



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

THIRD SECTION

CASE OF MUSTAFA AND MUSTAFOVA v. BULGARIA

(Application no. 7428/17)

JUDGMENT

Art 6 § 1 (civil) • Tort claim brought by applicants on behalf of late father who had sought compensation through a prior obligatory out-of-court procedure • Applicants' claim considered new and inadmissible by domestic courts • Art 6 § 1 applicable • Father's out-of-court claim equivalent to initiating a court action • Applicants' claim to be considered as a continuation of compensation procedure already set in motion by father • Restriction of their access to court not proportionate to any legitimate aim pursued

Prepared by the Registry. Does not bind the Court.

STRASBOURG

1 July 2025

FINAL

01/10/2025

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

In the case of Mustafa and Mustafova v. Bulgaria,

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

Ioannis Ktistakis, *President*,

Lətif Hüseynov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 7428/17) 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, Mr Metin Mustafa Mustafa and Ms Esengyul Mustafova Mustafova (“the applicants”), on 16 January 2017;

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

the parties’ observations;

Having deliberated in private on 4 March and 3 June 2025,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns access to a court. The applicants complained under Article 6 § 1 of the Convention that the national courts had declared inadmissible a tort claim brought by them on behalf of their late father, who had, prior to his death, sought compensation through an out-of-court procedure.

THE FACTS

2. The applicants were born in 1981 and 1978 respectively and live in Todor Ikonomovo. They were represented by Mr I. Yovchev, a lawyer practising in Sofia.

3. The Government were represented by their Agent, Ms R. Nikolova, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. The applicants are brother and sister. They had a brother, who was seriously injured in a car accident on 22 October 2010 and died several days later. In September 2011 the person who had caused the accident was convicted in relation to it.

6. The applicants' father wished to claim compensation for his son's death and, after requesting information on the matter, in February 2011 was informed by the Guarantee Fund (for the role of this institution, see paragraph 17 below) that the driver at fault had not been insured. Accordingly, on 25 October 2011 the applicants' father submitted a request to the Fund, seeking compensation for non-pecuniary damage in the amount of 100,000 Bulgarian leva (BGN – equivalent to 51,150 euros (EUR)), in accordance with Article 288 § 9 of the Insurance Code of 2005. Under that provision, he was obliged to pursue an out-of-court procedure in order to obtain compensation (see paragraphs 18-19 below).

7. Soon afterwards, on 10 November 2011, the applicants' father died.

8. On 28 November 2011 the Guarantee Fund refused to pay the compensation claimed by the applicants' father, on the grounds that the driver who had caused the accident of 22 October 2010 had in fact been insured with the V. company, which was thus liable for the payment of compensation.

9. On 3 May 2012 the applicants brought a claim against the V. company and, as an alternative if it was found that the driver had not had valid insurance, against the Guarantee Fund, seeking once again compensation in the amount of BGN 100,000 in respect of non-pecuniary damage suffered by their father.

10. In a decision of 26 February 2013 the Sofia City Court dismissed the claim as inadmissible, on the ground that the applicants had had no standing to bring it. It pointed out that the entitlement to claim compensation in respect of non-pecuniary damage was a strictly personal one, and that the applicants' father had not himself brought a claim before the courts.

11. On 10 April 2013 the Sofia Court of Appeal quashed that decision and held that the claim had to be examined. It noted that the applicants' father had already made a compensation claim by applying to the Guarantee Fund, which had been an obligatory stage. After his death the applicants could maintain that claim, retaining the amount claimed. They were not substituting the personal choice made by their father with their own decision.

12. In a judgment of 16 June 2014, the Sofia City Court partially allowed the applicants' claim and ordered the V. company to pay compensation. It noted, without going into further detail, that the applicants had been entitled to claim compensation on behalf of their deceased father. It then found that the driver at fault had had valid insurance, and that the V. company was accordingly liable. Lastly, considering that it had partially dismissed the applicants' claim, it ordered them to pay part of the costs incurred by the Guarantee Fund and the V. company, totalling BGN 5,260 (EUR 2,690).

13. However, upon appeal, in a judgment of 2 February 2015 the Sofia Court of Appeal quashed the lower court's judgment and dismissed the applicants' claim as inadmissible. It noted that the applicants' father had been entitled to claim compensation, but had not himself brought an action in the courts to that effect. The applicants were not able to do so on his behalf. His

entitlement to compensation had ceased with his death, as it was a “strictly personal” one. The applicants could only have pursued judicial proceedings already brought by their father before his death. It was “insignificant” that the applicants’ father had requested compensation from the Guarantee Fund (see paragraph 6 above), as such a request could not be treated as equivalent to an action in court. With regard to the above findings, the Sofia Court of Appeal relied, among others, on the Supreme Court of Cassation’s decision of 31 March 2009. That decision concerned a similar situation, where the mother of the deceased person was denied standing to pursue a court action (see paragraph 24 below). The domestic court noted lastly, by way of *obiter dictum*, that the driver at fault’s insurance contract had indeed been invalid, and that it would have been the Guarantee Fund which would have been liable to pay compensation for the death of the applicants’ brother.

14. In a final decision of 18 July 2016, the Supreme Court of Cassation refused to accept for examination an appeal on points of law by the applicants, who had only raised questions related to the validity of the driver’s insurance contract. It did not discuss the applicants’ standing to bring a claim on behalf of their father, noting that they had not complained to it in that regard.

15. Throughout the various stages of the proceedings, the applicants consistently contended that their father had already demonstrated his will to receive compensation as he had made a request for that purpose to the Guarantee Fund. At that stage he had not been entitled to bring a court action, pursuant to Article 288 § 11 of the 2005 Insurance Code (see paragraph 19 below), and he had died before being notified of the Fund’s refusal. Nevertheless, the compensation claim had become part of his assets, and could be inherited by the applicants after his death.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CIVIL LIABILITY INSURANCE OF DRIVERS

16. Until 2016 the civil liability insurance of drivers was regulated under the Insurance Code of 2005. A new Insurance Code was enacted in 2016.

17. Both Codes made it compulsory for drivers to have civil liability insurance. A Guarantee Fund, created with financial contributions from all licensed insurers, was tasked with paying compensation in specific situations not covered by an insurance contract – such as where the person who had caused an accident was unknown, or did not have insurance.

18. Under Article 288 § 9 of the Insurance Code of 2005, an injured person claiming compensation from the Guarantee Fund had to submit a written request in that regard.

19. Article 288 § 11 of the Code provided that the injured person could only bring a court action to obtain payment if the Fund had not taken a decision within three months following the written request, or had refused to

award compensation, or where the injured person was not satisfied with the amount paid. No such obligatory preliminary stage was provided for with regard to insurance companies. Injured people could bring an action against such companies, as provided for under Article 226 § 1 of the Code.

20. The Insurance Code of 2016 provides, for its part, that a person wishing to claim compensation in respect of non-pecuniary damage for, *inter alia*, death on the road, is to address his or her claim to the insurer in out-of-court proceedings (Article 380). Only after that a claim can be brought before the courts (Article 432 § 1).

II. ENTITLEMENT TO CLAIM NON-PECUNIARY DAMAGE

21. It has been the consistent practice of the Supreme Court of Cassation and the previously existing Supreme Court that the heirs of a person entitled to claim compensation in respect of non-pecuniary damage on any ground could not bring a claim in court on his or her behalf, since such a claim was considered to pertain to the strictly personal sphere. Only if the person entitled to compensation had lodged a claim in court, and had subsequently died, could his or her heirs pursue the proceedings.

22. With regard to the judicial practice referred to in the previous paragraph, the Government submitted excerpts from three early judgments from the 1960s and 1970s concerning claims for compensation in respect of non-pecuniary damage, given by the previously existing Supreme Court. One of those judgments concerned damage stemming from death caused on the road (*Решение № 1528 от 20.VI.1972 г. по зп. д. № 567/72 г., BC, I з. о.*), while another one concerned an unspecified accident (see *Решение № 829 от 5.VIII.1969 г. по н. д. № 730/69 г., BC, III н. о.*). Relying on the general provisions on tort liability contained in the Obligations and Contracts Act, the Supreme Court held that “compensation is due to the person on whom the damage was inflicted” (*Решение № 2732 от 20.XII.1975 г. по зп. д. № 1487/75 г., BC, I з. о.*). Only the injured person could assess whether a given action had caused him or her non-pecuniary damage, and if so, in what amount. If a court action had been brought while the injured person was alive, his or her heirs could pursue the proceedings, since the requisite personal decision “had already been made”.

23. None of the cases in the previous paragraph mentioned a situation where an out-of-court procedure had been initiated by the person entitled to compensation.

24. The Government submitted in addition a decision of the Supreme Court of Cassation dated 31 March 2009 (*Определение № 169 на БКС от 31.01.2009 г. по ч. м. д. № 11/2009 г.*). That decision was given in leave-to-appeal procedure and not following an examination on the merits. It concerned a case where the health of the claimant’s daughter had deteriorated as a result of her participation in clinical trials. Before her death the daughter

had sought compensation from an insurance company. The Supreme Court of Cassation, in refusing leave to appeal on the ground that the case did not raise issues with the correct application of the law, noted that the lower court had followed established judicial practice on the transferability of claims for non-pecuniary damage, stating in that regard the following:

“Legal theory and judicial practice have consistently accepted that the entitlement to compensation for non-pecuniary damage is personal and cannot be inherited. If, while alive, the injured person has brought an action seeking compensation for non-pecuniary damage, the proceedings can be continued by his heirs. However, if the injured person has not brought such an action, the heirs can only claim damages for their own pains and suffering, and not those of the person directly affected. ... Since the entitlement to compensation for non-pecuniary damage is personal and cannot be inherited, the heir does not have standing to bring a court action regarding the rights of another. That is why it is without significance that the [injured person] has requested compensation from the person having caused the damage, respectively his insurer providing civil liability insurance”.

25. Subsequently, the Supreme Court of Cassation accepted for cassation examination a case where a person had requested compensation from the insurer for the death of a relative in a road traffic accident, but had not brought a court action prior to her death.

26. Thus in the decision allowing the application for cassation review, dated 2 July 2021 (see *Определение № 60402 на ВКС от 2.07.2021 г. по ч. м. д. № 1435/2020 г.*), the Supreme Court of Cassation noted that it had to examine the case in view of the “lack of established case-law” and the ensuing risk of conflicting interpretations.

27. In its judgment on the merits of that case, given on 13 May 2022 (see *Решение № 60170 на ВКС от 13.05.2022 г. по м. д. № 1435/2020 г., II м. о.*), the Supreme Court of Cassation overturned the lower court’s ruling that the claim by the heirs of the deceased person was inadmissible, and remitted the case for a re-examination. The case involved a road accident that led to a death in 2012. The Insurance Code of 2005 had thus been applicable to the events. A Ms S. had claimed compensation, addressing a claim in that regard to an insurance company, but not the courts, and had passed away shortly afterwards. The Supreme Court of Cassation reaffirmed its practice referred to above that if an injured person had brought a court action to claim compensation in respect of non-pecuniary damage, their heirs could pursue the proceedings after their death. It further held that the rule also applied in a situation where the injured person had claimed compensation in an out-of-court procedure. This was so because in such a situation the injured person had “already made known” to the party liable to pay compensation his or her personal assessment about his or her suffering. Once this entitlement was asserted, it became inheritable, and it was without significance whether such assertion had been made before the courts or in an out-of-court procedure. The significance of the out-of-court application for compensation “could not be denied”.

28. The same approach was applied in another case decided shortly afterwards, and referring to the judgment described in the preceding paragraph. The Supreme Court of Cassation quashed a lower court's decision finding a tort claim inadmissible, and remitted the case for examination on the merits (see *Определение № 239 на ВКС от 30.05.2022 г. по ч. т. д. № 711/2022 г., II т. о.*). That case concerned the application of the Insurance Code of 2016.

III. RE-OPENING OF CIVIL PROCEEDINGS

29. Article 303 § 1 (7) of the Code of Civil Procedure provides that an interested party may request the reopening of civil proceedings in a case where a “judgment of the European Court of Human Rights has found a violation of the [Convention]” and “a new examination of the case is required in order to repair the consequences of the violation”.

IV. RELEVANT EUROPEAN UNION LAW

30. Directive 2009/103/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability was adopted on 16 September 2009.

31. Article 18 of the Directive obliges Member States to ensure “that any party injured as a result of an accident caused by a vehicle covered by insurance ... enjoys a direct right of action” against the insurance company covering the person responsible. Under Article 22, States must oblige insurance companies “to make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified”, or to provide reasons when refusing a compensation claim.

32. Directive 2009/103/EC was transposed into Bulgarian law with the adoption of the Insurance Code of 2016 (see paragraph 16 above).

THE LAW

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

33. The applicants complained that the dismissal of their claim as inadmissible had breached their right of access to a court, as guaranteed by Article 6 § 1 of the Convention. That provision, in so far as relevant, reads as follows:

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

A. Admissibility

34. The Government argued that Article 6 § 1 was not applicable, given that the applicants' entitlement to claim damages on behalf of their late father had not been recognised under domestic law. Accordingly, "it could not be alleged on arguable grounds" that their father's entitlement to compensation had passed to them.

35. The applicants did not comment on that issue.

1. *Applicability of Article 6 § 1*

36. The Court reiterates that for Article 6 § 1 in its civil limb to be applicable, there must be a "dispute" ("*contestatation*" in French) regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018; *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022; and *Grosam v. the Czech Republic* [GC], no. 19750/13, § 108, 1 June 2023, all with further references). Lastly, the right must be a "civil" right (see *Grzęda*, cited above, § 257, and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, § 595, 9 April 2024).

37. In determining whether there was a legal basis for the right asserted by an applicant, the Court needs to ascertain only whether the applicant's arguments were sufficiently tenable, not whether he would necessarily have been successful had he been given access to a court (see *Grzęda*, cited above, § 268). The starting point for the Court's analysis must be the provisions of the relevant domestic law and their interpretation by the domestic courts (*ibid.*, § 259).

38. If there was a genuine and serious dispute about the existence of a right, a decision by the domestic courts that there was no such right does not remove, retrospectively, the arguability of the claim (see *Károly Nagy v. Hungary* [GC], no. 56665/09, § 63, 14 September 2017, with further references). However, if at the relevant time the right claimed was not even arguable under domestic law, the Court will conclude that the case does not concern a genuine "dispute" about a civil right (see, for an example of such an approach, *Tereshchenko v. Russia*, no. 33761/05, §§ 110-11, 5 June 2014).

39. Article 6 § 1 does not guarantee any particular content of "civil rights and obligations" in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right

which has no legal basis in the State concerned (see, for example, *Grzęda*, cited above, § 258).

40. In the case at hand, the right asserted by the applicants at the domestic level, namely to receive compensation for non-pecuniary damage, was “civil” in nature (see, for example, *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, § 154, 7 May 2021).

41. The applicants claimed compensation in respect of non-pecuniary damage on behalf of their late father. There is no dispute that their father himself, if alive, could have brought an action before the courts to claim such compensation. Under Bulgarian law the right to claim non-pecuniary damage is considered to fall within the “strictly personal sphere” and as a general rule is not inheritable (see paragraph 21 above). The question is therefore whether in the present circumstances the applicants’ affirmation that they were entitled to bring the matter to the courts on behalf of their father after his death led to a serious and genuine dispute, namely whether the asserted right to pursue their father’s claim had a basis in domestic law so as to be arguable.

42. The Court observes that the constant approach of the Bulgarian courts has been that the heirs of a person having suffered non-pecuniary damage could not bring a tort action on his or her behalf, because the assessment whether such damage had been inflicted was a strictly personal one, and could not be exercised by another (see paragraph 21 above). The Government submitted in that regard excerpts from three older judgments, which contained very few factual details, and only one of which mentioned that it concerned death on the road (see paragraph 22 above). As noted in paragraph 23 above, none of these judgments appeared to concern a situation such as the one obtained in the present case, namely where the injured person had made an out-of-court compensation claim but had passed away before being able to bring a court action.

43. A situation similar to the one here was examined in a 2009 decision, also submitted by the Government (see paragraph 24 above). In that case, when refusing leave to appeal, the Supreme Court of Cassation found that the lower court’s conclusion that the mother of the injured person lacked standing to bring court proceedings was consistent with the established case-law. However, that case is materially different from that of the applicants, because there was no mandatory out-of-court stage in the procedure before the matter could be brought to the courts. In the present case, the applicants’ father had submitted his claim to the Guarantee Fund through a mandatory out-of-court procedure, which was an essential legal prerequisite for access to the courts.

44. In so far as the Court has been informed by the parties, the above appears to have been the state of domestic case-law at the time when the applicants brought their action in 2012.

45. The lack of clarity as to the requirements permitting a court action such as the applicants’ to be examined on the merits may appear to be substantiated by the divergent decisions on the admissibility of the action

brought by them. Initially, the first-instance Sofia City Court dismissed their claim as inadmissible, while the Sofia Court of Appeal found the opposite (see paragraphs 10-11 above). At the fresh examination of the case, the Sofia City Court accepted that the applicants had standing to pursue their father's claim, but the Sofia Court of Appeal dismissed the action (see paragraphs 12-13 above). The Supreme Court of Cassation did not deal with the matter (see paragraph 14 above).

46. At a later stage the Supreme Court of Cassation accepted for examination a similar case, namely concerning a situation where the heirs of a person entitled to claim compensation in respect of non-pecuniary damage stemming from death on the road had brought a court action on her behalf, and where that person had addressed an out-of-court claim to the respective insurance company. In considering that its review was necessary, the Supreme Court of Cassation noted in particular the "lack of established case-law" and the ensuing risk of contradictory interpretations (see paragraph 26 above). It gave a judgment upholding the family's standing to bring and pursue the proceedings (see paragraph 27 above).

47. In view of the above, noting in particular the Supreme Court of Cassation's finding about the lack of established case-law concerning the particular situation where the person entitled to claim compensation in respect of non-pecuniary damage had done so in out-of-court proceedings, the Court cannot accept the Government's argument (see paragraph 34 above) that the applicants' right to claim compensation on behalf of their father had clearly not been recognised under domestic law. It is evident that the case-law of the domestic courts did not sufficiently cover a situation such as theirs, and that the Supreme Court of Cassation undertook to clarify the applicable standards in the 2021-22 proceedings referred to in paragraphs 25-27 above.

48. Having regard to the above, the Court considers that as of 2012 when they brought their claim, the applicants could reasonably assume that it would be examined on the merits, and that domestic law, as interpreted and applied by the national courts, did not deny their right to claim compensation. Their father had lawfully initiated the procedure, demonstrating his desire to seek compensation in respect of non-pecuniary damage in the only manner available to him at the time, namely out of court as provided under Article 288 §§ 9 and 11 of the Insurance Code of 2025 (see paragraphs 18-19 above), and in the same amount which the applicants subsequently claimed before the courts (see paragraphs 6 and 9 above).

49. Accordingly, the Court has before it sufficient elements to conclude that the case concerned a "genuine" and "serious" dispute regarding a civil right of the applicants which can be said, at least on arguable grounds, to have existed under domestic law. The fact that this right was denied in the domestic proceedings is insufficient to refute such a conclusion (see paragraph 38 above), while the Court should take into account the eventual recognition of

the alleged right in similar circumstances (see, generally, *Boulois v. Luxembourg* [GC], no. 37575/04, § 94, ECHR 2012).

50. It follows from the above considerations that Article 6 § 1 of the Convention is applicable.

2. Other grounds for inadmissibility

51. The Court also observes that an issue may arise in the case as regards the requirement to exhaust domestic remedies, noting that the applicants did not raise in their appeal on points of law the question of their standing to bring an action on behalf of their father (see paragraph 14 above). However, the Government have not raised a non-exhaustion objection on this ground after notice of the application was given to them, and the Court cannot examine this question of its own motion (see, among other authorities, *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 79, ECHR 2014 (extracts), and *M.C. v. Türkiye*, no. 31592/18, § 44, 4 June 2024).

52. The Court notes lastly that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

53. The applicants reiterated their complaint. They relied on the Supreme Court of Cassation's judgment of 13 May 2022 (see paragraph 27 above).

54. The Government contended that the approach taken in the applicants' case had followed the consistent case-law of the domestic courts. The applicants themselves had not been among those entitled to seek compensation for their brother's death, nor did there exist conditions permitting them to inherit their father's entitlement in that regard. For the Government, the judgment of 13 May 2022 (see paragraph 27 above) represented a "reversal" of the case-law, which could not alter the conclusions in respect of the applicants. The Sofia Court of Appeal's judgment of 2 February 2015 declaring their claim inadmissible (see paragraph 13 above) had been "duly reasoned". In addition, the applicants' father could have applied for compensation soon after receiving information from the Guarantee Fund about the driver at fault's insurance – that is, in February, and not October 2011 (see paragraph 6 above). He could have also sued the insurance company directly, without waiting for the Guarantee Fund's response to his compensation request. If he had brought a court action before he had died, there would have been no obstacle to the applicants' pursuing the proceedings in his stead.

2. *The Court's assessment*

55. The Court reiterates that the right to a fair hearing must be construed in the light of the rule of law, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights. Everyone has the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. In this way, Article 6 § 1 embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before courts in civil matters, is one particular aspect (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 192, 25 June 2019, with further references).

56. The right of access to a court under Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States (see *Grzęda*, cited above, § 298, with further references).

57. The right of access to a court is not absolute, but may be subject to limitations; these are permitted by implication since the right of access, by its very nature, calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. That being stated, those limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired. In addition, such limitations will not be compatible with Article 6 § 1 if they do 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 achieved (see *Nicolae Virgiliu Tănase* cited above, § 195, with further references; see also *Grzęda*, cited above, § 343, with further references).

58. In the case at hand, the Government argued that the restrictions on the applicants' right of access to a court had been in accordance with the law and the judicial practice at the time (see paragraph 54 above). Indeed, it appears that the national courts have consistently held that the heirs of a person entitled to claim compensation for non-pecuniary damage cannot themselves bring an action on his or her behalf, and can only pursue an action already lodged. The decision whether or not to claim compensation in such circumstances pertains to the strictly personal sphere of the person concerned, and such a decision cannot be replaced by one taken by the heirs (see paragraphs 21-24 above). That approach was applied in the applicants' case, resulting in the dismissal of their action as inadmissible.

59. The Court does not consider the above approach *a priori* unfair. Moreover, even though the Government did not indicate any “legitimate aim” which the restriction of the applicants' right of access to a court could have pursued, the Court is prepared to accept, in the light of the considerations above, that this type of restriction aims, broadly speaking, to guarantee legal certainty.

60. However, in the case at hand the applicants' situation had particularities which warranted a more nuanced approach. While the

applicants' father did not bring a court action to claim compensation for his son's death in a road traffic accident, he submitted a request for that purpose to the Guarantee Fund, and died before the Fund rejected that request (see paragraphs 6-8 above). The applicants argued in the domestic proceedings that their father's out-of-court request had been sufficient to give them standing to pursue his claim, given that he had clearly demonstrated his desire to receive compensation in the only manner permissible at that time under domestic law (see paragraph 15 above).

61. Several years later, namely in a judgment given on 13 May 2022, the Supreme Court of Cassation accepted in another case arguments such as those raised by the applicants, holding that the heirs of a person in the same position as the applicants' father had standing to bring court proceedings on her behalf. This was so because the injured person, while not having brought court proceedings herself, had made known her choice to claim compensation in respect of non-pecuniary damage, and once asserted, her entitlement to claim such damage could be inherited and pursued by the heirs (see paragraph 27 above).

62. The Court finds an approach such as the one taken by the Supreme Court of Cassation in the judgment of 13 May 2022 reasonable and adequate. Such an approach duly takes into account the fact that the person entitled to claim compensation in respect of non-pecuniary damage has already expressed his or her desire to receive such compensation when addressing a request in that sense to the insurer or the Guarantee Fund. In the case of the applicant's father, this out-of-court stage was in fact obligatory, as he had been told that it fell on the Guarantee Fund to compensate him. He could bring a court action only after that obligatory initial stage had finished, and if the Fund had failed to respond in a satisfactory manner to his compensation request (see paragraphs 6 and 19 above).

63. The Court thus agrees with the Supreme Court of Cassation's conclusion that an out-of-court claim, expressly made and quantified, could be treated as equivalent to initiating a court action to obtain compensation for non-pecuniary damage, in so far as this affected the right of the heirs to maintain such claim. As to the applicants' case, the Court does not accordingly consider that the claim they brought to the courts on 3 May 2012 (see paragraph 9 above) was a new one they had themselves decided upon; it was rather a continuation on their part of a claim and a compensation procedure already set in motion by their father.

64. By referring to the Supreme Court of Cassation's judgment of 13 May 2022, the Court reiterates once again that it does not consider that judgment to represent a "reversal" of the domestic case-law, as alleged by the Government (see paragraph 54 above). The Court already noted (see paragraph 47 above) that up to that moment the situation had not been sufficiently covered by the case-law of the domestic courts, and that the Supreme Court of Cassation undertook to clarify the applicable standards.

65. In so far as the Government argued that the applicants' father had acted in an inappropriate manner, as he had not applied to the Guarantee Fund immediately after learning that the driver who had caused the death of his son had not been insured, nor had he brought an action directly against the insurer (see paragraph 54 above), the Court notes that it does not find his actions unreasonable or deficient. He took the necessary steps to obtain compensation, as provided under domestic law (see paragraphs 18-19 above), and died soon afterwards (see paragraph 7 above). There is no reason to blame him for not acting in a manner which would, upon his death, have potentially made it easier for his surviving children to inherit his claim.

66. In view of the above, the Court concludes that the restriction of the applicants' right of access to a court, namely the national courts' finding that the applicants could not lodge and pursue a tort claim in respect of non-pecuniary damage on behalf of their late father, despite his having sufficiently demonstrated his desire to receive such compensation, was not proportionate to any legitimate aim pursued, in particular as defined in paragraph 59 above.

67. The foregoing considerations are sufficient to enable the Court to conclude that the restriction of the applicants' right of access to a court was in breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. In respect of damage, the applicants claimed 100,000 Bulgarian leva (BGN – equivalent to 51,150 euros (EUR)), which was the amount they had claimed in the domestic proceedings (see paragraph 9 above), and which they considered to be their “unreceived inheritance”. They claimed in addition approximately EUR 36,500 in interest. Each of the applicants also claimed EUR 1,000 for non-pecuniary damage, namely the “stress” and “sense of injustice” related to the violation of their rights.

70. The Government contested the claims, observing that, in the event that the Court found a violation of the applicants' rights, they would be entitled to apply for the reopening of the domestic proceedings.

71. The Court reiterates that the most appropriate form of redress in cases where it finds that an applicant has not had access to a court in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and to re-examine the case in keeping with all the requirements

of a fair hearing. Bulgarian law provides for such a possibility (see paragraph 29 above). Accordingly, the Court sees no reason to make the award claimed by the applicants in respect of pecuniary damage (see, for example, *Carmel Saliba v. Malta*, no. 24221/13, §§ 84-85, 29 November 2016).

72. However, the Court finds it appropriate to satisfy in full the applicants' claims in respect of the non-pecuniary damage inflicted on account of the violation of their rights found in the case. It thus awards each of the applicants EUR 1,000 under this head.

B. Costs and expenses

73. The applicants also claimed EUR 3,390 for the costs and expenses incurred by them before the domestic courts, without specifying what was included in that amount and, if it concerned the adverse costs awarded against them by the Sofia City Court (see paragraph 12 above *in fine*), whether they had actually paid any of these sums.

74. As to the expenses before the Court, the applicants claimed EUR 635 for translation fees. They submitted numerous invoices showing that they had paid sums totalling that amount between July 2023 and March 2024. Most of the invoices were for translations from English or French into Bulgarian or the translation of other documents. On one invoice, the applicants had paid the sum of BGN 22.80 (EUR 12) for the translation of their submissions before the Court.

75. The Government contested the claims.

76. 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.

77. In the present case, as regards the domestic proceedings (see paragraph 73 above), the Court finds the applicants' claim unsubstantiated. In addition, in so far as the claim could concern the adverse costs awarded against the applicants in the Sofia City Court's judgment of 2 February 2015 (see paragraph 12 above *in fine*), these stemmed from the partial dismissal of the applicants' claim as concerns its quantum, and are thus unrelated to any attempts on the part of the applicants to prevent the violation of their rights under Article 6 § 1 of the Convention or to obtain compensation. Accordingly, the Court dismisses this claim.

78. Finally, as concerns the claims relating to translation fees (see paragraph 74 above), the Court is not satisfied that the costs and expenses have been necessarily incurred. Most of the sums paid concerned the translation of unspecified documents from English or French into Bulgarian. As regards the translations of documents paid for by the applicants, the Court refers to Rule 34 § 3 (a) of the Rules of Court, which requires that applicants'

written submissions be made in one of its official languages, but does not contain the same requirement as concerns the documents submitted in support of the application. Accordingly, the Court considers it justified to award only the sum of EUR 12, paid for the translation of the applicants' observations before the Court after notice was given of the application.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;
2. *Holds*, by five votes to two, that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*, by five votes to two,
 - (a) that the respondent State is to pay, 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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 12 (twelve euros) jointly to the two applicants, plus any tax that may be chargeable to them, 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;
4. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President