



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

FOURTH SECTION

CASE OF PASHOV AND OTHERS v. BULGARIA

(Application no. 20875/07)

JUDGMENT

STRASBOURG

5 February 2013

FINAL

05/05/2013

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

In the case of Pashov and Others v. Bulgaria,

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

Ineta Ziemele, *President*,
David Thór Björgvinsson,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 15 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 20875/07) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Bulgarian nationals, Mr Pavel Simeonov Pashov, Ms Elena Pavlova Lazova and Mr Konstantin Vasilev Nikolov (“the applicants”), on 7 May 2007.

2. The applicants were represented by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agents, Ms M. Kotseva and Ms R. Nikolova, of the Ministry of Justice.

3. The applicants alleged, in particular, that a set of civil proceedings they were party to were excessively lengthy and that the authorities failed for a long period of time to enforce the final judgment.

4. On 12 May 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicants were born in 1944, 1970 and 1946 respectively, and live in Sofia.

A. Background to the case

6. On 10 January 1997 a political rally took place in front of the Parliament building in Sofia, continuing until well after midnight. At one point, the rally turned violent and some protesters broke into the building. The police used force in order to disperse them.

B. The applicants' encounter with the police

7. At about 3 a.m. on 11 January 1997 the applicants, who were all in the first and second applicants' flat, not far from the Parliament building, went outside to see what was happening, as they had heard on the radio that there had been some violence. They saw a group of police officers on the street armed with guns, batons, shields and helmets, who were running towards them.

8. The applicants hurried back into the first and second applicants' apartment building, locking the front door after them. The police officers broke in and two of them chased the applicants to the top floor where they started beating them with batons. After several minutes they left.

9. As the applicants were too scared to go outside again, they waited until morning before going to see a doctor. The three of them had wounds to their heads and bruises on their backs and arms. The first and second applicants had their head wounds stitched and the third applicant, who had a broken finger, had his hand fixed with a splint and bandaged.

10. On 22 January 1997 the applicants were examined by forensic doctors. It was established that the first applicant had three head wounds, one of which had been treated by a surgeon, and numerous bruises on the back, left shoulder and left arm. The second applicant had a head wound and the third applicant had a broken finger and bruises on the neck and the right arm. The doctors found that the applicants' injuries were the result of having been beaten with hard objects, and could have been inflicted at the time and in the way the applicants alleged.

11. On 22 and 23 January 1997 the first and second applicants lodged a complaint about the incident with the National Investigation Service, supported by copies of their medical records.

C. Investigation of the events of 10-11 January 1997

12. On 20 January 1997, upon a request by the mayor of Sofia and instructions from the Chief Public Prosecutor's Office, the Sofia Regional Military Prosecutor's Office opened a criminal investigation in respect of the actions of the police during the rally.

13. During the course of the proceedings the prosecutors interviewed all the police officers who had been on duty during the rally and more than

four-hundred participants. Several members of parliament and other politicians who had been inside the Parliament building during the rally were also interviewed. The prosecution collected documentary evidence, photos and video recordings.

14. On 9 November 1999, a prosecutor from the Sofia Regional Military Prosecutor's Office decided that the criminal proceedings should be discontinued. He observed that around 1 a.m. on 11 January 1997, when the tensions in front of Parliament had escalated, the police had injured participants in the rally using their batons. However, the individual perpetrators could not be identified. In addition, it appeared that the police had acted in self-defence and with the aim of defending the life, physical integrity and possessions of others. No evidence had been collected to suggest that the officers had the authority of their superiors to use force.

15. A list of eighty-five participants reported to have sustained injuries during the rally was attached to the above decision; it contained the names of the first and second applicants, but not that of the third applicant.

16. The decision did not mention the specific circumstances in which the applicants had sustained their injuries.

17. Upon an appeal by the first and second applicants, on 11 July 2000 a prosecutor from the Military Appellate Prosecutor's Office upheld the decision to discontinue the proceedings.

18. It appears from the documents submitted by the parties that that decision was not sent to the relevant court for judicial control, as provided for in the legislation at the time. The applicants submitted that they did not receive any information regarding the investigation after the decision of 11 July 2000.

D. Tort proceedings against the State

19. In the meantime, on 13 November 1997 the three applicants brought a tort action against the Ministry of the Interior under the State and Municipalities Responsibility for Damage Act (see paragraph 33 below). They sought non-pecuniary damages for the suffering and humiliation caused to them during the incident of 11 January 1997.

20. Between 6 February 1998 and 14 March 2000 the Sofia District Court held at least twelve hearings, four of which were adjourned due to improper service of the summons.

21. Meanwhile, on 23 March 1999 the applicants requested that three new defendants be joined to the proceedings, including the Sofia Directorate of Internal Affairs.

22. In a judgment of 29 May 2000 the Sofia District Court allowed the applicants' claim against the Sofia Directorate of Internal Affairs but rejected it in respect of the other defendants.

23. On appeal, on 4 October 2001 the Sofia City Court held that the lower court had erred in applying the law and remitted the case for fresh examination.

24. On 7 February 2002, sitting in camera, the District Court of its own motion joined the State, represented by the Minister of Finance, as a defendant.

25. In a judgment of 28 April 2003 the Sofia District Court allowed the applicants' claims against the State.

26. On appeal by the Minister of Finance, in a judgment of 3 December 2003 the Sofia City Court held that the State was not the correct defendant in the case. It noted that the State could only be held responsible through the actions of its bodies, which were separate legal entities. Thus, it once again remitted the case for fresh examination.

27. In a judgment of 22 July 2004 the Sofia District Court held that evidence had been gathered proving that the police officers had had no justification for using force against the applicants and that the latter had done nothing to provoke such a violent attack. It further held that the correct defendant in the case was the Sofia Directorate of Internal Affairs, and ordered it to pay each of the applicants 1,000 Bulgarian leva (BGN), the equivalent of approximately 510 euros (EUR) in non-pecuniary damages, plus interest and costs.

28. The Sofia District Court established the factual circumstances as described in paragraphs 7-10 above. It based its conclusions, *inter alia*, on medical expert opinions about the nature and probable cause of the applicants' injuries, and on the statements of three witnesses: the third applicant's wife, who had been with the applicants at the time of the incident, and two neighbours who had seen the police officers break the front door of the apartment building and chase the applicants, had heard a noise that sounded like beating and groaning, and had seen blood at the scene of the incident.

29. The above judgment was not appealed against and became final on 15 October 2004.

E. Enforcement of the judgment of 22 July 2004

30. On 3 November 2004 the applicants obtained a writ of execution to enforce the judgment of 22 July 2004. On 26 November 2004 they submitted it to the Sofia Directorate of Internal Affairs with a request for payment. On 6 January, 4 April and 2 October 2006 they sent further requests.

31. At the time of the applicants' latest communication to the Court of December 2010, the judgment of 22 July 2004 had not yet been enforced.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force and the duty to investigate ill-treatment by the police

32. The relevant provisions, in force at the time, concerning use of force and the duty to investigate ill-treatment by the police have been summarised in paragraphs 42-44 of the Court's judgment in the case of *Krastanov v. Bulgaria* (no. 50222/99, 30 September 2004).

B. Civil remedies against ill-treatment by the police

33. The relevant provisions concerning actions under the State Responsibility for Damage Act (the Act's title having been amended later to State and Municipalities Responsibility for Damage Act – "the SMRDA") have been summarised in paragraphs 45-46 of the Court's judgment in the case of *Krastanov* (cited above).

C. Enforcement against State bodies

34. Under the Code of Civil Procedure 1952, which was in force until March 2008, no enforcement proceedings could be instituted in cases where the debtor was a State body or a municipality. The relevant provisions in that connection have been summarised in paragraphs 36-38 of the Court's judgment in the case of *Mancheva v. Bulgaria* (no. 39609/98, 30 September 2004).

35. The procedure for the execution of judgments against State bodies remained unchanged under the new Code of Civil Procedure, which entered into force on 1 March 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicants complained under Article 3 of the Convention that the authorities had failed to investigate effectively their claim that they had been beaten by the police.

37. Article 3 of Convention reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

38. The Government disputed the third applicant's claims that he had been beaten by police officers, on the grounds that he had not made a complaint to the prosecution authorities and that his name had not appeared on the list of injured people appended to the prosecutor's decision of 9 November 1999 to discontinue the criminal investigation (see paragraph 15 above) or on other lists containing the names of people injured at the rally. Moreover, the Government argued that the ill-treatment inflicted on the applicants had not reached the minimum level of severity required under Article 3, nor had been intended to humiliate or debase them. The Government argued that the applicants' ill-treatment had in any event been justified because the applicants may have provoked it. The Government also submitted that the criminal investigation of the events of 10 and 11 January 1997 had been thorough and that valid conclusions had been reached.

39. The applicants contested these arguments and reiterated their complaint.

40. As regards the Government's objection concerning the facts of the case, namely that it had not been established that the third applicant had also been injured during the incident of 11 January 1997, the Court refers to the reasoned findings of the domestic courts in the tort proceedings brought by the applicants (see paragraphs 27-28 above) and sees no cogent elements which would lead it to depart from them (see *Jasar v. "the former Yugoslav Republic of Macedonia"*, no. 69908/01, § 53, 15 February 2007; *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 286, 26 April 2011; and *Radu Pop v. Romania*, no. 14337/04, § 109, 17 July 2012).

Admissibility

41. The Court is of the view that a question arises as to whether the complaint under Article 3 of the Convention has been raised within six months of the "final decision" on the case, as required by Article 35 § 1 of the Convention.

42. The six-month rule provided for in Article 35 § 1 has a number of aims. Its primary purpose is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time. That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible (see, among many other authorities, *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-40, 29 June 2012). The six-month rule serves the interests not only of the respondent Government, but also of legal certainty as a value in itself. That is why the Court has to examine compliance with the rule even in the absence of an objection by the Government to that effect (see *Walker v. the United Kingdom* (dec.),

no. 34979/97, ECHR 2000-I; *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III; and *Manolov and Racheva-Manolova v. Bulgaria*, no. 54252/00, § 25, 11 December 2008).

43. The Court notes in that connection that the present case concerns an incident dating back to January 1997 (see paragraphs 6-9 above). The criminal investigation opened by the authorities was closed in 2000 without, however, having involved the examination of the particular circumstances in which the applicants' injuries had been inflicted, since it centred on the events in front of the Parliament, whereas the applicants had been attacked in the building where the first and second applicants had been living (see paragraphs 14-16 above).

44. The Court has already held in cases of alleged ill-treatment that applicants were required to lodge their applications with due expedition once they became, or should have become, aware of the lack of an effective investigation capable of leading to the identification and punishment of those responsible (see *Kırlangıç v. Turkey*, no. 30689/05, §§ 26-33, 25 September 2012; *Brunner v. Turkey* (dec.), no. 10/10, 6 December 2011; *Manukyan v. Georgia* (dec.), no. 53073/07, 9 October 2012). The Court thus finds that the applicants in the present case should have become aware, within a reasonable time following the discontinuation of the criminal proceedings opened by the authorities, that no further investigation into their beating would be carried out, and should have lodged their application with due expedition after that.

45. Yet, the present application was only lodged on 7 May 2007 (see paragraph 1 above) and the applicants have not provided any valid justification for their failure to complain to the Court at an earlier date.

46. It is true that the applicants brought a tort action against the State (see paragraphs 19-29 above), which continued well after the discontinuation of the criminal proceedings. However, these proceedings had no bearing on the State's obligation to carry out an effective investigation and the final judgment given in them could not be considered a "final decision" within the meaning of Article 35 § 1 of the Convention in respect of the applicants' complaints under the procedural limb of Article 3. In any event, these proceedings ended on 15 October 2004 when the Sofia District Court's judgment of 22 July 2004 became final (see paragraphs 27-29 above), which was still more than six months before the lodging of the present application on 7 May 2007.

47. It is true also that even after 15 October 2004 an issue remained pending, as the damages awarded to the applicants in the tort proceedings had still not been paid (see paragraph 31 above). However, the Court points out that the complaint under examination concerns the lack of effective investigation of the applicants' ill-treatment by police officers on 11 January 1997; it does not consider that the link between this complaint and the issue remaining after 15 October 2004, namely the non-enforcement of the

judgment of 22 July 2004, was strong enough to justify the conclusion that the matters complained of by the applicants had not been determined at the domestic level.

48. It follows that the complaint under Article 3 about the lack of effective investigation has not been introduced within six months of the “final decision” in the case and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

49. The applicants complained in addition of the length of the tort proceedings and the prolonged non-enforcement of the final judgment of 22 July 2004. They relied on Article 13 of the Convention in conjunction with Article 3, Article 6 § 1 and Article 1 of Protocol No. 1.

50. The Court is of the view that the issues raised would be most appropriately examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, which, in so far as relevant, read:

Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

51. The Government did not comment on these complaints.

52. The Court notes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. They must therefore be declared admissible.

A. Article 6 § 1 of the Convention

53. The Court notes that in the present case the period to be taken into consideration began on 13 November 1997, when the applicants brought a tort action against the Ministry of the Interior (see paragraph 19 above).

54. The judicial stage of the proceedings ended on 15 October 2004. The case was examined by two levels of jurisdiction and the courts ordered the Sofia Directorate of Internal Affairs to pay damages to the applicants (see paragraphs 20-29 above). However, by December 2010 the final judgment given in the proceedings had still not been enforced (see paragraphs 30-31 above). The Court has already held that the enforcement stage is the second stage of the proceedings and that the right asserted does not actually become effective until enforcement (see *Di Pede v. Italy*, 26 September 1996, §§ 22, 24 and 26, *Reports of Judgments and Decisions* 1996-IV; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197, ECHR 2006-V; and *Kambourov v. Bulgaria*, no. 55350/00, § 53, 14 February 2008). Therefore, the Court will include the enforcement stage in the period to be taken into consideration, which lasted until at least December 2010.

55. The overall length of the proceedings has thus been more than thirteen years, seven of which were at the judicial stage.

56. The reasonableness of the duration of proceedings must be assessed in the light of the particular circumstances of each case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the litigation (see, among many other authorities, *Finger v. Bulgaria*, no. 37346/05, § 94, 10 May 2011).

57. The Court notes that the present case does not appear to have been particularly complex and that there appear to be no particular delays attributable to the applicants. At the judicial stage, the proceedings were delayed because the case was on several occasions remitted for fresh examination on account of errors by the courts in interpreting and applying domestic law (see paragraphs 23 and 26 above). As already mentioned, this resulted in the case continuing for seven years, at two levels of jurisdiction. The Court considers that the delays which incurred at the judicial stage of the proceedings were in themselves excessive in view of the requirements of Article 6 § 1 of the Convention.

58. Moreover, following completion of the judicial stage, the final judgment given by the courts has remained unenforced for a particularly long time – from 2004 to at least 2010 (see paragraphs 29-31 above). The Government have not provided any justification for that delay (see paragraph 51 above). The problem was exacerbated by the fact that Bulgarian law does not provide for enforcement proceedings against State institutions (see paragraphs 34-35 above), or for any clearly regulated complaints procedure before an independent body with the power to issue binding orders in cases of failure of State institutions to execute judgments against them (see *Mancheva v. Bulgaria*, cited above, § 60, and, *mutatis mutandis*, *Mutishev and Others v. Bulgaria*, no. 18967/03, § 144, 3 December 2009).

59. Accordingly, the Court concludes that in the present case there has been a violation of Article 6 § 1 of the Convention.

B. Article 1 of Protocol No. 1

60. In accordance with the Court's established case-law (see *Burdov v. Russia*, no. 59498/00, § 40, ECHR 2002-III; *Mancheva*, cited above, § 65; and *Kotov v. Russia* [GC], no. 54522/00, § 90, 3 April 2012), the applicants' enforceable claim under the final judgment of 22 July 2004 constituted a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

61. The impossibility for the applicants to obtain the execution of that judgment constituted an interference with their rights to peaceful enjoyment of their possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Mancheva*, cited above, § 66).

62. The Government have not advanced any justification for this interference (see paragraph 51 above).

63. It follows that there has been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. For pecuniary damage, the applicants claimed the amount of the judgment debt, plus the interest accrued, which they calculated to be BGN 3,554.58, the equivalent of EUR 1,813, for each of them. In respect of non-pecuniary damage resulting from the length of the proceedings and the non-enforcement of the judgment of 22 July 2004, the applicants claimed EUR 12,000 each.

66. The Government did not dispute the amounts claimed by the applicants for pecuniary damage, but noted that these sums were already due to them in the domestic proceedings. As regards the applicants' claim for non-pecuniary damage, the Government argued that the amount claimed was exaggerated.

67. In respect of pecuniary damage, the Court notes that in accordance with domestic law, the applicants are entitled to the payment of the

judgment debt claimed by them, together with the relevant interest and the costs and expenses incurred in the enforcement proceedings. The Court observes that in December 2010 the applicants were still in possession of their claim. Thus, it considers that no specific award in respect of pecuniary damage should be made and that, if they have not already done so, the respondent Government should ensure enforcement of the judgment of the Sofia District Court of 22 July 2004 in the applicants' favour (see *Čolić and Others v. Bosnia and Herzegovina*, nos. 1218/07, 1240/07, 1242/07, 1335/07, 1368/07, 1369/07, 3424/07, 3428/07, 3430/07, 3935/07, 3940/07, 7194/07, 7204/07, 7206/07 and 7211/07, § 20, 10 November 2009; *Solomatin v. Ukraine*, no. 8191/04, § 30, 15 October 2009; and *Puleva and Radeva v. Bulgaria*, no. 36265/05, § 52, 14 February 2012). The Court holds further that enforcement should be guaranteed within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention.

68. As regards non-pecuniary damage, the Court considers that the applicants must have suffered frustration as a result of the violation of their rights in the case. Judging on an equitable basis, it awards EUR 2,000 to each of them.

B. Costs and expenses

69. The applicants also claimed EUR 3,700 in respect of costs and expenses incurred before the Court. In support of this claim, they submitted a contract for legal representation and a time sheet for their representative's work. They requested that any amount awarded under this head be transferred directly into the bank account of their representative, Mr Y. Grozev.

70. The Government contested that claim as being exaggerated.

71. 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. In the present case, regard being had to the documents in its possession, the above criteria and the fact that it found the present application partially inadmissible, the Court considers it reasonable to award the sum of EUR 800 for costs and expenses. As per the applicants' request, it is to be transferred directly into their representative's bank account.

C. Default interest

72. The Court considers it appropriate that the default interest rate 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 complaints concerning the length of the civil proceedings and the prolonged non-enforcement of a final judgment admissible;
2. *Declares* by a majority the complaint under Article 3 of the Convention inadmissible;
3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* unanimously that there has been a violation of Article 1 of Protocol No. 1;
5. *Holds* by six votes to one
 - (a) that within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the respondent State is, if it has not already done so, to secure enforcement of the Sofia District Court's judgment of 22 July 2004;
 - (b) that, within the same time-limit, the respondent State is to pay the applicants the following amounts, to be converted into Bulgarian leva at the rate applicable at the date of settlement:
 - (i) to each applicant – EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) jointly to the three applicants – EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be transferred directly into the bank account of the applicants' representative;
 - (c) 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;
6. *Dismisses* by six votes to one the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 5 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Ineta Ziemele
President

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

I.Z.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE
KALAYDJIEVA

I fully agree that “the right asserted [by the applicants did] not actually become effective until enforcement” (paragraph 54) of the domestic civil court’s decision of 2004 against the Ministry of Interior, after proceedings in which a prosecutor was also a party. This decision “established the factual circumstances as described in paragraphs 7-10” (paragraph 28) – namely that “a group of police officers ... armed with guns, batons, shields and helmets... were running towards [the applicants] ...[broke into a locked private building and] chased [them] to the top floor, where they started beating them with batons... [causing] wounds to their heads and bruises on their backs and arms”. The court concluded that “the police had had no justification for using force against the applicants and ... the latter had done nothing to provoke such a violent attack” (paragraph 27). These conclusions led neither to payment of compensation nor to further investigation into the applicants’ particular circumstances in the following years.

I agree with the Chamber that there were “no cogent elements which would lead it to depart from” the civil courts’ findings (paragraph 40), but not necessarily with the view that the tort action “had no bearing on the State’s obligation to carry out an effective investigation” (paragraph 47). While it is true that after 2004 the applicants did not request any further or more vigorous investigation into their particular circumstances, it is difficult to conceive that the decision in question remained unknown to the other parties to the civil case. Thus, while it may be correct that the decision disregarding the applicants’ arguable claims of 2000 “could not be considered”, at least in respect of the applicants’ complaints under the procedural limb of Article 3, a “final decision”, I wonder if no new *ex officio* obligation arose after 2004, when the alleged unlawful beating was “established beyond reasonable doubt” in proceedings to which both the police and the prosecution authorities were parties.

I also wonder what more could reasonably be expected from the applicants in this regard after the “establishment of the circumstances beyond reasonable doubt” following the discontinuance of the investigation in respect of their initial “arguable claim”. The applicants’ steps to establish the facts of the unlawful use of force are not necessarily comparable (see paragraph 44) to those in the cases of *Kırlangıç v. Turkey* (no. 30689/05, 25 September 2012), *Brunner v. Turkey* ((dec.), no. 10/10, 6 December 2011) and *Manukyan v. Georgia* ((dec.), no. 53073/07, 9 October 2012), where both the applicants and the relevant authorities remained completely inactive for long periods.

These circumstances raise the issue whether the positive obligation to conduct an effective investigation is an *ex officio* one which requires the authorities to take measures as soon as they are informed of circumstances

falling under Articles 2 and 3, or one requiring the affected individuals to push for such an investigation in an attempt to “exhaust the available domestic remedies”, despite their evident ineffectiveness.

This furthermore poses the question as to the moment when it may be reasonably argued that the authorities may be considered exempt from their further *ex officio* positive obligation to identify those responsible, in the face of established acts which fall to be considered under Article 3 of the Convention. In this regard the Court’s views have developed to require not only an effective investigation, but also a reasonably appropriate punishment to avoid the impression of impunity.

Moreover, while it is true that the applicants did not insist on further investigation capable of identifying those responsible, it is difficult to deny their consistent attempt to obtain at least the compensation to which they were entitled. Was this attempt not a way of asserting their entitlement to redress for their suffering as a result of the alleged violation of their rights under Article 3?

In previous cases, the Court has examined complaints initially raised about the length of criminal proceedings in a rape case as falling to be examined under Article 3; it has found that payment of compensation (see *Öneryıldız v. Turkey* [GC], no. 48939/99, ECHR 2004-XII) and legal aid (see *Gäfgen v. Germany* [GC], no. 22978/05, ECHR 2010, and *Ilbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, 10 April 2012) constitute elements of the positive obligations of the State authorities to provide appropriate and sufficient redress in cases under Articles 2 and 3; it has also found violations of the rights protected by these provisions in cases where the applicants had obtained pecuniary compensation but the criminal investigation had resulted in inappropriately lenient punishment of the perpetrators or in no punishment at all – regardless of the late registration of the complaints under this head (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20 December 2007, and *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, §§ 31-32, 10 June 2010). Whereas in the present case, by contrast, the Court dismissed the applicants’ complaints that “the authorities had failed to investigate effectively their claim that they had been beaten by the police” (paragraph 36) and limited the scope of its examination to the complaints that the “set of civil proceedings they were party to were excessively lengthy and that the authorities failed for a long period of time to enforce the final judgment” (paragraph 3). It appears to me that in doing so, the Chamber apparently failed to address the pertinent questions: what were “the rights asserted by the applicants” and what was “at stake” in these long and ineffective proceedings?

In this regard, the overall reasoning of the Court appears, for the first time, to treat complaints of ineffective protection under Article 3 as relating only to the right to a reasonable length of proceedings and enforcement of

decisions – in respect of any civil right, that is to say, matters which are not necessarily protected by the Convention.

As a result, the measures to be taken for the implementation of the present judgment will inevitably remain limited to the payment of compensation in addition to that which already became due ten years ago, this being a form of redress which the Court has considered insufficient in the circumstances of deliberate use of force by State agents, even prior to the development of the notion of positive obligations and protection of the rights of individuals under Articles 2 and 3 of the Convention.