



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

FOURTH SECTION

CASE OF FILEVA v. BULGARIA

(Application no. 3503/06)

JUDGMENT

STRASBOURG

3 April 2012

FINAL

03/07/2012

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

In the case of Fileva v. Bulgaria,

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

Lech Garlicki, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 13 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 3503/06) 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 a Bulgarian national, Ms Maria Panayotova Fileva (“the applicant”), on 12 January 2006.

2. The applicant was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agents, Ms M. Dimova and Mr V. Obretenov, of the Ministry of Justice.

3. On 11 May 2010 the Court (Fifth Section) declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the applicant’s alleged lack of access to court to enable her to seek damages from the prosecution and the alleged lack of impartiality of the criminal courts which examined the accusations against her.

4. The Government and the applicant submitted written observations on the admissibility and merits on 20 September and 3 December 2010 respectively.

5. The application was later transferred to the Fourth Section of the Court, following the reorganisation of the Court’s sections on 1 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Ms Maria Panayotova Fileva is a Bulgarian national who was born in 1948 and lives in Asenovgrad.

A. The criminal proceedings against the applicant

7. On 17 June 1999 the applicant, at that time an employee of the Asenovgrad agricultural land commission (“the land commission”), was questioned on suspicion of abuse of office. She was suspected, *inter alia*, of attempting to impede the adoption of amendments to a land redistribution plan adversely affecting plots of agricultural land previously restored to her husband, a member of the Asenovgrad municipal council at the relevant time.

8. Criminal proceedings were instituted soon afterwards, on 6 July 1999. On 16 May 2001 the applicant was charged with three offences – one committed in 1992 and the other two in 1999.

9. In 2004 the case was placed on a special register in the Chief Public Prosecutor’s Office, apparently because it was considered to have a corruption element.

10. The investigation of the case against the applicant continued until 29 June 2005.

11. On 14 July 2005 the Plovdiv regional public prosecutor’s office terminated the criminal proceedings against the applicant. It was concluded that the applicant’s actions relating to the events of 1999 did not constitute a crime and that it had not been proved that the applicant had been party to the offence in 1992.

12. On 23 March 2006, following an internal review of cases ordered by the Chief Public Prosecutor’s Office, a prosecutor from the Plovdiv appellate public prosecutor’s office quashed the decision of 14 July 2005 and ordered the resumption of the criminal proceedings against the applicant, on the ground that the investigation had been incomplete and that the conclusions reached did not correspond to the evidence collected. In particular, it was noted that a key witness – the chairman of the land commission who had established breaches of duty on the part of the applicant – had not been questioned and that the applicant should have been questioned again in relation to one of the charges.

13. On 16 January 2007 the applicant was presented with modified charges, consisting of two counts of abuse of office and one count of drawing up a false document in an official capacity. On the same date, the criminal proceedings in respect of the offence committed in 1992 were

terminated, as it had not been proved that the applicant had been a party to the offence, and as the prosecution had now become time-barred.

14. On 10 October 2007 the Plovdiv Regional Court convicted the applicant and gave her a suspended sentence of two years' imprisonment.

15. In a judgment of 10 April 2008 the Plovdiv Court of Appeal acquitted the applicant on one of the counts of abuse of office and upheld the conviction on the remaining counts. It reduced the applicant's sentence to a suspended term of one year's imprisonment. That judgment was upheld by the Supreme Court of Cassation in a final judgment of 11 July 2008.

B. The civil proceedings for damages

16. On 25 November 2005 the applicant, relying on the termination of the criminal proceedings against her of 14 July 2005, brought an action for damages under the State and Municipalities Responsibility for Damage Act ("the SMRDA") against the prosecuting authorities for unlawful prosecution.

17. The applicant submitted that on 28 November 2005 her representative in the domestic proceedings was told by a prosecutor at the Plovdiv regional public prosecutor's office that bringing an action under the SMRDA could have unfavourable consequences for the applicant. On an unspecified date in March 2006 the same prosecutor told the applicant's representative that she had made a mistake in pursuing the proceedings for damages against the advice given on 28 November 2005, as the criminal proceedings against the applicant had been resumed.

18. On 3 July 2006 the applicant's representative sent an open letter through the Bulgarian media to the Chief Public Prosecutor's office, averring that the prosecution authorities had resumed the proceedings against the applicant in retaliation for the proceedings for damages she had brought against the State. At least one other case similar to that of the applicant was reported by the media.

19. In a newspaper publication the Supreme Cassation Public Prosecutor's Office denied the allegations made in the letter of 3 July 2006.

20. In a newspaper published on 6 July 2006 a spokesperson for the Plovdiv appellate public prosecutor's office was quoted as stating that it was against the interests of the prosecuting authorities to allow claims engaging the State's responsibility, as this adversely affected the Bulgarian taxpayer. Also, the Chief Public Prosecutor was quoted as stating that there was cause for concern, in that the lack of criteria for the resumption of criminal proceedings left scope for abuse of process. Further, in a newspaper published on 5 July 2006 the applicant gave her account of the events stating she was innocent.

21. In a judgment of 6 November 2006 the Plovdiv Regional Court rejected the applicant's action for damages. The court held that because

criminal proceedings were pending against the applicant her action had been brought prematurely. As to the period before the proceedings were terminated, the Court found that in view of their resumption in March 2006 the proceedings up to that moment could not be considered unlawful, nor had the State's responsibility been engaged in that respect.

22. The applicant appealed. In a judgment of 10 July 2007 the Plovdiv Court of Appeal found against her. The court dismissed the applicant's request for the proceedings to be stayed until the resumed criminal proceedings against her had ended, reasoning that this was irrelevant to the outcome of her civil action for damages, which was grounded on her claim that the criminal proceedings had been terminated. In the absence of a final act terminating those proceedings the action for damages could not be upheld.

23. In a final judgment of 11 December 2008 the Supreme Court of Cassation quashed the lower court's judgment in part. It allowed the applicant's action in so far as the criminal proceedings relating to the 1992 offence, which had been terminated, were concerned (see paragraph 13 above, *in fine*) and awarded her 2,000 Bulgarian leva (BGN). The court reasoned that the applicant's right to compensation arose on the date of the second termination of those proceedings on 16 January 2007 and not from the termination on 14 July 2005. It subscribed to the lower court's conclusions in respect of the charges related to the offences committed in 1999, namely that there had been no final act terminating the criminal proceedings against the applicant given that the proceedings had been resumed.

II. RELEVANT DOMESTIC LAW

A. State and Municipalities' Responsibility for Damage Act of 1988

24. Section 2(1)(2) of the 1988 Act provides as follows:

"The State shall be liable for damage caused to individuals by organs of [the investigation], the prosecution and the courts through unlawful:

...

2. bringing of criminal charges, if the person concerned has been acquitted or if the criminal proceedings are discontinued because the offence was not committed by the person concerned, or [that person's] act does not constitute a criminal offence..."

25. Individuals who have been acquitted or had the proceedings against them discontinued on one of the grounds set forth in section 2(1)(2) – which, according to an interpretative decision of the Supreme Court of Cassation (тълк. реш. № 3 от 22 април 2005 г. по тълк. гр. д.

№ 3/2004 г., ОСГК на ВКС), include discontinuance because the charges have not been made out – can obtain compensation for the mere fact that criminal proceedings have been instituted against them. Paragraph 1 of the transitional and concluding provisions of the 1988 Act provides that all matters which have not been addressed in the Act are to be resolved in line with the general provisions of civil and labour law. Section 110 of the 1951 Obligations and Contracts Act, which is also applicable to proceedings under the 1988 Act (тълк. реш. № 3 от 22 април 2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС; реш. № 7768 от 10 юни 2010 г. по адм. д. № 14132/2009 г., ВАС, III о.), provides that the limitation period for tort claims is five years.

B. Code of Criminal Procedure

26. Article 237 § 1 of the Code of Criminal Procedure of 1974 (“the 1974 Code”), in force at the relevant time, provided for the termination of criminal proceedings by the prosecution in cases, *inter alia*, where it had transpired that no offence had been committed.

27. Any decision under Article 237 § 1 of the 1974 Code in which the conditions for termination set by that provision had not been met and which had not been appealed against before the courts could be quashed by the appropriate higher-ranking prosecutor’s office of its own motion (Article 237 § 7 of the 1974 Code). That was not limited in time and could be done at any time before the prosecution became time-barred.

28. The text of Article 237 § 7 of the Code was reproduced in Article 243 § 9 of the new Code of Criminal Procedure of 2005 (“the 2005 Code”). On 14 October 2010 a draft law proposing, *inter alia*, an amendment of Article 243 § 9 of the 2005 Code setting a one-year term for resuming previously discontinued criminal proceedings was rejected by the Bulgarian parliament. The draft law reasoned that the amendment was necessary in view of the lack of stability of the prosecution authorities’ acts discontinuing criminal proceedings and the fact that their discretion to resume proceedings was not limited in time.

29. By virtue of Article 237 § 3 of the 1974 Code, any decision of the prosecution to terminate criminal proceedings was subject to appeal before the courts by the accused or the victim of the alleged offence within seven days following notification of the decision. The courts were competent to uphold or quash the decision terminating the proceedings or to amend the grounds for termination. The existence of a final decision of a public prosecutor to terminate the criminal proceedings or of a final court ruling upholding a decision of the prosecution to that effect was an absolute obstacle to prosecuting the same person for the same offence (Article 21 § 1 (6) of the 1974 Code).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained that as a result of the resumption of the criminal proceedings against her she had been deprived of access to court to seek damages from the prosecution and that the criminal courts examining the charges against her had lacked impartiality, contrary to Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ...”

A. Complaint relating to an alleged breach of Article 6 § 1 in the civil proceedings for damages

1. Admissibility

31. The Government stated that the applicant could not claim to be a victim of a violation of the Convention, because the domestic courts had acknowledged in the proceedings for damages that there had been a breach of the Convention, and had awarded her BGN 2,000.

32. The applicant disagreed.

33. While it is true that the applicant was ultimately awarded damages in respect of the 2007 discontinuation of the criminal proceedings relating to the 1992 offence alleged against her (see paragraph 23 above), the resumption of the criminal proceedings brought to an end her civil action in respect of the remaining charges. To that effect the applicant can still claim to be a victim of a breach of her right of access to a court as guaranteed by Article 6 § 1 of the Convention.

34. Accordingly, the Court rejects the Government's preliminary objection based on loss of victim status. It further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

35. The Government argued that the applicant's right of access to court had not been infringed, as the domestic courts in the civil proceedings against the State had examined the claims made by her and had awarded her damages. They further averred that the public prosecutor's decision of

14 July 2005 to terminate the criminal proceedings had become final after the expiry of the seven-day term for appealing against it, and that from that moment the applicant had had a right to compensation under the SMRDA. At the same time, the Government stated that the resumption of the criminal proceedings constituted grounds for staying the civil proceedings for damages.

36. The applicant stated that the domestic courts in the civil proceedings had dismissed her action in respect of two of the three charges brought against her, solely on account of the resumption of the criminal proceedings. This, in the applicant's view, demonstrated that by resuming these proceedings the public prosecutor's office had managed to affect the outcome of proceedings to which it was a party.

37. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to court", of which the right of access constitutes one aspect (see *Golder v. the United Kingdom*, 21 February 1975, §§ 28-36, Series A no. 18, and *Kostadin Mihaylov v. Bulgaria*, no. 17868/07, § 37, 27 March 2008).

38. In addition, that provision embodies the right to a fair trial, which incorporates, *inter alia*, the requirement of equality of arms in the sense of a fair balance between the parties where each party must be afforded a reasonable opportunity to present their case - under conditions that do not place them at a substantial disadvantage *vis-à-vis* their opponent (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 46, Series A no. 301-B).

39. In the proceedings at issue, the applicant brought an action against the public prosecutor's office for damages stemming from allegedly unlawful charges and relying on the termination of the criminal proceedings against her in July 2005. The decision on termination, however, remained open to revision by the higher prosecution authority and while the civil case was pending before the first level of jurisdiction it was reversed and the criminal proceedings against the applicant were resumed. That resumption prompted the domestic courts to dismiss her action as premature.

40. Against this background, the Court will examine whether in the circumstances of the present case, the decision of 23 March 2006 to resume the criminal proceedings against the applicant while the civil proceedings for damages brought by her were pending entailed a breach of her right of access to court and of the fair trial guarantee embodied in Article 6 § 1.

41. In the case at hand, the criminal proceedings were resumed on the ground that the investigation had been incomplete and that the conclusions drawn from the evidence collected had been imprecise or wrong. The prosecuting authorities did not refer to any specific deficiencies (such as

newly discovered evidence, abuse of power, manifest errors in the application of substantive law or any other weighty reasons stemming from the interests of justice) which could have prompted the resumption of the proceedings. Nor did the Government adduce any such deficiencies.

42. The Court observes that the prosecuting authorities were not required to indicate any specific grounds or reasoning justifying the decision in question and that it could be issued in any event where they considered that the termination was not justified under Article 237 § 1 of the CCP 1974 (see paragraphs 26 and 27 above). That decision is apparently not subject to judicial review (contrast with *Withey v. United Kingdom* (dec.), no. 59493/00, ECHR 2003-X).

43. That said, the Court cannot speculate as to whether the criminal proceedings were resumed in “retaliation” for the applicant’s action for damages or in order to stifle it. However, it cannot but observe that the prosecution authorities as a party to the proceedings under the SMRDA were able to affect their outcome simply by resuming the criminal proceedings against her. The decision to resume not only defeated the applicant’s civil claim, it also made it impossible for the civil court to adjudicate on it.

44. To conclude, in the specific circumstances of the present case the Court considers that in the absence of procedural safeguards such as limitation in time, reference to well-defined statutory criteria, or judicial review the discretion of the prosecution authorities to resume the criminal proceedings gave them, as a defendant in the proceedings for damages, the possibility to influence their scope and outcome unilaterally. This placed the applicant at a substantial disadvantage *vis-à-vis* her opponent, thus impairing the very essence of her right of access to court in breach of the fair trial guarantee embodied in Article 6 § 1. In this connection, the Court considers it noteworthy that this regime was viewed as creating a risk of abuse by the Chief Public Prosecutor himself (see paragraph 20 above).

45. Accordingly, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

B. Complaint relating to an alleged breach of Article 6 § 1 in the criminal proceedings against the applicant

46. The applicant complained of a violation of Article 6 § 1 in that the criminal courts lacked objective impartiality because they had an interest in convicting her, as her acquittal would have bound the State to pay her damages. In particular, she averred that the criminal courts had been well aware of the importance of the outcome of the criminal proceedings for the success of her action for damages, as the case had been highly publicised. In addition, allowing compensation claims against the prosecuting authorities

adversely affected the budget of the judiciary, and this alone cast doubt on the criminal courts' impartiality.

47. The Government disagreed. They submitted that the criminal courts had convicted the applicant following a thorough examination of the evidence against her, and that they had no information on the progress of the civil proceedings for damages issued by her.

48. The Court has stressed that a tribunal must be impartial from a subjective as well as an objective view (see *Mustafa (Abu Hamza) (No. 1) v. United Kingdom* (dec.), no. 31411/07, § 37, 18 January 2011; for a description of the two tests developed by the Court, see *Micallef v. Malta* [GC], no. 17056/06, §§ 93-99, 15 October 2009).

49. The Court notes that no allegation is made as to the subjective impartiality of any of the judges. As regards objective impartiality, the Court accepts that a virulent media coverage of the proceedings might adversely affect the fairness of a trial (see *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, ECHR 1999-V). At the same time, the function of the courts as a forum for settlement of disputes does not preclude discussion of the dispute elsewhere, including in the general press (see, *mutatis mutandis*, *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 65, Series A no. 30). In the case at hand the media coverage was not in any way directed against the applicant so as to possibly prejudice the judges. In fact, part of the material published in the media did not concern the applicant at all (see paragraph 18 above).

50. In addition, the general allegations that it was in the domestic courts' interest to convict the applicant so as to avoid budgetary constraints are entirely speculative. In addition, the situation must be distinguished from that which obtained in the case of *Mihalkov v. Bulgaria* (no. 67719/01, § 48, 10 April 2008) where any award made to the applicant was payable out of the budget of the court which was a co-defendant in the proceedings for damages.

51. Next, the Court, in examining the criminal proceedings against the applicant following their resumption, observes that such resumption did not in itself contradict the requirements of Article 6 § 1 of the Convention. The findings reached above (paragraphs 41-45) do not mean that the public prosecutor's office should refrain from resuming criminal proceedings where an action for damages stemming from a previous termination of proceedings has been lodged. Nor do they mean that a decision to terminate criminal proceedings cannot be reversed. However, the principles of legal certainty enshrined in Article 6 of the Convention require such decisions to be based on well-established criteria, accompanied by terms and safeguards to prevent potential abuse of process in relation to the resumption of criminal proceedings. As already noted (see paragraph 44 above) despite legislative attempts to amend the impugned provisions (see paragraph 28 above), Bulgarian law does not provide for such safeguards. That fact

distinguishes the present case from the situation which obtained in *Withey*, cited above, where the Court observed that any application to resurrect the proceedings was made to a court which considered the application from the standpoint of certain criteria including the fairness of the re-opening. Nevertheless, in the case at hand the Court cannot share the applicant's misgivings about the reasons for the resumption of the criminal proceedings against her. In particular, it is not for the Court to determine whether there were genuine shortcomings in the initial investigation which justified the resumption of the criminal proceedings. Nor, as noted earlier, can it speculate as to whether the criminal proceedings were resumed in "retaliation" for the applicant's action for damages or in order to stifle it.

52. The above considerations suffice to allow the Court to conclude that there is no appearance of a violation of Article 6 § 1 in respect of the criminal proceedings against the applicant. It follows that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government contested these claims as excessive and unsubstantiated.

56. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant was denied her right of access to a court as regards her civil rights. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards her EUR 3,200, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicant also claimed EUR 6,188.33 for costs and expenses incurred before the domestic courts and for those incurred before the Court. In support of her claim she presented a contract for legal representation, a time sheet and a translation contract, as well as a contract for legal

representation and receipts for state fees in connection with the proceedings before the domestic courts. The applicant requested that the amount under this head awarded by the Court for the proceedings before it be paid into the bank account of her representatives, Mr M. Ekimdzhiev and Ms K. Boncheva, with the exception of EUR 400 which she had paid as an advance payment on the legal fees.

58. The Government contested these claims as exorbitant.

59. 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 are reasonable as to quantum. The Court further reiterates that legal costs are only recoverable to the extent that they relate to the violation that has been found (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 220, ECHR 2007-IV). In the present case, regard being had to the documents in its possession and the above criteria and having regard to the fact that a violation was found only of Article 6 in respect of the civil proceedings for damages, the Court considers it reasonable to award the sum of EUR 1,600 under all heads. EUR 1,200 of that amount is to be transferred directly into the bank account of the applicant's legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva.

C. Default interest

60. 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

1. *Declares* unanimously the complaint under Article 6 § 1 concerning the lack of access to court in the civil proceedings for damages admissible and the remainder of the application inadmissible;
2. *Holds* by six votes to one that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* by six votes to one
 - (a) that the respondent State is to pay the applicant, 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 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,600 (one thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 1,200 of which to be transferred directly into the bank account of the applicant's representatives;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President

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

L.G.
T.L.E.

DISSENTING OPINION OF JUDGE HIRVELÄ

1. I respectfully disagree with the majority of the Chamber that there has been a violation of Article 6 § 1 of the Convention as regards the civil proceedings for damages.

2. The regional public prosecutor terminated the criminal investigation against the applicant on 14 July 2005 since it had not been proved that the applicant had committed a crime. However, on 23 March 2006 the higher prosecutor, the Chief Public Prosecutor's Office, reviewed the decision, quashed it and ordered the resumption of the pre-trial investigation finding that the previous investigation was incomplete and did not correspond to the evidence collected. The applicant was charged on 16 January 2007 and on 10 October 2007 the Regional Court convicted her. On 10 April 2008 the Court of Appeal mainly upheld the conviction and imposed on her a suspended sentence of one year's imprisonment.

3. The applicant relying on the termination of the criminal proceedings brought an action for damages for unlawful prosecution. The Regional Court and the Court of Appeal rejected her request, holding that the action was premature since the criminal proceedings were pending against her. The Supreme Court of Cassation on 11 December 2008 subscribed to the lower courts' conclusions that there had been no final termination of the criminal proceedings against the applicant as they had been resumed.

4. The applicant complained that as a result of the resumption of the criminal proceedings she was deprived of her right of access to court to seek damages from the prosecution.

5. The majority concluded that there was a violation of 6 § 1 since the prosecuting authorities did not refer to any specific deficiencies in the first investigation or other convincing reasons for resumption. Furthermore, there were no procedural safeguards such as time-limits, statutory criteria or judicial review of the decision to resume the prosecution, which gave the prosecution authorities the possibility to influence the course of the proceedings for damages.

6. I fully agree with the majority that there should be no scope for abuse of power. However, I do not agree that no pertinent reasons were given for reopening the lower prosecutor's decision. The Chief Prosecutor's Office found that the decision of the lower prosecutor was incorrect. That decision was based on an incomplete pre-trial investigation and the conclusions reached did not correspond to the evidence. It was pointed out that the key witness had not been questioned. The criticism of the regional prosecutor's decision was justified and confirmed by the national courts since the applicant was ultimately convicted. In my opinion the higher prosecutor's decision to resume the proceedings was based on appropriate reasons. Furthermore, it is worth noting that the decision to resume the proceedings

was taken nine months after the decision to terminate them. The applicant was not left in a state of uncertainty for an unacceptable length of time.

7. Therefore, I conclude that there has been no violation in this case.