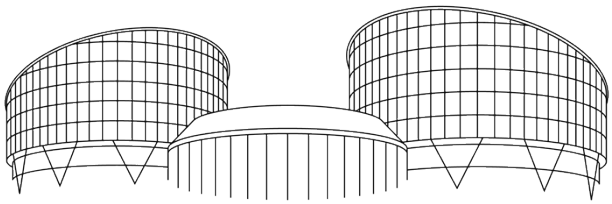

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF PUTTER v. BULGARIA

(Application no. 38780/02)

JUDGMENT

STRASBOURG

2 December 2010

FINAL

02/03/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Putter v. Bulgaria**,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 9 November 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 38780/02) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Bulgarian nationals, Mr Paul Evald Putter, Mr Victor Alexandrov Putter and Mr Johannes Alexandrov Putter, on 10 October 2002. Mr Paul Putter ("the first applicant") was born in 1930, lived in Plovdiv and died in 2009. He was the uncle of Mr Victor Putter ("the second applicant") and Mr Johannes Putter ("the third applicant"), who were born in 1954 and 1966, respectively, and who both live in Plovdiv. The first applicant's heirs, his wife Ms Dimitriya Zhivkova Putter, his daughter Ms Matilda Paul Putter and his son Mr Karl Pavlov Putter, informed the Court of his death by letter of 9 June 2009, indicating that they wished to continue the application on his behalf.

2. The applicants were represented by Mr M. Ekimdjiev and Ms K. Boncheva, lawyers practising in Plovdiv.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

4. The applicants alleged, in particular, that in proceedings which ended with a final judgment of the Supreme Administrative Court delivered on 11 July 2002, they had not had access to a court having full jurisdiction, in that the domestic courts had refused to undertake an independent review of the Government's valuation of the properties at issue, relying entirely on the method and calculations undertaken by the Privatisation Agency and Ministry of Industry in determining the applicants' entitlement to shares under section 18 of the Transformation and Privatisation of State and Municipal Enterprises Act of 1992.

5. On 9 October 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the alleged lack of access to a court having full jurisdiction to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

6. The applicants are hereditary successors in title to individuals who held 9.375 per cent of the share capital in the company which operated the "Kamentiza – Frick & Sultzer" brewery (the "Brewery") situated in the town of Plovdiv.

7. In 1947 the State nationalised the Brewery, together with its properties and the shares held by shareholders in the Brewery, under the Nationalisation of Private Industrial and Mining Enterprises Act ("the Nationalisation Act": Закон за национализация на частни индустриални и минни предприятия).

8. In February 1992 the Restitution of Ownership of Nationalised Real Estates Act ("the Restitution Act": Закон за възстановяване собствеността върху одържавени недвижими имоти) entered into force. In accordance with the terms of the Restitution Act, the applicants successfully restituted 9.375 per cent of 20,539 square metres of land and a number of buildings situated on it, all of which still formed part of the Brewery ("the Properties"), as restitution for the 9.375 per cent of the share capital in the Brewery held by their predecessors in title and which had been seized by the State under the Nationalisation Act. In particular, the first applicant restituted 4.6875 per cent of the Properties and the second and third applicants jointly restituted a further 4.6875 per cent of the Properties.

9. Thereafter, the applicants successfully sued the Brewery, on at least one occasion, for rental payments in respect of the Properties.

10. In May 1992 the Transformation and Privatisation of State and Municipal Enterprises Act ("the Privatisation Act": Закон за преобразуване и приватизация на държавни и общински предприятия) entered into force (see "Relevant domestic law and practice" below). On an unspecified date prior to 30 September 1994, the applicants made a request under section 18 of the Privatisation Act to be compensated with shares in the Brewery.

11. During the autumn of 1993, the first applicant discovered from local media reports that the Government had sold a majority stake in the Brewery to "Brau und Brunnen GmbH", a German limited liability company. However, the sale was not completed.

12. On 12 November 1993 the first applicant obtained a notary deed for his 4.6875 per cent ownership of the Properties. On the same day the second and third applicants also obtained a notary deed for their joint ownership of 4.6875 per cent of the Properties. Thus, in total, the applicants were registered owners of 9.375 per cent of the Properties.

13. On 25 January 1995 the State sold seventy per cent of the shares in the Brewery to "Interbrew", a Belgian brewer.

B. The allotment of shares to the applicants

14. On 2 December 1993 the first applicant wrote to the Privatisation Agency, querying the valuation of the Brewery and requesting confirmation of the number of shares to be allotted to the applicants. The Privatisation Agency responded to the first applicant in a letter dated 3 February 1994, informing him that the valuation of the Brewery that it had undertaken was in the context of its privatisation and that it was confidential because it served as an indicative basis for negotiating the sale price of the shares to be sold by the State. In addition, the Privatisation Agency stated that the privatisation valuation was not a relevant basis for determining the number of shares to be allotted to the applicants. The letter went on to state that the decision would be undertaken by the Ministry of Industry on the basis of a separate expert valuation.

15. Section 18 of the Privatisation Act was amended on 28 May 1996. The relevant amendment set out a method for determining the size of the shareholdings to be awarded as compensation to owners of seized property (see "Relevant domestic law and practice" below).

16. In early 1997 the applicants complained to a number of State bodies that their application to receive shares in the Brewery had not yet been examined.

17. On 8 May 1997 the applicants initiated an action before the domestic courts seeking a declaration that both the Plovdiv Municipality and the Privatisation Agency had failed in their respective obligations under section 18 of the Privatisation Act to inform them of the valuation of the Brewery. On 17 November 1997 the Plovdiv District Court rejected the applicants' action. That judgment was upheld on appeal by the Plovdiv Regional Court in a decision of 11 March 1998.

18. The Ministry of Industry commenced a parallel proceeding on 25 September 1997. The Ministry requested that the Privatisation Agency provide it with the value of, *inter alia*, the Properties. It also asked to be informed as to the percentage of the registered share capital of the Brewery

and the number of shares to be allotted in compensation for, *inter alia*, the Properties.

19. In a letter of 6 October 1997 the Privatisation Agency informed the Ministry of Industry that, on the basis of a valuation dated 30 June 1994 that it had undertaken, the value of the 20,539 square metres of land, a four-storey building and a two-storey building, of which the Properties formed part, was equal to 8.11 per cent of the net value of the assets of the Brewery – corresponding to 12,445 shares.

20. On 10 November 1997 the Ministry of Industry forwarded this valuation to the Plovdiv Municipality. The municipality subsequently informed the applicants that they would be compensated for the Properties with a total of 998 shares in the Brewery, each with a nominal value of 1,000 old Bulgarian levs (at the time, equal to 1 German mark), representing a total of 0.65 per cent of the Brewery's assets. In particular, the first applicant was to be allotted 499 shares and the second and third applicants were to be jointly allotted 499 shares. Each of these shareholdings would represent 0.325 per cent of the Brewery's assets.

21. On 25 November 1997 the applicants appealed against the decision of the Ministry of Industry.

22. In the course of the proceedings before the Plovdiv Regional Court, an expert valuation was conducted on 10 June 1998. This valuation compared the valuation conducted by the Privatisation Agency in 1994 with the prevailing market value of the Properties and concluded that the market value had increased by 5.38 per cent since 1994.

23. The Plovdiv Regional Court rejected the applicants' appeal on 25 June 1998. The Regional Court held that the applicants had no right of appeal against the decision of the Ministry of Industry which set the applicants' allotment of shares in the Brewery.

24. The applicants appealed against the above decision. On 27 January 1999, the appeal was rejected by the Supreme Administrative Court as having been submitted out of time.

25. Following a further appeal, on 21 May 1999 the extended panel of the Supreme Administrative Court quashed the above-mentioned decision and remitted the case for fresh consideration.

26. On 29 October 1999 the Supreme Administrative Court quashed the decision of the Plovdiv Regional Court given on 25 June 1998 and remitted the case to the Regional Court for fresh consideration. The proceedings continued before the Plovdiv Regional Court.

27. An expert report, dated 26 January 2001, was presented to the Plovdiv Regional Court. This report concluded that the number of shares to be allotted to the applicants was not determined on the basis of the privatisation valuation of the Brewery. Rather, the valuation used had only taken one part of the privatisation valuation and had partially relied on the registered share capital of the Brewery as at 30 June 1994.

28. On 19 July 2001 the Plovdiv Regional Court again dismissed the applicants' appeal against the decision of the Ministry of Industry to compensate them with a total of 998 shares in the Brewery. The court found that only expert valuations undertaken pursuant to the original text of section 18 of the Privatisation Act could be challenged before the courts. As the determination of the applicants' prospective shareholdings had been undertaken after the amendment of section 18 of the Privatisation Act in 1996, the court held that the balance sheet value of any property or, in the case of the applicants, the privatisation valuation of the Properties, was the proper basis for determining the number of shares to be allotted to them. However, the court considered that neither the balance sheet value nor the privatisation valuation of the Properties could be challenged before the courts. Nor, therefore, could the applicants challenge the method for calculating the number of shares to be granted to them.

29. The applicants appealed against the above judgment on 24 August 2001. They argued, *inter alia*, that they had a right of appeal against the valuation of the Properties and, consequently, that they also had a right to appeal against a decision as to the number of shares to be allotted to them using such a valuation. The applicants raised an additional ground of appeal based on the long delay by the authorities in addressing their request to receive shares in the Brewery. The applicants further averred that the original process required by section 18 of the Privatisation Act necessitated that an expert valuation be performed and that the authorities had failed to comply with the requirements of the law. Furthermore, the applicants argued that both versions of section 18 of the Privatisation Act provided for a right of appeal against the valuation used as a basis for determining the number of shares to be granted to an applicant. Lastly, the applicants claimed that neither they nor the courts had ever been presented with the full privatisation valuation of the Brewery, as the information had been classified. As a result, the applicants argued that the courts had relied entirely on the calculations and determinations undertaken by the Privatisation Agency and the Ministry of Industry as to the applicable value of the Properties and therefore, the number of shares that the applicants were entitled to receive in the Brewery.

30. The Supreme Administrative Court dismissed the applicants' appeal in a final judgment delivered on 11 July 2002. It upheld the lower court's finding that, following the amendment of section 18 of the Privatisation Act in 1996, both the privatisation valuation and the method for calculating the applicants' prospective shareholdings were not subject to appeal or challenge before the courts. In particular, the court stated:

> "In essence the dispute is about which valuation is pertinent for calculating the number of shares due – the privatisation or the expert [valuation] – so as to assess which of them should be used for calculating the number of shares [necessary] for

satisfying the restitution claims and to what extent that [valuation] is subject to judicial review.

The [lower court] rightly found that under section 18 of the [Privatisation Act], as in force at the relevant time, the compensation was calculated on the basis of the privatisation valuation, which is not, in itself, subject to judicial review. Thus, by not taking into account the expert [valuation], the court did not breach [the applicable] procedural rules because its assessments were irrelevant to the dispute. In the instant case, the pertinent fact is that the company was in the process of privatisation, a cash privatisation [for that matter], and in order to satisfy the claims of the former owners the only possibility was for them to receive the appropriate number of shares – which are to be calculated on the basis of the privatisation valuation."

C. Subsequent developments

31. On 17 January 2005 the Ministry of Economy invited the applicants to enter into share transfer agreements in respect of their compensation under section 18 of the Privatisation Act. In particular, the Ministry of Economy offered to transfer to the first applicant 5,489 shares in the Brewery, each with a nominal value of 1 new Bulgarian lev (0.51 euros), and to transfer 2,745 such shares to each of the second and third applicants. The draft share transfer agreements explicitly stated that, by entering into the agreement, each applicant would accept the valuation of their nationalised property contained therein and the number of shares allotted to him by way of compensation as a result.

32. On 31 January 2005 the applicants informed the Ministry of Economy by letter that they refused to sign the draft share transfer agreements. The applicants highlighted in their letter that they did not accept the valuation of the Properties and the number of shares to be allotted to them as a result. The applicants reiterated their request that an independent expert valuation be undertaken. Moreover, they expressed surprise at the significant increase in the number of shares they were being offered in the Brewery, demanded to know the reason and rationale for the increased offer and also stated their opinion that a further increase would result from an independent valuation.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Transformation and Privatisation of State and Municipal Enterprises Act of 1992

33. Section 18 (1) of the Privatisation Act, as in force between 1992 and 1996, provided that owners of real estate, such as the Properties, which physically existed and formed part of the tangible assets of State- and

municipal-owned enterprises, had the right to receive shares in any company created on the basis of those enterprises. The size of the shareholding to be awarded pursuant to the Privatisation Act was to be determined on the basis of an expert valuation undertaken by the municipal council where the property was situated. The expert valuation would subsequently be communicated to the owner of the real estate by the municipality. In this regard, section 18 (3) of the Privatisation Act provided the following:

> "The municipal council where the property is situated informs the owners of its valuation ... [The valuation] can be appealed before the Regional Court within fourteen days of being served."

34. The time limit for submitting a request to receive shares as provided for in the Privatisation Act expired on 11 May 1993. However, section 18 (1) of the Privatisation Act was amended on 24 June 1994 and this amendment granted a new deadline which expired on 30 September 1994.

35. Section 18 (1) of the Privatisation Act was further amended on 28 May 1996. This latter amendment set out the basis for the allotment of shares to be made to an applicant pursuant to the Privatisation Act. As amended, the Privatisation Act provided that an allotment of shares would be based on the balance sheet value of the relevant property unless a privatisation in cash had been concluded, in which case the privatisation valuation would be used. The right of appeal against a valuation remained unchanged (section 18 (3) of the Privatisation Act).

36. The Privatisation Act was repealed in 2002.

B. The possibility of reopening civil proceedings as a result of a judgment of the European Court of Human Rights

37. Article 231 § 1 (h) of the Code of Civil Procedure of 1952 (Граждански процесуален кодекс), as in force between 1 April 1998 and 1 March 2007, provided that an interested party could request the reopening of civil proceedings in the event that a "judgment of the European Court of Human Rights has found a violation of the [Convention]". On 1 March 2007 the Code of Civil Procedure of 1952 was replaced by a new code of the same name.

38. By virtue of section 45 of the Administrative Procedure Act of 1979 (Закон за административното производство) and section 41 (1) of the Supreme Administrative Court Act of 1997 (Закон за Върховния административен съд), the above provision of the Code of Civil Procedure of 1952 was also made applicable to proceedings in administrative cases. The Supreme Administrative Court relied on Article 231 § 1 (h) to reopen proceedings which had resulted in a ruling that the courts had no

jurisdiction to examine an application for judicial review of an administrative decision (see *Al-Nashif v. Bulgaria*, no. 50963/99, 20 June 2002, and реш. № 4332 от 8 май 2003 г. по адм.д. № 11004/2002 г., ВАС, петчленен състав).

39. On 12 July 2006 a new Code of Administrative Procedure ("the Code": Административнопроцесуален кодекс) entered into force. Article 239 § 6 of the Code provides that an interested party may request the reopening of administrative proceedings in the event that a "judgment of the European Court of Human Rights has found a violation of the [Convention]".

THE LAW

I. PRELIMINARY ISSUE

40. The Court observes that the first applicant died in 2009 and that his wife, Ms Dimitriya Zhivkova Putter, his daughter, Ms Matilda Paul Putter, and his son, Mr Karl Pavlov Putter, informed the Court in a letter dated 9 June 2009 that they wished to continue the application on behalf of the first applicant.

41. In view of the above, the Court holds that the first applicant's heirs have standing to continue the present proceedings in his stead.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

42. The applicants complained under Article 6 of the Convention that, in the domestic proceedings which concluded in a final judgment of the Supreme Administrative Court of 11 July 2002, they lacked access to a court having full jurisdiction because the domestic courts refused to review the valuation of the Properties and relied entirely on the method and calculations undertaken by the Privatisation Agency and the Ministry of Industry in determining their entitlement to shares under section 18 of the Privatisation Act. The relevant part of Article 6 reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

43. The Government claimed that the applicants had failed to exhaust the available remedies because they had not accepted the shares they were offered by the Ministry of Economy on 17 January 2005 – an option which was still open to them. Thus, they had deprived themselves of the possibility of remedying their complaint by receiving adequate compensation offered in respect of their claims towards the State.

44. In response, the applicants stated that the reason for their refusal to accept the offer made by the Ministry of Economy was that they did not agree with the basis of the valuation, which was the central issue in their complaint to the Court. Moreover, they observed that by signing the proposed share transfer agreements, they would not only have been required to accept the Government's valuation of their properties and the number of shares allotted to them as a result, but would also have been contractually precluded from raising any further challenge to the basis of valuation.

A. Admissibility

45. The Court notes that the Government considered that the applicants had, and still have, the ability to remedy the complaint before the Court by accepting the shares they were offered by the Ministry of Industry in its letter of 17 January 2005. However, in so far as the present application relates to the alleged lack of access to a court having full jurisdiction on account of the domestic courts' refusal to review the valuation of the Properties and the related method of determining the applicants' entitlement to shares, the Court does not consider the Government's proposed remedy to be one that the applicants should have exhausted prior to filing the complaint. In particular, the Court notes that, in accepting the proposal of the Ministry of Economy, the applicants would have had to waive their rights to challenge the relevant valuation in further proceedings, thus precluding themselves from seeking to correct the deficiency that allegedly existed in the preceding administrative proceedings.

In view of the above, the Court dismisses the Government's contention that the applicants failed to exhaust all available remedies.

46. Thus, the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. The complaint must therefore be declared admissible.

B. Merits

47. The Court reiterates that in order for the determination of civil rights and obligations by a tribunal to satisfy Article 6 § 1, the tribunal in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see, *mutatis mutandis*, *Terra Woningen B.V. v. the Netherlands*, 17 December 1996, §§ 52-55, *Reports of Judgments and Decisions* 1996-VI; *Chevrol v. France*, no. 49636/99, §§ 76-84, ECHR 2003-III; and *I.D. v. Bulgaria*, no. 43578/98, §§ 45-52, 28 April 2005).

48. In the present case, the Court notes that the first applicant wrote to the Privatisation Agency as early as 2 December 1993 to enquire about the

number of shares to be allotted to the applicants, but was informed on 3 February 1994 that the decision would be taken by the Ministry of Industry on the basis of an expert valuation.

49. Subsequently, in 1997 the Privatisation Agency informed the Ministry of Industry that, on the basis of the 1994 valuation, the value of the 20,539 square metres of land, a four-storey building and a two-storey building, of which the Properties formed part, was equal to 8.11 per cent of the net value of the assets of the Brewery – corresponding to 12,445 shares. This valuation was forwarded to the Plovdiv Municipality, which in turn informed the applicants that they would be compensated for the Properties with 998 shares in the Brewery, each with a nominal value of 1,000 old Bulgarian levs (at the time, equal to 1 German mark), representing a total of 0.65 per cent of the Brewery's assets. In particular, the first applicant was allotted 499 shares and the second and third applicants were jointly allotted 499 shares, and each of these shareholdings represented 0.325 per cent of the Brewery's assets.

50. On 25 November 1997 the applicants appealed against the decision of the Ministry of Industry. In the course of the proceedings before the Plovdiv Regional Court an expert valuation was conducted in 1998 which compared the valuation conducted by the Privatisation Agency in 1994 with the prevailing market value of the Properties and concluded that the market value had increased by 5.38 per cent since 1994.

51. At the retrial before the Plovdiv Regional Court another expert report was prepared in 2001 which concluded that the number of shares allotted to the applicants was not determined on the basis of the privatisation valuation of the Brewery. Rather, the valuation used had only taken one part of the privatisation valuation and had partially relied on the registered share capital of the Brewery as at 30 June 1994.

52. Irrespective of the expert reports presented to the courts, in a final judgment of 11 July 2002 the Supreme Administrative Court dismissed the applicants' appeal and found that, following the amendment of section 18 of the Privatisation Act in 1996, both the privatisation valuation and the method for calculating the applicants' prospective shareholdings were not subject to appeal or challenge before the courts.

53. Thus, the Court finds that the domestic courts considered themselves bound by the privatisation valuation of the Properties conducted by the administrative authorities and refused to examine the method used by them to calculate the number of shares allotted to the applicants as compensation for their restituted properties, both of which were central to determining the proprietary complaints brought before the domestic courts. The domestic courts took this line of reasoning in spite of the explicit right of appeal against privatisation valuations provided for in section 18 (3) of the Privatisation Act (see “Relevant domestic law and practice” above).

54. Consequently, in their exclusive reliance on the valuation and method of calculating the applicants' compensation entitlement undertaken by two administrative bodies – the Privatisation Agency and the Ministry of Industry – the domestic courts refused to assess a fact which was central for the determination of the case at the domestic level (see, *I.D.*, cited above, § 50). The applicants were thus not able to obtain a final judicial determination of their alleged entitlement to more shares than were determined by the administrative bodies.

55. The Court further observes that no justification has been offered for the situation that transpired. In particular, neither the Supreme Administrative Court nor the Government have sought to justify this denial of access to a court as pursuing a legitimate aim and being in a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. On the other hand, it must be noted that it impaired the very essence of the applicants' rights, as it does not appear that they could resort to any other avenue of redress (see, *Yanakiev v. Bulgaria*, no. 40476/98, § 72, 10 August 2006).

56. In view of the above, the Court finds that the domestic courts failed to exercise their jurisdiction to examine all questions of fact and law relevant to the dispute before them, as required by Article 6 § 1 of the Convention.

There has accordingly been a violation of Article 6 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

58. The applicants claimed 80,000 euros (EUR) as compensation for non-pecuniary damage sustained as a result of the lack of access to a court having full jurisdiction and the prolonged uncertainty of their legal situation. The amount claimed by the applicants is stated to represent the difference in value between the allotment of shares made to them using the privatisation valuation and that of the expert's valuation of 10 June 1998 (see paragraphs 20 and 22 above).

59. The Government did not comment on the applicant's claim.

60. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicants did not have the benefit of

the guarantees of Article 6 § 1 of the Convention. Whilst the Court cannot speculate as to the outcome of the proceedings had the position been otherwise, it considers that the applicants must have suffered non-pecuniary damage, for which the finding of a violation does not constitute sufficient reparation (see *Chevrol*, cited above, § 89). Ruling on an equitable basis as required by Article 41 of the Convention, the Court awards EUR 4,000 jointly to the heirs of the first applicant and EUR 2,000 to each of the second and third applicants in respect non-pecuniary damage, plus any tax that may be chargeable.

61. The Court also considers it necessary to point out that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for the consequences of its violation in such a way as to restore as far as possible the situation existing before the breach. In the case of a violation of Article 6 of the Convention, the applicants should, to the fullest extent possible, be put in the position they would have been in had the requirements of the Convention not been disregarded (see *Yanakiev*, cited above, § 89).

62. The Court notes that Article 239 § 6 of the Code (see paragraph 39 above) provides for the reopening of domestic proceedings if the Court has found a violation of the Convention. The Court takes the view that the most appropriate form of redress in cases where it finds that an applicant has not had access to a tribunal in breach of Article 6 § 1 of the Convention is, as a rule, to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see *Yanakiev*, cited above, § 90).

B. Costs and expenses

63. The applicants also claimed EUR 1,460 for costs and expenses incurred before the Court. The amount claimed consisted of lawyers' fees of EUR 1,429 and postal and office expenses of EUR 31. In support of their claim, the applicants provided a legal-fees agreement and an approved time-sheet, as well as receipts for payment of the claimed postal expenses. The applicants asked that any award under this head be made directly payable to their lawyers.

64. The Government did not comment on the applicant's claim.

65. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable

as to quantum. In the present case, having regard to the documents in its possession and to the above criteria, the Court considers it reasonable to award the claimed amount of EUR 1,460 in full. The award shall be paid into the bank account of the applicants' legal representatives, Mr M. Ekimdjiev and Ms K. Boncheva.

C. Default interest

66. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 6 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 4,000 (four thousand euros) jointly to the heirs of the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros) to each of the second and third applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,460 (one thousand, four hundred and sixty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of the applicants' legal representatives, Mr M. Ekimdjiev and Ms K. Boncheva;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President