



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

FOURTH SECTION

CASE OF YOCHEVA AND GANEVA v. BULGARIA

(Applications nos. 18592/15 and 43863/15)

JUDGMENT

Art 14 (+ Art 8) • Discrimination • Sex • Family status • Discriminatory denial of surviving parent allowance to single mother of minor children of unknown father • Domestic legal provision based on an outdated and stereotypical understanding of families as necessarily having two legal parents • Applicant mother in a relevantly similar situation to surviving parents whose children were legally recognised by the deceased parent • Intimate information disclosure and/or undertaking of legal steps for paternal recognition an unjustified precondition for equal treatment • Children of unknown fathers objectively deprived of care and protection of one of their parents in the same way as children with one deceased parent • No evidence of fraudulent claim

STRASBOURG

11 May 2021

FINAL

11/08/2021

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

In the case of Yocheva and Ganeva v. Bulgaria,

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

Tim Eicke, *President*,
Yonko Grozev,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Pere Pastor Vilanova,
Ana Maria Guerra Martins, *judges*,
and Andrea Tamietti, *Section Registrar*,

Having regard to:

the applications (nos. 18592/15 and 43863/15) 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 Katerina Borislavova Yocheva (“the first applicant” or “the applicant”) and Katerina Nikolova Ganeva (“the second applicant”), on 15 April 2015 and 29 August 2015 respectively;

the decision to give notice to the Bulgarian Government (“the Government”) of the applications;

the parties’ observations;

Having deliberated in private on 16 March and 20 April 2021,

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

INTRODUCTION

1. The case concerns the applicants’ complaints of discrimination against them as single mothers caring for their minor children whose fathers are unknown, based on the refusal of the authorities to grant the applicants payment of a family allowance provided to families in which children had only one living parent.

THE FACTS

2. The applicants were born in 1974 and 1966 respectively and live in Sofia. The first applicant was represented by Ms D. Marcheva, a lawyer practising in Sofia. The second applicant was represented by Mr P. Borisov, a lawyer practising in Pernik.

3. The Government were represented by their Agent, Ms I. Stancheva-Chinova, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. APPLICATION NO. 18592/15

5. The first applicant is a single mother who lives with and cares for her two children, born in 2003 and 2006 respectively.

A. Administrative proceedings for the payment of a family allowance

6. On 30 September 2013 the first applicant applied, under section 7(9) of the Family Allowances for Children Act 2002 (“the FACA”), for a family allowance for families of children who had only one living parent (see paragraph 37 below).

7. The Directorate for Social Family Allowances in Krasno Selo (“the Directorate”) refused to pay the allowance to the first applicant in an order issued on 14 October 2013. The reason given was that her situation did not fulfil the legal requirements set out in section 7(9) of the FACA; in particular, she had not submitted the documents required under section 17(3), points 13 and 14, of the Regulations for the implementation of the FACA (see paragraph 41 below).

8. The first applicant challenged the order before the higher administrative body, the Regional Agency for Social Assistance (“the Agency”), which upheld it on 4 December 2013. In particular, having established that the first applicant’s family consisted of her and her two children, the Agency found that she had not submitted any evidence to show that her children had been recognised by their father and that he had died. Likewise, she had not produced a certificate attesting that the children were their father’s statutory heirs (an “heirs certificate”) or a family-status certificate showing that she was not married.

B. Judicial review proceedings regarding the payment of the family allowance

9. The first applicant brought judicial review proceedings.

10. She pointed out that she had submitted a certificate showing that the children’s father was unknown. As to an heirs certificate, it was objectively impossible for her to produce such a document, given that the children’s paternity had not been established. She further argued that the administration’s refusal to grant her the allowance in question was unlawful, as it was contrary to Article 6 § 2 of the Constitution, which prohibited discrimination on the basis, among other things, of origin (see paragraph 32 below). The legal definition of “children with only one living parent”, set out in paragraph 1, point 9, of the Additional Provisions of the FACA (see paragraph 40 below), could not exclude children who had not been recognised by their father. If the legislature had meant for section 7(9) of the FACA to apply only to children one of whose parents had died, they would

have expressly said so by using the formulation “children with one deceased parent” instead of the current formulation “children with only one living parent”.

11. The applicant referred to Article 16 of the revised European Social Charter (see paragraph 56 below), Article 23 of the International Covenant on Civil and Political Rights (“the ICCPR” – see paragraph 61 below) and Article 9 of the International Covenant on Economic, Social and Cultural Rights (“the ICESCR” – see paragraph 62 below).

1. First instance proceedings

12. In a judgment of 14 March 2014, the Sofia City Administrative Court set aside the Directorate’s order and remitted the case to it to decide on the merits of the first applicant’s request in line with the reasoning in the court’s judgment.

13. The City Court established that the first applicant’s family status corresponded to that of “unmarried individuals” and that she cared for her two minor children alone. The children’s birth certificates indicated their father as “unknown”. The court went on to observe that the law did not differentiate between children living in families as defined in paragraph 1 of the Additional Provisions of the FACA (see paragraph 39 below) and children in families where the parents were not married. It was unacceptable to place children whose parents were not married or did not live together, or whose fathers had not recognised them, in a less favourable position than that of children growing up in families that matched the legal definition above. Accordingly, a mother and her two children who have not been recognised by their father, the latter being unknown, represented a family within the meaning of the above-mentioned provision. Therefore, such children had only one living parent, given that the other one was unknown.

14. The City Court went on to find that the refusal by the administrative body to grant the allowance in question to the first applicant was contrary to Article 3 § 1 of the 1989 UN Convention on the Rights of the Child, in force in respect of Bulgaria since 1991 (see paragraph 60 below). The refusal was not in the best interest of the children, and that interest had to be the central consideration in the decision-making process of any institution, be it a private or a public one. Accordingly, if the legislation stated that the State provided assistance to the children of a parent whose husband or wife had died, it was reasonable to conclude that this also applied to children with only one parent, irrespective of whether the other parent had died or the children had not been recognised by their father.

15. The court further held that depriving families in which one of the parents was unknown, or had not recognised the children, of the allowance in question would result in discrimination on the basis of social status *vis-à-vis* the parent who was alive. The law had envisaged that the allowance was due to families with children who had only one living parent,

irrespective of the income of the family. Consequently, the granting of that family allowance had to be extended to all children who were being raised by only one parent. As a result of the absence of their second parent by virtue of being unknown, those children were in an identical situation to children one of whose parents had died.

16. Indeed, a father was not obliged to recognise a child if he did not want to do so; a mother did not dispose of any legal mechanism to compel the father to recognise the child of his own motion, or to marry her. In both cases, children living in families with only one parent had the same needs and, in both cases, the State had a corresponding responsibility to ensure acceptable conditions for their care. The family allowance due to families under section 7(9) of the FACA (see paragraph 37 below) was determined precisely in view of the needs of children living in such families. The fact that the first applicant was a single mother could not be interpreted to the detriment of her children and be used in order to refuse to grant the family the above-mentioned allowance. Accordingly, the authorities were obliged to grant her the allowance towards providing care for her children as their only living parent.

2. Last instance proceedings

17. Upon an appeal by the Directorate, on 22 October 2014 the Supreme Administrative Court (“the SAC”), in a final judgment, quashed the lower court’s judgment and rejected the first applicant’s challenge to the Directorate’s order of 14 October 2013 (see paragraph 7 above).

18. The SAC held that while the lower court had correctly established the facts, it had wrongly applied the law. In particular, in order to be eligible for the family allowance provided for by section 7(9) of the FACA, it was necessary to produce an heirs certificate and a family-status certificate, in accordance with the requirement under section 17(3), points 13 and 14, of the Regulations for the implementation of the FACA (see paragraph 41 below). The central consideration was, therefore, whether the case concerned a parent who had survived the death of his or her spouse and parent of his or her children. The common children of the deceased and surviving parents had to be the legal heirs of the former. That was the reason for the requirement to submit a certificate attesting to this with the request for the family allowance. Likewise, there was a requirement that the parent making the request had to be single at the time of the request.

19. Consequently, the lower court had wrongly concluded that the key element was whether the first applicant as a single mother and her children represented a family. Instead, the crux of the matter was whether there was a surviving parent who had not remarried. The outstanding question therefore was whether the legal provision at stake applied only to situations of semi-orphaned children, or also to situations of children whose fathers had not recognised them. In order to establish the meaning of that provision,

namely whether children who had not been recognised have equal rights with semi-orphaned children, it was necessary to look at the intentions of the legislature.

20. In particular, paragraph 2 of the bill of 13 March 2012 for amending the FACA stated that the reason for introducing section 7(9) of the FACA was to improve the protection available to the most vulnerable group of children, namely those who were being brought up by only one living parent. The logic was that the optimal environment for every child was a family, as well as that there were more difficulties associated with caring for a child one of whose parents had died. Therefore, it could be concluded that, by making this family allowance available irrespective of the income of the family, the legislature had envisaged that it applied only in respect of families in which one of the parents had died.

21. That had also been the conclusion of the Constitutional Court (“the CC”) in its decision no. 3 of 27 June 2013 in which it had rejected the request by the Ombudsperson to declare unconstitutional section 7(9) of the FACA in so far as it used the word “living” (see paragraphs 43-43 below). Specifically, the CC had found that the loss of a parent was the single most important factor affecting any given family environment. Thus, children most acutely affected by the loss of a parent were, in the first place, those whose parents had both died and, in the second place, those one of whose parents had died. The idea behind the law was that there was a significant difference between a child who is cared for by a surviving parent and a child who is cared for by a parent who has not married. In the latter case, the child had the right to bring an action to establish paternity. As a result of such an action, the child would become part of another family, with all the personal and economic consequences that would bring. This in turn was in the best interest of the child as it was of crucial importance for the establishment of his or her legal status.

22. The CC had rightly determined that the situation of a child one of whose parents has died was not identical to that of a child who was cared for by a single parent for a different reason. The introduction of a different regime of protection in respect of these two categories was justified in order to ensure equal protection to children cared for by only one living parent.

23. This led to the conclusion that a broad interpretation of section 7(9) of the FACA was contrary to the purpose of the law. Were the provision to be interpreted broadly, this would result in a much larger group of rather dissimilar cases which would have to be treated equally, in breach of the principle of equality before the law. That in itself would be unjust.

24. The City Court had wrongly held that refusing to pay the family allowance to the first applicant was in breach of Article 3 of the Convention on the Rights of the Child (see paragraph 14 above). The provision in question provided that States were obliged to ensure that children benefited from the care and protection necessary for their well-being, taking into

account the rights and obligations of their own parents or other caregivers, including by means of all necessary administrative and legal measures. It was precisely to provide for the best interests of the child that the legislature had introduced section 7(9) of the FACA, given that it provided the requisite care for children one of whose parents had died.

C. Statistical data provided by the Government

25. According to information provided by the Bulgarian National Statistical Institute, a State agency, the number of children with unknown fathers born in the country between 2007 and 2015 was on average 12,400 per year.

26. As of February 2017, according to information provided by the State Agency for Social Assistance, the State was paying allowances under the FACA to the families of a total of 640,952 children, while the specific allowance under section 7(9) of the FACA was being paid to the families of 10,570 children with one deceased parent.

II. APPLICATION NO. 43863/15

27. The second applicant is a single mother who lives with and cares for her minor son born in 2007.

28. She complained to the Commission for the Protection against Discrimination (“the Commission”) about her family being discriminated against as a result of her inability to obtain the allowance provided for by section 7(9) of the FACA because the father of her children was unknown as opposed to deceased. On 13 June 2014 the Commission found that section 7(9) of the FACA provided for less favourable treatment of families of children with only one parent in comparison with families in which one of the parents had died. That, the Commission ruled, was direct discrimination on the basis of “personal status”, “origin” and “family status”.

29. The Council of Ministers brought judicial review proceedings in respect of this decision. The second applicant participated in the proceedings as an interested party and submitted a reply to the position of the Council of Ministers.

30. In a judgment of 17 December 2014, the Sofia City Administrative Court overturned the Commission’s decision. The judgment indicated that it could be appealed against within fourteen days from the parties being notified of it (see paragraph 55 below). The second applicant was notified of it on 22 December 2014. She did not appeal against the judgment and neither did the Commission. The judgment thus became final on 20 January 2015.

31. On 21 April 2015 the second applicant enquired with the Commission about developments in the case and was told orally by a staff member that the Commission had not appealed against the judgment. On 1 July 2015 she wrote to the Commission repeating her request, but received no reply.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

32. Article 6 § 2 provides that all citizens are equal before the law, where the term “citizens” refers to all individuals to whom the Constitution applies. There are to be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.

33. Article 14 provides that the family, motherhood, and childhood enjoy the protection of the State and society.

34. Article 32 § 1 provides that the privacy of citizens is inviolable. Everyone is entitled to protection against any unlawful interference in his or her private or family affairs and against encroachments on his or her honour, dignity and reputation.

35. Article 47 provides that the rearing and upbringing of children until the attainment of majority constitutes a right and an obligation for the parents and that the State is to provide assistance to them. Mothers enjoy special protection from the State, which guarantees them paid leave before and after birth, free obstetrical care, easier conditions of work, and other types of social assistance. Under the same provision, children born out of wedlock enjoy equal rights with those born in wedlock. Children left without the care of the immediate family enjoy the special protection of the State and society.

B. The FACA

36. Section 7(1) of the FACA, which was added to the FACA and came into force on 1 January 2013, stipulates that a monthly family allowance for a child who has not finished secondary education, but is no older than 20, is provided to low-income families whose children meet all of the following conditions: (a) they are not cared for full-time in a State institution; (b) they regularly attend school, unless this is impossible due to health reasons; and (c) they live on the territory of Bulgaria on a permanent basis.

37. Under section 7(9) of the FACA, in cases where the family comprises children with only one living parent, the family's income is not taken into account as a condition for receiving this monthly allowance.

38. Section 7(2) of the FACA provides that the monthly family allowance described in section 7(1) is payable, irrespective of the family's income, also to relatives or foster families who care for children. Under section 8d of the FACA, the monthly allowance is payable also to families with children with permanent disabilities, irrespective of the family's income.

39. Under paragraph 1, point 1, of the Additional Provisions of the FACA, as worded at the relevant time, a family comprised spouses or unmarried parents who lived in the same household or single parents and minor children, as well as children over 18 years of age, but no older than 20, who were still in secondary education. "Children" included those who had been born into the family, those who had been recognised by their parents, those who had been adopted, and stepchildren, but did not include children who had married.

40. Under paragraph 1, point 9, of the Additional Provisions of the FACA, which was first introduced in 2012, "a child with only one living parent" is a minor, or under 20 years of age and in secondary education, one of whose parents (including adoptive parents) has died and who is being cared for by the other parent (including an adoptive parent), on condition that the latter has not remarried.

41. Section 17(3), points 13 and 14, of the Regulations for the implementation of the FACA provided at the material time that monthly allowances for families with children in secondary school who were no older than 20 and who had only one living parent, were payable upon submission of a request (*молба-декларация*) to that effect, to which had to be attached an heirs certificate and a family-status certificate.

42. Under section 17(3), point 1, monthly allowances for children living in low-income families were paid upon submission of a certificate showing the family's income during the previous twelve months.

C. The 2013 Constitutional Court's decision

43. In its decision no. 3 of 27 June 2013, the CC rejected the Ombudsperson's request to declare section 7(9) of the FACA (see paragraph 37 above) unconstitutional in so far as it used the word "living". The Ombudsperson had submitted that when the legislature had introduced a privilege for a certain group of people, namely children with only one living parent, by eliminating family income as a criterion for eligibility for a family allowance, that privilege had to cover all children who had only one parent, as they were in an identical position to those in the first group. The CC acknowledged that in a State governed by the rule of law the legislature

was required to treat similar cases alike and different cases differently. That was the only way to guarantee equality before the law and justice in society. That said, the existence of significant differences required the legislature to intervene and differentiate the applicable rules in order to achieve equal protection.

44. The CC went on to note that Article 14 of the Constitution provided that the family enjoyed the protection of the State and Article 47 § 1 of the Constitution required the State to assist parents in the upbringing of their children (see paragraph 35 above). It was beyond doubt that children who only had one living parent were a vulnerable category in need of protection by the State. The question was whether the legislature had breached the principle of equality before the law by introducing a privilege for only one sub-group of parents who were the sole caregivers to their children.

45. The CC found that there were significant differences within the larger group of single-parent families referred to by the Ombudsperson. Families in which one parent cared for the children following the death of the other parent could hardly be considered identical to families in which the children were being brought up by one parent following the divorce of the parents and the granting of custody rights to one of them. In particular, while divorce put an end to the marriage of the parents, the child continued to have two parents. As a result, the environment in which that child was being reared differed significantly from the environment of a semi-orphaned child. In the former case the child was bound to receive care by both parents, as custody could be modified and, in any event, both parents were responsible for participating in the child's upbringing.

46. Similarly, there was a significant difference between the situation of a child being reared by his or her surviving parent and a child being reared by a parent who was not married and caring for the child alone. In the latter case, it was possible for the child's legal representative to bring an action in the name of the child for establishing the child's legal ties to the other parent. As a result of such an action, the child would become part of another family, with all the personal and economic consequences that would bring. This in turn was in the best interest of the child as it was of crucial importance for the establishment of his or her legal status.

47. This was also the purpose behind Article 47 of the Constitution, namely the objective for every child to have his or her origin determined in relation to both parents as an important premise for defining the environment for the child's care and upbringing. Similarly, Article 7 of the Convention on the Rights of the Child stipulated that every child had the right to know his or her parents. A parent's death automatically terminated the relationship between that parent and the child and undeniably affected his or her emotional and psychological state. Both the family and the child underwent a drastic change as a result of circumstances beyond their control and, in such situations, the State stepped in in order to provide assistance

towards the care of the semi-orphan child. The introduction of a different regime of social protection in respect of these two categories was justified in order to ensure equal protection to children cared for by only one living parent.

48. At their very origin, allowances for families with children were intended for families affected by factors over which they had no control, yet which had permanent negative effects on the psychological state of the family members. It was impossible to treat similarly different members of a very broad group without accounting for the reasons for which children were being reared by a single parent. If the word “living” were to be eliminated from the legal provision in question, this would lead to an unjust result, given that the same legal regime would apply to a diverse group of cases. That in turn would mean treating similarly different cases which would lead to a breach of the principle of equality before the law.

49. The purpose of the privilege introduced by section 7(9) of the FACA was to differentiate a specific subset of cases from the broader group within which it fell. Extending the privilege to the broader constituents of the group would lead to the two constituent groups swapping places. If the privilege were to be applied to the whole broad group of cases of single-parent families, this would lead to the opposite of the intended outcome, namely to a limitation of the rights of the people in the specific subset of cases.

50. The reasons at the origin of the privilege introduced by the FACA fell outside of the characteristics, exhaustively enumerated in the Constitution, on the basis of which it was unacceptable to limit rights or grant privileges. There was no obstacle for the legislature to introduce additional characteristics, on the basis of which certain groups of people would benefit from a privilege, as long as it did not lead to a breach of the requirement in Article 6 of the Constitution (see paragraph 32 above). In other words, privileges could not be discriminatory. This in turn meant that the difference in treatment provided in this particular case was justified by the differences observed within the broader group of single-parent families.

51. Article 3 of the Convention on the Rights of the Child provided that States were obliged to ensure that children in a family benefited from the care and protection necessary for their well-being, taking into account the rights and obligations of their own parents or other caregivers, including by means of all necessary administrative and legal measures. It was precisely to provide for the best interests of the child that the legislature had introduced section 7(9) of the FACA, given that it provided the requisite care for children one of whose parents had died.

D. The Regulations for the implementation of the Social Assistance Act

52. Paragraph 1, point 3, of the Additional Provisions of the Regulations for the implementation of the Social Assistance Act provides that a “single parent” is a person who, as a result of widowhood, divorce or lack of civil marriage, has the sole care of children younger than 18, or up to 20 years of age if they are still enrolled in secondary education.

E. The Family Code

1. Acknowledging paternity of a child

53. Under Article 65 § 1 of the Family Code, a father can acknowledge paternity of a child by means of a declaration made in writing and in person before a civil-status officer, or a declaration certified by a notary and deposited with the civil-status officer.

2. Action for establishing paternity

54. Under Article 69 of the Family Code, an action for establishing paternity can be brought in court against the father by the child’s mother within three years of the birth and by the child himself or herself no later than three years after reaching majority. Under Article 129 of the Family Code, any parent can represent his or her minor child. In an interpretative ruling (no. 5/78 of 21 February 1979), the Plenary of the then Supreme Court clarified that, under the law (the provision in force at the time was identical to Article 69 of the Family Code currently in force), a child could bring a claim for the establishment of paternity even before he or she reached majority. This could be done by the child’s mother, acting as the legal representative of the child and exercising the child’s right to bring such a claim.

F. The Protection Against Discrimination Act

55. Under section 68 of the Act, the decisions of the Commissions for the Protection against Discrimination are subject to judicial review within fourteen days of the interested parties being notified of them.

II. RELEVANT INTERNATIONAL MATERIAL

A. European Social Charter (Revised)

56. Article 16 of the revised European Social Charter (“the Charter”), in force in respect of Bulgaria since 1 August 2000, reads as follows:

The right of the family to social, legal and economic protection

“With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family allowances, fiscal arrangements, provision of family housing, family allowances for the newly married and other appropriate means.”

57. According to the interpretation given by the European Committee of Social Rights to the provisions of the Charter, compiled in its Digest of 2018, the protection afforded in Article 16 of the Charter covers single-parent families. The scope of Article 16 is, in any case, not restricted to families based on marriage. States Parties enjoy discretion to choose the means in their endeavour to ensure the social, legal and economic protection of the various types of families that can be found in the population. States Parties are required to ensure the protection of vulnerable families, single-parent families and Roma families, in accordance with the principle of equality of treatment.

58. Article E of the Charter provides as follows:

Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

59. In its decision on a collective complaint (see *International Association Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52), the European Committee of Social Rights observed that the wording of Article E was almost identical to the wording of Article 14 of the Convention. The Committee held that Article E not only prohibited direct discrimination but also all forms of indirect discrimination, and that such indirect discrimination might arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all. In the same decision the Committee further considered that the insertion of Article E into a separate Article in the Revised Charter indicated the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained therein. It held that its function was to help secure the equal effective enjoyment of all the rights concerned regardless of difference (*ibid.*, § 51).

B. The Convention on the Rights of the Child

60. Article 3 of the United Nations Convention on the Rights of the Child, signed in New York on 20 November 1989 and in force in respect of Bulgaria since 3 July 1991, reads as follows:

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

C. International Covenant on Civil and Political Rights (“the ICCPR”)

61. Article 23 of the ICCPR reads as follows:

“1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”

D. International Covenant on Economic, Social and Cultural Rights (“the ICESCR”)

62. Article 9 of the ICESCR reads as follows:

“The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.”

THE LAW

I. JOINDER OF THE APPLICATIONS

63. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rule of Court).

II. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

64. The applicants complained that by requiring that they, as single mothers, establish paternity of their children and provide a death certificate in respect of the children's fathers as a condition for receiving a family allowance payable monthly to families with "children with only one living parent", the authorities had breached their right to respect for their private and family life, protected by Article 8 of the Convention. Furthermore, by interpreting the phrase "children with only one living parent" as meaning solely "children with one deceased parent", the authorities had breached the applicants' right not to be discriminated against, as they had failed to recognise that the category of families with "children with only one living parent" included that of families with "children one of whose parents was unknown". They relied in this respect on Article 14 of the Convention taken in conjunction with Article 8.

65. The relevant Convention provisions provide as follows:

Article 8

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Scope of the case

66. Since the alleged discriminatory treatment of the applicants lies at the heart of their complaint, having regard to the circumstances of the present case, and bearing in mind that it is master of the characterisation to

be given in law to the facts of a complaint (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers it appropriate to examine the applicants' grievances only from the standpoint of Article 14 of the Convention taken in conjunction with Article 8.

B. Admissibility

1. As regards application no. 43863/15

67. The Government submitted that the second applicant had failed to exhaust domestic remedies by omitting to seek to be granted the allowance in question, as well as by failing to appeal against the judgment of the Sofia City Administrative Court. Alternatively, she had failed to comply with the six-month time-limit, as she had lodged her application with the Court more than seven months after the last domestic decision in her case had become final.

68. The second applicant stated that, if there were several possible remedies open to her, she was only expected to have tried one of them. Moreover, she had relied on the Commission to appeal against the judgment of the first-instance court in the discrimination proceedings which she had initially brought. The Commission had not explained its unusual lack of initiative and the second applicant considered that she should not be penalised for this.

69. The Court considers it unnecessary to determine whether the second applicant exhausted domestic remedies as, in any event, it finds that her application is inadmissible for failure to observe the six-month time-limit. The Court notes in that connection that the second applicant was notified of the first-instance court's judgment, which quashed the Commission's decision and after which there were no further procedural developments at the national level, on 22 December 2014, and it became final on 20 January 2015 as no appeal had been lodged against it (see paragraph 30 above). It thus became the final domestic decision in her case. The second applicant was apparently told in April 2015 that the Commission had not appealed against the judgment (see paragraph 31 above). However, she only applied to the Court on 28 August 2015 which was more than six months after the judgment becoming final on 20 January 2015.

70. It follows that application no. 43863/15 was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. *As regards application no. 18592/15*

(a) *Compatibility ratione materiae*

71. The Court has consistently held that Article 14 has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by the other substantive provisions of the Convention and its Protocols. For Article 14 to be applicable, it is enough for the facts of the case to fall within the ambit of one or more of those provisions; moreover, the prohibition of discrimination enshrined in Article 14 extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 40, ECHR 2000-IV, and *E.B. v. France* [GC], no. 43546/02, §§ 47-48, 22 January 2008).

72. Admittedly, Article 8 does not include a right to family allowances or impose any positive obligation on States to provide such allowances. That said, the Court has held that parental leave and related allowances promote family life (see *Topčić-Rosenberg v. Croatia*, no. 19391/11, §§ 37-38, 14 November 2013, with further references). Also, by granting child benefits, States are able to “demonstrate their respect for family life” within the meaning of Article 8 of the Convention (see *Niedzwiecki v. Germany*, no. 58453/00, § 31, 25 October 2005). Thus, parental allowances and child benefits come within the scope of Article 8 (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 130, ECHR 2012 (extracts); *Petrovic v. Austria*, 27 March 1998, §§ 26-29, *Reports of Judgments and Decisions* 1998-II; *Di Trizio v. Switzerland*, no. 7186/09, §§ 60-62, 2 February 2016; *Okpisch v. Germany*, no. 59140/00, § 32, 25 October 2005; and *Fawsie v. Greece*, no. 40080/07, § 28, 28 October 2010; see also *Weller v. Hungary*, no. 44399/05, § 29, 31 March 2009, in the context of a maternity benefit). The Court sees no reason to depart from those conclusions in the present case, which concerns the allowance for the first applicant’s minor children provided for by section 7(9) of the FACA (see paragraph 37 above). Accordingly, if a State does decide to create a parental leave scheme, it must do so in a manner which is compatible with Article 14 of the Convention (see, similarly, *Petrovic*, §§ 26-29, and *Konstantin Markin*, §130, both cited above).

73. It follows that Article 14, taken together with Article 8, is applicable.

(b) No significant disadvantage

(i) The parties' submissions

74. The Government submitted that the application had to be dismissed in accordance with Article 35 § 3 (b), as the first applicant had not suffered a significant disadvantage.

75. More specifically, had she succeeded with her claim at the national level, she would have been receiving 43.50 euros (EUR) per month for both children together. Given that she had been insuring herself at the national level for what was at the time the highest insurable monthly income of EUR 1,100, her interest in receiving EUR 43.50 a month was negligible. In addition to the minimal personal interest of the applicant, the question did not concern a structural issue and her case had been duly considered by several domestic tribunals.

76. The first applicant disagreed. She pointed out that, as the problem she had raised was equally valid in respect of all children who were excluded from the system of the said family allowance because their paternity had not been established, the issue effectively concerned a structural problem. Furthermore, it was unacceptable for the State, which was responsible for the petty amounts paid in family allowances, to use the argument of “insignificant disadvantage” on the basis of those amounts being negligible.

77. In any event, given the age of her children at the time she had lodged the request for the allowance, her family would have been entitled to receive EUR 522 per year for the two children together for a duration of eight years (until the elder child reached majority). Thereafter, the family would have been entitled to receive a further EUR 681.12 for three years in respect of the younger child before he reached majority. All in all, the family would thus have received EUR 4,857.12 under the allowance in question, even if the applicable rates were not increased over the years.

(ii) The Court's assessment

78. The Court reiterates that, as pointed out in its previous case-law (see *Mura v. Poland* (dec.), no. 42442/08, § 20, 2 June 2016, and *C.P. v. the United Kingdom* (dec.), no. 300/11, § 41, 6 September 2016), the purpose of the admissibility rule in Article 35 § 3 (b) is to allow the Court to concentrate on its central mission of providing legal protection of human rights at the European level.

79. The question whether the applicant has suffered any “significant disadvantage” represents the main element of the rule. Inspired by the general principle *de minimis non curat praetor*, this first criterion of the rule rests on the premise that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum

level is, in the nature of things, relative and depends on all the circumstances of the case. The severity of a violation should be assessed taking into account both the applicant's subjective perceptions and what is objectively at stake in a particular case. In other words, the absence of any "significant disadvantage" can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant. However, the applicant's subjective perception cannot alone suffice to conclude that he or she has suffered a significant disadvantage. The subjective perception must be justified on objective grounds (see, *inter alia*, *C.P. v. the United Kingdom*, cited above, § 42, with further references).

80. There are two further criteria under Article 35 § 3 (b). The second compels the Court to examine the case in any event if respect for human rights so requires. This would apply where a case raises questions of a general character affecting the observance of the Convention, for instance whether there is a need to clarify the States' obligation under the Convention or to induce the respondent State to resolve a structural deficiency (*ibid.*, § 49). Finally, the third criterion does not allow the rejection of an application if the case has not been "duly considered by a domestic tribunal" (*ibid.*, § 51).

81. Turning to the instant case, the Court observes that the core of the first applicant's complaint concerns the exclusion of children with unknown fathers from the allowance provided for by section 7(9) of the FACA, and the ensuing discrimination allegedly suffered by those children's families vis-à-vis the families with a deceased parent. The domestic proceedings which the applicant brought did not result in her achieving her objective of determining that her family should not have been excluded from that State benefit (contrast *C.P. v. United Kingdom*, cited above, § 46). Likewise, it cannot be said that the resulting exclusion did not bring about any actual prejudice to her family, given that it was deprived altogether of the said assistance from the State. Quite apart from the purely financial value of that assistance, the complaint is that the authorities' actions culminated in the applicant being made ineligible for receiving it and in her children, whose father was unknown, being placed in a less favourable position than children who had only one living parent as a consequence of the second one having died.

82. The complaint thus raises an important question both in terms of the subjective perception of the applicant and as regards what is objectively at stake. Consequently, the issue cannot be reduced, as the Government suggested, to a mere monetary comparison between the applicant's family's income and the financial benefit of her receiving the allowance in question. The Court finds that it cannot be said therefore that the first applicant did not suffer a significant disadvantage as a result of the refusal to grant her the allowance a stake.

83. This conclusion would be sufficient to reject the Government's preliminary objection of lack of significant disadvantage. However, the Court also notes the following as regards the second element of the test, namely the necessity to hear the case if respect for human rights so requires (see paragraph 80 above). The authorities' decisions – to require the establishment of the identity of the father in order to be eligible to receive an allowance – have broader repercussions for the right to freedom from discrimination and the right to private life for individuals who, like the first applicant, have the sole charge of their family's care by virtue of the father being unknown, as well as for their children. The Court thus finds that the question raised by this application is one of a general character affecting the observance of the Convention. It considers that it may therefore be necessary for it to clarify the State's obligations, in particular under Articles 14 and 8 of the Convention. The Court also needs to assess whether the resulting situation is one of a structural nature which would in turn require the State to act in order to resolve it.

84. Finally, as regards the third criterion, namely the requirement that the case be duly considered by a domestic tribunal, the Court notes that the applicant's legal challenge to the administrative refusal to grant her the benefit was effectively examined at two levels of jurisdiction which considered in substance the same subject matter of the complaint as that raised in the present application.

85. The Court finds that owing to the absence in the present case of two of the three stated criteria for inadmissibility, the Government's objection of lack of significant disadvantage should be dismissed.

(c) Other grounds of inadmissibility

86. The Court notes that application no. 18592/15 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other ground listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

1. Submissions by the parties

(a) The first applicant

87. The applicant submitted that the State had breached her right to private and family life by imposing a duty on her, as a single parent, to establish paternity of her children in order for the children to be treated in a non-discriminatory manner and her family not to be excluded from the system of family allowances. Given that the Constitution provided that children born out of wedlock enjoyed equal rights with those born within it, and that mothers enjoyed special protection, the above-described

requirement was disproportionate and in breach of the applicant's right to private and family life and freedom from discrimination. The legal definition of "children with only one living parent" (see paragraph 40 above) implied that only children with established origin from both parents were considered eligible for the allowance under section 7(9) of the FACA, provided that one of the parents had passed away. This definition excluded from the outset and discriminated against families of children with non-established paternity.

88. To the extent that the State had introduced an allowance for children with only one living parent, regardless of the financial situation of the family, it was unjust to exclude from eligibility for it children in families with only one parent by reason of the second one being unknown. Any internal differentiation with regard to the mental state of the child (whether he or she had suffered from the death, and so on) was irrelevant.

89. It was all the more unjustified to make it a precondition for children's inclusion in the allowance system that their mother bring a legal action against their father to establish paternity. In order to be admissible under Bulgarian law, such an action could only be brought within three years of the birth of the child (see paragraph 54 above) and, at the time when the applicant's request for the allowance had been refused, this limitation period had expired.

90. The central element of importance for determining whether the situation of children one of whose parents had died was similar or different to children whose father had not recognised them lay in the reality of the family situation and in the range of care actually received. The authorities' actions in the applicant's case had led to a situation whereby her children, who had not been recognised by their father, could achieve non-discriminatory treatment only if beforehand the applicant had allowed a disproportionate interference in her private and family life to take place.

(b) The Government

91. The Government recognised that the first applicant and her children represented a family both within the meaning of the Convention and of the national legislation (on the last point, see paragraph 39 above).

92. The introduction of the allowance in section 7(9) of the FACA had been aimed at implementing the State's policy of protecting families and children, as required under the Constitution. The State had a margin of appreciation in respect of the specific vulnerable groups of the population to which it extended its support and protection. This benefit provided, in particular, necessary assistance for the vulnerable group of children one of whose parents had died. The allowance was also available to families with disabled children and to foster families, and families of children's relatives who cared for them instead of their own parents (see paragraph 38 above). The legislature's logic had been that the allowance, even if negligible in its

financial aspect, was aimed at compensating to a certain extent the emotional trauma experienced by children as a result of the loss of a parent, or because of a physical disability, or of the impossibility of living with their own mother and father.

93. Introducing a benefit irrespective of the family's income for families of children with unknown fathers would, in the words of the Government, result in unequitable treatment of other groups of children being raised by one parent.

94. There was no difference in law in the treatment of children, irrespective of whether they had been born in or outside of marriage and whether their fathers had recognised them or not. In order to be eligible for the benefit in question, it was sufficient for the child to have had two parents, one of whom had died. In all other cases of single-parent families, the law provided for different ways of establishing and restoring the child's relationship with the second parent, which included the bringing of an action in court to establish paternity of the child. However, bringing such an action was the mother's prerogative and she could decide whether and when to exercise it. There was no general obligation under Bulgarian law, or practice, for mothers to have to establish paternity of their children.

95. There could be many and diverse reasons why paternity had not been established in the instant case, including some of a profoundly intimate character. The applicant had taken a conscious decision to be a single mother and her situation was not due to objective reasons beyond her control.

96. There was a significant difference between the situation of a semi-orphaned child and a child who lived with only one of his or her parents because they had not married or following a divorce. In the latter case, the child continued to have two parents and was consequently bound to receive care from both parents, as custody could be modified and, in any event, both parents were responsible for participating in the child's upbringing. Conversely, the connection of the semi-orphaned child with the deceased parent had been irreversibly severed.

97. Bulgarian law provided a number of possible options to women in the exercise of their reproductive rights. These included assisted insemination and unrestricted access to abortion in cases of unwanted pregnancy. Also, a number of provisions in different pieces of Bulgarian legislation entitled single-parent families, including mothers of children whose fathers were unknown, to receive financial assistance, on condition that their income was under a certain threshold.

98. The Government also pointed out that, generally speaking, the most common reason for a father not to recognise a child was his unwillingness to do so. This applied particularly in situations where the fathers actually lived with the family without having legally recognised the children. They suggested that it was a regular practice of certain ethnic and social

communities in Bulgaria to “pretend” that the mother was a single parent so as to more easily obtain State benefits. This particular practice explained the high number of unrecognised children in the statistics (see paragraph 25 above).

99. Finally, if the State were to provide financial assistance to all children in the country whose fathers were unknown, which was between 14% and 18% of all children born, this would represent a disproportionate burden on the State budget. If the State were to be found in violation of the prohibition of discrimination as a result of not treating families with unknown fathers as equal to families with a deceased parent, the State would in all likelihood be forced to do away with the allowance altogether, given that the burden on the budget would be excessive.

2. *The Court’s assessment*

(a) **General principles**

100. According to the Court’s settled case-law, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. In other words, the requirement to demonstrate an analogous situation does not require that the comparator groups be identical. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently (see *Fábián v. Hungary* [GC], no. 78117/13, § 113, 5 September 2017, with further references). Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Konstantin Markin*, cited above, § 125).

101. Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *X and Others v. Austria* [GC], no. 19010/07, § 98, ECHR 2013). The scope of the margin of appreciation will vary according to the circumstances, the subject matter and its background, but the final decision as to observance of the Convention’s requirements rests with the Court (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 387, ECHR 2012 (extracts)). A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature’s policy choice unless it is “manifestly without reasonable foundation” (see

Stec and Others v. the United Kingdom [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006-VI). The Court has stressed in the context of Article 14 in conjunction with Article 1 Protocol 1 that, although the margin of appreciation in the context of general measures of economic or social policy is, in principle, wide, such measures must nevertheless be implemented in a manner that does not violate the prohibition of discrimination as set out in the Convention and complies with the requirement of proportionality (see *Fábián*, cited above, § 115, with further references). Thus, even a wide margin in the sphere of economic or social policy does not justify the adoption of laws or practices that would violate the prohibition of discrimination. Hence, in that context the Court has limited its acceptance to respect the legislature's policy choice as not "manifestly without reasonable foundation" to circumstances where an alleged difference in treatment resulted from a transitional measure forming part of a scheme carried out in order to correct an inequality (see *J.D. and A v. the United Kingdom*, nos. 32949/17 and 34614/17, § 88, 24 October 2019, with further references).

102. The Court has also considered that as the advancement of gender equality is today a major goal in the member States of the Council of Europe, very weighty reasons would have to be put forward before such a difference of treatment could be regarded as compatible with the Convention (see *Konstantin Markin*, cited above, § 127). In particular, references to traditions, general assumptions or prevailing social attitudes in a particular country are insufficient justification for a difference in treatment on grounds of sex (*ibidem*). The Court has also noted that common ground between the member States of the Council of Europe regarding the importance of equal treatment of children born within and children born outside marriage has been established for a long time, which has, moreover, led to a uniform approach today by the national legislatures on the subject – the principle of equality eliminating the very concepts of legitimate children and children born outside marriage – and to social and legal developments definitively endorsing the objective of achieving equality between children (see *Fabris v. France* [GC], no. 16574/08, § 58, ECHR 2013 (extracts), and *Marckx v. Belgium*, 13 June 1979, § 41, Series A no. 31; see also the 1975 European Convention on the Legal Status of Children Born out of Wedlock). Accordingly, very weighty reasons have to be advanced before a distinction on grounds of birth outside marriage can be regarded as compatible with the Convention (*ibidem*; see also *Genovese v. Malta*, no. 53124/09, § 44, 11 October 2011).

103. The notion of discrimination within the meaning of Article 14 also includes cases where a person or group is treated, without proper justification, less favourably than another, even though the more favourable treatment is not called for by the Convention (see *Biao v. Denmark* [GC],

no. 38590/10, § 90, 24 May 2016, and *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 82, Series A no. 94).

104. Article 14 does not prohibit all differences in treatment, but only those differences based on an identifiable, objective or personal characteristic, or “status”, by which individuals or groups are distinguishable from one another. The words “other status” have generally been given a wide meaning, and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Carson and Others*, cited above, § 70, and *Clift v. the United Kingdom*, no. 7205/07, §§ 56-58, 13 July 2010).

105. As concerns the burden of proof in relation to Article 14 of the Convention, once the applicant has demonstrated a difference in treatment, it is for the Government to show that it was justified (see *Biao*, cited above, § 92).

(b) Application of these principles to the present case

- (i) *Whether the applicant was in a relevantly similar or analogous situation to that of surviving parents whose children had been legally recognised by the deceased parent*

106. The Court must consider whether the applicant, a single mother whose minor children have not been recognised by their father, is in an analogous situation to the groups who were entitled to the benefit irrespective of income under section 7(9) of the FACA, namely single parents of children whose legal ties to both of their parents had been established before the other parent’s death. Those groups comprised fathers of children whose mothers had died; widows whose children were born in wedlock; and single mothers whose children’s fathers had recognised them before dying.

107. The Court has already found that, in so far as parental leave allowances are concerned, men and women are in an analogous situation (see *Konstantin Markin*, cited above, § 132). As regards family allowances which are meant to support families with children with one surviving parent, the Court finds no reason to hold otherwise. Men and women are likewise “similarly placed” in terms of their role as sole carers for their children.

108. The Court must also decide whether single mothers of children of unknown fathers (like the first applicant) are in a relevantly similar situation to surviving mothers who are widows or whose children’s fathers have legally recognised them. In carrying out this analysis, the Court must have regard to the particular nature of the complaint (see *Fábián*, cited above, § 113), which in the present case concerns a claim for monthly allowances under section 7(9) of the FACA. The Court notes that, as advanced by the Government, the primary aim of the introduction of the benefit in question

was the implementation of the policy of protecting families and children as enshrined in the Constitution (see paragraph 92 above). While the Government also suggested that the allowance was aimed at compensating for the suffering resulting from the death of a parent, this does not seem to be the main rationale of the legislative scheme. The Court observes that the relevant domestic legislation, namely section 7 of the FACA, was geared towards providing ongoing support to children growing up in a disadvantaged family situation more generally (see paragraphs 36-40 above). Taking into account the basic characteristics of the scheme in issue, namely providing ongoing monthly support for families with children, who for a variety of reasons are in a vulnerable position (see also paragraph 119 below), and the role of the groups of mothers described above in acting as the sole carer for their children, the Court is of the view that those groups are in a “a relevantly similar situation”.

(ii) Whether there was a difference in treatment

109. The Court observes that the first applicant was refused the monthly allowance under section 7(9) of the FACA as she could not produce documents certifying that the father had died and the children were his legal heirs. The Court also notes that the other groups discussed in the previous two paragraphs could claim the allowance, being in a position to produce those documents as their children had established legal ties to both parents. Consequently, there was a difference in treatment between the applicant’s family and the other groups of families discussed above.

(iii) Whether the difference in treatment was based on a ‘status’ envisaged under Article 14

110. The Court further observes that the first applicant was treated differently on the following two grounds.

111. The first one is in relation to her sex, given that, as maternity is determined by the act of birth, in the vast majority of cases it is only children’s paternity that can be unknown. The applicant, as a mother of a child with an unknown father, could not provide the required documents under the law, while a single father whose children’s mother had died would normally be able to do so.

112. The second ground for the difference in treatment is the applicant’s family status. The applicant was treated differently on account of being a single mother, with the identity of the fathers of her children not being established. This was the result of the language of section 7(9) of the FACA as regards families with “only one living parent”, interpreted as corresponding to families with “one surviving parent”, and of the requirement for one of the parents in the family to have died (see

paragraph 40 above), an interpretation confirmed and clarified by the Constitutional Court in 2013 (see paragraphs 44-51 above).

113. The Court notes that, as a result of the application of this law, the first applicant's family was excluded, on the basis of her family status, from receiving the monthly allowances. In particular, her family could not satisfy the relevant requirements for receiving the benefits, as her children did not have their legal ties to both parents established.

(iv) Whether the difference in treatment was objectively justified

114. It remains to be ascertained whether, in relation to the family benefit in question, the difference in treatment of parents depending on their sex and on their family status pursued a legitimate aim and was objectively and reasonably justified under Article 14 of the Convention.

115. The Court observes firstly that the applicable law, namely section 7(9) of the FACA, provides that the benefit is payable only to the families of children with two legally established parents, one of whom has died. Thus, it is the law itself which differentiates between that category of families and families with only one known parent, like that of the first applicant. In the Court's view, the legal provision in question, as confirmed by the Constitutional Court's interpretation, is based on a very traditional and outdated understanding of a family, in particular as regards the expectation that there must be two parents with whom the children have established legal ties (see paragraphs 46 and 47 above). The Court has held that very weighty reasons would have to be advanced before a difference in treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention (see, among other authorities, *Genovese*, cited above, § 44, 11 October 2011, where the applicant had been born out of wedlock, although subsequently to his birth he had had his legal ties to both parents established). In another case examined by the Court, namely *Camp and Bourimi v. the Netherlands* (no. 28369/95, § 38, ECHR 2000-X), the applicant's ties with his father were not legally recognised and, as a result, he was treated differently (less favourably) not only in comparison with children born in wedlock but also in comparison with children who, although born out of wedlock, had been recognised by their father. The Court held in *Camp and Bourimi* that similarly weighty reasons were required for this latter difference in treatment to be compatible with the Convention (*ibidem*).

116. The Government's submissions that it would have been sufficient for the first applicant to demonstrate that her children had had two parents and that one of them had died for her to receive the allowance (as they pointed out in paragraph 94 above) only confirm this stereotypical understanding of families as necessarily having two legal parents. The Court reiterates that stereotypes of this nature, requiring legally established ties to both parents in a family, cannot be considered to amount to sufficient

justification for a difference in treatment, any more than similar stereotypes based on race, sex, colour or sexual orientation (see, in relation to the perception of women as primary child-carers and men as primary breadwinners, *Konstantin Markin*, cited above, § 143; see also, *mutatis mutandis*, *Genovese*, cited above, § 44, and *Camp and Bourimi*, cited above, § 38).

117. The Court agrees with the Government's point that the considerations on the basis of which the first applicant may not be willing to disclose the identity of her children's father, and/or seek legal recognition through the courts in order to satisfy the requirements of section 7(9) of the FACA, may be numerous and that they are in any event strongly personal in nature (see paragraph 95 above). Contrary to the position of the Government, however, the Court does not consider that the applicant should be required to undertake steps – such as either asking the father to recognise the children (see paragraph 53 above) or instituting court proceedings seeking to establish paternity (see paragraph 54 above) if the father was known to her – as a precondition for equal treatment of her family to that of families with children who have had their legal ties to both parents established and one of whose parents has died. Accepting this would equate to a prior interference in her private and family life in order for her family to receive equal treatment. Consequently, making receipt of the allowance conditional on the applicant's disclosure of intimate information, and/or taking legal steps through the courts to establish the children's paternity – all of which fall squarely in the sphere of her private life and which she does not wish to do – amounts to making the full exercise of her right to respect for her family life conditional upon her relinquishing the exercise of her right to respect for her social and personal identity and psychological integrity, all of which are protected under Article 8 of the Convention (compare, *mutatis mutandis*, *A.P., Garçon and Nicot v. France*, nos. 79885/12 and 2 others, § 131, 6 April 2017; see also *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 159, 24 January 2017 as regards the content of Article 8). The existence of such a requirement can therefore hardly be considered objectively justified.

118. As to the justification focused entirely on the loss of a parent (see the Government's argument summarised in paragraph 92 *in fine* above), the Court notes that children whose father is unknown cannot as a rule be said to be in a better position than children with one deceased parent, without accounting for a whole range of surrounding and relevant other circumstances which inevitably vary greatly from case to case. Similarly, it cannot be said that such children require less care and protection. They may arguably be in an even worse position, given that, unlike children with established paternity, they could not be their father's legal heirs. In objective terms, they are deprived of the care and protection of one of their parents in the same way as children one of whose parents has died.

119. In the process of explaining the aim of the allowance under section 7(9) of the FACA, the Government also pointed out that a family allowance irrespective of the family's income was provided under different provisions of the law also to families of children with disabilities, and to families of children who are cared for in their relatives' families or in foster families (see paragraphs 38 and 92 above). The underlying common reason for that, according to the Government, was the emotional trauma provoked by circumstances other than the death of a parent, and the legislature's aim was to compensate, at least to a certain extent, those particularly vulnerable categories of children. The Court finds that the present applicant's family situation, which, according to her, was characterised by the absolute absence of a father, cannot as a rule be considered advantageous to the children in her family. The arguments advanced by the Government to justify the exclusion of her family from receiving the benefit are therefore not consistent or convincing and, as a result, they cannot be taken to provide either reasonable or objective justification for that exclusion.

120. As to the argument that, if families of children with unknown fathers were made eligible for the monthly allowance in question, this would result in unequitable treatment of other groups of children being raised by one parent (see paragraph 93 above), the Court emphasises that the Government did not elaborate upon and specify which groups they meant, and the Court's task is limited to the examination of the particular facts presented before it.

121. To the extent that it may be inferred from the Government's observations that the requirement to establish the identity of the father served to protect the State against fraud (see paragraph 98 above), the Court finds that the Government have not, at any point, argued that the applicant herself was attempting, or aiming, to defraud the State by claiming the allowance in question. Rather, the Government suggested that this was a regular practice of certain ethnic and social communities in Bulgaria aimed at claiming State benefits for which they would not otherwise be eligible. However, the Government failed to provide any evidence, statistical or other, in support of their claims of such widespread fraud and how the impugned policy was aimed at protecting against such fraud (see paragraph 25 above). It is difficult to accept the argument advanced by the Government that the total number of unrecognised children reflects in itself a fraudulent practice and that the impugned legislation was therefore justified in terms of protecting against such fraud. Neither have the Government presented evidence that other, more standard measures directed towards preventing fraudulent claims have been ineffective. The Court emphasises in this connection that there are different legal and policy means for successfully combatting fraud and, in any event, the argument of prevention of fraud is not relevant to the applicant's personal situation.

122. The Government further emphasised that including the category to which the applicant belongs in the benefit plan would result in an excessively high cost to the State, for which it lacked resources. They also submitted that, if the Court were to find a violation of the prohibition of discrimination in respect of the applicant, the State would likely be forced to do away with the benefit altogether, because of the excessive financial burden it would face (see paragraph 99 above).

123. Indeed, States are usually allowed a wide margin of appreciation when it comes to general measures of economic or social strategy (see, among others, *Ponomaryovi v. Bulgaria*, no. 5335/05, § 52, ECHR 2011 and the case-law quoted in paragraph 101 above) and the resources which the authorities may devote to family benefits are inevitably limited. Moreover, widely different systems for social benefits exist in the States Parties to the Convention. However, the lack of a common standard does not absolve those States which adopt family allowance schemes from the obligation to grant such benefits without discrimination (compare, *mutatis mutandis*, *Weller*, cited above, § 34; see also the case-law quoted in paragraph 101 above). Even a wide margin of appreciation in the sphere of economic or social policy does not justify the adoption of laws or practices that would violate the prohibition of discrimination (see *J.D. and A v. the United Kingdom*, cited above, § 88). Thus, even bearing in mind the wide margin of appreciation available to the State in matters of social and economic policies, the Court considers that the argument that making the applicant's category eligible for the benefit is unacceptable because it would result in the authorities having to pay more than they currently do, is not in itself sufficient for justifying such a difference in treatment.

124. Finally, while it is not for the Court to engage with the policy dimension of a potential measure of doing away with the benefit altogether, which the Government have warned may be necessary, this cannot prevent it from dealing with the essence of the complaint before it, under Article 14 of the Convention in conjunction with Article 8, in view of the fundamental importance of the prohibition of discrimination and the right to respect for one's family life.

125. On the basis of the above, the Court concludes that surviving parents of children legally recognised by the deceased parent had an entitlement to the family benefit irrespective of the family's income. By contrast, the applicant, a single mother of children with an unknown father did not. The Government neither alleged nor produced evidence to show that the unknown father of the applicant's two children had been in effect providing care or support to the children, or had been in any way actually involved in their life. While the Court does not exclude the possibility that the situation may be different in other circumstances of single parents of children with legally unestablished ties to both parents, where officially unknown fathers would in reality support their children, the Government

have not shown, in the particular circumstances of the present case, that there were convincing reasons unrelated to the applicant's family status or to her sex to offset the discriminatory effect on the applicant's family of section 7(9) of the FACA. The Court reiterates in particular that very weighty reasons must be put forward before a difference of treatment based on the ground of sex or family status alone can be regarded as compatible with the Convention (see *Ünal Tekeli v. Turkey*, no. 29865/96, § 53, ECHR 2004-X (extracts), and, *mutatis mutandis*, *Camp and Bourimi*, cited above, § 38). The Court therefore concludes that the difference in treatment, of which the first applicant was a victim, amounted to discrimination on the grounds of both her family status and her sex.

126. There has therefore been a violation of Article 14 taken in conjunction with Article 8.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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

128. In respect of pecuniary damage, the first applicant claimed EUR 522 per year for both children together (EUR 43,50 x 12 months), from the date of her request of the benefit at the national level (see paragraph 6 above) till the date of the Court's judgment. She specified that that would represent EUR 2,088 for a four-year period of unpaid family allowance in respect of both children. She also claimed EUR 12,000 in respect of non-pecuniary damage. More specifically, she claimed EUR 3,500 in respect of non-pecuniary damage for each of her two minor children and EUR 5,000 for herself.

129. The Government submitted that those amounts were unjustified. As regards the claim in respect of pecuniary damage, the applicant was not eligible under the national law for the allowance in question and therefore she could not claim compensation for what was not due to her. As regards the claim in respect of non-pecuniary damage, the claim in respect of the two children was manifestly ill-founded as they were not applicants in the present case. As regards the claim in respect of the first applicant herself, it was excessive.

130. The Court does not discern any causal link between the violation found and the non-pecuniary damage alleged in respect of the first applicant's two children; it therefore rejects this claim.

131. On the other hand, it awards the first applicant EUR 4,500 in respect of non-pecuniary damage and EUR 3,915 in respect of pecuniary damage, the latter for the period between 30 September 2013 and 31 March 2021, plus any tax that may be chargeable.

B. Costs and expenses

132. The first applicant also claimed EUR 2,160 in respect of the costs and expenses incurred before the Court.

133. The Government submitted that this amount was excessive.

134. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,160 for the proceedings before the Court. This amount is comparable to the fees awarded in respect of applicants' lawyers in recent cases against Bulgaria of comparable complexity (see, notably, *Penchevi v. Bulgaria*, no. 77818/12, § 89, 10 February 2015; *Bulves AD v. Bulgaria*, no. 3991/03, § 85, 22 January 2009, and *Mutishev and Others v. Bulgaria*, no. 18967/03, § 160, 3 December 2009).

C. Default interest

135. 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, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* application no. 18592/15 admissible and application no. 43863/15 inadmissible;
3. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 8 in respect of the first applicant, Ms Katerina Borislavova Yoicheva;

4. *Holds*

- (a) that the respondent State is to pay the first applicant, within three months from 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 at the date of settlement:
 - (i) EUR 3,915 (three thousand nine hundred and fifteen euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 2,160 (two thousand one hundred and sixty euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses;
- (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 first applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Andrea Tamietti
Registrar

Tim Eicke
President