



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

FIFTH SECTION

CASE OF STOYANOVI v. BULGARIA

(Application no. 42980/04)

JUDGMENT

STRASBOURG

9 November 2010

FINAL

09/02/2011

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

In the case of Stoyanovi 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 5 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 42980/04) 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 two Bulgarian nationals, Ms Veselka Vasileva Stoyanova and Mr Grigor Kirilov Stoyanov (“the applicants”), on 25 November 2004.

2. The applicants were represented by Mr Y. Grozev, a lawyer practising in Sofia, and Mr B. Boev, a legal officer at Article 19, a non-governmental organisation based in London. On 8 October 2008 the President of the Fifth Section granted leave to Mr Boev to represent the applicants, in accordance with Rule 36 § 4 (a) *in fine* of the Rules of Court. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged that the State was responsible for the death of their son, an army officer, and that it had failed to respond to his death in an effective manner.

4. On 6 January 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1946 and 1938 respectively and live in Kazichene.

6. On 27 May 1998 their son, Mr Rosen Stoyanov, born in 1967, a parachute instructor in the Bulgarian Army, died when performing a parachute jump from a Mi-17 helicopter during a training exercise of the Ministry of the Interior's Special Anti-Terrorism Squad.

1. The 27 May 1998 accident

7. Six paratroopers were scheduled to jump on that day. Before getting into the helicopter they were examined by a doctor who confirmed that they were physically fit. The helicopter took off at 1 p.m. and several minutes later reached a height of about 1,100 metres. Immediately before the start of the parachute jumps Chief Sergeant T., in charge of the jumps, instructed the helicopter's pilots to speed up. The pilots responded "You have it". It is unclear what the exact speed thus reached was, because, as it was established later, the helicopter's device recording the parameters of the flight had not been loaded with a tape.

8. One of the paratroopers, Mr G., jumped first. Immediately after the jump, his body was thrust back by the air stream and his head passed about 20 centimetres from the left rear tyre of the helicopter.

9. The applicants' son jumped four seconds later. Immediately after the jump, his head hit the left rear tyre of the helicopter and he became unconscious. His body fell freely and hit the ground.

10. Four seconds later the next paratrooper, Mr V., jumped. His head also hit the left rear tyre of the helicopter and he became unconscious. Sixty to seventy metres from the ground he regained consciousness and attempted unsuccessfully to open his parachute. His body also hit the ground.

11. After the accidents with the applicants' son and Mr V. the parachute jumps stopped and the helicopter landed. The two bodies were located soon afterwards.

2. The internal inquiry

12. On 27 May 1998 the Ministers of the Interior and Defence appointed a ten-member commission to investigate the reasons that had led to the fatal accident. The commission, which included paratroopers, doctors and other experts, conducted inspections, interviewed witnesses and examined documents. On 6 June 1998 it presented an interim report proposing, with a view to establishing properly the circumstances of the accident, that an experiment with a dummy being thrown from a helicopter at different

speeds be carried out and that the helicopter's manufacturer be asked for additional technical information. However, it appears that none of these actions was taken.

13. On 24 June 1998 the commission submitted its final report. It established that after Chief Sergeant T. had instructed the crew to speed up (see paragraph 7 above), the helicopter had increased its speed from about 150 to about 200 km/h. This estimation was based on ground control data.

14. Furthermore, the commission established that the helicopter, which was built in 1986, had been in a good state of technical repair, and that its equipment had been functioning well during the fatal flight. The three members of the crew were experienced and qualified. The commission established that up to 27 May 1998 Mr Rosen Stoyanov had performed 450 parachute jumps, 112 of which were from a Mi-17 helicopter. Mr V. had performed 178 jumps, 120 of which were from a Mi-17 helicopter.

15. The commission concluded that the accident had been caused by

“the inappropriate speed of the helicopter and the position of the paratroopers' bodies at the time of jumping, not in conformity with that speed”.

Additionally, the accident had been due to:

“1) incomplete coordination between the helicopter's crew and the paratroopers; 2) shortcomings in the preparation and conduct of the flight on the part of the helicopter's crew; and 3) shortcomings in the organisation and the conducting of the parachute jumps on the part of the Ministry of the Interior's Special Anti-Terrorism Squad.”

16. The commission criticised the failure of the officials responsible for the organisation of the flight to load the helicopter's recording device with a tape (see paragraph 7 above), which was against the rules.

17. Furthermore, the commission criticised Chief Sergeant T.'s failure to communicate to the crew the exact speed he needed when he requested them to speed up. Neither had the speed at which the jumps were to be performed been indicated by the officer in charge of the training (he had remained on the ground) before the helicopter took off.

18. The commission recommended various measures for the prevention of similar accidents in the future, mostly concerning the training of paratroopers and flight preparation. It is unclear whether any of them were put into practice.

19. On 30 June 1998 the commission's report was affirmed by the Minister of Defence, but not by the Minister of the Interior. Subsequently, the document was extended to the prosecuting authorities who investigated the deaths of Mr Stoyanov and Mr V. (see below).

3. The criminal proceedings

20. On 27 May 1998 the Sofia military regional prosecutor's office opened a preliminary investigation into the accident.

(a) Initial investigative actions

21. A post-mortem examination of the bodies of the applicants' son and Mr V. was carried out on 28 May 1998. It concluded that the death had been caused by “numerous traumas incompatible with the maintenance of life”. There were no traces of alcohol or poison in the blood.

22. Nor were any traces of alcohol or poison found in the crew members' blood.

23. Colonel O., the flight captain, was questioned on 28 May 1998. He stated that the helicopter had been checked and found to be in good technical repair just before the flight. Furthermore, he stated that after Chief Sergeant T. had asked the pilots to speed up he had increased speed from 130 to 150 km/h. After the first three paratroopers had jumped, he had been told to land as two of the paratroopers' parachutes had not opened.

24. Senior Sergeant A., the flight engineer, was questioned on 1 June 1998. He also testified that the helicopter's speed at the time when the parachute jumps had started had been 150 km/h. The speed and the height had not changed during the jumps. When jumping from the helicopter, Mr G. had plunged energetically and Mr Rosen Stoyanov and Mr V. had not, which, in Senior Sergeant A.'s view, had been the reason for the fatal accident.

25. On 29 May 1998 Mr G., who had jumped before Mr Stoyanov, testified that immediately after jumping he had felt an unexpectedly strong air stream.

26. Chief Sergeant P., who had been on board the helicopter, was questioned on 29 May 1998. He explained that he had seen Mr G.'s head pass about 20 centimetres from the helicopter's left rear tyre and then Mr Rosen Stoyanov and Mr V. hit the tyre. Because of the force of the blow, Mr Stoyanov's body had turned several times in the air.

27. Lieutenant D., who had also been in the helicopter, testified that he, too, had seen Mr Rosen Stoyanov's head hit the tyre. Captain C., who had also been on board, described the position of Mr G.'s body immediately after he had jumped as “totally abnormal”.

28. Chief Sergeant T., who had been in charge of the jumps and had been scheduled to jump after Mr V., was questioned on 29 May 1998. He explained that he had not seen Mr Rosen Stoyanov and Mr V. hit the tyre but had become aware of the abnormal position of Mr V.'s body and had not jumped. He had not noticed any change in the speed, height or direction of the helicopter during the parachute jumps.

29. During the first several weeks after 27 May 1998 the investigator in charge of the case examined other witnesses, conducted inspections and collected documentary evidence.

30. On 28 May 1998 he appointed the members of the internal inquiry commission of the Ministries of the Interior and Defence (see paragraphs 12-19 above) as experts in the criminal proceedings, with the task of determining the cause of the two paratroopers' deaths. Since the experts

failed to submit a report within the months that followed, on 25 November 1998 a prosecutor from the Sofia military regional prosecutor's office stayed the proceedings.

(b) Subsequent developments

31. On several occasions in 1999 and early 2000 the Sofia military regional prosecutor's office sent letters to the Ministries of the Interior and Defence requesting that their officials appointed as experts prepare and submit a report for the purposes of the criminal proceedings.

32. On 18 April 2000 the criminal proceedings were resumed and the prosecutor in charge of the case appointed a new group of experts from the National Military University in Dolna Mitropoliya, with the task of assessing the reasons for the deaths of the applicants' son and Mr V.

33. On 25 April 2000 the experts submitted their conclusions, specifying that the information they had been given was insufficient, there being no data on the exact parameters of the flight, and also that they were not experts in parachuting; therefore, they were not able to draw up a formal expert report.

34. The experts considered that the helicopter's speed at the time of Mr Rosen Stoyanov's and Mr V.'s jumps had been between 150 and 170 km/h. However, in their view, the speed was not related to the fatal accident, which had instead been caused by the two paratroopers' jumping technique; this had not been in compliance with the respective instructions for performing parachute jumps.

35. In July and October 2000 the Sofia military regional prosecutor's office sent new letters to the Ministries of the Interior and Defence requesting again that the experts appointed on 28 May 1998 (see paragraph 30 above) draw up a formal report.

36. On 17 November 2000 the Ministry of Defence experts submitted their report. The group included four paratroopers and a doctor. The Ministry of the Interior experts did not sign the document.

37. On the basis of ground control data, the Ministry of Defence experts established that the helicopter's speed at the time of Mr Rosen Stoyanov's and Mr V.'s jumps had been 210 km/h. The experts were of the opinion that Mr Stoyanov and Mr V. had not committed any errors when jumping from the helicopter, but pointed out that they did not possess the expertise to assess whether the helicopter's crew had committed any errors that might have led to the tragic accident. The experts noted that the two paratroopers' parachutes had been well packed and in good repair and that the weather conditions at the time had not affected the flight.

(c) Discontinuance of the criminal proceedings

38. On 4 February 2002 a prosecutor from the Sofia military regional prosecutor's office discontinued the criminal proceedings. Relying on witness testimony and the conclusions of the National Military University

experts (see paragraph 34 above), he found that the helicopter's speed and course of flight did not change significantly during the parachute jumps and were not related to the fatal accident. He accepted that sufficient data could not be collected to assess whether the helicopter's crew had committed any errors and that the applicants' son and Mr V. had not complied with the respective instructions on performing parachute jumps.

39. On an appeal by the applicants, on 6 August 2002 the Sofia Military Court quashed the prosecutor's decision. On 28 November 2002 the Military Court of Appeal affirmed the lower court's findings. It held that the prosecutor had breached the procedural rules and that the conclusions of the National Military University experts, on which his decision had been based, could not serve as valid evidence in the case.

40. After the case was remitted to the prosecution, some of the witnesses were re-examined. On an unspecified date Chief Sergeant T., who had been in charge of the parachute jumps, explained that when he had instructed the helicopter crew to speed up he had meant a speed of about 150 km/h, as was usual. He had become aware later, apparently from the conclusions of the internal inquiry, that the speed had been above 200 km/h. He considered that this, coupled with a possible minor side inclination of the helicopter, which would have shifted the position of the left rear tyre *vis-à-vis* the paratroopers' bodies, had been the reason for the accident with the applicants' son and Mr V.

41. On 13 May 2003 a prosecutor from the Sofia military regional prosecutor's office requested the Ministers of the Interior and Defence to nominate seven experts in aerodynamics, aviation, meteorology and parachuting to be appointed experts in the criminal proceedings and draw up a new expert report. He received no reply.

42. On 16 June 2003 the prosecutor appointed another group of experts – a physician from the Military Medical Academy and five lecturers from the Air Transport Department of the Technical University in Sofia – with the task of assessing the reasons for the two paratroopers' deaths on 27 May 1998.

43. The experts submitted their report on 25 July 2003. They considered it scientifically impossible for Mr Stoyanov and Mr V. to have hit the helicopter's left rear tyre; in their view those blows had been “made up”. The experts considered that the two paratroopers had wrongly estimated the distance to the ground and had failed to open their parachutes in time; this had led to their deaths. Furthermore, the paratroopers had failed to comply with the relevant instructions on the position of their bodies at the time of jumping. The speed and course of the helicopter had not been related to their death.

44. On 10 June 2004 a prosecutor from the Sofia military regional prosecutor's office once again discontinued the criminal proceedings. In his decision, he referred to the expert report of 25 July 2003 and its conclusion that the applicants' son and Mr V. had not in fact hit the left rear tyre of the

helicopter (see paragraph 43 above). However, he also mentioned the witness testimony indicating that these impacts had happened (see paragraphs 26-27 above). He failed to examine the apparent controversy between those two groups of evidence and to indicate which version he found plausible. He merely concluded, after describing the evidence collected in the case, that there was no appearance of a crime.

45. Upon appeal by the first applicant, on 30 June 2004 the prosecutor's decision was upheld by the Sofia Military Court. Examining the evidence collected in the case, that court dismissed the conclusion of the expert report of 25 July 2003 (see paragraph 43 above) that Mr Stoyanov and Mr V. had not hit the helicopter's left rear tyre; it considered that in this regard the testimony of the other participants in the flight was reliable. Nevertheless, the domestic court accepted the experts' conclusion to the effect that Mr Stoyanov and Mr V. had not positioned themselves correctly when they jumped. It concluded that this had been the reason for their hitting the tyre and falling to the ground. Accordingly, it upheld the prosecution's conclusion that no offence had been committed in the case.

4. Other developments

46. Soon after their son's death, the applicants sought the compensation provided for in section 249(2) of the Armed Forces Act 1995 (see paragraph 49 below). As they had not received that sum by 2003, they brought a claim. They sought the compensation provided for in section 249(2) of the Armed Forces Act, plus interest, as provided for in section 250 (*ibid.*).

47. While the proceedings were pending, the Bulgarian Army paid up the compensation due, which was in the amount of 8,316.48 Bulgarian leva (BGN), the equivalent of approximately 4,300 euros (EUR). Therefore, in a judgment of 6 July 2004 the Sofia District Court only awarded the applicants the interest accrued, in accordance with section 250 of the Armed Forces Act, which amounted to BGN 427.58, the equivalent of EUR 220. That judgment was not appealed against and entered into force.

48. In September 2003 the applicants also sought indemnification from the company with which their son had been insured by the Bulgarian Army. They claimed a sum of about BGN 3,000, the equivalent of EUR 1,540. However, that indemnification was refused as they had failed to claim it within the statutory three-year time-limit from the date of their son's death.

II. RELEVANT DOMESTIC LAW

A. The Armed Forces Act of 1995

49. Section 249(2) of that Act, in force at the relevant time, provided that the Bulgarian Army would be liable to pay compensation in the amount

of twelve months' salary, to each of the heirs (spouse, children or parents) of an army serviceman who had died during military service. By section 250 of the same Act, the Army was also liable to pay any interest accrued in the event of a delay of payment.

50. Where the heirs of an army serviceman who had died during military service sought a larger amount in damages, they could, by virtue of the provision of section 249(6) of the Armed Forces Act, bring an action before the civil courts.

B. State liability for damage

51. Section 1(1) of the 1988 State Responsibility for Damage Caused to Citizens Act (on 12 July 2006 its name was changed to “State and Municipalities Responsibility for Damage Act”) provides that the State is liable for damage suffered by private persons as a result of unlawful decisions, actions or omissions by civil servants committed in the course of or in connection with the performance of their duties.

52. In addition, section 45(1) of the 1951 Contracts and Obligations Act provides that everyone is obliged to make good the damage which they have, through their fault, caused to another person. Section 49 of the Act provides that a person who has entrusted another with performing a job is liable for the damage caused by that other person in the course of or in connection with the performance of the job.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

53. The applicants complained under Article 2 of the Convention that the State had been responsible for the death of their son, Mr Rosen Stoyanov, and that the investigation of his death had been ineffective. Article 2, in so far as relevant, reads:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

....”

54. The Government considered that the investigation of Mr Stoyanov's death had been thorough and effective and that the Sofia Military Court's conclusion that no criminal offences had been committed in the course of the preparation and conduct of the parachute jumps on 27 May 1998 was tenable and well-reasoned.

55. The applicants contested these arguments.

A. Admissibility

56. The Court notes that in 2003 the applicants received compensation for their son's death from the Bulgarian Army (see paragraphs 46-47 above). However, the obligation to pay that compensation resulted directly from the fact that the applicants' son had died during his military service (see paragraph 49 above) and there is nothing to suggest in the case that in paying it the authorities also acknowledged, expressly or in substance, alleged breaches of Article 2 of the Convention (see *Rotaru v. Romania* [GC], no. 28341/95, §§ 33-38, ECHR 2000-V). Accordingly, the Court considers that the applicants have remained victims of the alleged violations of that provision.

57. Furthermore, the Court is of the view that the complaints under Article 2 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

58. The Court notes that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III).

59. Where the threat to life derives from the criminal acts of others, this positive obligation has been held to include a primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. In certain well-defined circumstances it may extend to requiring the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. Subject to considerations as to the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities and which also conforms with the other rights guaranteed under the Convention. The test imposed in the context of the duty to prevent and suppress offences against the person is that it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their

powers which, judged reasonably, might have been expected to avoid that risk (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII). This approach has been applied also to areas where risks to life have arisen due to dangerous situations, such as the settlement of people in slum dwellings next to a massive rubbish dump and naturally-occurring hazards such as mudslides, where the authorities, knowing about the potential danger, are under obligations to respond with due regard to protection of the right to life. In this context, the Court has found failures on a substantive level, in the failures to take the necessary measures to inform and safeguard the population, and also on procedural level, due to inadequate investigatory and judicial response permitting the cause of the disaster to be established, for the persons responsible to be held accountable and for compensatory relief to be available to the victims (see *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004-XII, and *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, ECHR 2008-... (extracts)).

60. Positive obligations apply in the public-health sphere too. They require States to make regulations compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives. They also require an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V; *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, ECHR 2004-VIII). Where the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy in every case. In the specific sphere of medical negligence, "the obligation may for instance also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any liability of the doctors concerned to be established and any appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained. Disciplinary measures may also be envisaged" (see *Calvelli and Ciglio*, cited above, § 51; *Lazzarini and Ghiacci v. Italy* (dec.), no. 53749/00, 7 November 2002; and *Mastromatteo v. Italy* [GC], no. 37703/97, § 90, ECHR 2002-VIII).

61. Positive obligations will vary therefore in their application depending on the context. It is primarily the task of the domestic systems to investigate the cause of fatal accidents and to establish facts and responsibility. In the present case, which concerns an accident during a military training exercise, the Court notes that while it may indeed be considered that the armed forces' activities pose a risk to life, this is a situation which differs from those "dangerous" situations of specific threat

to life which arise exceptionally from risks posed by violent, unlawful acts of others or man-made or natural hazards. The armed forces, just as doctors in the medical world, routinely engage in activities that potentially could cause harm; it is, in a manner of speaking, part of their essential functioning. Thus, in the present case, parachute training was inherently dangerous but an ordinary part of military duties. Whenever a State undertakes or organises dangerous activities, or authorises them, it must ensure through a system of rules and through sufficient control that the risk is reduced to a reasonable minimum. If nevertheless damage arises, it will only amount to a breach of the State's positive obligations if it was due to insufficient regulations or insufficient control, but not if the damage was caused through the negligent conduct of an individual or the concatenation of unfortunate events (see, for comparison, *Kalender v. Turkey*, no. 4314/02, §§ 43-47, 15 December 2009).

62. There is no claim in the present case that there was any deliberate infliction of injury or that any specific risk to life of the applicants' son arose that should have been foreseen in advance. It is however the case that there should be an appropriate legal, regulatory and judicial framework such that the cause of the accident should be determined and provision made for establishing any liability and affording appropriate redress.

63. In the present case the applicants do not argue that the legislative and administrative framework set up by the State was defective in any general or systemic sense. The Court's supervision must rather focus on the response by the authorities to the accident. In the case at hand, the relevant events which led to loss of life occurred under the responsibility of the Ministry of the Interior, which organised and carried out the parachuting training of 27 May 1998 (see paragraph 6 above). Having regard to the context, the circumstances surrounding the accident which led to the death of the applicants' son were largely confined within the knowledge of the public authorities, which were also the only entities possessing sufficient expertise and resources to identify and establish the reasons behind it. Thus it was for these authorities to ensure that there was an effective investigation. As such investigation necessarily includes a significant element of technical expertise, the Court must give particular weight to the domestic authorities' findings in this regard.

64. The Court notes that in fact there were two official inquiries into the fatal accident in which Mr Rosen Stoyanov lost his life. On the first place, an internal inquiry was carried out by a joint commission of the Ministries of the Interior and Defence, which gathered numerous pieces of evidence and submitted a report, concluding that the accident had been caused by the helicopter's "inappropriate" speed and by deficiencies in the preparation of the parachute training and in the coordination between the helicopter's crew and the paratroopers (see paragraphs 12-17 above). The Court is satisfied that the commission possessed the necessary expertise and impartiality, that its investigation was comprehensive and that its conclusions were adequate,

tenable and convincing. Indeed, the Court notes, as the commission did, that the communication between the helicopter's crew and the paratroopers appears to have been deficient as, firstly, Chief Sergeant T., who was in charge of the parachute jumps, failed to indicate to the crew the exact speed needed (see paragraphs 7 and 40 above) and, secondly, the crew failed to communicate to the paratroopers the exact speed attained after his instructions to "speed up" (see paragraph 7 above). Furthermore, the helicopter's device recording the parameters of the flight had not been loaded with a tape (see paragraphs 7 and 16 above). The Court notes also that the internal inquiry's conclusions provide a plausible and convincing explanation of the events of 27 May 1998, and in particular of the fact that two very experienced paratroopers died in the same way, within seconds of each other, after their heads hit the left rear tyre of the helicopter, and that Mr G., the paratrooper who had jumped first, did not jump normally either, his head barely missing the same tyre. The Court sees no reason to doubt the thoroughness and the correctness of the internal inquiry's conclusions. It notes that even if the measures recommended in the commission's interim report of 6 June 1998, namely an experiment with a dummy and requesting additional information from the helicopter's manufacturer, were apparently never carried out (see paragraph 12 above), the final report of 24 June 1998 still appears to have been based on ample and diverse evidence, namely site inspections, witness testimony and documents (*ibid.*). Furthermore, even if the commission's members were officials of the Ministries of the Interior and Defence, the Court sees no reason to question their impartiality in this exercise. These officials included paratroopers, doctors and other experts (see paragraph 12 above). Their expertise has not been challenged and was apparently also recognised by the prosecuting authorities who initially appointed the commission's members as experts in the criminal proceedings (see paragraph 30 above). The internal inquiry's conclusion that the paratroopers bore no fault for the fatal accident was also reiterated in the expert report submitted for the purposes of the criminal proceedings on 17 November 2000 (see paragraphs 36-37 above).

65. Furthermore, the Court notes that the internal inquiry was prompt, as it was concluded less than a month after the fatal accident of 27 May 1998 (see paragraph 13 above).

66. The prosecuting authorities also carried out an investigation into the accident of 27 May 1998 (see paragraphs 20-45 above) but differed from the internal inquiry as to the interpretation of the evidence and as to where the fault for the accident lay. The Court does not find problematic in itself the fact that these inquiries carried out by the authorities did not lead to establishing any degree of criminal responsibility of the persons responsible for the parachute training of 27 May 1998. It notes that Article 2 of the Convention obliges the authorities to carry out a meaningful investigation; it is not required that there is an ensuing criminal conviction (see paragraph 60 above). Although the conclusions of the prosecuting authorities as to the

causes of the fatal accident of 27 May 1998 did not provide convincing explanation for the way in which two experienced paratroopers died one after the other and one other paratrooper almost hit the wheel of the helicopter, it does not necessarily follow that they erred in not applying criminal sanctions. It is not apparent that the evidence concerning Mr Stoyanov's death, gathered by the authorities, suggested that a particular individual or individuals committed such grave errors as to be justifiably held criminally responsible. Nor do the applicants in their submissions point to such individuals.

67. The Court would emphasise that the inquiries described above allowed the applicants to acquaint themselves with the evidence concerning their son's death. Furthermore, the internal inquiry carried out by the Ministries of the Interior and the Defence concluded, as the applicants argued themselves, that the responsibility for their son's death lay on the State. Had the applicants sought to pursue the matter further and have a court finding to that effect, it was open for them, on the basis of the factual findings of the two inquiries, to bring civil proceedings. Domestic law at the time, namely section 249(6) of the Armed Forces Act, expressly authorised them to bring an action for damages against the Ministry of Defence, irrespective of whether or not they had already received compensation (see paragraphs 47 and 50 above). Furthermore, as regards the alleged responsibility of the Ministry of the Interior, they could bring an action for damages under the general legislation providing for tort liability of the State (see paragraphs 51-52 above). The Court sees no reason to find that such actions would not have been capable of establishing the fault of the authorities, which would have been a prerequisite for their liability for damages.

68. To sum up, the Court considers that while the authorities were the only entities to have sufficient knowledge to establish the circumstances of Mr Rosen Stoyanov's death, once they had investigated the accident and laid the evidence on the table, it was up to the applicants to pursue the matter and bring proceedings to establish the State's responsibility and liability in damages. As to the authorities, they complied with their obligation to carry out an effective investigation, as required under Article 2 of the Convention.

69. In the circumstances of the present case, the Court concludes therefore that there has been no failure on the part of the State to comply with its positive obligation to respect the right to life under Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

70. The applicants also complained under Article 13 of the Convention that in view of the findings of the criminal investigation in the case they could not seek damages for their son's death. Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

71. The Government did not submit observations on this complaint.

72. The Court notes that the applicants received compensation for their son's death and were, moreover, entitled to seek indemnification from his insurer (see paragraphs 46-48 above).

73. In so far as they may be understood to complain that they could not seek additional damages, the Court notes that it already found that they had possibilities to do so (see paragraph 67 above). Accordingly, it finds that no separate issue arises under Article 13 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* the application admissible by a majority;
2. *Holds* by six votes to one that there has been no violation of Article 2 of the Convention;
3. *Holds* unanimously that no separate issue arises under Article 13 of the Convention.

Done in English, and notified in writing on 9 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kalaydjieva is annexed to this judgment.

P.L.
C.W.

SEPARATE OPINION OF JUDGE KALAYDJIEVA

I fully share the conclusions of the majority on the merits of the applicants' complaints in regard of the alleged failure of the authorities to meet their positive obligations under Article 2 of the Convention. Unlike in cases of wilful deprivation of life and use of lethal force, in cases of negligence the positive obligations of State authorities do not necessarily involve a duty to institute criminal proceedings or to prosecute those responsible for negligent omissions leading to tragic incidents. In such circumstances the obligation of the State is to provide a regulatory and judicial framework, in which the availability of civil proceedings will very often be sufficient.

In the present case the applicants were satisfied with the conclusions of the internal inquiry carried out by the Ministry of the Interior and the Ministry of Defence that there had been deficiencies and negligent failures in following the existing clear regulations on parachute exercises. The applicants do not complain that these conclusions gave rise to suspicions as to the circumstances in which their son died, or that any facts related to the death were withheld by the authorities. They also do not contest the fact that by the time they were informed on this report, they could file a claim against the Ministry of the Interior for compensation of their loss and sufferings. In my view by this time the authorities had met their positive obligations in similar circumstances.

It is not clear why - once aware of the established circumstances in their son's death - the applicants neither availed themselves of the existing opportunity for civil compensation under the general tort law, nor complained before the Court of any specific deficiencies of the internal inquiry within six months after they were informed on the outcome of the internal inquiry. Since this was not done, I believe that the applicants' complaints under Article 2 are late and inadmissible, regardless of their merits.

As concerns the parallel criminal investigation proceedings, the applicants fail to explain whether and how their outcome would influence their prospects for civil compensation, or would in any way override, or be more binding for the civil courts than the different conclusions of the internal inquiry commission of the Ministry of the Interior. I fully agree with the majority that the purpose of the criminal investigation was to inquire into possible criminal acts, which – where appropriate – could result in the indictment of those responsible. In the present case the applicants do not maintain that the established negligent omissions leading to their son's death constituted any criminal acts, or that the authorities failed to meet any obligations by not prosecuting the officers responsible for negligent acts. In

the face of the proper conclusions of the internal inquiry, with which the applicants agreed, it remains unclear why they expected the outcome of the criminal proceedings as a panacea for their grieving, or as an obstacle to their opportunity to file a compensation claim before the prescription time-limit expired.

In my view the fact that the authorities found it necessary to institute criminal investigation proceedings does not mean that those proceeding are part of the positive obligations of the State in the context of negligence, nor does it justify the applicants' decision to await the outcome of these proceedings before complaining to the Court.