



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

FIFTH SECTION

CASE OF ZASHEVI v. BULGARIA

(Application no. 19406/05)

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 Z Ashevi 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. 19406/05) 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 Genka Ivanova Z Asheva and Mr Metodi Dimitrov Z Ashev (“the applicants”), on 26 April 2005.

2. The applicants were represented by Mr Y. Grozev, a lawyer practising in Sofia and by Mr B. Boev, formerly a lawyer practising in Sofia, who on 7 October 2008 was granted leave under Rule 36 § 4 (a) *in fine* of the Rules of Court to continue representing the applicants. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged that the authorities had failed to carry out an effective investigation into their son’s death and that they had not had effective remedies in that regard.

4. On 7 September 2009 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1939 and 1933 respectively and live in Sofia.

6. They are the parents of Mr Ivaylo Zashev, who was shot and killed by people trying to rob him in his aunt's house in the village of Stavertsi, in the Pleven region, in the late hours of 3 February or the early hours of 4 February 1997.

A. The events of 3 and 4 February 1997

7. In the morning of 3 February 1997 Mr Ivaylo Zashev and his brother, Mr Valeri Zashev, both of whom had come to Stavertsi for a business venture, went to a neighbouring village to see if they could buy cattle. Later that day they went to Pleven to exchange 2,000 German marks and 1,000 United States dollars. They were also carrying 200,000 old Bulgarian levs. They did not exchange the money and in the evening went back to Stavertsi. At about 10.45 p.m. they went to sleep. Their aunt, Ms T.L., was sleeping in the adjoining room.

8. Around midnight the two brothers woke up and saw in the room three men wearing masks and gloves. One of them was carrying a shotgun, the other a metal pipe, and the third was unarmed. The two armed assailants started fighting with Mr Ivaylo Zashev and Mr Valeri Zashev, while the unarmed one sifted through the items in the room. While the assailant with the pipe was hitting Mr Valeri Zashev, Mr Ivaylo Zashev was trying to protect himself with a chair from the one with the shotgun. The assailants ordered the brothers to hand over the money they had. Mr Ivaylo Zashev replied that it was in his trousers and, while the assailants were checking them, he managed secretly to slip the bag with the money under his bed. At that point Ms T.L. entered the room. The assailants were startled. One of them told the one with the shotgun to fire. He pulled the trigger, but the gun jammed. However, after that he fired two shots, the second of which hit Mr Ivaylo Zashev in the chest and pierced his heart and lungs; about a minute later he died. The assailants pushed Ms T.L. to the ground, face down. Then they went out of the house despite Mr Valeri Zashev's efforts to stop them. They reached their car, which was parked nearby, and left the village.

B. The proceedings

1. The pre-trial investigation

9. Approximately two hours after the events, at 1.55 a.m. on 4 February 1997, an investigator from the Pleven Investigation Service inspected the crime scene with two police officers, an expert and a forensic doctor. He found and seized a hunting bullet, a hunting cartridge case, a pistol cartridge case, four rubber bullets and two hunting-bullet caps.

10. Later that day the investigator asked an expert to express an opinion on the extent of the injuries suffered by Mr Valeri Zashev and Ms T.L. and the manner in which they had been inflicted. He also asked a clinic in Pleven to clarify the exact cause of Mr Ivaylo Zashev's death, the distance and the position from which the shot had been fired, and the relative positions of the victim and the shooter.

11. Between 12 February and the end of March 1997 the investigator interviewed Mr Valeri Zashev, Ms T.L. and a number of other witnesses.

12. One of those witnesses was a Mr V.K., the personal driver of a Mr P.T., a local businessman. He was arrested by the police on 8 February 1997, and after that kept in custody for a few days in a house in the country near Pleven and repeatedly questioned. According to his subsequent allegations, he was ill-treated and pressured into testifying in line with the instructions of the police, as well as into identifying certain individuals and objects during identity parades. The police denied these allegations and said that Mr V.K. had made all his statements freely.

13. Mr V.K. was interviewed by the investigator on 13, 16, 18 and 20 February 1997. He said, *inter alia*, that on the evening of 3 February 1997 he had seen his boss, Mr P.T., a Mr I.K., and two other men. Mr P.T. had instructed him to go to Stavertsy with Mr I.K. and the two others, in an Audi. When getting out of the car the three men had put masks and gloves on. Mr V.K. had waited for them for a few minutes, during which time he had heard two shots. After that the three had come back to the car, carrying a shotgun. They had driven out of the village and had told Mr V.K. to get out of the car. Mr V.K. had then returned to Mr P.T.'s house, where Mr P.T. had asked him whether the three men had had any United States dollars on them. He had then told him to forget the events of that night. The next day Mr V.K. had heard Mr P.T. and Mr I.K. discussing the incident, with Mr I.K. mentioning a pipe and chair broken in the scuffle, and saying that an old woman had entered and messed up their plans.

14. Meanwhile, on 15 February 1997 the police seized an Audi, suspected of being the car used by the assailants for their escape. It was inspected on 19 February 1997, and a dark spot measuring four millimetres in diameter was found on the back seat. The same day the investigator asked an expert to determine whether that spot was blood, and if so, of which group. The expert confirmed that the spot was human blood, but could not determine its group because of the insufficiency of the material available for testing.

15. On 15 February 1997 Mr P.T., Mr I.K. and a Mr V.P. were arrested. On 16 February 1997 Mr P.T. was released, and the investigator carried out an identity parade in which Mr V.K. identified Mr I.K. and Mr V.P. They were then charged and placed in detention. They remained in custody until April 1998, when they were released on bail.

16. On 21 February 1997 Mr V.K. was presented with a tracksuit seized at Mr I.K.'s home and allegedly worn by him at the time of the offence; he recognised it.

17. On 25 March 1997 a Mr G.G. was arrested. On 28 March 1997 he was also charged with taking part in the robbery.

18. On 8 April 1997 the investigator sent the ballistics evidence seized at the crime scene for testing.

19. Mr V.K. was interviewed again on 12 June 1997. He withdrew his earlier statements and said that he had been coerced by the police into giving false evidence.

20. On 7 August 1997 the Pleven Regional Prosecutor's Office, observing that no investigatory steps had been taken for several months, replaced the investigator.

21. In an interview on 13 August 1997 an individual detained in the same cell as Mr G.G. stated that he had asked him to kill Mr V.K. In an interview of the same date two employees of the country house in which Mr V.K. had been held by the police (see paragraph 12 above) said that while there he had confided in them that he was afraid that his boss, Mr P.T., might kill him because he had testified against him. Mr V.K. had no marks of ill-treatment.

22. In August 1997 the Pleven Regional Prosecutor's Office noted that the accused should remain in custody in view of their apparent resolve to liquidate the witnesses against them.

23. On 25 September 1997 the investigator ordered Mr P.T.'s detention. Some time after that Mr P.T. was arrested and on 28 October 1997 he was charged. He remained in custody until 18 May 1998.

24. On 6 and 7 November 1997 the investigator interviewed Mr V.K. again. He again changed his position, reasserting his statements of February 1997 (see paragraph 13 above) and withdrawing his statement of 12 June 1997 (see paragraph 19 above). He said that it had been given under pressure from Mr P.T., who had kidnapped him and deprived him of his liberty for a month.

25. On 3 and 4 December 1997 Mr V.K. was interviewed again. On 4 December 1997, during an identity parade, he did not recognise Mr G.G.

26. In a memorandum of 2 September 1998 the head of the Pleven police technical department said that the ballistics evidence seized at the crime scene had been lost when transferred between various departments without the required documents. It was therefore impossible to test it.

27. No investigative steps were taken in 1998, 1999 and 2000.

28. On 5 August 1999 the Veliko Tarnovo Appellate Prosecutor's Office noted that the investigation had suffered from serious setbacks and that not enough had been done to elucidate how and why the missing real evidence had been lost.

29. On 12 June 2000 Mr Valeri Zashev died. Ms T.L. also died, on 2 October 2000.

30. On 20 March 2001 the Veliko Tarnovo Appellate Prosecutor's Office noted that, for no apparent reason, no investigatory steps had been taken after 18 May 1998. It further observed that the file was not bound and ordered properly, which made it difficult to check on the progress of the unfolding of the investigation. It recommended finding out why the case had not been concluded for more than four years and punishing those responsible, as well as taking steps to finalise the case in the near future. Accordingly, on 26 March 2001 the Pleven Regional Prosecutor's Office instructed the investigator to renew work on the case.

31. On 23 April 2001 the investigator recommended that the charges be dropped for lack of evidence. The prosecuting authorities disagreed and in July and August 2001 instructed him to question Mr V.K. again and to order a further expert report. However, in the meantime, on 1 August 2001 the investigator left his job and had to be replaced.

32. On 22 January 2002 the new investigator commissioned a DNA expert report of the blood spot found on the back seat of the seized Audi. On 30 January 2002 the expert said that no blood could be found on the seat.

33. On 28 May 2002 Mr V.K. was interviewed by the investigator at a public hearing held at the Pleven Regional Court. Mr V.K. stated that he would not testify until measures were taken to protect him, as he had received threats made on behalf of the accused. Accordingly, on 30 May 2002 the investigator requested the police to take measures to protect the witness. The police made contact with Mr V.K. on 18 June 2002. The next day, 19 June 2002, he was asked to go to the police station, where he said that he did not require protection for the time being, but would contact the police if he was threatened again in the future.

34. On 16 December 2002 Mr V.K. was interviewed again at a public hearing before the Pleven Regional Court. He stated that he had been ill-treated and pressured by the police into testifying in a certain way about the robbery and into recognising a specific individual during identity parades. He further said that he did not know any of the accused apart from Mr P.T.

35. On 11 March 2003 the investigator again recommended that the charges be dropped. On 24 March 2003 the Pleven Regional Prosecutor's Office decided to follow this recommendation.

36. On an appeal by the applicants, on 16 July 2003 the Pleven Regional Court set this decision aside. It found, *inter alia*, that it was unclear whether Mr V.K. had made his incriminating statements under police pressure or had retracted them under threats from the accused. The case file contained ample material supporting both versions, but the authorities had done nothing to provide protection for the witness. That had eventually led to him refusing to testify. Nevertheless, the analysis of his statements showed that

he had been with the accused both before and after the time when the offence had been committed. The court went on to say that not enough effort had been made to find the lost ballistics evidence. It instructed the investigating authorities to, *inter alia*, check Mr V.K.'s allegations of police violence against him, take measures to protect him, and then question him again, if need be in the presence of a judge, in order to clarify which of his statements was genuine. The court also said that further efforts should be made to find the missing ballistics evidence.

37. Between October and December 2003 the investigator interviewed seven police officers who had taken part in the investigation. All of them said that Mr V.K. had given his evidence freely. They were unable to provide definite clues as to the disappearance of the ballistics evidence.

38. When interviewed on 15 December 2003, Mr V.K. again said that he had been ill-treated by the police and pressured into testifying in a way indicated by them.

39. On 26 March 2004 the investigator again recommended that the charges against Mr P.T., Mr G.G., Mr V.P. and Mr I.K. be dropped. However, the Pleven Regional Prosecutor's Office disagreed and on 14 April 2004 indicted them. It alleged that Mr P.T. had incited the rest to rob Mr Ivaylo Zashev and Mr Valeri Zashev; it further alleged that the other three had carried out an armed robbery in the course of which they had killed Mr Ivaylo Zashev.

2. The trial

40. The trial took place before the Pleven Regional Court (*Плевенски окръжен съд*) on 15 October and 20 December 2004 and 17 March 2006. The applicants were not summoned and did not take part in it. The court heard numerous witnesses and admitted various documents in evidence.

41. In a judgment of 17 March 2006 the court acquitted Mr P.T., Mr G.G., Mr V.P. and Mr I.K. of the charges against them.

42. It found that there was no evidence to show that they had committed the offence. The shotgun had not been found or identified. Likewise, the bullets causing the death of Mr Ivaylo Zashev had not been positively identified. The ballistics evidence found at the crime scene had later been lost because of failure to follow procedures for storing and transporting real evidence, and thus had never been analysed. It was therefore impossible to make any findings about the weapon used to commit the offence or its owner. Furthermore, the investigator had not taken any samples or real evidence from the crime scene, such as tyre or shoe marks, fingerprints or objects, to support even a supposition that any of the accused had been at or even near the crime scene. Nor had the outside of Ms T.L.'s house been checked for traces of the assailants or of the car which they had used to escape. There were no witnesses – save for the brother of the deceased Mr Valeri Zashev and Ms T.L. – who had seen the assailants or the car. The

available evidence showed that the Zashevi brothers had neither met the accused or any persons close to them, nor told any of them that they were carrying a sum of money. The analysis of Mr Valeri Zashev's and Ms T.L.'s statements showed that even they had not seen the assailants properly or identified them. Nor had they seen the car properly.

43. There was not enough evidence to show that the Audi, which had not been seized until fifteen days after the commission of the offence, had been the one used by the assailants. It had been washed inside and outside before being handed over to the police, and had remained unlocked, including when stored in the police station's yard. It could not therefore be conclusively established whether the small dark blood spot on its back seat was linked with the offence. The first expert report on this point could not be admitted in evidence, as the investigator's decision to commission it did not contain any description of the car to be analysed. As to the second expert, he had been unable to reach any conclusion about the blood's group.

44. The court went on to say that Mr V.K.'s incriminating statements could not be considered reliable. After analysing in detail the circumstances in which they had been made, it found that it was clear that Mr V.K. had been pressured by the police, who had detained him unlawfully, to testify in a way indicated by them. Nor did the court find the identity parades carried out with Mr V.K.'s participation reliable. Contrary to the rules of procedure, he had not been asked about any distinctive features of the individuals to be recognised before the identification, nor had those individuals been lined up among persons who resembled them. Moreover, Mr V.K. had been instructed whom to identify and on the basis of what physical features.

45. Finally, the expert examination of the clothes seized at Mr I.K.'s home showed that there were no traces of blood on them.

46. No other evidence had been put forward by the prosecution to link any of the accused to the commission of the offence.

3. The appeal

47. The prosecution appealed, arguing that the acquittal was ill-founded.

48. On 30 May 2006 the Veliko Tarnovo Court of Appeal (*Великотърновски апелативен съд*) set the case down for hearing. It noted that the appeal did not point to specific irregularities in the lower court's judgment, and that there was no request for further evidence to be gathered.

49. At the hearing, which took place on 18 September 2006, the prosecutor on appeal reluctantly endorsed the appeal. He did not call further evidence.

50. In a judgment of 4 October 2006 the Veliko Tarnovo Court of Appeal upheld the acquittal. It found that the lower court had properly analysed the entirety of the available material, finding that key pieces of evidence had been lost or spoiled. Its conclusion that the evidence adduced

could not link the accused to the commission of the offence had been fully warranted. No arguments had been put forward by the prosecution in the appeal proceedings to cast doubt on that finding.

51. The prosecution did not appeal again and the judgment became final on 24 October 2006.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

52. The applicants complained that the authorities had failed to carry out an effective investigation into their son's death. They relied on Article 2 of the Convention, which provides, in so far as relevant:

“1. Everyone's right to life shall be protected by law. ...”

A. The parties' submissions

53. The Government submitted that there was no doubt that Bulgaria had set up a legal framework safeguarding the right to life. They pointed out that the authorities had immediately launched an official investigation, and had taken steps to gather the evidence and establish the facts. Initially the investigation had progressed at a good pace. The numerous investigative steps had been illustrative of the authorities' determination to identify the perpetrators and bring them to account. At the same time, it could not be overlooked that, as noted by the domestic courts, the investigating authorities had breached the rules of procedure and had made mistakes. Had they complied strictly with the rules governing the gathering of evidence, they would have stood a much better chance of identifying the culprits. However, the fact that the assailants had worn masks had posed serious difficulties in that respect. Another problem had been the scarcity of witness evidence. Nonetheless, the authorities' failure to identify those responsible for an offence did not automatically entail a breach of their procedural obligations under Article 2. The authorities could not be blamed if, despite carrying out an effective investigation, they still could not establish the identity of and punish those responsible. The investigation was continuing, and could go on until the expiry of the limitation period, which was thirty years from the commission of the offence. Lastly, the Government pointed out that the Assistance and Financial Compensation of the Victims of Crime Act, which applied in respect of offences committed after 30 June 2005, had come into force on 1 January 2007.

54. The applicants submitted that to comply with its positive obligations under Article 2 of the Convention the State had to do more than adopt laws mandating the investigation and punishment of homicide. It also had to carry out effective official investigations of all instances of homicide. The investigation in the case at hand had not been effective; on the contrary, it had been tainted by a number of grave omissions, which had completely undermined its ability to establish both the exact circumstances in which Mr Ivaylo Zashev had been killed and the identity of the persons responsible for his death. The most serious error had been the loss of the cartridges impounded from the crime scene, as well as the failure to provide protection to Mr V.K., which had been both possible and indispensable, and the lack of which had led to his changing his statements several times. Other deficiencies had been the substandard inspection of the crime scene, the belated conducting of interviews with the neighbours, the belated commissioning of DNA and ballistic expert reports, and in general the excessive length of the investigation, which had lasted almost eight years. The applicants also criticised the passive conduct of the prosecution during the trial, in the course of which it had made only one – poorly substantiated – request for further evidence to be gathered. In addition, in its appeal against the acquittal the prosecution had not raised any additional arguments and had not made further evidentiary requests; nor had it sought later to appeal on points of law.

B. The Court's assessment

55. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

56. It considers that despite the lack of involvement of State agents in Mr Ivaylo Zashev's killing, the authorities were under an obligation to carry out an effective investigation of the circumstances in which he lost his life. Article 2 § 1 imposes on the State a 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 (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII). That obligation requires by implication that there should be some form of effective official investigation when individuals have died in violent or suspicious circumstances, even if there is no indication that the death is due to State action (see, concerning inter-prisoner violence, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II; concerning homicides by prisoners benefiting from early release or social reintegration schemes, *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 89, 92 and 93, ECHR 2002-VIII, and

Maiorano and Others v. Italy, no. 28634/06, §§ 123-26, 15 December 2009; concerning racist attacks, *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V, and *Angelova and Iliev v. Bulgaria*, no. 55523/00, §§ 91-105, ECHR 2007-IX; concerning high-profile assassinations, *Kolevi v. Bulgaria*, no. 1108/02, §§ 191-215, 5 November 2009; concerning domestic violence, *Opuz v. Turkey*, no. 33401/02, §§ 150 and 151, ECHR 2009-...; concerning car accidents, *Al Fayed v. France* (dec.), no. 38501/02, §§ 73-78, 27 September 2007; *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007; and *Railean v. Moldova*, no. 23401/04, § 28, 5 January 2010; concerning deadly accidents on construction sites, *Pereira Henriques v. Luxembourg*, no. 60255/00, §§ 12 and 54-63, 9 May 2006; and, concerning suspicious deaths, *Rantsev v. Cyprus and Russia*, no. 25965/04, § 234, 7 January 2010, and *Iorga v. Moldova*, no. 12219/05, § 26, 23 March 2010). The Court recently described that obligation as having evolved into a “separate and autonomous duty” (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). Indeed, this need for scrutiny was acknowledged by the national authorities, which initiated an investigation immediately after the incident (see paragraph 9 above).

57. While that obligation may differ, both in content and in terms of its underlying rationale, depending on the particular situation that has triggered it (see *Banks and Others v. the United Kingdom* (dec.), no. 21387/05, 6 February 2007, and, *mutatis mutandis*, *Beganović v. Croatia*, no. 46423/06, § 69, ECHR 2009-... (extracts)), any such investigation must comply with certain minimum requirements which have recently been set out, with reference to deaths not involving State action, in paragraphs 192-94 of the Court’s judgment in the case of *Kolevi* (cited above). The Court would add that the nature and degree of scrutiny which satisfy the minimum threshold of effectiveness depend on the circumstances of each particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see, among other authorities, *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI, and *Ülkü Ekinci v. Turkey*, no. 27602/95, § 144, 16 July 2002). Moreover, this is not an obligation of result, but of means only (see, among other authorities, *Paul and Audrey Edwards*, cited above, § 71). Article 2 does not entail the right to have others prosecuted or sentenced for an offence, or an absolute obligation for all prosecutions to result in conviction or in a particular sentence (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 94 and 96, ECHR 2004-XII).

58. In the instant case, the authorities carried out an investigation which led to the trial of the alleged perpetrators. However, that trial resulted in an acquittal, the reason for which was the lack of proof that the offence had been committed by those accused of it (see, *mutatis mutandis*, *Makaratzis v. Greece* [GC], no. 50385/99, § 77, ECHR 2004-XI). Pleven Regional

Court analysed in detail the material adduced by the prosecution and found that, due to a number of omissions during the investigation, there was not a single piece of evidence to link the accused to the commission of the offence. In particular, no samples had been taken and no real evidence seized from the crime scene; the bullets and cartridges found there had been lost before being tested, due to a failure to comply with proper procedures; the seized car had not been examined in a timely fashion; the key witness for the prosecution had been unlawfully pressured by the police into testifying in a certain way; and the identity parades he attended had not been conducted properly (see paragraphs 41-46 above). On appeal, the Veliko Tarnovo Court of Appeal fully endorsed those findings (see paragraph 50 above). One additional weakness, also criticised by Pleven Regional Court but not remedied effectively, was the authorities' failure to provide effective protection for that key witness, who had received threats and eventually retracted all of his incriminating statements, possibly as a result of those threats (see paragraphs 21, 22, 24, 33, 34, 36 and 38 above).

59. In view of those flaws, described in detail by the domestic courts, the investigation can hardly be regarded as effective within the meaning of this Court's case-law, which says that any deficiency which undermines the investigation's ability to identify the perpetrators is liable to fall foul of the required measure of effectiveness (see *Kolevi*, cited above, 192). While the Government pointed out that the investigation is ongoing and would continue until the expiry of the applicable limitation period (see paragraph 53 above), there is no indication that the authorities are taking any real steps to establish the identity of those responsible for Mr Ivaylo Zashev's death.

60. It should in addition be pointed out that, while starting promptly, the investigation later on suffered from lengthy delays – such as the unexplained gap between May 1998 and March 2001 – which were criticised by the prosecuting authorities (see paragraphs 20, 27, 28 and 30 above). Its overall duration of more than seven years until the case was brought to trial can therefore be regarded as problematic.

61. In view of the foregoing, the Court concludes that the investigation into Mr Ivaylo Zashev's death fell foul of the requirements of Article 2 of the Convention. There has therefore been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

62. The applicants complained that the lack of an effective investigation had deprived them of effective remedies in respect of the death of their son, in breach of Article 13 of the Convention, which 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.”

63. The Government did not address this complaint in their observations.

64. The applicants submitted that the investigation's failure to identify the persons responsible for Mr Ivaylo Zashev's death prevented them from seeking any compensation in that regard.

65. The Court finds that this complaint is linked to the one examined above and must therefore likewise be declared admissible. However, having regard to the reasons for which it found a breach of the State's procedural obligations under Article 2, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 (see *Angelova and Iliev*, cited above, § 106, with further references).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicants jointly claimed 40,000 euros (EUR) in respect of non-pecuniary damage. They submitted that they had suffered emotional pain and anguish as a result of the authorities' failure to effectively investigate Mr Ivaylo Zashev's death and identify those responsible. That had undermined their faith in the capacity of the Bulgarian judicial system to prevent and punish violations of the right to life. Any compensation awarded to them would in reality compensate Mr Ivaylo Zashev's daughter and her mother, who were receiving support from the applicants.

68. The Government did not comment on the applicants' claim.

69. The Court observes that the State was found liable solely for the lack of an effective investigation of the circumstances in which Mr Ivaylo Zashev was killed. The Court nevertheless considers that the applicants must have experienced severe anguish and frustration on account of the inability of authorities to identify his assailants and bring them to justice. Ruling in equity, as required under Article 41, the Court awards the two applicants jointly EUR 20,000, plus any tax that may be chargeable.

B. Costs and expenses

70. The applicants sought reimbursement of EUR 5,840 incurred in fees for seventy-three hours of work by their lawyers on the proceedings before the Court, at EUR 80 per hour. They submitted a fee agreement and a time

sheet, and requested that any amount awarded be made payable directly to Mr Y. Grozev.

71. The Government did not comment on the applicants' claim.

72. According to the Court's case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 4,000, plus any tax that may be chargeable to them. That amount is to be paid into the bank account of their legal representative, Mr Y. Grozev.

C. Default interest

73. 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 application admissible;
2. *Holds* that there has been a violation of Article 2 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
4. *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 leva at the rate applicable on the date of settlement:
 - (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand 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 representative, Mr Y. Grozev;
 - (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;

5. *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