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

FOURTH SECTION

CASE OF VELIKOVA v. BULGARIA

(Application no. 41488/98)

JUDGMENT

STRASBOURG

18 May 2000

FINAL

04/10/2000

In the case of Velikova v. Bulgaria,

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

Mr M. PELLONPÄÄ, *President*,
Mr G. RESS,
Mr A. PASTOR RIDRUEJO,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mr J. HEDIGAN,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 20 January and 27 April 2000,

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

PROCEDURE

1. The case originated in an application (no. 41488/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), by Ms Anya Velikova, a Bulgarian national, on 12 February 1998. The applicant was represented by Mr I. Dimitrov and Mr Y. Grozev, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs V. Djidjeva, of the Ministry of Justice.

The applicant complained under Articles 2, 6, 13 and 14 of the Convention in respect of the death in police custody of Mr Tsonchev, the man with whom she had been living for about twelve years, the alleged ineffective investigation into this event, the alleged obstacles to the determination of her civil right to compensation arising out of the death of Mr Tsonchev, the alleged lack of effective remedies in this respect and the alleged discrimination on the basis of Mr Tsonchev's Romany ethnic origin.

2. On 7 September 1998 the Commission decided to communicate the application to the Government.

Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998, and in accordance with Article 5 § 2 thereof, the application was examined by the Court.

In accordance with Rule 52 § 1 of the Rules of Court, the President of the Court, Mr L. Wildhaber, assigned the case to the Fourth Section. The Chamber constituted within that Section included *ex officio* Mrs S. Botoucharova, the judge elected in respect of Bulgaria (Article 27

§ 2 of the Convention and Rule 26 § 1 (a)), and Mr M. Pellonpää, President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr G. Ress, Mr I. Cabral Barreto, Mr V. Butkevych, Mrs N. Vajić and Mr J. Hedigan (Rule 26 § 1 (b)).

3. The Government's written observations were submitted on 14 December 1998, after an extension of the time-limit fixed for that purpose. The applicant replied on 8 February 1999.

4. The Court declared the application admissible on 18 May 1999[1].

5. On 9 August 1999 the applicant submitted written observations on the merits and just satisfaction claims, in support of which she filed additional documents on 7 October 1999. On 27 September 1999 the Government submitted, of their own motion, written observations on the facts and the admissibility of the application. They also requested a hearing.

6. On 14 October 1999 the Court examined the state of the proceedings in the case. It decided to invite the Government to comment in writing on the merits of the application and to submit "copies of all documents contained in the files of all authorities which [had] dealt with the investigation into the death of Mr Tsonchev". The Court also decided to invite the parties to a hearing on the merits of the case.

7. The Government submitted their observations on the merits and "copies of all documents contained in the files" on 11 November 1999.

On 14 January 2000 the Government submitted observations on the applicant's claims for just satisfaction. These observations were accepted by decision of the President of the Chamber, acting under Rule 38 § 1.

On 14 January 2000 the applicant submitted an additional claim for just satisfaction in respect of the costs of the hearing in Strasbourg, which was accepted for examination by the President of the Chamber, acting under Rule 60 § 1. The Government replied on 28 January 2000.

8. Having originally been designated by the initials A.V., the applicant subsequently agreed to the disclosure of her name.

9. Having declared the application admissible, the Court, acting in accordance with Article 38 § 1 (b) of the Convention, placed itself at the disposal of the parties with a view to securing a friendly settlement. No friendly settlement was reached.

10. Pursuant to a decision of the Chamber of 13 January 2000, the President of the Chamber held on 20 January 2000, before the commencement of the public hearing, a preparatory meeting concerning, *inter alia*, the Government's objection as to the authenticity of the application. The meeting was attended by the representatives of the parties and the applicant herself. The President of the Chamber and the

1. *Note by the Registry*. See *Velikova v. Bulgaria* (dec.), no. 41488/98, ECHR 1999-V (extracts) The full text of the Court's decision is obtainable from the Registry.

representative of the Government put questions, to which the applicant replied.

The hearing took place in public in the Human Rights Building, Strasbourg, on 20 January 2000.

There appeared before the Court:

(a) *for the Government*
Mrs V. DJIDJEVA, Ministry of Justice, *Agent*;

(b) *for the applicant*
Mr Y. GROZEV, Lawyer, *Counsel.*

The applicant herself was also present.

The Court heard addresses by Mr Grozev and Mrs Djidjeva.

11. As Mrs Vajić was unable to attend the deliberations on 27 April 2000, she was replaced by Mr A. Pastor Ridruejo, substitute judge, as a member of the Chamber (Rule 26 § 1 (c)).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

12. The applicant is a Bulgarian national, born in 1942 and residing in Pleven. At the relevant time she lived in Bukovlak, a village in the district of Pleven.

A. Circumstances surrounding the death of Mr Tsonchev

13. In the early hours of 25 September 1994, the man with whom the applicant had lived for about twelve years, Mr Slavtcho Tsonchev, 49 years old, belonging to the ethnic group of the Romanies (Gypsies), died after he had spent about twelve hours in police custody following his arrest and detention on charges of cattle theft.

14. On 24 September 1994 at 11 a.m. the Pleven police received a telephone call from the village of Bukovlak informing them of the theft of nine cows. Police Sergeant Ivanov and his colleague Petranov were immediately dispatched to the village, where they met Mr N., the person who had been tending the cattle. Mr N. was brought to the police station in Pleven.

There he initially stated that the cows had been stolen by unknown persons who had sprayed him with nerve gas, but then explained that, at about 10 a.m., Mr Tsonchev, accompanied by a 10-year-old boy, had taken away the nine cows through the use of threats and had warned him that if asked about the incident he should maintain that someone had sprayed him with nerve gas. Mr N. affirmed that he was afraid of Mr Tsonchev, who had been drunk at the time of their encounter.

15. In his testimony given later, Sergeant Ivanov relayed the following: "We were told that the perpetrator was Slavtcho [Tsonchev] – a Gypsy from the village of Bukovlak whose nickname was Patcho. We knew this person as he was from our criminally active contingent."

It transpires from all testimonies that Mr Tsonchev's relatives, who were later questioned in relation to the investigation into his death, also knew the police officers and their nicknames.

16. The same police patrol drove back to the village of Bukovlak, where they were joined by two of the cattle owners and all four started searching the village for Mr Tsonchev. They found him at about 2 p.m. at his aunt and uncle's house. According to Sergeant Ivanov's testimony, Mr Tsonchev was "drinking alcohol in the company of other Gypsies".

17. According to the testimonies of Mr Tsonchev's cousin and Mrs K., an elderly woman who was a neighbour of Mr Tsonchev's relatives, he had spent the late morning and early afternoon of 24 September 1994 digging a ditch at the house of Mrs K. During this time Mr Tsonchev drank four beers. He had apparently also drunk alcohol before that. According to the same testimony and that of Mr Tsonchev's uncle and aunt, he came to their house in the early afternoon, about fifteen minutes before the arrival of the police. The uncle further testified that Mr Tsonchev had not complained of any medical problem and had behaved normally.

18. The police officers invited Mr Tsonchev to come with them. He answered that he wished to finish his beer, to which the police officers agreed. Mr Tsonchev was then placed in the back seat of the police car, between the two cattle owners. The car first drove for several minutes to the home of the cattle owners. According to the statement of one of the police officers, during this short drive the persons in the back of the car "had an argument with the Gypsy but ... did not beat him. They only talked". The car arrived at the home of the cattle owners, where a crowd of about twenty to thirty persons had gathered. According to police officer Ivanov they wanted to beat up Mr Tsonchev, but he and his colleague did not allow this to happen. The police car then drove to the Pleven police station where not later than 2.30 p.m. Mr Tsonchev was handed over to Sergeant Kostadinov, the officer on duty.

19. Sergeant Kostadinov stated in his testimony to investigator Enchev that he had locked Mr Tsonchev in the arrest cell, as he had been too drunk to be questioned. Mr N., the person who had reported the cattle theft and

who had been waiting at the police station to give evidence, claimed that Mr Tsonchev had been seated on a couch in the hallway.

Both Sergeant Kostadinov and Mr N. testified that Mr Tsonchev had been very drunk. According to Mr N. at some point, while seated, Mr Tsonchev had defecated into his trousers.

It appears that Mr Tsonchev had some verbal exchanges with others while at the police station. An internal police note of 20 October 1994 concerning the death of Mr Tsonchev (see paragraph 33 below) stated that he had denied having stolen the cows. The source of this information was not mentioned in the note. Mr N. on his part relayed in his testimony that at some point Mr Tsonchev had been asked questions about the cattle theft, but had replied that he had slaughtered one of the cows.

20. At 5 p.m. Sergeant Kostadinov contacted by telephone police officer Lubenov who arrived at the police station and started questioning the witness, Mr N. According to officer Lubenov, Mr Tsonchev was too drunk to be questioned.

Police officer Lubenov issued an order for the detention of Mr Tsonchev after having consulted the prosecutor on duty, Ms Popova. The order stated that it was issued on 24 September 1994 at 7 p.m.

21. According to the testimony of police officers Kostadinov and Lubenov, at about 7 p.m. Mr Tsonchev "complained that he was not feeling well" whereupon Sergeant Kostadinov contacted the emergency unit of the local hospital for an ambulance.

At the police station were present Mr N. and one of the owners of the stolen cattle, who had arrived at about 7 p.m. to report that the cows had been found earlier in the afternoon. The two men left shortly after 7 p.m., Mr N. apparently having spent the whole afternoon at the police station. The testimony of Mr N. does not contain any reference to the fact that Mr Tsonchev had displayed signs of ill-health. Apparently, the other person present was not questioned in the course of the investigation, as no such testimony has been submitted by the Government.

According to the internal police note of 20 October 1994, all the above events, including Mr Tsonchev's complaint that he did not feel well and the arrival of an ambulance, happened at about 10 p.m. and not at about 7 p.m. The note did not specify the source of this information.

22. According to the testimony of officers Kostadinov and Lubenov, a physician and a paramedic arrived at the police station shortly after the call for an ambulance and examined Mr Tsonchev briefly. The physician allegedly pressed and touched Mr Tsonchev's body, but said that the latter was too drunk to be examined and that he would examine him when he sobered up.

No written record of this medical examination is to be found among the documents in the files, as submitted by the Government, of all authorities which had dealt with the case. During the investigation into the death of

Mr Tsonchev apparently no questions were put to the police officers about the identity of the members of the medical team and no further detail was established.

23. At about 11 p.m. a Mr I.P., who had been arrested for violent behaviour, was brought to the police station and detained there.

According to the internal police note of 20 October 1994, Mr I.P. had testified that Mr Tsonchev was drunk. No such testimony can be found in the material submitted by the Government.

24. According to the testimony of Sergeant Kostadinov, the officer on duty, at a certain point during the night Mr Tsonchev started vomiting in the cell where he had been placed. He was allowed to go to the toilet and was not locked up afterwards, but sat on a couch in the hallway. After midnight Mr Tsonchev went to the toilet again. On his way back to the couch, he fell on the floor. Police officer Kostadinov instructed the detained Mr I.P. to help to get Mr Tsonchev seated on the couch. Officer Kostadinov noticed that Mr Tsonchev was sick and he called the hospital emergency unit again. At that point Mr I.P. was released and left the police station.

The internal note of 20 October 1994 specified that Sergeant Kostadinov had seen Mr Tsonchev lying on the ground at about 1.50 a.m. on 25 September 1994. The source of the information about the hour was not mentioned.

25. According to the police officers' testimonies, the same physician and paramedic, whose identities have not been disclosed, arrived at around 2 a.m. and found Mr Tsonchev dead. The doctor did not draw up a death certificate. This was done later by Dr Dorovski, the forensic expert who visited the site with the investigator, Mr Enchev, and who also conducted the autopsy.

B. The investigation into the death of Mr Tsonchev

26. Immediately after Mr Tsonchev was found dead, the police informed the investigator on duty, Mr Enchev, who arrived at 2.30 a.m. to inspect the scene.

According to the written record of the inspection, the dead body of Mr Tsonchev was found in the hallway of the first floor, southern section, of the Pleven police station. He was seated on a couch, with two hands hanging on both sides of the couch, and the head hanging back. The victim was dressed in a white shirt, wide open at the chest, with unbuttoned trousers and no underwear. The report further states that “[o]n the right side of the face there was a bruise. Because of the dark colour of the skin, there were no other visible injuries on the body”. The investigator finished the inspection at 3 a.m. The inspection record states that a forensic expert, Dr Dorovski, and three other persons were present during the inspection. None of them signed the record, which was only signed by the investigator.

Photographs of the scene were taken during the inspection. The Government have not submitted copies thereof.

27. Dr Dorovski issued death certificate no. 217 on 25 September 1994 indicating "acute anaemia, fat embolism and haematomas on the trunk and the limbs" as the causes of death. He also marked the option "accident" in the column requesting information about the possible circumstances. He left blank the space provided to indicate the time of death.

28. On 25 September 1994 Mr Enchev, regional investigator, issued an order for the opening of a criminal investigation into the death of Mr Tsonchev.

On the same day early in the morning, after 4.25 a.m., investigator Enchev questioned three of the police officers involved, officers Ivanov, Kostadinov and Lubenov. The documents in the files of the authorities which investigated the death of Mr Tsonchev, as submitted by the Government, contain no trace of any questioning of police officer Petranov, who had been together with Sergeant Ivanov during Mr Tsonchev's arrest and his transfer to the police station.

29. The investigator also ordered a biochemical report and a forensic medical report. The forensic medical report was assigned to Dr Dorovski, who had been present at the inspection of the corpse. He was requested by investigator Enchev to answer the following questions:

> "1. What traumatic injuries are to be found on the corpse [of Mr Tsonchev]?
>
> 2. What was the cause of his death?
>
> 3. How were the injuries inflicted?"

30. The forensic expert carried out a post-mortem examination between 8.30 a.m. and 11.30 a.m. on 25 September 1994. He found a haematoma of purple-blue colour under the lower right eyelid; oval bruises of a red-brown colour measuring 2 by 0.5 to 1 cm beneath the lower eyelid and on the opposite side of the face under the cheek bones; one bruise of the same colour on the left side of the lower jaw measuring 0.5 by 0.5 cm; one bruise of a red-brown colour, oblong, measuring 2 by 0.5 cm on the centre of the chin; symmetrical haematomas of a strong purple-blue colour measuring 40 by 18 cm on the front side of both armpits and the upper part of the arms; and three haematomas of purple-blue colour on the left buttock and on the upper back of the left thigh, perpendicular to the femur, measuring 8 to 10 cm by 1.5 to 2 cm.

The laboratory analysis of the blood and the urine of Mr Tsonchev revealed an alcohol content of 0.4 per thousand[1].

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1. Under Bulgarian law, driving with a blood alcohol level of over 0.5 per thousand is an administrative offence (section 174 of the Road Traffic Law as in force since 1 September 1999).

The report concluded:

> "The inspection and the autopsy of Slavtcho Tsonchev's corpse discloses a state of acute loss of blood – pale post-mortal spots, anaemic internal organs, massive haematomas on a large surface of the upper limbs and the left buttock, a bruise on the left eyelid, scratches on the face.
>
> The cause of Mr Tsonchev's death was the acute loss of blood resulting from the large and deep haematomas on the upper limbs and the left buttock, as it appears from the autopsy.
>
> The injuries are the result of a blunt trauma. The injuries described as double stripped haematomas on the left buttock resulted from the impact of one or more long hard objects, approximately 2 cm wide. The haematomas in the upper limbs resulted from the impact of – blows by or collision with – a hard, blunt object. They do not have a characteristic shape and it is therefore not possible to identify the object which had caused them. The injuries on the face could have been caused by blows, or could have been the result of falling, as they are located on the protruding parts of the face.
>
> The analysis of the corpse did not disclose any ailment which could be related to the death [of Mr Tsonchev]. No injuries from sharp objects or firearms were found."

The report placed the time of the death at about ten to twelve hours prior to the autopsy. The report expressed no opinion as to the timing of the injuries which had caused the death. No such question had been put by the investigator.

31. On the morning of 25 September 1994 the applicant, who went to the police station to wait for the release of Mr Tsonchev, was informed that he was dead. When later that day his body was transported to the applicant's house in the village of Bukovlak, the applicant allegedly observed numerous bruises and injuries. Upon her request neighbours called journalists from local newspapers. Mr Tsonchev was buried that evening.

32. On 28 September 1994 the investigator questioned Mr Tsonchev's uncle, aunt and cousin, Mrs K., their neighbour, and Mr N., the person whose cows had been stolen.

33. On 20 October 1994 a colonel from the Directorate of the National Police (Дирекция на националната полиция) in Sofia drew up a note on the death of Mr Tsonchev, apparently in the framework of an internal inquiry conducted within the police department. The note described the events and concluded that the case was within the competence of the investigation authorities. No other document in respect of this police inquiry can be found among the material submitted by the Government.

34. On 21 December 1994 an expert in chemistry issued a report on the analysis of samples of stomach contents as well as liver, kidney and brain tissue taken from the corpse. The purpose of the analysis, as defined by the investigator, had been to search for traces of toxic substances. No such substances were found. Insignificant quantities of aspirin, pain killers and codeine were detected.

35. The material submitted by the Government in response to the Court's request for "all documents contained in the files of all authorities which [had] dealt with the investigation into the death of Mr Tsonchev" does not show any investigation activity after December 1994.

36. In the months following the death of Mr Tsonchev, the applicant regularly visited the office of investigator Enchev to ask for information about the progress of the investigation. In 1995 counsel for the applicant allegedly visited Mr Enchev's office on several occasions and spoke to him on the telephone several times. Mr Enchev allegedly refused to release any specific information. Also, according to the applicant, those of the documents in the investigation file to which counsel was permitted access contained no information concerning any investigation proceedings which may have been conducted after 21 December 1994.

37. On 5 December 1995 counsel for the applicant requested the Pleven Regional Prosecutor's Office (Окръжна прокуратура) to expedite the investigation. As no response was received, on 28 February 1996 counsel filed a request with the Chief Public Prosecutor's Office (Главна прокуратура).

On 19 March 1996 regional prosecutor Popova issued an order suspending the criminal proceedings in the death of Mr Tsonchev. The order stated, *inter alia*:

> "Tsonchev's death [was] caused by a number of internal haemorrhages and acute loss of blood, as a result of deliberate beating. The deceased Tsonchev was detained under a police order for [a maximum period of] twenty-four hours pursuant to the Police Act [Закон за националната полиция], for the theft on 24 September 1994 of nine cows in the vicinity of the village of Bukovlak, Pleven District ...
>
> In the course of the investigation, it proved impossible to determine whether Tsonchev was beaten up in the Pleven police station or outside it. Nor was there any evidence demonstrating whether it was the cattle owners or police officers who did the beating."

38. In her ensuing appeal of 20 May 1996 to the Chief Public Prosecutor's Office, the applicant argued that the investigation had not been thorough and that there had been significant omissions. She suggested that all evidence indicated that the injuries resulting in the death had been inflicted after the victim had been taken to the police station. She also objected to the significant delays in the investigation.

By an order of 8 July 1996 prosecutor Slavova of the Chief Public Prosecutor's Office granted the applicant's request for the reopening of the investigation. The order stated, *inter alia*:

> "[A] careful reading of the file demonstrates that the investigation [was] not thorough and complete. Not all possible investigations were carried out, for which reason the decision to suspend the investigation is unfounded ...

> ... it is necessary to establish Mr Tsonchev's particular health problems during his stay at the police station and the findings of the emergency medical team on his state of health. The physician and the paramedic of the emergency unit who examined [Mr Tsonchev] should be found and questioned, and the relevant documents recording the examinations be requested. The reasons why no medical care was offered to the victim should be established (there is no evidence in that respect, at least up to this moment) and, depending on the findings, a conclusion should be drawn as to whether a crime, under Article 123 of the Criminal Code [Наказателен кодекс], was committed. The health condition of Mr Tsonchev prior to his arrest should be ascertained. An additional medical report should be ordered, to be carried out by three forensic experts, which should establish in particular the cause of the death, the manner in which the injuries were inflicted and the time at which the injuries occurred. [This] should be used to identify the person who inflicted the injuries on that same day or on the previous day. The death certificate of Mr Tsonchev should be requested and attached to the file, and [the applicant's] allegation of incorrect documents should be investigated. After all these issues, as well as others that may come up during the investigation, are clarified, a decision on the merits should be taken."

39. According to the applicant, during the months following the order of the Chief Public Prosecutor's Office, her counsel spoke by telephone, on at least two occasions, with investigator Enchev. In both conversations investigator Enchev allegedly declined to provide any information concerning the investigation. On 6 January 1997 counsel filed a complaint with the Pleven Regional Prosecutor's Office, asserting that no investigation was taking place in defiance of the order of the Chief Public Prosecutor's Office, and requested that investigator Enchev be taken off the case.

Counsel for the applicant received no reply to his written complaint for more than four months. On 22 May 1997 counsel Dimitrov allegedly spoke to investigator Enchev over the telephone. Investigator Enchev informed counsel that he was still the investigator responsible for the case. During the conversation it allegedly became apparent that no investigation had been undertaken since the order of the Chief Public Prosecutor's Office of 8 July 1996. Following this conversation, counsel for the applicant filed another complaint with the Chief Public Prosecutor's Office renewing his request for investigator Enchev to be taken off the case and to expedite the proceedings.

40. On 17 August 1997 counsel received a copy of a letter signed by regional prosecutor Popova and dated 3 June 1997, addressed to the Chief Public Prosecutor's Office. In apparent response to counsel's complaint of May 1997, the letter stated that no further investigation was possible, and that in prosecutor Popova's opinion the investigation should be suspended. According to the prosecutor, "there are no clues as to the identity of the offender and this precludes any further investigation". She also refused to remove investigator Enchev and expressed her frustration with the numerous complaints raised by counsel Dimitrov.

The investigation has apparently not been suspended as there is no formal order to that effect. In December 1997, in a telephone conversation

with counsel Dimitrov, investigator Enchev allegedly confirmed that he was still working on the case.

II. RELEVANT DOMESTIC LAW

41. Under Bulgarian law, criminal proceedings can be brought only by the decision of a prosecutor or an investigator (Article 192 of the Code of Criminal Procedure (Наказателно процесуален кодекс)).

In accordance with the law as in force at the relevant time and until 1 January 2000, a decision to terminate pending criminal proceedings was subject to appeal by the victim to the higher prosecutor (Article 237 § 6 of the Code as in force until 1 January 2000). In practice, as in the applicant's case, appeals to the higher prosecutor were also possible against a decision to suspend criminal proceedings (Article 239 of the Code as in force until 1 January 2000). No further remedies existed under the relevant law.

FINAL SUBMISSIONS TO THE COURT

42. At the hearing on 20 January 2000, the Government invited the Court to reject the application as being inadmissible, or to dismiss the applicant's claims as unfounded.

43. On the same occasion the applicant reiterated her request to the Court to find violations of Articles 2, 6, 13 and 14 of the Convention.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

44. The Government raised a number of preliminary objections, whereas the applicant maintained that the case should be examined on the merits.

A. The authenticity of the application

45. In their written observations on the merits of 11 November 1999, the Government noted that a declaration of means, made on 1 July 1999 before a notary and submitted by the applicant in support of her legal aid request, contained the applicant's thumb-print and a note from the notary stating that the applicant was illiterate. The Government further observed that the power of attorney, whereby the applicant had authorised her lawyers to represent

her before the Convention organs and which was dated 9 February 1998, contained a signature.

The Government submitted that a power of attorney issued by an illiterate person could only be valid, in accordance with Article 151 § 1 of the Bulgarian Code of Civil Procedure, if it contained that person's thumb-print and if it was co-signed by two witnesses. Since this was not the case in respect of the power of attorney of 9 February 1998, it followed that the application had been submitted by persons who were not duly authorised to do so on behalf of the applicant. The Government requested the Court to declare the application inadmissible.

46. During the preparatory meeting before the public hearing on 20 January 2000 (see paragraph 10 above), the applicant declared that she had signed the document in issue and explained in detail the circumstances in which she did so. She stated, *inter alia*, that she had been assisted in filling out the form and had signed it herself. Asked whether she wished to demonstrate her ability to sign, she put her signature on a piece of paper, in the presence of the President of the Chamber and the representatives of the parties. At the close of the preparatory meeting, the representative of the Government did not comment on the authenticity of the applicant's signature on the power of attorney, but stated that she maintained the Government's preliminary objection.

47. The Court observes that the Government are not estopped from raising the above objection, as it is based on a document which was created and came to light after 18 May 1999, the date of the admissibility decision in the present case (see the Ergi v. Turkey judgment of 28 July 1998, *Reports of Judgments and Decisions* 1998-IV, p. 1770, § 62).

48. The Court further recalls that in cases of similar challenges by Governments a question was put to the applicant as to whether he or she had signed the document in issue. A general assessment of all the evidence and, in particular, of the question whether the applicant maintained an interest in pursuing the case, was also relevant (see the Ergi v. Turkey judgment cited above, pp. 1770-71, §§ 63-64; Kurt v. Turkey, application no. 24276/94, Commission decision of 22 May 1995, Decisions and Reports 81-A, p. 112; Sarli v. Turkey, application no. 24490/94, Commission's report of 21 October 1999, § 107, unpublished; and Aslan v. Turkey, applications nos. 22491/93 and 22497/93, Commission's report of 22 May 1997, unpublished).

49. In the present case the Government do not allege in express terms that the application was made without the applicant's consent. Their objection appears to be centred on the question whether the power of attorney of 9 February 1998 is legally valid.

50. In so far as the Government rely on the requirement of Bulgarian law that a document emanating from an illiterate person must carry a thumb-print placed in the presence of two witnesses, the Court first observes that it

is unclear whether a genuine document, signed by the hand of someone who had on another occasion stated to be illiterate, would be considered null and void under Bulgarian law.

In any event, the Court recalls that the representative of the applicant must produce a "power of attorney or a written authority to act" (Rule 45 § 3 of the Rules of Court and Rule 43 § 3 of the Rules of Procedure of the Commission, as in force at the time the present application was filed with the Commission). Therefore, a simple written authority would be valid for purposes of the proceedings before the Court, in so far as it has not been shown that it was made without the applicant's understanding and consent.

51. As regards this latter point, the Court takes into account all evidence before it, including the meeting with the applicant in person in the presence of the President of the Chamber and the representative of the Government (see paragraph 46 above). It further considers that at no point has there been serious doubt as to the will of the applicant to pursue her complaints.

Finally, the Court notes that one of the two lawyers, whose names appear on the impugned power of attorney dated 9 February 1998, has been her representative before the domestic authorities since at least 1995 (see paragraphs 1 and 36 above).

52. The Court finds, therefore, that the application has been validly submitted on behalf of the applicant and dismisses the first preliminary objection by the Government.

B. The remaining preliminary objections

53. In their written observations of 27 September 1999, the Government stated that the admissibility decision of 18 May 1999 contained a number of incorrect statements of fact and unjustified conclusions. In particular, on pages 7 to 12 of the admissibility decision, there were unacceptable statements.

The Government further reiterated their position that the application should be rejected for failure to exhaust domestic remedies. They maintained, as they did at the admissibility stage of the proceedings, that, *inter alia*, the applicant should have brought a civil action for damages and should have joined the criminal investigation into the death of Mr Tsonchev as a private prosecutor. The Government further stated that the Court's finding as regards the six-month time-limit was "contrary to the letter and the meaning of Article 35 of the Convention".

In their observations of 11 November 1999 and at the hearing before the Court, the Government also maintained that the application amounted to an abuse of the right of petition.

On the basis of the above considerations, the Government requested the Court to declare the application inadmissible.

54. The applicant replied that the application should be examined on the merits.

55. The Court takes cognisance of the Government's observations on the facts and takes them into account fully, along with all other evidence. Indeed, it is precisely after declaring an application admissible that the Court proceeds to a final establishment of the facts, in accordance with Article 38 of the Convention, on the basis of the submission of the parties and, if need be, its own investigation.

56. The Court further notes that the alleged unacceptable statements in its admissibility decision are all to be found in the summary of the applicant's complaints and submissions, which forms part of the text of the decision as much as the summary of the Government's position does, without any of them being the expression of the Court's opinion.

57. In respect of the Government's request that the application be declared inadmissible, the Court recalls that the provision of Article 35 § 4 *in fine* of the Convention, according to which the Court may declare an application inadmissible at any stage of the proceedings, does not signify that a respondent State is able to raise an admissibility question at any stage of the proceedings if that question could have been raised earlier (see paragraph 88 of the explanatory report to Protocol No. 11 to the Convention and Rule 55 of the Rules of Court).

In the present case the Government, for the most part, reiterate their objections as to the admissibility of the application, which were already examined by the Court and rejected by its decision of 18 May 1999. The Court sees no new element justifying a re-examination of these matters.

In any event, looking into the substance of the Government's preliminary objections, the Court finds no merit in any of them.

58. The Court dismisses, therefore, the remainder of the Government's preliminary objections.

II. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION

59. The applicant alleged violations of Article 2 of the Convention in that Mr Tsonchev had died as a result of injuries intentionally inflicted by the police, that he had not received adequate medical treatment while in police custody and that there had not been a meaningful investigation into the circumstances of his death.

Article 2 provides as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Arguments of the parties

1. The applicant

60. In the applicant's view all available evidence indicated that Mr Tsonchev was in good health at the time he first encountered the police in the early afternoon of 24 September 1994. The fact that he had been drinking alcohol (not more than four beers) did not affect his general state of health, which was apparently good.

61. The applicant submitted that the Government had not provided any explicit explanation, let alone a plausible one, for what had happened, and had thus failed to show that its agents had not been responsible for the death of Mr Tsonchev. The Government had only implied, in their submissions to the Court, that Mr Tsonchev might have received his injuries by falling on the ground, due to his alcohol intoxication. However, it sufficed to examine the conclusions of the forensic report concerning the type and the size of the injuries which had caused Mr Tsonchev's death to discard such a version of the facts as implausible.

62. The applicant further submitted that Mr Tsonchev had not received adequate medical treatment for several hours, while he had been in police custody apparently suffering from life-threatening injuries. The applicant stated that Bulgarian legislation contained no provisions guaranteeing access to a doctor for persons deprived of their liberty.

She further disputed the Government's position that everything possible had been done. She recalled that, according to the police officers' testimonies, the doctor who had seen Mr Tsonchev, and whose identity was never disclosed, had stated that Mr Tsonchev had been too drunk to be examined. In the applicant's view these facts, if they were true, could only serve to establish the doctor's liability for medical malpractice, and not as grounds for the conclusion that adequate measures had been taken. She submitted that there were two possible explanations: either the doctor had arrived after the death of Mr Tsonchev and, appalled by what the police had done, had refused cooperation, or no doctor had ever arrived, the whole story having been made up by the police. In either case, Mr Tsonchev had been denied appropriate and timely medical care.

63. The applicant also alleged that the authorities had failed in their duty under Article 2 of the Convention to undertake a prompt, thorough and

effective investigation into the circumstances surrounding Mr Tsonchev's death. Although the investigation had started promptly, nothing had been done since December 1994, despite the applicant's repeated requests.

64. The applicant further contended that the investigation had been characterised by a number of omissions and inconsistencies which had resulted in most of the questions surrounding the death of Mr Tsonchev remaining unanswered. In the applicant's view these omissions were so numerous and so striking that they could only be described as an effort by the investigation authorities to cover up for the police, rather than to investigate their acts.

2. The Government

65. The Government contended that the complaints under Article 2 were manifestly ill-founded. In their view, the applicant's allegation that Mr Tsonchev had died as a result of ill-treatment by police officers was not supported by the evidence in the case. The investigation had established that prior to his arrest he had consumed a large quantity of alcohol and that he had been staggering and falling when apprehended and later at the police station. At the same time little and highly contradictory evidence was available regarding the manner in which he had spent the hours prior to his arrest.

The Government submitted that the forensic medical experts had concluded that the fatal injuries could have been the result of falling. These considerations and the fact that no evidence of police brutality was established during the investigation should, in their view, lead to the conclusion that the applicant's allegations were unfounded.

66. The Government further maintained that until 10 p.m. on 24 September 1994, Mr Tsonchev had not complained of any ailment. He had been under the influence of alcohol and had not been communicative. It was normal in these circumstances that the police officers had decided to leave him to sober up. When Mr Tsonchev had complained that he felt unwell, an emergency medical team had urgently been dispatched, but the doctor had found it impossible to examine him due to his state of alcohol intoxication. In the Government's view, therefore, the police could not be held responsible for not having provided adequate medical treatment. In fact, everything possible was done.

67. The Government also affirmed that all necessary investigation steps had been undertaken promptly. An investigator had visited the site immediately after Mr Tsonchev's death and had then proceeded with questioning witnesses. An autopsy had been ordered and promptly performed. Therefore, the allegation that the investigation was not effective was also unfounded.

B. The Court's assessment

1. As to the alleged killing of Mr Tsonchev

68. The Court recalls that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. In the light of the importance of the protection afforded by Article 2, the Court must subject to the most careful scrutiny complaints about deprivation of life (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 86, ECHR 1999-IV).

69. In the present case it is alleged by the applicant that the authorities were responsible for the death of Mr Tsonchev. It is alleged that he was severely beaten while in the hands of the police, that he did not receive proper medical treatment despite the grave injuries thus inflicted, and that he died as a consequence.

70. The Court considers that where an individual is taken into police custody in good health but is later found dead, it is incumbent on the State to provide a plausible explanation of the events leading to his death, failing which the authorities must be held responsible under Article 2 of the Convention (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

In assessing evidence, the general principle applied in cases has been to apply the standard of proof "beyond reasonable doubt" (see the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, § 61). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control while in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.

71. The "cause of Mr Tsonchev's death was the acute loss of blood resulting from the large and deep haematomas on the upper limbs and the left buttock".

The autopsy disclosed no other ailment or injury which could have led to the fatal outcome (see paragraph 30 above).

72. It is undisputed that Mr Tsonchev had consumed a certain quantity of alcohol prior to his arrest. However, it is also undisputed that, at the moment of his arrest, he was enjoying drinks in the company of others, that he could walk, that there was some verbal communication between him and the police officers and other persons, that in the course of this verbal communication, at the time of the arrest and within the next two hours, Mr Tsonchev did not complain of any ailment, and that none of those

having been in contact with him, including the police officers involved, reported any visible sign of such grave injuries as were found later by the autopsy (see paragraphs 14-19 above).

On the basis of the above the Court finds implausible the Government's suggestion that Mr Tsonchev might have received his fatal injuries prior to his arrest.

73. The Government's other supposition, that Mr Tsonchev might have been injured by falling on the ground, when apprehended and later at the police station, as he was allegedly staggering, is equally implausible. The post-mortem report mentioned such a possibility only in respect of the bruises on Mr Tsonchev's face. These bruises were not among the injuries that led to the acute loss of blood and, eventually, to the fatal outcome.

As regards the fatal injuries, the Court notes that according to the prosecutor's decision of 19 March 1996 they had been the result of "deliberate beating" (see paragraph 37 above). Indeed, the acute loss of blood was the result of symmetrical haematomas on the upper limbs, measuring 40 by 18 cm each, and a haematoma on the left buttock, which was 8 to 10 cm long and 1.5 to 2 cm wide. The forensic expert did not mention falling on the ground as a possible means of inflicting injuries of such gravity and of such particular characteristics. According to the post-mortem report, the injuries on the left buttock "resulted from the impact of a long hard object(s), with a limited narrow surface, longish, approximately 2 cm wide" and, those on the upper limbs, from "the impact of − blows by or collision with − a hard blunt object", the shape of which could not be determined (see paragraph 30 above). The above evidence does not support the Government's contention that Mr Tsonchev could have injured himself by falling on the ground.

74. The Court finds, therefore, that there is sufficient evidence on which it may be concluded beyond reasonable doubt that Mr Tsonchev died as a result of injuries inflicted while he was in the hands of the police. The responsibility of the respondent State is thus engaged.

75. The Court also finds that there is no evidence of Mr Tsonchev having been examined with the care one would expect from a medical professional at any time while in custody, and suffering from severe injuries (see paragraph 22 above).

76. The Court concludes, therefore, that there has been a violation of Article 2 of the Convention in respect of the death of Mr Tsonchev.

2. As to the alleged lack of a meaningful investigation

77. The Court observes at the outset that certain references in the material submitted to it could lead to the supposition that there exist documents concerning the investigation into the death of Mr Tsonchev, copies of which have not been provided by the Government (see, *inter alia*, paragraphs 22 and 33 above). In this respect the Court recalls that it is of

utmost importance for the effective operation of the Convention system of individual petition that States furnish all necessary facilities to enable a proper and effective examination of applications, as required by Article 38 of the Convention (see *Çakıcı* cited above, § 76).

In the particular circumstances of the case, it is nevertheless not necessary to examine whether the Government have complied with their obligations under Article 38 of the Convention. For the purposes of the applicant's complaint that there has been no effective investigation into the death of Mr Tsonchev, it suffices to note that the Government were requested to submit "copies of all documents contained in the files of all authorities which [had] dealt with the investigation into the death of Mr Tsonchev" and that in reply, on 11 November 1999, the Government submitted "copies of all documents contained in the files" (see paragraphs 6 and 7 above). The Court is thus entitled to draw the inference that the material submitted to it contains all information about the investigation (see the Yaşa v. Turkey judgment of 2 September 1998, *Reports* 1998-VI, pp. 2439-40, § 103).

78. The Court notes that the investigation into the death of Mr Tsonchev commenced promptly, immediately after he was found dead at the police station in Pleven, with a visit on the site, a questioning of witnesses and an autopsy.

It is observed, however, that there were numerous unexplained omissions from the very beginning and throughout the investigation.

79. In the first hours after the tragic event, when ordering an autopsy, investigator Enchev failed to ask the forensic expert to state his opinion as to the time the fatal injuries occurred, despite the obvious crucial importance of obtaining an answer to that question (see paragraph 29 above). Strikingly, throughout the investigation, no expert was ever asked to comment on the time at which the victim sustained his injuries.

It is also highly significant that the investigation file contains no trace of any attempt by investigator Enchev to identify the members of the medical team who, according to the statements of the police officers involved, visited the Pleven police station twice during the night when Mr Tsonchev died. Copies of the records of the hospital emergency unit, which would normally contain information about the alleged visit, are not to be found in the investigation file (see paragraphs 22, 25 and 38-40 above).

Furthermore, a number of important witnesses were never examined or were not asked certain key questions. Police officer Petranov, who arrested Mr Tsonchev together with his colleague Ivanov, was never questioned. It appears that Mr I.P., who was detained at the Pleven police station during the night in question, and who must have observed Mr Tsonchev's deterioration, was not questioned either. Finally, the investigator did not deem it necessary to obtain the testimony of any of the twenty to thirty persons who had gathered in front of the cattle owners' home and who,

according to the police officers involved, "wanted to beat up [Mr Tsonchev]" (see paragraphs 14, 18, 21 and 23 above).

80. The Court recalls that the State's obligation under Article 2 to protect the right to life, read in conjunction with its general duty under Article 1 to "secure to everyone within their jurisdiction the rights and freedoms defined [therein]", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The investigation must be, *inter alia*, thorough, impartial and careful (see the McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 49, §§ 161-63, and *Çakıcı* cited above, § 86).

The Court further considers that the nature and degree of scrutiny which satisfies the minimum threshold of the investigation's effectiveness depends on the circumstances of the particular case. It must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. It is not possible to reduce the variety of situations which might occur to a bare check-list of acts of investigation or other simplified criteria (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 101-10, ECHR 1999-IV; the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, pp. 325-26, §§ 89-91; and the Güleç v. Turkey judgment of 27 July 1998, *Reports* 1998-IV, pp. 1732-33, §§ 79-81).

81. In the present case the applicant submits that the deficiencies of the investigation were so grave and numerous that the only possible explanation could be that the investigator and the prosecutor were biased and endeavoured to cover up the crime committed against Mr Tsonchev.

82. The Court considers that unexplained failure to undertake indispensable and obvious investigative steps is to be treated with particular vigilance. In such a case, failing a plausible explanation by the Government as to the reasons why indispensable acts of investigation have not been performed, the State's responsibility is engaged for a particularly serious violation of its obligation under Article 2 of the Convention to protect the right to life.

83. The Court observes that there existed obvious means to obtain evidence about the time at which Mr Tsonchev's injuries occurred and further important evidence about the circumstances surrounding his arrest, his state of health and, consequently, about the perpetrators of the grave crime committed against him (see paragraph 79 above). However, the investigator did not proceed to collect such evidence, an omission which was sanctioned through the order of 19 March 1996 and the letter of 3 June 1997 by the regional prosecutor (see paragraphs 37 and 40 above).

Furthermore, the investigation remained dormant, nothing having been done since December 1994 to uncover the truth about the death of Mr Tsonchev. The applicant's numerous complaints of the authorities' inactivity were to no avail (see paragraphs 35-40 above).

No plausible explanation for the reasons of the authorities' failure to collect key evidence was ever provided by the Government.

84. The Court finds, therefore, that there has been a violation of the respondent State's obligation under Article 2 of the Convention to conduct an effective investigation into the death of Mr Tsonchev.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

85. The applicant alleged that the excessive length of the investigation into the death of Mr Tsonchev amounted to a violation of her right under Article 6 § 1 of the Convention to a determination "within a reasonable time" of her civil right to compensation arising out of the death. She also submitted that there had been violations of Article 13 of the Convention in that the authorities had failed to carry out a thorough, effective and timely investigation into Mr Tsonchev's death and in that Bulgarian law did not provide for an effective remedy against the inactivity of the prosecution authorities.

86. The Court considers that these complaints fall to be examined under Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

87. The applicant submitted that there had been an inexcusable inactivity on the part of the authorities.

She asserted that the failure to carry out a thorough and effective investigation in this case reflected a broader pattern in Bulgaria, which had been noted by intergovernmental organisations.

She referred to the report of the Special Rapporteur on Torture to the United Nations Commission on Human Rights (UN Document E/CN.4/1997/7 of 10 January 1997), which stated, *inter alia*, that "[t]he Special Rapporteur [was] concerned by the frequency of allegations of torture or ill-treatment, sometimes followed by death, of persons in police custody. The rarity of any disciplinary measures and of investigations leading to criminal prosecutions, as well as the virtual absence of successful prosecutions of those responsible, can only lead to a climate of impunity. [The Special Rapporteur] believes the government should establish measures to ensure the independent monitoring, on a sustained basis, of the arrest, detention, and interrogation practices of the relevant law enforcement agencies".

The applicant finally referred to the most recent annual report of the United Nations' Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (UN Document

E/CN.4/1999/15 of 15 January 1999), where it was stated that "police abuse of Roma in custody [was] widespread in Bulgaria ... Since 1992, at least fourteen Roma men in Bulgaria have died after having last been seen alive in police custody, or as a result of the unlawful use of firearms by law enforcement officers ... As a rule investigative and judicial remedies are rare".

88. The Government submitted that if the applicant had been a legal successor of Mr Tsonchev, she could have applied to be admitted as a party to the criminal proceedings (as a private prosecutor or as a plaintiff claiming damages). As a party to the criminal proceedings, she would have been entitled to request the collection of evidence and would have had access to the case file. In the event of a refusal of a prosecutor to admit the applicant or Mr Tsonchev's heirs as parties to the proceedings, appeals could have been lodged with the higher prosecutor.

The Government also submitted that the applicant could bring a civil action for damages in separate civil proceedings and concluded that Bulgarian law provided for effective legal remedies, which had not been used by the applicant or Mr Tsonchev's heirs.

As to the length of the investigation, the Government maintained that it was justified and not unreasonable in view of the complex factual issues in the case and the time needed for various procedural acts.

Finally, the Government submitted that the criminal investigation had not been terminated and that the authorities were under a legal obligation to act if new evidence came to light.

89. The Court recalls that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The scope of the obligation under Article 13 also varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State.

A violation of Article 2 cannot be remedied exclusively through an award of damages (see the Kaya judgment cited above, p. 329, § 105). Given the fundamental importance of the right to protection of life, Article 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation likely to lead to those responsible being identified and punished, and in which the complainant has effective access to the investigation proceedings (see *Çakıcı* cited above, §§ 112-13).

90. In the instant case, having regard to paragraphs 78 to 84 above, the Court finds that the respondent State has failed to comply with its obligation to carry out an effective investigation into the death of Mr Tsonchev. This

failure undermined the effectiveness of any other remedies which might have existed. Therefore, the question about the applicant's status in the criminal investigation does not call for a separate examination.

There has been, therefore, a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

91. The applicant claimed that there had been discrimination contrary to Article 14 of the Convention on the basis of Mr Tsonchev's Roma (Gypsy) ethnic origin. Article 14 of the Convention provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] 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."

92. The applicant submitted that popular prejudice against the Roma people in Bulgaria was widespread and frequently manifested itself in acts of racially motivated violence against Roma, to which the authorities reacted by inadequate investigation leading to practical impunity. The applicant stated that this phenomenon had been documented by human rights monitoring organisations and had been acknowledged by the Bulgarian government. She referred, *inter alia*, to the 14th Periodic Report of States Parties (Addendum – Republic of Bulgaria) of 26 June 1996, issued by the United Nations Committee on the Elimination of Racial Discrimination; to the reports of 25 January and 24 December 1996 (E/CN.4/1996/4 and E/CN.4/1997/60) by Mr Bacre Waly Ndiaye, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, commissioned by the United Nations Commission on Human Rights; to the report of the European Committee for the Prevention of Torture of 6 March 1997; and to reports of non-governmental organisations.

The applicant maintained that Mr Tsonchev's ethnic origin had been known to the police officers who had apprehended him and held him in custody and that the officers' perception thereof had been so strong that at least one of them, Sergeant Ivanov, in testimony during the investigation, had made explicit references to his ethnic origin. The remark of investigator Enchev that no injuries were visible on Mr Tsonchev's body due to the "dark colour of the skin" was also an expression of bias. In the applicant's view, based on her experience over many years with law enforcement and investigation authorities in Bulgaria, the police officers' perception of Mr Tsonchev's ethnicity was a decisive factor in contributing to his ill-treatment and murder. Prejudice was also the reason for the refusal to investigate.

93. The Government replied that there was nothing to indicate that the police acted on the basis of Mr Tsonchev's ethnic origin. He was arrested on the suspicion of having committed a serious crime. Mentioning the word

"Gypsy" was not discriminatory because his ethnic origin was indeed that of a "Gypsy".

The Government further submitted that they were actively working on the better integration in society of persons of Gypsy origin. A National Council on Ethnic and Demographic Issues, whose members are representatives of non-governmental organisations and State officials, was created in 1997. There exist in the country a number of non-governmental organisations defending the interests of persons of Gypsy origin. In April 1999, following an extensive dialogue with representatives of the community, the National Council adopted a programme on the integration of Gypsies in society. The Government are thus actively working on maintaining a climate of ethnic tolerance and social cohesion.

94. The Court observes that the applicant's complaint under Article 14 is grounded on a number of serious arguments. It also notes that the respondent State failed to provide a plausible explanation as to the circumstances of Mr Tsonchev's death and as to the reasons why the investigation omitted certain fundamental and indispensable steps which could have shed light on the events (see paragraphs 69-76 and 81-84 above).

The Court recalls, however, that the standard of proof required under the Convention is "proof beyond reasonable doubt". The material before it does not enable the Court to conclude beyond reasonable doubt that Mr Tsonchev's death and the lack of a meaningful investigation into it were motivated by racial prejudice, as claimed by the applicant.

It follows that no violation of Article 14 has been established.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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. Non-pecuniary damage

96. The applicant claimed 100,000 French francs (FRF) in compensation for the pain and suffering resulting from the violations of the Convention and an order of the Court that this amount be paid directly to her in full, free of taxes or of any claim or attachment by the government or by third persons. The applicant also requested the Court to order that there should be no negative consequences for her, such as reduction in social benefits due to her, as a result of the receipt of the above amount.

The applicant stated that Mr Tsonchev was the person with whom she had been living for twelve years and who was the father of her three children. The pain experienced at the loss of someone so close was aggravated by the failure of the competent authorities to investigate the tragic events and to render justice. The applicant further stated that she still cared for their children and that any amount awarded in damages would also benefit them.

97. The Government submitted that the amount was excessive, referring to the case of Assenov and Others v. Bulgaria (judgment of 28 October 1998, *Reports* 1998-VIII). They argued that the standard of living in Bulgaria should be taken into account and that the finding of a violation of the Convention would be sufficient just satisfaction.

98. The Court considers that the applicant must have suffered gravely as a result of the serious violations, found in the present case, of the most fundamental human rights enshrined in the Convention. The Court notes, *inter alia*, that the case concerns the death of the applicant's partner and father of three of her children.

The Court considers, in the light of its case-law (see *Oğur v. Turkey* [GC], no. 21594/93, § 98, ECHR 1999-III, and the following judgments cited previously: Kaya, p. 333, § 122; Ergi, p. 1785, § 110; Yaşa, pp. 2444-45, § 124; *Çakıcı*, § 130; *Tanrıkulu*, § 138; and Güleç, p. 1734, § 88), that the applicant's claim is not excessive and, accordingly, awards it in full.

99. In respect of the applicant's request for an order that there be no attachment of the above amount, the Court considers that the compensation fixed pursuant to Article 41 and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for, *inter alia*, deprivation of life constituting a violation of Article 2 of the Convention if the State itself were then allowed to attach this amount. The purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted, if such a situation were to be deemed satisfactory. However, the Court has no jurisdiction to make an order exempting compensation from attachment (see, among other authorities, the Philis v. Greece (no. 1) judgment of 27 August 1991, Series A no. 209, p. 27, § 79; the Allenet de Ribemont v. France judgment of 7 August 1996, *Reports* 1996-III, p. 910, §§ 18-19; and *Selmouni* cited above, § 133). It must therefore leave this point to the discretion of the Bulgarian authorities.

B. Pecuniary damage

100. The applicant claimed FRF 39,047.55 (being 11,295.85 new Bulgarian levs (BGN)) for pecuniary damage. She stated that Mr Tsonchev had been the main support of the family and that his death had resulted in a significant loss of income for herself and their three children.

The applicant was unable to present documentary proof of Mr Tsonchev's income. She claimed that its source was mainly petty trade of services for goods or food. This activity was never documented, as in the case of most Romanies in Bulgaria, the majority of whom are unemployed and for whom irregular, unofficial and low-paid work in the shadow economy remains the only viable supplement to what the applicant described as the inadequate social-welfare payments.

The applicant submitted that in these circumstances strict adherence to the requirement of supporting documents would make impossible any award of pecuniary compensation to Romanies or other persons who live in a strictly cash economy. That, in turn, would be incompatible with the purpose of Article 41.

The applicant, therefore, proposed to calculate the pecuniary damage suffered by her on the basis of the average life expectancy for men in Bulgaria and the minimum monthly salary in the country, with a 20% reduction for the deceased person's own living expenses.

101. The Government stated that the applicant was not entitled to a survivor's pension as she was never married to Mr Tsonchev. They further noted that no documentary proof had been submitted in respect of his income. Furthermore, it was unclear whether he would have lived to the average life expectancy. The Government also noted that the minimum monthly salary of BGN[1] 67 (the equivalent of FRF 225), which was used by the applicant in her calculation, was in force since July 1999, whereas at the time of Mr Tsonchev's death it was 2,143 old Bulgarian levs (BGL) (about FRF 190 at that time) and had always been fluctuating.

102. The Court finds that the applicant must have suffered pecuniary damage in the form of loss of income resulting from the death of Mr Tsonchev. However, the method used by her in calculating the loss of income for the family is far from precise. The applicant has not presented an actuarial report. The Court is therefore obliged to deal with the claim on an equitable basis.

As regards the Government's arguments, the Court notes that the applicant's claim is based on the fact that she was living with Mr Tsonchev and that, as alleged by her, he was providing for the family, and would have continued to do so if he were alive. The question whether the applicant was entitled to a survivor's pension is therefore irrelevant.

Deciding on an equitable basis, the Court awards BGN 8,000.

C. Costs and expenses

103. The applicant claimed 5,081 United States dollars (USD) and FRF 6,304 in respect of 103 hours of work on the domestic proceedings and

1. As of July 1999, 1,000 old Bulgarian levs (BGL) became 1 new Bulgarian lev (BGN).

the Strasbourg proceedings performed by her counsel, Mr Dimitrov and Mr Grozev, out-of-pocket expenses, as well as air fares and expenses related to the appearance of the applicant and Mr Grozev at the hearing before the Court in Strasbourg. The amount claimed by the applicant is the equivalent of about BGN 12,000.

The Government objected that the lawyers' claim for fees at the rate of USD 40 per hour was excessive, regard being had to the fact that a judge of high rank in Bulgaria earned the equivalent of about USD 3 per hour. The Government submitted that there was an alarming tendency of transforming cases before the Court into a business intended to benefit not the applicants, who were seeking their own rights, but their lawyers. The Government maintained that, once a case came to an advanced stage, lawyers had little difficulty in obtaining the signature of an applicant under any agreement on legal fees, with the expectation that the State would be paying.

The Government accepted as reasonable the claims related to the costs and expenses for the hearing in Strasbourg.

104. The Court considers that, as a whole, the sums claimed by the applicant are not excessive, regard being had to its case-law and, in particular, the sums awarded in the case of *Nikolova v. Bulgaria* ([GC], no. 31195/96, § 79, ECHR 1999-II).

Deciding on an equitable basis, the Court awards under the head of costs and expenses BGN 10,000, together with any value-added tax that may be chargeable, less FRF 14,693 received by the applicant by way of legal aid, to be converted into Bulgarian levs at the rate applicable on the date of settlement.

D. Default interest

105. According to the information available to the Court, the statutory rate of interest applicable in Bulgaria at the date of adoption of the present judgment is 13.23% per annum and in France 2.74% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections;

2. *Holds* that there has been a violation of Article 2 of the Convention in respect of the death of Mr Tsonchev;

3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds* that there has been no violation of Article 14 of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:

(i) for non-pecuniary damage, FRF 100,000 (one hundred thousand French francs);

(ii) for pecuniary damage, BGN 8,000 (eight thousand Bulgarian levs);

(iii) for costs and expenses, BGN 10,000 (ten thousand Bulgarian levs), plus any value-added tax that may be chargeable, less FRF 14,693 (fourteen thousand six hundred and ninety three French francs) to be converted into Bulgarian levs at the rate applicable on the date of settlement;

(b) that simple interest shall be payable from the expiry of the above-mentioned three months until settlement at an annual rate of 13.23% in respect of the amounts in Bulgarian levs and at annual rate of 2.74% in respect of the amounts in French francs;

7. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 May 2000.

Vincent BERGER
Registrar

Matti PELLONPÄÄ
President