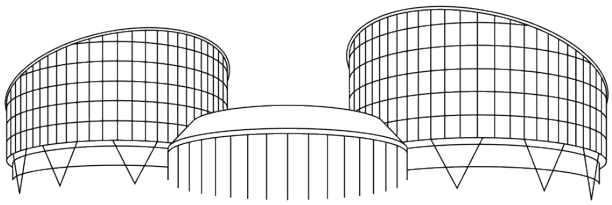

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF PETKOV AND OTHERS v. BULGARIA

(Applications nos. 77568/01, 178/02 and 505/02)

JUDGMENT

STRASBOURG

11 June 2009

FINAL

11/09/2009

This judgment may be subject to editorial revision.

In the case of Petkov and Others v. Bulgaria,

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 5 May 2009,

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

PROCEDURE

1. The case originated in three applications (nos. 77568/01, 178/02 and 505/02) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Bulgarian nationals, Mr Naum Ivanov Petkov, Mr Boris Radkov Georgiev and Mr Ventseslav Asenov Dimitrov ("the applicants"), on 16 November, 1 October and 21 December 2001 respectively.

2. The first two applicants were represented by Mr N. Teoharov, a lawyer practising in Sofia. The third applicant acted *pro se*. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicants alleged, in particular, that they had been prevented from running in the 2001 parliamentary elections and had not had effective remedies in that respect.

4. By a decision of 4 December 2007 the Court decided to join the applications and declared them partly admissible.

5. Neither the applicants nor the Government filed further written observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1941 and lives in Vratsa. The second applicant was born in 1944 and lives in Montana. The third applicant was born in 1945 and lives in Sofia.

A. Background

7. In 1997, several years after the fall of the communist regime, the Bulgarian Government introduced the 1997 Access to Documents of the Former State Security Agencies and the Former Intelligence Department of the General Staff Act ("the Dossiers Act" – see paragraph 47 below), providing for, *inter alia*, the names of individuals who had worked for or collaborated with certain agencies mentioned in the Act ("the former State security agencies") to be disclosed. This task was entrusted to a special commission ("the Dossiers Commission"), which had to gather information in the archives of these agencies and on the basis of that information publish reports containing the names of the individuals who had worked for or collaborated with them.

B. Participation in the 2001 parliamentary elections of persons who had allegedly collaborated with the former State security agencies

8. In the run-up to the parliamentary elections on 17 June 2001, in response to debate concerning the participation of individuals who had allegedly collaborated with the former State security agencies, a clause – section 48(5) – was included in the newly adopted 2001 Election of Members of Parliament Act allowing parties or coalitions which had nominated such persons to withdraw their nominations on the basis of information indicating that they had collaborated with the former State security agencies (see paragraph 41 below).

9. On 5 June 2001 the Central Electoral Commission – the body overseeing the electoral process – decided that the relevant information could be provided by the Dossiers Commission either through the reports it was supposed to prepare or through certificates issued by it. On the basis of these documents and of a request by the party or coalition concerned, the relevant regional electoral commission could annul the candidate's registration under the above-mentioned section 48(5). The party or coalition had to nominate a replacement not later than seven days before the date of the elections.

10. In a final judgment of 13 June 2001 the Supreme Administrative Court, acting on an application from the Coalition for Bulgaria, one of the groups contesting the upcoming parliamentary elections, declared the Central Electoral Commission's decision of 5 June 2001 null and void in so far as it provided for collaboration with the former State security agencies to be established on the basis of certificates issued by the Dossiers Commission. It held that the only lawful means of establishing that an individual had collaborated were the reports to be drawn up by the Dossiers Commission. The Dossiers Commission could issue only the documents provided for by law. In deciding that it could also issue certificates proving collaboration with the former State security agencies, the Central Electoral Commission had acted *ultra vires*, and its decision was therefore null and void.

C. The annulment of the applicants' registration as candidates for Parliament and the failure to reinstate them on the list of candidates

11. All three applicants were registered as candidates in the parliamentary elections to be held on 17 June 2001. They ran on the ticket of the National Movement Simeon II, a coalition established in the spring of 2001. Prior to the election they were struck off the lists of candidates on account of allegations, based on certificates issued by the Dossiers Commission, that they had collaborated with the former State security agencies. The decisions to strike them off the lists were subsequently declared null and void by the Supreme Administrative Court. However, the electoral authorities did not restore their names to the lists, and as a result they could not run for Parliament.

12. The specific circumstances of each applicant are described below.

1. The case of Mr Petkov

13. Mr Petkov was nominated as a candidate for Parliament and registered as such on 17 May 2001.

14. On 7 June 2001 the National Movement Simeon II, relying on section 48(5) of the 2001 Election of Members of Parliament Act and the Central Electoral Commission's decision of 5 June 2001 (see paragraph 9 above and paragraph 41 below), requested the annulment of Mr Petkov's registration. It did so on the basis of a certificate issued by the Dossiers Commission to the effect that he had collaborated with the former State security agencies.

15. In a decision of 8 June 2001 the Vratsa Regional Electoral Commission annulled Mr Petkov's registration. It relied on the request made by the National Movement Simeon II and the certificate issued by the Dossiers Commission.

16. In a decision of 13 June 2001 the Central Electoral Commission refused to examine Mr Petkov's appeal against the Vratsa Regional Electoral Commission's decision. It reasoned that under section 48(5) of the 2001 Election of Members of Parliament Act, a party or coalition could request annulment of the registration of its candidates if information was revealed indicating that they had collaborated with the former State security agencies. Each party or coalition could freely assess the facts establishing the existence of such collaboration, and their assessment was not subject to review by the electoral authorities. The purpose of the law was to allow the party or coalition to nominate only candidates of impeccable moral standing. Since a candidate could withdraw his candidacy, it was logical for a party or a coalition to be able to withdraw it as well. Furthermore, it was not open to candidates themselves to challenge the electoral authorities' decision in the matter.

17. On 17 June 2001, the day of the elections, after unsuccessfully requesting the Central Electoral Commission to reconsider its position, Mr Petkov lodged an application for judicial review with the Supreme Administrative Court. In a judgment of 21 June 2001 a three-member panel of that court set aside the Central Electoral Commission's decision and declared the Vratsa Regional Electoral Commission's decision null and void. It found that not only the parties and coalitions but also the candidates themselves had standing to seek review of the electoral authorities' decisions to strike them off the lists. It went on to hold that, while section 23(3) of the 2001 Election of Members of Parliament Act expressly provided for judicial review of some of the Central Electoral Commission's decisions, this did not mean that the decisions not expressly mentioned therein were not subject to such review, in view of the general rule that judicial review of administrative decisions could be limited only by statute, which was not the case here. It further held that the Central Electoral Commission had erred in accepting that these decisions fell within the regional commissions' discretion. Under section 48(5) of the above-mentioned Act, the striking of a candidate off the list had to be predicated on information to the effect that he or she had collaborated with the former State security agencies. In the absence of such information, striking-off was precluded. The Dossiers Act provided that the only basis for proving collaboration with the former State security agencies was a report from the Dossiers Commission. The certificates issued by the Commission did not constitute such a basis, as already found by the court in its judgment of 13 June 2001 (see paragraph 10 above). The annulment of Mr Petkov's registration on the basis of such a certificate was therefore null and void.

18. The same day Mr Petkov asked the Central Electoral Commission to reinstate him on the list of candidates, but apparently no action was taken.

2. The case of Mr Georgiev

19. Mr Georgiev was nominated as a candidate for Parliament and registered as such on 17 May 2001.

20. In a decision of 8 June 2001 the Montana Regional Electoral Commission, acting in response to a request made by the National Movement Simeon II the previous day, annulled Mr Georgiev's registration as a candidate. It relied on section 48(5) of the 2001 Election of Members of Parliament Act (see paragraph 41 below). In a decision of 13 June 2001 the Central Electoral Commission refused to examine Mr Georgiev's appeal against that decision, on the same grounds as in the case of Mr Petkov (see paragraph 16 above).

21. On 15 June 2001, two days before the elections, Mr Georgiev lodged an application for judicial review with the Supreme Administrative Court. In a judgment of the same day a three-member panel of that court set aside the Central Electoral Commission's decision and declared the Montana Regional Electoral Commission's decision null and void, giving the same reasons as in the case of Mr Petkov (see paragraph 17 above).

22. On 20 June 2001 Mr Georgiev asked the Montana Regional Electoral Commission to reinstate him on the list of candidates, but apparently no action was taken.

3. The case of Mr Dimitrov

(a) The proceedings before the electoral authorities and the Supreme Administrative Court

23. Mr Dimitrov was nominated as a candidate for Parliament and registered as such on 16 May 2001.

24. On 7 June 2001 the National Movement Simeon II, relying on section 48(5) of the 2001 Election of Members of Parliament Act (see paragraph 41 below), requested the annulment of Mr Dimitrov's registration. It did so on the basis of a certificate issued by the Dossiers Commission on 4 June 2001 to the effect that he had collaborated with the former State security agencies.

25. In a decision of 9 June 2001 the Razgrad Regional Electoral Commission annulled Mr Dimitrov's registration. It relied on section 48(5) of the 2001 Election of Members of Parliament Act, the decision of the Central Electoral Commission of 5 June 2001 (see paragraph 9 above and paragraph 41 below) and the certificate issued by the Dossiers Commission on 4 June 2001. In a decision of 13 June 2001 the Central Electoral Commission refused to examine Mr Dimitrov's appeal against this decision, giving the same reasons as in the case of Mr Petkov (see paragraph 16 above).

26. The same or the following day Mr Dimitrov sought judicial review of the above decisions by the Supreme Administrative Court. In a judgment of 15 June 2001, two days before the elections, a three-member panel of that court set aside the Central Electoral Commission's decision and declared the Razgrad Regional Electoral Commission's decision null and void, giving the same reasons as in the case of Mr Petkov (see paragraph 17 above).

27. Mr Dimitrov asked the Razgrad Regional Electoral Commission to restore his name to the ballot paper, which it did in a decision of 16 June 2001, one day before the elections. However, on the same day the Central Electoral Commission set that decision aside, stating that the Supreme Administrative Court's judgment was not yet final. Mr Dimitrov sought judicial review of the latter decision, and in a judgment of 19 June 2001, two days after the elections, the Supreme Administrative Court declared it null and void. It found, *inter alia*, that the Central Electoral Commission's opinion that the court's judgment of 15 June 2001 was not final was erroneous. It was final and binding, as expressly stated in section 23(3) of the 2001 Election of Members of Parliament Act (see paragraph 45 below).

28. On 21 June 2001 a five-member panel of the Supreme Administrative Court rejected as inadmissible the Central Electoral Commission's appeal on points of law against its judgment of 15 June 2001, reiterating that the judgment was final and not subject to appeal, as stated in section 23(3) of the 2001 Election of Members of Parliament Act (see paragraph 45 below).

(b) The proceedings before the Constitutional Court

29. On 4 July 2001 a group of fifty-seven Members of Parliament (MPs) acting on behalf of Mr Dimitrov requested the Constitutional Court to annul the election of the person who had replaced him on the ticket following his deregistration. The Plenary Meeting of the Supreme Administrative Court made a similar request on 5 July 2001.

30. In a decision of 9 July 2001 the Constitutional Court declared the MPs' request admissible and allowed Mr Dimitrov, among others, to intervene in the proceedings as a third party. In a decision of 12 July 2001 the court declared the Supreme Administrative Court's request likewise admissible and decided to join the proceedings in the two cases.

31. In a judgment of 2 October 2001 (решение № 17 от 2 октомври 2001 г. по к.д. № 13 от 2001 г., обн. ДВ бр. 87 от 9 октомври 2001 г.) the Constitutional Court, acting under Article 149 § 1 (7) of the 1991 Constitution (see paragraph 35 below), rejected the request. It held that the courts were entrusted with reviewing the decisions of the authorities, including the electoral authorities. In a State governed by the rule of law, the final judgments of the courts were binding on the parties to a case and had the status of *res judicata*. Therefore, the judgments of the Supreme Administrative Court setting aside and declaring null and void decisions of

the electoral commissions were binding on the latter and had to be complied with. However, failure to comply with the judgments could only engage the State's liability in tort and could not render the election of the person who had replaced Mr Dimitrov on the ticket illegal. That person's name had featured on the ballot paper and on the list of candidates on the day of the election, having been included at the request of the National Movement Simeon II. The voters had used the ballot papers featuring her name, in accordance with the wishes of the coalition which had put her forward as a candidate.

32. Two judges dissented. They stated, *inter alia*, that as the decision of the electoral authorities to strike Mr Dimitrov off the list of candidates had been declared null and void, it had never legally existed. Therefore, his name should have been the one to feature on the ballot paper on the day of the election. The fact that the ballot paper had in fact contained another name did not make good the unlawful decisions of the electoral authorities and did not render the other person's election lawful.

(c) Action under the 1988 State Responsibility for Damage Act

33. In October 2004 Mr Dimitrov brought an action under the 1988 State Responsibility for Damage Act (see paragraph 50 below). At the time of the latest information provided by Mr Dimitrov (15 February 2008), the proceedings were still pending at first instance before the Sofia City Court. Nine hearings had taken place and a further one was listed for 12 November 2008.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1991 Constitution

34. Article 120 § 2 of the 1991 Constitution provides that all natural and legal persons have the right to seek judicial review of any administrative decision which affects them, save as expressly provided by statute.

35. Article 66 of the Constitution provides that the lawfulness of parliamentary elections may be challenged before the Constitutional Court in a manner to be provided by a special statute. According to paragraph 3(3) of the transitional and concluding provisions of the Constitution, such a statute had to be adopted not later than three years after its entry into force. Under Article 149 § 1 (7) of the Constitution, the Constitutional Court rules on disputes concerning the legality of the election of an MP (see also section 12(1)(8) of the 1991 Constitutional Court Act). The only persons or bodies who have standing to refer a matter to the Constitutional Court are (i) a fifth of the two hundred and forty MPs, (ii) the President, (iii) the Council of Ministers, (iv) the Supreme Court of Cassation, (v) the Supreme

Administrative Court and (vi) the Prosecutor-General (Article 150 § 1 of the Constitution; see also section 16 of the 1991 Constitutional Court Act). In addition, in 2006 the ombudsman was allowed to challenge before that court statutes which in his or her view are violative of the citizens' rights and freedoms (Article 150 § 3 of the Constitution). Requests made by other persons, officials or bodies are inadmissible (опр. № 6 от 2 март 1993 г. по к.д. № 7 от 1993 г.; опр. № 7 от 19 октомври 1993 г. по к.д. № 20 от 1993 г.).

36. Article 7 of the Constitution stipulates that the State is liable for the damage caused by the unlawful decisions or actions of its organs and servants. In a binding interpretative decision of 22 April 2005 (тълк. реш. № 3 от 22 април 2005 г. по т.гр.д. № 3/2004 г., ОСГК на ВКС) the Supreme Court of Cassation, confirming the courts' prior practice, observed that this provision did not provide a direct avenue of redress, but merely laid down a general principle whose implementation was to be effected through a statute. As no such statute was enacted following the Constitution's entry into force in 1991, this function is performed by the 1988 State Responsibility for Damage Act (see paragraphs 50 and 51 below).

B. Relevant provisions of the 2001 Election of Members of Parliament Act

37. The 2001 Election of Members of Parliament Act (*Закон за избиране на народни представители*) was adopted by the National Assembly on 9 April 2001 and entered into force on 13 April 2001, the day of its publication in the State Gazette.

1. General organisation of elections

38. The Act, as in force at the relevant time (prior to a partial overhaul in April 2009), stipulated that elections to the Bulgarian National Assembly were held on the basis of a party list proportional system. Each party or coalition registered with the competent regional electoral commission – the body overseeing the election process in the relevant constituency – a list of candidates for each of the multi-seat constituencies into which the country was divided (section 6(1)). Registration had to take place not later than thirty days before election day (section 45(2)).

39. After the election, the Central Electoral Commission – the body overseeing the election process in the entire country (section 23(1)) – determined the overall number of seats for each party or coalition on the basis of the total number of votes cast for the respective party or coalition. The Commission did so using the D'Hondt method, applied in accordance with rules adopted by the Commission prior to the elections (section 107(1)). After the elections, the Commission determined the number of seats for each party or coalition in each of the multi-seat

constituencies using the same method, taking into account the proportion of the votes cast (section 107(3)).

40. The Central Electoral Commission had to announce the number of votes cast for each party, and the allocation of seats among the parties, coalitions and independent candidates, not later than four days after the day of the elections (section 111(1)). It announced the names of the elected MPs not later than seven days following the day of the elections (section 111(2)).

2. Possibility for parties and coalitions to withdraw candidates on account of their links with the former State security agencies

41. Section 48(5), repealed in May 2002, provided:

> "Parties and coalitions may request annulment of the registration of a person featuring on their candidate list in respect of whom information is revealed indicating that he or she collaborated with the former State security agencies. In such cases the parties and coalitions may propose a new candidate not later than seven days before the election date."

42. This provision was complemented by paragraph 6 of the Act's transitional and concluding provisions, also repealed in May 2002, which read as follows:

> "Before registering lists of candidates with the regional electoral commissions, the central leadership of political parties and coalitions may request [the Dossiers Commission] to conduct checks on the individuals who have accepted nomination as candidates for Parliament on their lists. The checks must be carried out no later than seven days after the request."

43. A new section 3(3), inserted in 2005 and repealed in April 2009, provided that the Security of Information Commission – a body overseeing the storage and use of classified information – checked whether the candidates for Parliament had had links with, *inter alia*, the former State security agencies or their predecessor or successor entities, and made this information available to the leadership of the political parties and coalitions which had nominated the candidates concerned.

3. Legal challenges to the electoral authorities' decisions

44. Under section 23(1)(9) (former section 23(1)(7)), the Central Electoral Commission examines appeals against the decisions and actions of the regional electoral commissions. It may, in particular, review the regional commissions' decisions relating to the registration of candidate lists (section 24(3)). It has to rule on all appeals within three days of their being lodged, and must deliver its decision immediately (ibid.).

45. Section 23(3) provides that certain decisions of the Central Electoral Commission are subject to judicial review by the Supreme Administrative Court. The application for judicial review has to be lodged within three days

of delivery of the decision. The court has to rule on the application within three days of its being lodged, by means of a final judgment.

46. Section 112 of the Act (whose text coincides almost entirely with that of the provision it superseded, namely section 94(1) of the 1991 Election of Members of Parliament, Municipal Councillors and Mayors Act) provides that candidates for Parliament, and the central leadership of the parties and coalitions which have taken part in the elections, may challenge the lawfulness of the election before the Constitutional Court within fourteen days of the announcement of the election results. They cannot apply to that court directly; they must do so through the persons or bodies set out in Article 150 § 1 of the 1991 Constitution (see paragraph 35 above). It seems that this provision and its precursor have, apart from the case of Mr Dimitrov, been used only twice, when groups of MPs acting on behalf of individual candidates or political parties asked the Constitutional Court to annul the election of an MP. In both cases the court acceded to their requests (реш. № 8 от 6 май 1993 г. к.д. № 5/93 г.; реш. № 1 от 8 март 1994 г. по к.д. № 22/93 г.).

C. Relevant provisions of the Dossiers Act

47. The 1997 Access to Documents of the Former State Security Agencies and the Former Intelligence Department of the General Staff Act ("the Dossiers Act") regulated, *inter alia*, disclosure of the names of persons who had worked for or collaborated with the communist-era State security agencies. Section 6(1) provided that the names of these persons were to be revealed in special reports issued by the Dossiers Commission. The reports had to be compiled on the basis of information gathered by a sub-commission dealing specifically with that issue (section 6(2)). In April 2002 the Dossiers Act was repealed and the Dossiers Commission was abolished.

48. A new Act on access to and disclosure of documents and publication of Bulgarian citizens' links with the State security agencies and the intelligence services of the Bulgarian national army ("Закон за достъп и разкриване на документите и за обявяване на принадлежност на български граждани към държавна сигурност и разузнавателните служби на българската народна армия") was enacted in December 2006. The Act, which is still in force, coincides to a large extent with the previously repealed Dossiers Act.

D. The 1997 Supreme Administrative Court Act

49. The 1997 Supreme Administrative Court Act, adopted in 1997 and superseded by the 2006 Code of Administrative Procedure, regulated the procedure before that Court. Section 30(2) (now superseded by Article 177

§ 1 of the Code) stipulated that judgments of the Supreme Administrative Court setting aside administrative decisions or declaring them null and void were binding on everyone.

E. The 1988 State Responsibility for Damage Act

50. Section 1(1) of the 1988 State Responsibility for Damage Caused to Citizens Act (on 12 July 2006 its name was changed to "State and Municipalities Responsibility for Damage Act") provides that the State is liable for damage suffered by private persons as a result of unlawful decisions, actions or omissions by civil servants committed in the course of or in connection with the performance of their duties.

51. Section 2(2) stipulates that the State is liable for the damage suffered by individuals on account of their being charged with a criminal offence, if (i) they are subsequently acquitted, (ii) the charges are dropped because the impugned act was not committed by them or does not constitute a criminal offence, or (iii) the proceedings against them were opened after the expiry of the relevant limitation period or despite an amnesty.

III. RELEVANT INTERNATIONAL DOCUMENTS

A. The Code of Good Practice in Electoral Matters

52. The Code of Good Practice in Electoral Matters (Guidelines and Explanatory Report) (CDL-AD (2002) 23 rev), adopted by the European Commission for Democracy Through Law ("the Venice Commission") at its 51st and 52nd sessions (5-6 July and 18-19 October 2002) constitutes, in the Commission's words, "the core of a code of good practice in electoral matters". It reads, in so far as relevant:

> "GUIDELINES ON ELECTIONS
>
> ...
>
> 2. Regulatory levels and stability of electoral law
>
> ...
>
> b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.
>
> ...

3.3. An effective system of appeal

a. The appeal body in electoral matters should be either an electoral commission or a court. For elections to Parliament, an appeal to Parliament may be provided for in first instance. In any case, final appeal to a court must be possible.

...

d. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.

e. The appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned.

f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.

...

EXPLANATORY REPORT

...

2. Regulatory levels and stability of electoral law

63. Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.

...

3.3. An effective system of appeal

92. If the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results: individual citizens may challenge them on the grounds of irregularities in the voting procedures. It also applies to decisions taken before the elections, especially in connection with the right to vote, electoral registers and standing for election, the validity of candidatures, compliance with the rules governing the electoral campaign and access to the media or to party funding.

93. There are two possible solutions:

– appeals may be heard by the ordinary courts, a special court or the constitutional court;

– appeals may be heard by an electoral commission. There is much to be said for this latter system in that the commissions are highly specialised whereas the courts tend to be less experience[d] with regard to electoral issues. As a precautionary measure, however, it is desirable that there should be some form of judicial supervision in place, making the higher commission the first appeal level and the competent court the second.

94. Appeal to parliament, as the judge of its own election, is sometimes provided for but could result in political decisions. It is acceptable as a first instance in places where it is long established, but a judicial appeal should then be possible.

95. Appeal proceedings should be as brief as possible, in any case concerning decisions to be taken before the election. On this point, two pitfalls must be avoided: first, that appeal proceedings retard the electoral process, and second, that, due to their lack of suspensive effect, decisions on appeals which could have been taken before, are taken after the elections. In addition, decisions on the results of elections must also not take too long, especially where the political climate is tense. This means both that the time-limits for appeals must be very short and that the appeal body must make its ruling as quickly as possible. Time-limits must, however, be long enough to make an appeal possible, to guarantee the exercise of rights of defence and a reflected decision. A time-limit of three to five days at first instance (both for lodging appeals and making rulings) seems reasonable for decisions to be taken before the elections. It is, however, permissible to grant a little more time to Supreme and Constitutional Courts for their rulings.

96. The procedure must also be simple, and providing voters with special appeal forms helps to make it so. It is necessary to eliminate formalism, and so avoid decisions of inadmissibility, especially in politically sensitive cases.

97. It is also vital that the appeal procedure, and especially the powers and responsibilities of the various bodies involved in it, should be clearly regulated by law, so as to avoid any positive or negative conflicts of jurisdiction. Neither the appellants nor the authorities should be able to choose the appeal body. The risk that successive bodies will refuse to give a decision is seriously increased where it is theoretically possible to appeal to either the courts or an electoral commission, or where the powers of different courts – e.g. the ordinary courts and the constitutional court – are not clearly differentiated.

...

98. Disputes relating to the electoral registers, which are the responsibility, for example, of the local administration operating under the supervision of or in co-operation with the electoral commissions, can be dealt with by courts of first instance.

99. Standing in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there

to lodge an appeal. A reasonable quorum may, however, be imposed for appeals by voters on the results of elections.

100. The appeal procedure should be of a judicial nature, in the sense that the right of the appellants to proceedings in which both parties are heard should be safeguarded.

101. The powers of appeal bodies are important too. They should have authority to annul elections, if irregularities may have influenced the outcome, i.e. affected the distribution of seats. This is the general principle, but it should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small. In zones where the results have been annulled, the elections must be repeated.

102. Where higher-level commissions are appeal bodies, they should be able to rectify or annul *ex officio* the decisions of lower electoral commissions."

B. Final report on the parliamentary elections in Bulgaria by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe ("OSCE")

53. This report, published in Warsaw, Poland on 31 August 2001, describes in detail the unfolding of the parliamentary elections in Bulgaria in June 2001. It reads, in so far as relevant:

"...

IV. LEGISLATIVE FRAMEWORK

...

...some aspects of the current [2001 Election of Members of Parliament Act] are of concern. While some of these stem from the previous law, others pertain to newly introduced provisions.

1. Under [section 48(5)], candidate lists may be changed ... if "data" is discovered indicating that they collaborated with the former State security agencies. Parties and coalitions may make these changes up to seven days before election day. The possibility of such eleventh-hour changes to the lists posed problems not only for election administrators and courts, but also for parties and voters whose understanding of candidates running in the elections was undoubtedly affected.

2. The newly adopted [section 48(5)] provides that parties and coalitions may withdraw candidates in case "data" on the candidates is found in the files of the Commission on the Documents of the Former State Security Service. A clear definition of the term "data" is needed to provide guidance. There is a particular need to define clearly whether these data constitute full evidence for collaboration with the former State security services. The current legal provisions in the Election Law as

well as in the Law on Access to the Documents of the Former State Security Service led to controversial withdrawals of candidates and a number of court cases.

...

Parties and coalitions may withdraw nominated candidates and nominate substitutes up to 30 days before the elections without having to abide by additional legal requirements. After that deadline, parties may withdraw a candidate from the ticket only if he or she is "permanently incapable to run in the elections" or if "data" exists that the candidate had collaborated with the former State security agencies. In these cases, parties may nominate a new candidate up to seven days before election day.

...

C. COMPLAINTS AND APPEALS

...

A particular, extended controversy related to changes to the candidate lists. Under the [2001 Election of Members of Parliament Act], candidate lists may be changed if "data" is discovered indicating that candidates collaborated with the former State security agencies. In this case, parties and coalitions can request the [Regional Electoral Commissions] to withdraw a name from their candidate lists. Accordingly, the [Regional Electoral Commissions] withdrew several candidates from various lists, eight of whom appealed the [Regional Electoral Commissions] decisions to the [Central Electoral Commission]. The [Central Electoral Commission] rejected the appeals, arguing that parties and coalitions have the exclusive right to evaluate the available data on collaboration with the State security agencies and to withdraw candidates. Furthermore, the [Central Electoral Commission] argued that candidates do not have the right to appeal the [Regional Electoral Commissions] decisions taken in accordance to [section 48(5)] of the [2001 Election of Members of Parliament Act], since this article does not establish the right of appeal for a candidate whose registration is annulled upon request of his/her party or coalition based on the existence of the above mentioned data on collaboration with the former State security agencies.

Some candidates appealed to the Supreme Administrative Court, which reversed the [Central Electoral Commission] decision two days before the election and reinstated these candidates on their original lists. The Supreme Administrative Court recognized the right of candidates to appeal their withdrawals, stating that they have a legal interest because their personal rights as candidates are affected by such measures. Furthermore, the Supreme Administrative Court argued that in such cases, [Regional Electoral Commissions] are obligated to examine the available data on collaboration with the former State security agencies and decide accordingly. However, the [Central Electoral Commission] instructed the respective [Regional Electoral Commissions] not to amend the candidate lists in question, stating that the decision of the Supreme Administrative Court was not in force, as it could be appealed within the next 14 days.

Following this [Central Electoral Commission] instruction, the candidates appealed to the Supreme Administrative Court again and were reinstated once more on 18 and 19 June, just after the elections had been held. The controversy looks set to continue, as the [Central Electoral Commission] has filed additional appeals, notwithstanding [section 23(3)] of the [2001 Election of Members of Parliament Act], which states that

decisions of the Supreme Administrative Court are final in the context of election disputes. At any rate, [Central Electoral Commission] Decision No. 348 of 20 June proclaimed the names of elected candidates according to the candidate lists that did not contain the withdrawn candidates.

The later [Central Electoral Commission] decisions are of particular concern. These decisions disregard the rulings of the Court by postponing the settlement of the dispute until after election day. As a consequence, the candidates at issue could not participate in the elections. Furthermore, [Central Electoral Commission] Decision 348 disregarded the court ruling again, as it proclaimed the names of elected candidates regardless of the fact that some candidates were still seeking legal redress.

Additionally, the [Central Electoral Commission] stated that the rulings of the Supreme Administrative Court were not in compliance with the law and thus were not binding. The [Central Electoral Commission] argued in particular that the court did not have jurisdiction over the case at issue. While the jurisdiction of the court was controversial to some extent, this line of argument of the [Central Electoral Commission] is of great concern. It is not within the competence of the parties to determine whether the decision of the court is binding or not. This conflict between two senior State institutions raises serious questions regarding the application of the rule of law in Bulgaria in this instance and should be resolved by the Constitutional Court.

...

XII. RECOMMENDATIONS

...

1. The deadline for parties and coalitions to change candidate lists should be set further in advance of election day.

2. A clear definition of the term “data” under [section 48(5)] of the [2001 Election of Members of Parliament Act].

3. A cut-off date for resignation of candidates and withdrawal of parties and coalitions well in advance of election day would prevent last-minute changes to the ballot or the use of ballots that have not been updated. ...”

IV. COMPARATIVE LAW

54. According to information available to the Court, the laws of at least seventeen States Parties to the Convention make provision for post-electoral remedies, whether before a special court or tribunal, the ordinary courts, or a constitutional court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

55. The applicants complained of the electoral authorities' refusal to comply with the final judgments of the Supreme Administrative Court declaring their striking off the lists of candidates null and void, and of their resulting inability to stand in the parliamentary elections on 17 June 2001.

56. The Court considers that this complaint falls to be examined under Article 3 of Protocol No. 1 to the Convention (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 141, ECHR 2006-IV, and *Kavakçı v. Turkey*, no. 71907/01, § 30, 5 April 2007). This provision reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

57. Having raised an objection of non-exhaustion of domestic remedies (which was joined to the merits – see paragraph 73 below), the Government did not make any submissions on the merits of this complaint.

58. The applicants argued that if the electoral authorities had complied with the final judgments against them they, the applicants, would have been elected to Parliament. They added that the Dossiers Commission had not issued any other certificates attesting to links with the former secret service and had been abolished a few months after the June 2001 elections.

59. The Court observes that, while this might not be obvious from its wording, Article 3 of Protocol No. 1 enshrines the right to stand for Parliament as an individual right (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, §§ 48-51, Series A no. 113, and *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 109 (i), ECHR 2008-...). This right, as, indeed, all rights guaranteed under this provision, is crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 58, ECHR 2005-IX). It is subject to implied limitations, but these must not curtail it to such an extent as to impair its very essence and deprive it of its effectiveness. Such limitations must also be consistent with the rule of law and be surrounded by sufficient safeguards against arbitrariness (see *Yumak and Sadak*, cited above, § 109 (ii)-(v)).

60. In the instant case, the Court is not called upon to decide whether or not it was contrary to Article 3 of Protocol No. 1 to allow political parties to withdraw their candidates on account of their links with the former State security agencies (see, by contrast and *mutatis mutandis*, *X. v. the*

Netherlands, no. 6573/74, Commission decision of 19 December 1974, Decisions and Reports (DR) 1, p. 88; *X. v. Belgium*, no. 8701/79, Commission decision of 3 December 1979, DR 18, p. 250; *Van Wambeke v. Belgium*, no. 16692/90, Commission decision of 12 April 1991, unreported; *Ždanoka*, cited above; and *Ādamsons v. Latvia*, no. 3669/03, 24 June 2008). Nor is the Court required to determine the correctness of the Supreme Administrative Court's rulings declaring null and void the striking of the three applicants off the lists of candidates at the request of the coalition which had nominated them (see paragraphs 17, 21 and 26 above). The Court is not a court of appeal from the national courts (see *Cornelis v. the Netherlands* (dec.), no. 994/03, ECHR 2004-V (extracts)), and it is not its function to deal with errors of fact or law allegedly committed by them (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Its task in the present case is confined to assessing whether the electoral authorities' failure to give effect to the final and binding judgments of the Supreme Administrative Court was in breach of the applicants' rights under the above-mentioned provision.

61. On this point, the Court observes that it has consistently stressed the need to avoid arbitrary decisions and abuse of power in the electoral context, especially as regards the registration of candidates (see *Podkolzina v. Latvia*, no. 46726/99, § 35, ECHR 2002-II; *Melnychenko v. Ukraine*, no. 17707/02, § 59, ECHR 2004-X; *Krasnov and Skuratov v. Russia*, nos. 17864/04 and 21396/04, § 42, ECHR 2007-...; see also *Lykourezos v. Greece*, no. 33554/03, § 56 *in fine*, ECHR 2006-VIII; *Kovach v. Ukraine*, no. 39424/02, § 54, ECHR 2008-...; *Sarukhanyan v. Armenia*, no. 38978/03, § 40, 27 May 2008; and *Ādamsons*, cited above, §§ 111 (e) and 117-19). It has also emphasised that the procedures for registering candidates must be characterised by procedural fairness and legal certainty (see *Ždanoka*, cited above, §§ 107, 108 and 115 (e), and *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, §§ 50 and 58-60, ECHR 2007-...).

62. The Court has moreover said, albeit in contexts differing from the present one, that the rule of law, one of the fundamental principles of a democratic society, entails a duty on the part of the State and the public authorities to comply with judicial orders or decisions against them (see, among others, *Hornsby v. Greece*, 19 March 1997, §§ 40-41, *Reports of Judgments and Decisions* 1997-II; *Iatridis v. Greece* [GC], no. 31107/96, §§ 58-62, ECHR 1999-II; *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 87, ECHR 2000-XI; *Taşkın and Others v. Turkey*, no. 46117/99, §§ 121-25, ECHR 2004-X; and *Okyay and Others v. Turkey*, no. 36220/97, § 73, ECHR 2005-VII).

63. Finally, the Court observes that an effective system of electoral appeals, as described in the Venice Commission's Code of Good Practice in Electoral Matters (see paragraph 52 above), is an important safeguard

against arbitrariness in the electoral process. Failure to abide by final decisions given in response to such appeals undoubtedly undermines the effectiveness of such a system.

64. Turning to the specific circumstances of the case, the Court observes that the electoral authorities either failed, as in the cases of Mr Petkov and Mr Georgiev (see paragraphs 18 and 22 above), or overtly refused, as in the case of Mr Dimitrov (see paragraph 27 above), to comply with the Supreme Administrative Court's final and binding judgments setting aside their decisions, and by virtue of which they were required to reinstate the three applicants on the lists of candidates (see paragraph 31 above). Their stance was, as noted in the OSCE's election report, probably due to their opinion that the Supreme Administrative Court had acted outside its jurisdiction and given erroneous rulings (see paragraph 53 *in fine* above), or perhaps to their belief, promptly dispelled by the same court, that the judgments in question were not final (see paragraphs 27 and 28 above). However, in a democratic society abiding by the rule of law it is not open to the authorities to cite their disapproval of the findings made in a final judgment in order to refuse to comply with it (see *Mancheva v. Bulgaria*, no. 39609/98, § 59, 30 September 2004).

65. By lodging applications for judicial review the applicants sought not only the annulment of the electoral authorities' decisions to deregister them in response to the requests of the coalition which had nominated them, but also and above all the erasing of the effects of those decisions. The effective protection of the applicants' right to stand for Parliament presupposed an obligation on the electoral authorities' part to comply with the final judgments against them. Their failure to give effect to those judgments was, as later acknowledged by the Constitutional Court, in breach of Bulgarian law (see paragraph 31 above). In addition, it deprived the procedural guarantees available to the applicants of any useful effect and was arbitrary.

66. The Court does not overlook the difficulties faced by the electoral authorities on account of the fact that two of the judgments against them were delivered just a couple of days before the elections, which took place on 17 June 2001, and one even after them (see paragraphs 17, 21 and 26 above). However, it considers for three reasons that these difficulties were largely of the authorities' own making. First, the electoral statute which made it possible to request the deregistration of candidates on account of their links with the former State security agencies – apparently a very delicate issue in Bulgarian politics – was enacted less than two and half months before the elections (see paragraph 37 above), at odds with the recommendations of the Council of Europe on the stability of electoral law (see paragraph 52 above). Second, instead of requiring such links to be checked prior to the candidates' nomination, it allowed the parties or coalitions which had nominated them to seek their deregistration subsequently. It thus put in place a mechanism which was bound to

engender serious practical difficulties and lead to legal challenges which would have to be examined under considerable time constraints. This mechanism was aptly described in the OSCE's report as opening the "possibility of ... eleventh-hour changes to the lists[, posing] problems not only for election administrators and courts, but also for parties and voters whose understanding of candidates running in the elections was undoubtedly affected" (see paragraph 53 above). Third, the practical arrangements for the application of this rule – criticised in the OSCE's report as being quite vague (see paragraph 53 above) – were clarified by the Central Electoral Commission just twelve days before the elections (see paragraph 9 above), whereas this could have been done much earlier. The initial registration of the candidates by law had to be – and in fact was – completed thirty days prior to the elections (see paragraphs 13, 19, 23 and 38 *in fine* above). Although the Supreme Administrative Court adjudged the applicants' applications for judicial review in record time, taking respectively just four, one and two days, this could not make up for the fact that, for the above-mentioned reasons, the issue of the applicants' deregistration was being reviewed so shortly before the day of the elections, or, in Mr Petkov's case, even after that day (see paragraphs 17, 21 and 26 above).

67. There has therefore been a violation of Article 3 of Protocol No. 1 to the Convention, in that the authorities failed to comply with the final judgments by virtue of which they were required to reinstate the three applicants on the lists of candidates.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

68. The applicants complained under Article 13 of the Convention that they had not had effective remedies in respect of the electoral authorities' refusal to reinstate them on the lists of candidates.

69. Article 13 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."

70. The Government submitted that the applicants had not made proper use of the available domestic remedies. They pointed out that under Article 7 of the 1991 Constitution the State was liable for damage caused by the unlawful decisions and actions of its organs and servants. This liability was regulated by the 1988 State Responsibility for Damage Act. It had been open to the applicants to bring actions under section 2(2) of this Act and seek compensation for the damage flowing from their inability to run for Parliament. There was no indication that they had done so.

71. The applicants replied that the Government had not given examples showing that the 1988 State Responsibility for Damage Act could be applied in their situation. They further argued that an action under that Act could not provide adequate redress for the alleged violation. The third applicant, Mr Dimitrov, additionally stressed that being an MP meant much more than receiving a salary. It meant participating actively in the public life of the country – something he had done for a number of years. He described at length his involvement in Bulgarian politics between 1990 and 2001, and added that the events of June 2001 had tarnished his reputation and destroyed his political career. This could not be made good by an award of damages; the only means of redress would have been a Constitutional Court ruling in his favour. However, that court had found against him. In any event, ordinary citizens were not entitled to institute proceedings before that court.

72. The applicants further submitted that an action under the above-mentioned Act could not have solved the wider problems engendered by the electoral authorities' failure to comply with final judgments against them. These could only be made good through a judgment of this Court. The third applicant, Mr Dimitrov, had brought an action under the Act in October 2004, and the proceedings were still pending before the first-instance court.

73. In its decision on the admissibility of the applications (see paragraph 4 above) the Court found that the question whether or not the applicants had at their disposal effective domestic remedies in respect of their complaint that they could not take part in the elections was closely linked to the merits of their complaint under Article 13 of the Convention. It therefore decided to join the Government's objection to the merits, and will examine it here.

74. According to the Court's case-law, Article 13 applies only in respect of grievances which can be regarded as arguable in terms of the Convention. It guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The scope of the Contracting States' obligations under this provision varies depending on the nature of the applicant's complaint; the effectiveness of a remedy does not depend on the certainty of a favourable outcome for the applicant. However, the remedy must be effective in practice as well as in law in the sense either of preventing the alleged violation or remedying the impugned state of affairs, or of providing adequate redress for any violation that has already occurred (see *Russian Conservative Party of Entrepreneurs and Others*, cited above, §§ 85 and 90).

75. The Court observes at the outset that the violation of Article 3 of Protocol No. 1 consisted, as noted in paragraphs 60 and 67 above, not in the initial striking of the applicants off the lists of candidates, but in the electoral authorities' ensuing failure to reinstate them on the lists despite the

final judgments to that effect. In light of its conclusion that this provision has been breached, the Court finds that the applicants' grievances under it were clearly arguable. It must therefore determine whether the applicants had an effective remedy in that respect.

76. On this point, the Court considers that, while compensation for the damage flowing from unlawful actions or omissions by the authorities can be seen as an important part of the range of redress, the remedy relied on the by the Government – an action under the 1988 State Responsibility for Damage Act – cannot by itself be considered effective, for the following reasons.

77. Firstly, the Government pointed to section 2(2) of the Act, which is completely irrelevant in the present context, dealing as it does with compensation for damage occasioned by criminal proceedings conducted unlawfully and the related deprivation of liberty (see paragraph 51 above).

78. Secondly, even assuming that the Government actually intended to refer to section 1 of the Act, which appears more pertinent (see paragraph 50 above), they have not shown – by, for instance, citing relevant case-law – that an action under this provision stood reasonable prospects of success. It is true that in its judgment in the case of Mr Dimitrov the Constitutional Court alluded to the possibility of invoking the State's liability under Article 7 of the 1991 Constitution (see paragraph 31 above). However, when the applicant later brought an action under the 1988 State Responsibility for Damage Act – the only means of invoking the State's liability under that Article (see paragraph 36 above) –, the proceedings lasted more than four years and, at the time of the latest information provided by him, were still pending before the first-instance court (see paragraph 33 above). Excessive delays in an action for compensation may seriously undermine its remedial effectiveness (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 195 *in fine*, ECHR 2006-V, with further references).

79. Thirdly, and most importantly, such an action, even if ultimately successful, cannot in the circumstances be considered as providing sufficient redress in itself, because it can result solely in an award of compensation (see paragraph 50 above and also, *mutatis mutandis*, *Hornsby*, § 37, and *Iatridis*, § 47, both cited above). In cases where – as here – the authorities, through deliberate actions and omissions, prevent a parliamentary candidate from running, the breach of Article 3 of Protocol No. 1 cannot be remedied exclusively through such an award. If States were able to confine their response to such incidents to the mere payment of compensation, without putting in place effective procedures ensuring the proper unfolding of the democratic process, it would be possible in some cases for the authorities to arbitrarily deprive candidates of their electoral rights (see, by way of example, *Podkolzina*; *Melnychenko*; and *Krasnov and Skuratov*, §§ 18-34, 42 and 52-67, all cited above) and even to rig elections. Were that to be the case, the right to stand for Parliament, which along with

the other rights guaranteed by Article 3 of Protocol No. 1 is crucial to establishing and preserving the foundations of a meaningful democracy (see, as a recent authority, *The Georgian Labour Party v. Georgia*, no. 9103/04, § 101, 8 July 2008), would be ineffective in practice.

80. Having thus found that the violation of Article 3 of Protocol No. 1 could not be made good through the mere payment of compensation, and noting that as a result of the authorities' actions and the considerable time constraints in the run-up to the elections, the breach could not be remedied prior to the elections (see paragraph 66 above), the Court concludes that the situation could be rectified solely by means of a post-election remedy. Therefore, in the specific circumstances of the case, the requirements of Article 13 could be fulfilled only by a procedure by which the candidates could seek vindication of their right to stand for Parliament before a body capable of examining the effect which the alleged breach of their electoral rights had on the unfolding and outcome of the elections. If that body deemed the breach serious enough to have prejudiced the outcome, it should have had the power to annul the election result, wholly or in part. While this option should undoubtedly have been reserved for the most serious cases, the competent authority should have been able to resort to it if necessary.

81. Indeed, Bulgarian law makes provision for post-election avenues of redress. Under Article 66 of the 1991 Constitution the Constitutional Court may hear challenges to the lawfulness of parliamentary elections, and under Article 149 § 1 (7) of the Constitution it is competent to review the lawfulness of the election of individual MPs (see paragraph 35 above). It did review the lawfulness of the election of the person who had replaced Mr Dimitrov on the ballot after his deregistration, but found that the breach of Mr Dimitrov's electoral rights, while serious, did not necessarily entail annulling her election, because it was her name which had featured on the ballot paper on election day, in line with the wishes of the coalition which had nominated her (see paragraphs 29-31 above). In the Court's view, especially bearing in mind the proportional system for parliamentary elections in Bulgaria (see paragraph 38 above), this approach was not inconsistent with Article 3 of Protocol No. 1. Once the wishes of the people have been freely and democratically expressed, that choice should not be called into question, except in the presence of compelling grounds for the democratic order (see, *mutatis mutandis*, *Lykourezos*, cited above, § 52 *in fine*; *Paschalidis, Koutmeridis and Zaharakis v. Greece*, nos. 27863/05, 28422/05 and 28028/05, § 28 *in fine*, 10 April 2008; and *Yumak and Sadak*, cited above, § 109 (vi)).

82. However, the Court is not persuaded that, in the specific circumstances of the case, the proceedings before the Constitutional Court, which were apparently conducted under Article 149 § 1 (7) rather than Article 66 of the Constitution (see paragraphs 31 and 35 above), were capable of providing adequate redress to the applicants. In particular, it is

not clear whether the scope of that court's review allowed it to address satisfactorily the essence of their grievances, and whether, had it found the breaches of their electoral rights serious enough to require remedial action, it would have been able to provide them with sufficient redress, by, for instance, ordering repeat elections. This uncertainty seems to be a result of the lack of clear and unambiguous provisions in this domain and of the scarcity of rulings on such matters. The latter, in turn, stems from the limitation on the persons and bodies who may refer a case to the Constitutional Court (see paragraph 35 above). While section 112 of the 2001 Elections of Members of Parliament Act states that parliamentary candidates may challenge the elections before that court, it stipulates that they may not do so directly, but only through the limited category of persons or bodies who are entitled to refer a matter to it (see paragraph 46 above). This means that candidates – or, indeed, any other participant in the electoral process – cannot directly compel the institution of proceedings before that court. The fact that such proceedings have apparently been instituted only three times, following petitions made by groups of MPs (see paragraph 46 above), shows the inaccessibility of this remedy in practice. According to the Court's settled case-law, a remedy can be considered effective only if the applicant is able to initiate the procedure directly (see *Sargin and Yagci v. Turkey*, nos. 14116/88 and 14117/88, Commission decision of 11 May 1989, DR 61, p. 250, at p. 279; *Brozicek v. Italy*, 19 December 1989, § 34, Series A no. 167; *Padovani v. Italy*, 26 February 1993, § 20, Series A no. 257-B, p. 19; *Spadea and Scalabrino v. Italy*, 28 September 1995, § 24, Series A no. 315-B; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 42 *in fine*, ECHR 1999-V; *Moya Alvarez v. Spain* (dec.), no. 44677/98, ECHR 1999-VIII; and *Ždanoka v. Latvia* (dec.), no. 58278/00, 6 March 2003).

83. In view of the foregoing, the Court concludes that the applicants did not have at their disposal effective remedies in respect of their complaint under Article 3 of Protocol No. 1. It therefore dismisses the Government's objection of non-exhaustion of domestic remedies and holds that there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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. Pecuniary damage

85. All three applicants claimed compensation in respect of the loss of salary and benefits which they would have received between June 2001 and June 2005 in their capacity as MPs. They further claimed interest on those amounts. The total of Mr Petkov's claim under this head was 143,839.08 Bulgarian levs (BGN), that of Mr Georgiev's claim was BGN 126,326.56 and that of Mr Dimitrov's claim was 72,477.09 euros (EUR). Mr Petkov and Mr Georgiev additionally claimed BGN 17,292.81 and BGN 20,768.61 respectively in respect of the social security and pension contributions which the National Assembly would have paid in its capacity as their employer during that period.

86. The Government did not comment on the applicants' claims.

87. The Court is not satisfied that there exists a sufficient causal link between the alleged loss suffered by the applicants and the violations found (see, *mutatis mutandis*, *Podkolzina*, § 49, and *Melnychenko*, § 75, both cited above). It therefore dismisses their claims under this head.

B. Non-pecuniary damage

88. The applicants claimed compensation in respect of the distress and frustration experienced as a result of the unlawful failure of the electoral authorities to reinstate them on the list of parliamentary candidates. They further submitted that the unproven allegations of links with the former State security agencies had damaged their reputations. Mr Dimitrov additionally alleged that these matters had led to a serious deterioration in his state of health. Mr Petkov and Mr Georgiev claimed EUR 40,000 each and Mr Dimitrov claimed EUR 30,000.

89. The Government did not comment on the applicants' claims.

90. The Court observes that the applicants' complaint relating to the divulging of allegedly defamatory information about their links with the former State security agencies was declared inadmissible (see the admissibility decision in the present case). It follows that no compensation is due in respect of the damage, if any, which they suffered as a result of this. On the other hand, the Court agrees that the applicants suffered non-pecuniary damage on account of the electoral authorities' failure to abide by the final judgments in their favour and the lack of effective remedies in that respect. However, in the particular circumstances of the case and in view of the nature of the breaches found, the Court considers that the finding of a violation constitutes sufficient just satisfaction (see, *mutatis mutandis*, *The Georgian Labour Party*, cited above, § 155).

C. Costs and expenses

91. Mr Petkov did not formulate a claim under this head. Mr Georgiev sought the reimbursement of BGN 15,120 incurred in lawyers' and experts' fees for the various domestic proceedings and the proceedings before the Court. Mr Dimitrov also sought the reimbursement of EUR 7,156 incurred in such fees, and asked that EUR 5,300 of this sum be made payable into his lawyer's bank account, and EUR 1,856 into his own account. The applicants submitted fee agreements, time sheets and other documents.

92. The Government did not comment on the applicants' claims.

93. According to the Court's settled case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, and noting that part of the applications were declared inadmissible (see paragraph 4 above), the Court considers it reasonable to award Mr Georgiev EUR 2,500 and Mr Dimitrov EUR 3,000. To these amounts is to be added any tax that may be chargeable to the applicants.

D. Default interest

94. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* by five votes to two that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

2. *Holds* by five votes to two that there has been a violation of Article 13 of the Convention and *dismisses* by five votes to two the Government's preliminary objection;

3. *Holds* by five votes to two
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, in respect of costs and expenses, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants:

(i) to Mr Georgiev, EUR 2,500 (two thousand five hundred euros);
(ii) to Mr Dimitrov, EUR 3,000 (three thousand euros);

(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' claims for just satisfaction.

Done in English, and notified in writing on 11 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judges Maruste and Jaeger is annexed to this judgment.

P.L.
C.W.

DISSENTING OPINION OF JUDGES MARUSTE AND JAEGER

We disagree with the majority for two main reasons. First, we consider that the relevant domestic-law provision regulating the annulment of the registration of election candidates was precise and clear. Secondly, we regard the last-minute change in the list of candidates, ordered by the Supreme Administrative Court, as an unnecessary disturbance of the free conduct of the elections.

Before explaining our position in these matters in detail we would like to submit as a general remark that genuine democracy has the legitimate right to defend itself. It is for the legitimately elected parliament to assess the political situation and to establish rules which govern elections, including who can be a candidate and the conditions of eligibility.

We maintain the position that the relevant law governing elections at the material time in Bulgaria was clear and foreseeable. The valid law in the 2001 elections – the 2001 Election of Members of Parliament Act – stipulated that elections to the Bulgarian National Assembly were to be held on the basis of party lists respecting the autonomy of parties. In particular, section 48(5) of that Act gave the parties and coalitions full discretion in composing the lists for the election. Parties and coalitions were free to submit lists as they considered best, taking into account whatever considerations they chose. There was no right for an individual candidate to be registered or to be put on the list. The electoral authorities thus decided upon requests from parties, not upon individual motions. Such a setup is in conformity with democratic rules, including party autonomy and internal party democracy.

The initial registration of the candidates by law had to be – and in fact was – completed thirty days prior to the elections. Such a time-limit is indispensable for the proper preparation of the ballot sheets for the elections.

The provision at issue made one exemption to this time-limit for specific reasons, when collaboration with the former State security agencies was revealed or alleged: “Parties ... may request annulment of the registration of a person featuring on their candidate list in respect of whom information is revealed indicating that he or she collaborated...”. No individual rights of the candidates were addressed. The wording of the relevant provision did not require proof. Such an exemption may be considered necessary because incriminating material is likely to arise from outside sources, once the names of candidates become known to a wider public. On the other hand, the thirty-day time-limit did not allow for a final assessment of the facts with a subsequent comprehensive review by a commission or a court. The law thus gave to the parties and coalitions in explicit terms one single ground to ask for a change in their list of candidates up to seven days before

the elections. According to the Central Electoral Commission, each party or coalition could freely assess the facts establishing the existence of such collaboration, and their assessment was not subject to review by the electoral authorities.

In our view, this is a logical solution and in conformity with the free democratic process. It enables the party or coalition to react to facts or suspicions which may impair the prospect of success for the whole party, including all other candidates. This provision thus enabled the party or coalition to strike out of the list someone whose reputation was discredited or whose credibility could be easily challenged, so as to uphold their chances.

To our understanding, the coalition in question and the Central Electoral Commission acted in full accordance with these principles and the provision of the law itself was never challenged. Neither the coalition nor the Central Electoral Commission can be held responsible for the correctness or the legality of the discrediting or disqualifying information which was revealed. This is a matter to be addressed by those who revealed the information and by the alleged victims of this.

What was challenged by the applicants was not the substance of the disqualification, but the form and procedure of revealing the disqualifying information (report, and not certificate) and the subsequent reaction of their own party. The applicants succeeded in the Supreme Administrative Court. We consider that this could be regarded as an unjustified interference with internal party democracy and, since it took place at the very period of elections, it interfered with the free and smooth conduct of the elections. Notwithstanding these questions which the Court does not have to address, the problem was rightly determined domestically by the Constitutional Court: the election was valid. The applicants could only claim that the State was liable in tort, which they never did.

On the basis of the above we consider that the applicants' complaint about the electoral authorities' refusal to comply with the final judgments of the Supreme Administrative Court is ill-founded and not directly linked to the subject matter of the dispute.