

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 6414/02
by Stanka Dimova KOSEVA
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 22 June 2010 as a Chamber composed of:

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

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 3 January 2002,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Stanka Dimova Koseva, is a Bulgarian national born in 1941 and living in Yambol. She is represented by Mr M. Ekimdzhiev, a lawyer practicing in Plovdiv. The respondent Government are represented by Ms M. Kotseva, of the Ministry of Justice.

A. The circumstances of the case

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

1. The death of the applicant's son and the ensuing investigation

The applicant's son, Mr Borislav Mihaylov Slavchev, born in 1964, was detained in the Stara Zagora Prison on 20 December 1995. He died there on 27 July 1996. The ensuing investigation concluded that he had caused his own death, by negligently attempting to disconnect a pendant light from the ceiling of the projection room in the prison cinema, and electrocuting himself in the process. The applicant strongly contested this conclusion.

(a) The events up to 27 July 1996

On an unknown date in 1994 Mr Slavchev shot and killed Mr T.B. and Mr S.S., two notorious figures who were allegedly involved in organised crime, in Yambol, for which he was later prosecuted. On 16 February 1996 the Yambol Regional Court found him guilty of aggravated murder and unlawful possession of firearms, and sentenced him to twenty-five years' imprisonment. He appealed, and at the time of his death the case was pending on appeal, with a hearing listed for 30 September 1996.

On 20 December 1995 Mr Slavchev was taken to the Stara Zagora Prison. There he was assigned to the third section and placed in cell 116.

The exact course of the events of 27 July 1996 is disputed between the parties. The account which follows is based on the investigation's findings. In her application the applicant strongly contested these findings and asserted that Mr Slavchev had been ill-treated and killed in reprisal for the murder of the two individuals shot by him. She alleged that on seeing his dead body, she spotted three bleeding wounds along the spinal column, bruises on the back of the head, the shoulder-blades and the shins, and a fracture on the left side of the skull. None of those had been noted in the autopsy report.

At about 11 a.m. Mr Slavchev was visited by relatives. After they left, at about 3 p.m., he asked an inmate, Mr M.U., who was responsible for operating the projection equipment in the prison cinema and for the maintenance of electrical devices in the prison, to help him repair his immersion heater. Then Mr Slavchev treated his cellmates and M.U. to food and beverages brought by his visiting relatives.

At about 4 p.m. Mr Slavchev and M.U. left cell 116 and set off for the latter's workshop, which was situated in the projection room of the prison cinema. As M.U. had been ordered to repair a television set, the two first went to the prison television room. M.U. inspected the set and decided that it had to be taken to his workshop. Mr Slavchev helped him carry the set there. They notified sergeant H.N., who with a gesture allowed them to

remove the set. The person responsible for operating the door leading to the cinema room, which in turn led to the projection room, was sergeant K.K. The inmates asked him to let them in. Sergeant K.K. was aware that only M.U. was allowed unrestricted access to the cinema room. He nevertheless opened the door and let both men enter the cinema room and then go to the adjacent projection room. Shortly thereafter M.U. decided to take a repaired radio receiver to the officer on duty, and Mr Slavchev remained alone in the projection room. As he had decided to find a socket and an electrical bulb for some additional light in his cell, he tried to remove a pendant light from the ceiling. He stepped on a wooden stool and started unscrewing the socket connecting the light to the electrical installation. As he did not have the requisite skill, he made a mistake, was struck by the electrical current and fell unconscious to the floor. Soon afterwards M.U. and sergeant E.D. came and found him lying there. Alongside his body they saw the broken light and the upturned stool. He was taken to the prison medical unit, where an emergency physician, who had been called in, confirmed his death.

(b) The investigation

(i) By the civilian investigation authorities

(α) Investigatory steps taken immediately after Mr Slavchev's death

At 5.35 p.m. on 27 July 1996 an assistant investigator at the Stara Zagora Regional Investigation Service was alerted to the incident. He went to the prison and between 6.10 p.m. and 6.45 p.m. inspected the projection room and the medical unit. Also present at the inspection were Dr E.B., forensic specialist at the Stara Zagora Regional Hospital, a technician, and two witnesses. The investigator noted, *inter alia*, that Mr Slavchev's palms bore signs of the passing of an electrical current. He also noted bruises on his back, but did not describe them in detail. He observed that Mr Slavchev's clothes were soiled, but did not specify with what substance. Dr E.B. expressed the provisional opinion that Mr Slavchev had died as a result of electrocution. Pictures were taken of the projection room and of various items in it. More pictures were taken in the medical unit: one of Mr Slavchev's body lying face up on a bed, and two more of the palms of his hands and of his fingers.

Later that day Dr E.B. performed an autopsy on Mr Slavchev's body. He noted, *inter alia*, that when inspecting the body at the prison medical unit, he had found purple post-mortal spots in the lower unpressed parts of the body; they disappeared when pressed and re-appeared later. The spots were also observable at the autopsy. The doctor described the external appearance of the body and noted an oblong bruise on the lower back. The bruise, which measured four by eight centimetres, was covered with reddish scab under the skin level. The doctor also noted whitish crater-like formations on

the skin of the fingers of both palms, the biggest measuring two by one and a half centimetres, and bruises, which he did not describe in detail, on the shins. The internal examination did not show, in his opinion, any anomalies. He concluded, based on the changes in the skin of the palms, the situation found during the inspection of the scene of the incident, and the indications, in his view, of an instantaneous death, that Mr Slavchev had died as a result of electrocution. The current had passed from one hand to the other, moving along the blood vessels, where resistance had been weakest. The circuit had closed through the heart and had caused a cardiac arrest. The bruises found on the body had been caused by hard dull-edged objects and could have been caused by the fall from the stool. They had no bearing on the lethal outcome.

The autopsy report did not mention the time of death, saying merely that it had occurred in the preceding twenty-four hours. The report was not accompanied by photographs and bore no mention of the time when it had been drawn up. On 24 February 1997, following repeated requests by the applicant and an enquiry by the investigator, that Dr E.B. specified that that the autopsy had been carried out at 10 p.m.

Mr Slavchev's brain, lungs, heart, coronary artery, liver and kidneys were removed for histopathological examination.

Mr Slavchev was buried on 29 July 1996, despite the applicant's insistence that the burial be postponed to allow additional post-mortem examinations. The same day the Stara Zagora District Investigation Service opened a criminal investigation with a view to determining if anyone had negligently caused his death, contrary to Article 122 § 1 of the Criminal Code (see Relevant domestic law below).

(β) Inspections and expert reports drawn up during the investigation

On 29 July 1996, immediately after taking up the case, the investigator to whom it had been assigned inspected the projection room with the help of an electricity expert. On 8 and 27 August 1996 he carried out further inspections with another expert, and took the pendant light, various other electrical devices, wires and ceiling paint for testing. He carried out another inspection on 4 March 1997, with the first expert, with a view to examining the state of the television set and of an electrical wall panel.

On 5 August 1996 the investigator asked three experts to draw up a report on the state of the electrical installation in the room and to answer whether any defects in it had contributed to Mr Slavchev's death. He also asked them to specify whether Mr Slavchev had been negligent in dealing with the electrical wiring and to explain the exact mechanism of his death. The report, which was ready in January 1997, concluded that the installation had not been properly fitted and was not safe. It also found that Mr Slavchev had probably not checked for tension in the wires and had been holding them with both hands, maybe with a screwdriver in one hand.

An additional expert report, ordered by the investigator on 21 February 1997 and filed on 5 March 1997, said that the current causing Mr Slavchev's death had come from the wiring on the ceiling and not from other devices in the room, such as the television set or the electrical wall panel. On 8 May 1997 the investigator asked the experts to specify the exact defects in the electrical installation, to establish whether it had been originally fitted that way, and to determine whether Mr Slavchev had breached any safety rules. In their additional report, probably filed in September 1997, the experts said that the electrical switch on the wall had been wrongly fitted and that the hook on the ceiling had not been insulated. These defects most likely dated back to the original fitting of the installation in 1976.

In the meantime, on 26 August 1996, following repeated requests by the applicant, the Chief Prosecutor's Office instructed the Stara Zagora Regional Prosecutor's Office to order an exhumation of Mr Slavchev's body, a second autopsy, and a medical expert opinion on the nature and the origin of his injuries, and the cause of his death.

Accordingly, on 3 September 1996 the investigator, acting on the instructions of the Stara Zagora Regional Prosecutor's Office, asked three forensic physicians – Dr H.E. and Dr T.T. of the forensic medicine department of the Medical Faculty of Stara Zagora University, and Dr I.I., head of the forensic medicine ward of the Stara Zagora Regional Hospital – to determine, following an exhumation of Mr Slavchev's body, the cause of his death, the path of the electrical current, and the existence of traumatic injuries to the head, the body or the limbs, their character, how they had been caused, and whether they had been caused while Mr Slavchev was still alive. Special attention was be paid to the existence or lack of injuries in the area of the right ear, the back of the head, the back and the spinal column.

The exhumation was carried out between 10.45 a.m. and 1.15 p.m. on 5 September 1996, in the presence of the applicant, the three physicians, another forensic expert, the investigator and a prosecutor. The physicians removed Mr Slavchev's clothes and inspected his corpse, noting that it was in an advanced state of decomposition. They removed his head and hands at wrist level for further testing. After the inspection they re-buried the remains. In their report, drawn up on the same day, they described the external and internal state of the corpse and reached the following conclusion:

> "The inspection and the re-autopsy of the exhumed body of [Mr] Slavchev revealed: electrical burns on the palms and the fingers of both hands. No traces of traumatic injuries on the dermis, the muscles and the bones of the head, the neck, the torso and the limbs, apart from a linear fracture of the left temporal bone; standard autopsy incisions on the head, the neck, the thorax and the abdomen. Advanced state of decomposition.
>
> The cause of [Mr] Slavchev's death cannot be inferred solely on the basis of the exhumation's findings.

Characteristic injuries were found on the palms and the fingers of both hands – the so-called electrical burns, which have a characteristic groove-like and crater-like shape. The path of the electrical current was from one the hand to the other, through the heart.

The re-autopsy did not reveal traces of traumatic injuries of the dermis, the subcutaneous tissue, the muscles or the skeleton, apart from the autopsy incisions and the linear fracture of the left temporal bone which was produced when the skull was opened during the initial autopsy.

It cannot categorically be concluded whether some areas of the body had abrasions, because this layer was stripped off by the decomposition process on the majority of the corpse's surface. However, there are no haematomas, wounds or bone fractures."

Mr Slavchev's hands were later mislaid in the forensic medicine department of the medical faculty of Stara Zagora University, and were not found again.

On 5 March 1997 the applicant filed an objection against the report with the Stara Zagora Regional Prosecutor's Office. She strongly disputed its conclusions and said, *inter alia*, that the experts had failed to note signs of trauma on Mr Slavchev's back and shins, which were very clearly visible on the inside surface of the skin, which they had removed. She also expressed doubts as to the origin of the fracture on his head, pointing out that it had not been noted in the initial autopsy report. On 6 May 1997 the physicians stated that they saw no need to amend their conclusions in response to the applicant's objections.

The results of the histopathological examination and the materials taken from Mr Slavchev's body during the initial autopsy (see above) were sent by Dr E.B. to the investigator on 24 April 1997. On 20 May 1997 the investigator asked the physicians who had carried out the second autopsy to determine, on the basis of these materials, whether Mr Slavchev had been subjected to violence or intoxicated, and the cause of his death. In their report, filed on 9 June 1997, the physicians said that, having examined the materials, they found no indications of violence or intoxication. The materials were indicative of a sudden death, as would be the case with death from electrocution.

In the course of the investigation the investigator also commissioned expert reports on the mechanical traces left on the pendant light, its socket and the screws on the socket.

(γ) Witnesses interviewed during the investigation

On 29 July 1996 the investigator and an assistant investigator interviewed M.U. and two other inmates who had been among those offered treats by Mr Slavchev in the afternoon of 27 July 1996.

On 30 July 1996 the investigator interviewed sergeant K.K., two other guards, and an inmate who also had keys to the cinema room and had been present in a room near the cinema room in the afternoon of 27 July 1996.

On 2 August 1996 the investigator interviewed sergeant E.D.

On 6 August 1996 the investigator re-questioned M.U., and, with the help of an assistant investigator, interviewed eleven of Mr Slavchev's cellmates and another inmate.

On 20 August 1996 the investigator interviewed the head guard.

On 24 October 1996 the investigator interviewed a guard and the prison's chief electrician.

On 21 October 1996 the investigator questioned M.U. for a third time.

On 29 October 1996 the investigator interviewed four guards.

On 16 December 1996 investigator interviewed the prison's psychologist, and on 12 February 1997 the prison's social services inspector.

On 22 April 1997 an assistant investigator in Yambol interviewed the mother of Mr S.S., one of the individuals shot by Mr Slavchev. She denied making death threats against him or plotting to have him murdered.

On 2, 3, 4 and 5 June 1997 and 25 September 1997 two investigators in Yambol briefly interviewed seven individuals (including the widow of Mr T.B., one of the individuals shot by Mr Slavchev, and former associates of Mr T.B. and Mr S.S.), alleged by the applicant to have been implicated in the death. All of them denied having any knowledge of the circumstances of Mr Slavchev's death or having any contacts in the Stara Zagora Prison.

(δ) The position of the applicant

The applicant actively followed the investigation from the outset and on 22 October 1997 applied to join the proceedings as a civil party. The same day the investigator acceded to her request.

In the many requests filed with the investigation and the prosecution authorities the applicant urged them to find out whether Mr Slavchev's death had been caused wilfully. She pointed out that the death had occurred in shadowy circumstances and voiced strong suspicions that her son had been ill-treated and killed in reprisal for the murders that he had committed, at the instigation of relatives or associates of the individuals shot by him. In particular, she found it plausible that M.U. and sergeant E.D., possibly with the help of others, had tricked Mr Slavchev into going to the projection room, where nobody could see them, had ill-treated him and had then caused him to be electrocuted. She also alleged that the head of the Yambol Regional Investigation Service had been in the pay of Mr T.B., one of the individuals shot by Mr Slavchev.

The applicant found it strange that Mr Slavchev's clothes, which could have yielded plentiful information about any injuries to his body, had not been preserved and described. She also repeatedly questioned the conclusions of the medical experts and requested the investigator to commission a fresh report, to be drawn up by experts from Sofia, who would be less likely to be under local influences. In addition, she pointed out that Mr Slavchev had been an excellent amateur electrician and was

highly unlikely to have made a mistake when manipulating electrical wiring.

(ε) The death of M.U.

On 29 September 1997 M.U., who had benefited from an early release in July 1997, was shot dead by a Mr G.G., a notorious figure who was allegedly involved in organised crime. According to the conclusions of the ensuing criminal investigation, M.U. had tried to rob G.G. at gunpoint at his front door, but the latter had managed to take away his pistol and shoot him five times in self-defence. Shortly after that the applicant sent a letter to the investigator, asking him to question G.G. concerning his possible involvement in her son's death. The letter was ignored.

(ζ) The investigator's conclusion and the ensuing actions of the prosecution authorities

On 12 November 1997 the investigator recommended that the proceedings be discontinued. In his report he set out in detail the findings of the different expert reports and concluded that the cause of the accident leading to Mr Slavchev's death had been a failure on the part of those who had fitted the electrical installation in the projection room in 1976 to wire it correctly. Mr Slavchev had also been at fault, for failing to check that there was no current before trying to remove the pendant light and its socket.

On 12 January 1998 the Stara Zagora Regional Prosecutor's Office referred the case back to the investigator, considering that it was necessary to question G.G. (see above) about whether he knew Mr Slavchev, maintained any contacts with M.U., or knew anything about Mr Slavchev's death. Accordingly, on 29 January 1998 the investigator questioned G.G. In the interview, which lasted ten minutes, G.G. denied knowing Mr Slavchev or M.U. or anything about the circumstances of Mr Slavchev's death.

In a note of 9 March 1998 the investigator said that he maintained his recommendation for the proceedings to be discontinued, because the additional material had not prompted him to alter his findings.

On 24 July 1998 the Stara Zagora Regional Prosecutor's Office decided to discontinue the investigation. It noted that a few days before his death Mr Slavchev had mentioned to his cellmates that he wished to obtain an electrical bulb in order to have more light in the cell. It described the events of 27 July 1996 and noted that the medical experts had found that Mr Slavchev's death had been the result of electrical current running from his one hand to the other, through the heart. The bruises found on his lower back and his shins, which were not the cause of death, could have been a result of his impact against the stool when he fell. The second autopsy had been unable to check for bruises in view of the corpse's advanced stage of decomposition, but had confirmed the lack of injuries or broken bones. The histopathological examination had found no traces of violence or

intoxication. The experts had concluded that death had occurred rapidly, as one would expect of death from electrocution. The technical expert report had found that the electrical wiring in the room had been wrongly fitted – probably on account of negligence –, was not properly insulated and was not in compliance with the applicable technical and safety requirements. This had probably occurred in 1976, when the cinema room had been built. The experts had concluded that the probable passage of the electrical current had been from Mr Slavchev's left hand, through his body and to his right hand, in which he had been holding the metal parts of the pendant light he was trying to remove. With a view to shedding further light on the events, the experts had been asked to clarify whether Mr Slavchev's hands had touched the light or another electrical device, such as the television set or the electrical wall panel. The experts had concluded that at the time of his death he had been in contact with the light, not the television set or the electrical wall panel. There was thus no evidence that the death had been caused by the wilful criminal acts of another. On the other hand there was evidence of breaches of the safety rules in the fitting of the electrical installation in 1976, which had led directly to Mr Slavchev's death. However, even assuming that this had amounted to professional negligence, contrary to Article 123 § 1 of the Criminal Code (see Relevant domestic law below), those responsible could not be prosecuted, as the relevant limitation period had expired a long time previously.

On an appeal by the applicant, on 7 September 1998 the Plovdiv Appellate Prosecutor's Office quashed the decision to discontinue the investigation and sent the case to the Plovdiv Regional Military Prosecutor's Office. In its view, since Mr Slavchev had died in prison, where certain members of the staff were subject to the jurisdiction of the military courts, the Stara Zagora Regional Prosecutor's Office had not been competent to conduct or discontinue the investigation.

(ii) By the military investigation authorities

Having received the case file on an unspecified date, on 27 January 2000 the Plovdiv Regional Military Prosecutor's Office refused to open an investigation. On an appeal by the applicant, on 21 March 2000 the Military Appellate Prosecutor's Office set this decision aside. Accordingly, on 9 May 2000 the Plovdiv Regional Military Prosecutor's Office opened an investigation with a view to determining if any members of the prison staff had failed to perform their duties concerning the supervision of prisoners, thus negligently bringing about Mr Slavchev's death, contrary to Article 387 of the Criminal Code (see Relevant domestic law below).

On 11, 12 and 13 September 2000 the investigator to whom the case was assigned interviewed several current and former members of the prison staff. On 24 October 2000 he charged sergeant K.K. with failing to perform

his duties and thus negligently causing the death of Mr Slavchev, contrary to Article 387 of the Criminal Code, and questioned him.

On 6 November 2000 the investigator finished his work on the case and recommended that sergeant K.K. be brought to trial.

On 5 December 2000 the Plovdiv Regional Military Prosecutor's Office referred the case for further investigation. It noted that the applicant had not been given an opportunity to take part in the proceedings, and that it had not been clarified who were responsible for the improper fitting of the electrical installation. Nor had the facts surrounding sergeant K.K.'s responsibility been fully elucidated. Finally, it was necessary to establish whether other members of the prison staff had negligently allowed Mr Slavchev to move around the prison, and, if so, to charge them as well.

With the assistance of experts the investigator conducted an experiment, designed to determine whether sergeant K.K. had been able to see the projection room from his post. He also gathered documents relating to the construction of the cinema room in 1976, questioned the prison electrician and a former governor who had been in charge of the prison in the 1970s, and the prison electrician at the time of Mr Slavchev's death and an inmate.

On 27 November 2001 the investigator again recommended that the investigation be discontinued. On 21 December 2001 the Plovdiv Regional Military Prosecutor's Office agreed and discontinued it, reasoning that sergeant K.K.'s actions had not resulted directly in Mr Slavchev's death. No other members of the prison staff falling under the jurisdiction of the military courts could be held responsible either, as none of them had obligations with regard to the electrical installations in the prison.

The applicant appealed against this decision, reiterating her allegations that her son had been killed by M.U., sergeant E.D. and another prison officer. In a decision of 21 June 2002 the Plovdiv Regional Military Court referred the case back for further investigation, without touching upon the merits of the appeal. It found that the investigator and the prosecutor had taken certain investigatory steps after the decision to discontinue the investigation, without documenting them in a fresh decision, which made it impossible to examine the points which the applicant wished to raise. It went on to say that Mr Slavchev's minor children had not been given an opportunity to take part in the proceedings, if necessary though a special representative. On an appeal by the applicant, on 6 November 2002 the Military Court of Appeal upheld this decision, fully agreeing with its reasoning.

The investigator appointed counsel for Mr Slavchev's children and allowed them to acquaint themselves with the case file. After that, on 1 April 2003, he again recommended that the investigation be discontinued, saying that no new facts had emerged. On 20 May 2003 the Plovdiv Regional Military Prosecutor's Office followed this recommendation and decided to discontinue the investigation. It reasoned that Mr Slavchev's

death had been the result of the passage of an electrical current through his hands, passing through his heart and stopping its activity, as established by the medical expert reports. The medical experts had not found signs of violence or intoxication. The technical experts had established that the electrical installation had not been properly fitted and secured, and that the cinema room had not been constructed in compliance with the applicable regulations. It was true that sergeant K.K. had breached his duties in allowing Mr Slavchev to move between different zones of the prison without the required permission and unaccompanied by a member of staff. However, that had constituted only a disciplinary offence and not a criminal one, as it did not have a direct causal link with Mr Slavchev's death. Sergeant K.K. could not have foreseen that Mr Slavchev would try to remove the pendant light in the projection room. The limitation period for imposing a disciplinary punishment had already lapsed, as had that for criminally prosecuting those responsible for the fitting of the electrical installation. No other criminal offences allegedly committed by members of the prison staff had been established during the investigation.

On appeals by the applicant and Mr Slavchev's wife, on 30 June 2003 the Plovdiv Regional Military Court upheld the decision to discontinue the investigation. It found that there was no convincing evidence indicating that sergeant K.K. had failed to perform his duties to supervise the inmates, thus negligently causing Mr Slavchev's death. The court set out its findings of fact, and noted, in particular, that the electrical current which had caused Mr Slavchev's death had not come from the television set or the electrical wall panel. It was apparent that Mr Slavchev had tried to remove the electrical socket of the pendant light. In these circumstances, it had not been established that any members of the prison staff had contributed to his death by failing to perform their duties. Furthermore, the investigation had fully clarified the facts and had been objective, comprehensive and thorough, obviating the need to carry out further investigative steps.

The applicant's ensuing attempts to obtain the reopening of the proceedings were unsuccessful.

2. The proceedings concerning the applicant's employment

In 1994 the applicant, who used to work as a teacher, was dismissed. She brought proceedings against her former employer. The proceedings ended on 20 December 1999 with a final judgment of the Supreme Court of Cassation. The applicant's ensuing request for reopening was declared inadmissible on 20 June 2000, and her appeal against this ruling was rejected on 9 January 2001. The applicant tried to lodge a further appeal, which was left without examination by the Supreme Court of Cassation in a decision of 21 June 2001.

3. The proceedings relating to the plot of land

In 1992 the applicant agreed to sell to another person a plot of land. As she apparently failed to perform her obligation, the other party to the contract brought proceedings against her. They ended in a judgment of 21 May 1997 in which the Yambol Regional Court found against the applicant. She did not lodge a petition for review and the judgment became final. Her subsequent request for reopening was rejected on 21 December 1999, and her further requests for reopening were left without examination on 4 July 2000 and on 18 July 2001.

4. The applicant's detention on 10 February 2003

In 2002 the Plovdiv District Prosecutor's Office opened an inquiry against the applicant pursuant to a complaint by one of her neighbours. In the course of the inquiry she was asked to appear for a psychiatric examination, but refused to do so. On 31 July 2002 the Plovdiv District Prosecutor's Office ordered that she should be brought by force to a psychiatric hospital, and kept there for up to thirty days to undergo a psychiatric examination. No steps were taken to enforce this order.

On 29 December 2002 the Plovdiv District Prosecutor's Office varied its order. It found that the prerequisites for the applicant's detention were no longer in place, as it had not been established that her conduct represented a threat for others or that she was likely to commit an offence leading to serious consequences. However, the police were not apprised of that decision, and thus remained under the impression that the initial order was still in force.

As a result, on 24 January 2003 they summoned the applicant. She reported at her local police station on 10 February 2003, where she was arrested and taken to a psychiatric clinic. She was released the same day.

Following her release, she complained to the Plovdiv Regional Prosecutor's Office. On 21 March 2003 that Office upheld the two decisions of the Plovdiv District Prosecutor's Office. It found that the initial order had been warranted at the material time. However, when enforced, it had already been varied and was no longer in force. On an appeal by the applicant, on 12 May 2003 the Plovdiv Appellate Prosecutor's Office upheld this decision. However, it observed that the applicant should not have been detained and that in omitting to notify the police that the order for her detention had been varied the Plovdiv District Prosecutor's Office had committed a serious error.

B. Relevant domestic law

1. Criminal law and procedure

Under Article 122 § 1 of the 1968 Criminal Code, it is an offence to cause the death of another through negligence. Article 123 § 1 of the Code makes it an offence to cause the death of another through the negligent performance of an occupation or a regulated high-risk activity. Article 387 § 1 of the Code makes it an offence for military or police officers to, *inter alia*, fail to perform their duties, if this leads to harmful consequences. The offence is aggravated if, *inter alia*, the harmful consequences are serious (Article 387 § 2). The conduct proscribed by Article 387 § 1 is criminal even if the harmful consequences are caused merely negligently (Article 387 § 4). These offences are all publicly prosecutable.

Article 192 §§ 1 and 2 of the 1974 Code of Criminal Procedure, as in force at the relevant time, provided that investigations concerning publicly prosecutable offences could only be opened by a prosecutor or an investigator. Prosecutors could discontinue investigations when, *inter alia*, there was no evidence of an offence, or the alleged act did not constitute an offence (Articles 21 § 1 (1) and 237 § 1 (1) and (2)). Prior to 2001, this decision was subject to appeal to a higher prosecutor, or to automatic review by that prosecutor (Articles 181 and 237 §§ 3 to 9, as in force at the relevant time). In April 2001 the Code was amended to provide for judicial review at the request of those concerned (Article 237 § 3, as amended in April 2001).

At the relevant time offences allegedly committed by police officers or by officers, sergeants and privates of other ministries and agencies were tried by military courts (Article 388 § 1 (2) of the 1974 Code, as in force at the relevant time). Where a case would fall within the jurisdiction of the military courts, the investigation was handled by military investigators and prosecutors.

2. The 1988 State Responsibility for Damage Act

Section 1(1) of the 1988 Act, originally entitled the State Responsibility for Damage Caused to Citizens Act, renamed on 12 July 2006 the State and Municipalities Responsibility for Damage Act ("the SRDA"), 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. Section 1(2) provides that compensation for damage resulting from unlawful decisions may be claimed after those decisions have been annulled in prior proceedings. The Supreme Administrative Court has held that it is competent to review the lawfulness of a person's detention by the police and award compensation by reference to the above provisions (реш. № 11858

от 28 ноември 2006 г. по адм. д. № 9165/2006 г., ВАС, V отд., реш. № 5230 от 9 май 2008 г. по адм. д. № 11884/2007 г., ВАС, III отд.).

Section 2(1)(1) provides that the State is liable for damage caused to individuals by the investigation or the prosecution authorities or the courts through unlawful detention, provided that such detention has been set aside for lack of lawful grounds. Over the years the application of this provision has generated an abundant case-law.

Section 2(2) stipulates that, under certain conditions, the State is liable for damage sustained by individuals on account of their being charged with a criminal offence.

Section 6(1) provides that the right to compensation in respect of pecuniary damage is inheritable, but that the right to compensation in respect of non-pecuniary damage survives the death of the individual concerned only if he or she has brought a claim. There is no reported case-law on the application of this provision.

3. The general law of tort

The general rules of the law of tort are set out in sections 45 to 54 of the 1951 Obligations and Contracts Act. Section 52 provides that the amount of compensation in respect of non-pecuniary damage is to be determined by the court in equity. In application of this provision, the former Supreme Court held that the parents of an individual who has died cannot seek compensation in respect of the non-pecuniary damage suffered by him prior to his death, because of the lack of a sufficient causal link. They can, however, claim compensation in respect of their own distress and anguish flowing from the death (реш. № 3287 от 27 декември 1971 г. по гр. д. № 1964/1971 г., ВС, I г. о.).

COMPLAINTS

1. In a letter dated 6 February 2002 and postmarked 12 February 2002 the applicant complained that her son had been killed in prison and that the authorities had failed to provide appropriate redress in that respect by, *inter alia*, not conducting an effective investigation into the circumstances of his death.

2. In her initial letter, dated 19 December 2001 and postmarked 3 January 2002, the applicant complained under Article 6 § 1 of the Convention that she had been dismissed from her employment in 1994, that the related proceedings had been unfair and excessively lengthy, and that the courts had been biased.

3. In the letter dated 6 February 2002 and postmarked 12 February 2002 the applicant complained that the proceedings relating to the plot of land

had been unfair and excessively lengthy, and that she had been wrongly deprived of the plot.

4. In a letter dated and postmarked 21 May 2003 the applicant complained that her detention on 10 February 2003 had been unlawful.

THE LAW

A. The death of the applicant's son and the ensuing investigation

The Court considers that the applicant's complaints in respect of the death of Mr Slavchev, the ensuing investigation and the availability of effective remedies in these respects fall to be examined under Articles 2, 3 and 13 of the Convention, which, in so far as relevant, provide:

Article 2 (right to life)

"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. ..."

Article 3 (prohibition of torture)

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

Article 13 (right to an effective remedy)

"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."

1. The parties' submissions

The Government submitted that the applicant had failed to make use of the available domestic remedies in respect of her complaint about the death of her son, as she had not brought a claim under section 2(2) of the SRDA. In such proceedings she could have obtained compensation in respect of any damage sustained as a result of actions or omissions of the authorities.

The Government further submitted that the authorities had not failed in their duty to protect Mr Slavchev's life, because he had died as a result of an unforeseeable accident. The prison staff had been unaware that he had intended to procure additional lighting for his cell and that the electrical installation in the projection room was defective. They could not therefore have been expected to take any measures in these respects. There was no firm proof that Mr Slavchev had been ill-treated during his time in prison. No such evidence had come out in the course of the investigation into the circumstances of his death.

Lastly, the Government argued that there had been no breach of the authorities' obligation to investigate Mr Slavchev's death, because they had carried out a comprehensive and impartial investigation into the matter. The experts heard in the course of the investigation had found no substance to the allegations that the death had been caused wilfully. This conclusion had been further confirmed by the witness statements. All these elements had fully elucidated the relevant facts. The authorities had also investigated the allegations that the prison staff had negligently failed to ensure the inmates' well-being.

The applicant submitted that the provision relied on by the Government was entirely inapposite and clearly could not supply a remedy in respect of her grievances.

The applicant further argued that the authorities had been under an obligation to protect Mr Slavchev's bodily integrity and life while he was in custody. Their failure to discharge this duty adequately had led to his death. They had not built the prison's projection room in line with the relevant safety requirements, but had still put it to use. The electrical installation in the room did not comply with the technical and safety rules, most probably as a result of negligent fitting. Sergeant K.K. had breached the prison regulations by allowing Mr Slavchev to enter the cinema room without permission and unescorted. The combination of these factors, indicative of gross negligence incompatible with the authorities' duties under Article 2, had led to Mr Slavchev's death. Even if it could be accepted that the authorities had been unaware of his intention to remove a light and a socket, they could not have been ignorant of the defects in the electrical system. They had been bound to take all necessary measures to correct them and to prevent prisoners from entering a hazardous building. However, they had failed to do so, but could not be held liable for this on account of the lack of provisions outlawing such conduct.

The applicant also argued that the investigation into Mr Slavchev's death had not been effective. In particular, Sergeant K.K., who had clearly breached his duties by allowing Mr Slavchev to enter the cinema room, had not been put on trial. No attempt had been made to clarify whether members of the prison administration knew about the problems with the electrical installation or had tried to resolve them. The investigation had shed insufficient light on Mr Slavchev's condition at the time when he was found on the floor. It had not even been clarified whether at that point he was still alive and how much time had elapsed between the incident and the arrival of the doctor who pronounced him dead. The investigation had thus failed to supply answers to key questions, such as the availability of timely and adequate medical assistance.

Lastly, the applicant submitted that she had not had any effective remedies in respect of the breaches of her rights under Articles 2 and 3. She reiterated her position that the remedy suggested by the Government was

clearly inapposite. She further argued that a tort claim under sections 45 or 49 of the 1951 Obligations and Contracts Act or section 1 of the SRDA would not be effective in practice, for two reasons. First, the direct causal link required under the courts' case-law would be impossible to make out. Second, under section 6(1) of the SRDA and the courts' case-law, the heirs of a deceased person were barred from seeking compensation in respect of any non-pecuniary damage sustained before the death unless that person had brought such a claim himself.

2. The Court's assessment

(a) Procedural complaint under Articles 2 and 3

The Court will first examine the complaint concerning the effectiveness of the investigation. It observes that whenever a detainee dies in suspicious circumstances, Article 2 requires the authorities to conduct an effective investigation to enable the cause of death to be established and anyone responsible for it to be identified and punished (see, among other authorities, *Salman v. Turkey* [GC], no. 21986/93, § 105, ECHR 2000-VII, and *Slimani v. France*, no. 57671/00, §§ 30 and 47, ECHR 2004-IX (extracts)). The relevant principles in that regard have been summarised in paragraph 32 of the Court's judgment in *Slimani* (cited above). The Court would add that the nature and degree of scrutiny which satisfy the minimum threshold of effectiveness depend on the circumstances of each particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work. Furthermore, the obligation to investigate is not one of result, but of means only (see, as a recent authority, *Babat and Others v. Turkey*, no. 44936/04, § 39, 12 January 2010, with further references).

In the instant case, the authorities took a number of investigatory steps. The death scene was immediately inspected by the investigator and forensic experts and photographs were taken of the scene and of Mr Slavchev's body. An autopsy was performed on the day of the death by a forensic expert (contrast *Tepe v. Turkey*, no. 27244/95, § 181, 9 May 2003). The autopsy report clearly identified the cause of death and specified that it had been instantaneous, which obviated the need to enquire into the availability of timely medical assistance (contrast *Anguelova v. Bulgaria*, no. 38361/97, § 142, ECHR 2002-IV). It also featured a description, albeit a brief one, of the other injuries sustained by Mr Slavchev (contrast *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII). The expert described both internal and external features of Mr Slavchev's body, and took histopathological samples which were later analysed in detail (contrast *Tanlı v. Turkey*, no. 26129/95, § 150, ECHR 2001-III). It is true that he did not specify the time of death, but in the circumstances of the case that does not seem to have been crucial for the elucidation of the facts (contrast *Velikova v. Bulgaria*,

no. 41488/98, § 79 *in limine*, ECHR 2000-VI). Later, upon the insistence of the applicant, the authorities ordered an exhumation and a second autopsy, which was performed by three forensic experts. It confirmed the findings of the first one and found no traces of traumatic injuries (see, *mutatis mutandis*, *Dölek v. Turkey*, no. 39541/98, § 77, 2 October 2007). It is regrettable that when the applicant challenged the experts' conclusions they did not give her a detailed reply, merely saying that they saw no need to amend their findings. However, that did not in itself invalidate the autopsy's findings or effectiveness.

The investigator later carried out further inspections of the death scene, and appointed several electricity and other experts with a view to determining the exact mechanism of Mr Slavchev's electrocution. He and other investigators interviewed a number of inmates and prison officers, with a view to establishing the precise chronology of the events of 27 July 1996. They also interviewed various other witnesses – some of which at the applicant's express request –, with a view to testing the possibility that individuals related to those shot and killed by Mr Slavchev might have been involved in his death. When requested by the prosecuting authorities, the investigator additionally interviewed G.G., the individual responsible for the death of the main witness, M.U. Later, during the military investigation, the authorities conducted further interviews and gathered more evidence, with a view to clarifying whether any prison officials bore liability for the defective electrical installation.

The Court finds that the authorities took what appears to be reasonable investigative steps with due consideration of the applicant's requests for specific investigatory actions (contrast *Velikova*, cited above, §§ 79 *in fine* and 83). They gave reasons why they decided to discontinue both the civilian and the military investigations. The failure to bring charges against sergeant K.K. did not detract from the investigation's effectiveness and the military prosecuting authorities convincingly substantiated their decision on that point. In any event, Article 2 does not entail the right to have third parties prosecuted or sentenced for a criminal offence (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 96, ECHR 2004-XII).

As to the investigation's promptness, the Court observes that it started immediately and proceeded at a satisfactory pace throughout 1996 and 1997, finishing in July 1998, when the Stara Zagora Regional Prosecutor's Office decided to discontinue it. In view of the significant number of investigatory steps taken by the authorities during that period, the Court finds that they may be regarded as having proceeded with reasonable expedition. It is true that there was subsequently a gap of about a year and a half before the military prosecuting authorities took up the case and started an additional investigation. However, that investigation, which dealt with a separate matter, cannot be described as a continuation of the civilian investigation, which had already shed ample light on the circumstances

surrounding Mr Slavchev's death (contrast *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 15 and 59, 20 December 2007).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) Substantive complaint under Articles 2 and 3

The Court does not find it necessary to determine whether the applicant has failed to exhaust domestic remedies, as it considers that her complaint in respect of the death of her son is manifestly ill-founded, for the reasons set out below.

A summary of the general principles concerning the State's duty to take measures to protect the lives of persons in custody and to account for fatal incidents involving such persons can be found in the Court's decisions in the cases of *Douglas-Williams v. the United Kingdom* ((dec.), no. 56413/00, 8 January 2002) and *Younger v. the United Kingdom* ((dec.), no. 57420/00, ECHR 2003-I).

In the instant case, according to the applicant's allegations, Mr Slavchev's life was at risk because he had killed two notorious figures from the organised-crime world and could therefore fear reprisals by their associates and/or relatives. In view of the suspicious circumstances of his death, those allegations cannot be discarded as prima facie untenable (see, *mutatis mutandis*, *Ülkü Ekinci v. Turkey*, no. 27602/95, § 141, 16 July 2002, and *Buldan v. Turkey*, no. 28298/95, § 78, 20 April 2004). However, the investigation, which the Court did not find ineffective, concluded, based on a number of witness statements and expert reports, that the death was not due to violence. Although the applicant pointed to certain dubious elements, such as the suspicious death of M.U., the last person to have seen Mr Slavchev alive, and the fact that Mr Slavchev had been an excellent amateur electrician, she has not adduced enough evidence to cast doubt on the above conclusion or allow the Court to find, beyond reasonable doubt – the standard of proof required under the Convention – that Mr Slavchev was killed in the circumstances alleged by her (see, *mutatis mutandis*, *Sabuktekin v. Turkey*, no. 27243/95, §§ 93-95, ECHR 2002-II; as well as *Ülkü Ekinci*, §§ 142-43, and *Buldan*, §§ 79-81, both cited above). There are therefore not enough elements to enable the Court to conclude that the risk to Mr Slavchev's life from the actions of third parties was sufficiently real and immediate to require the authorities to take measures to avoid it. Nor is there sufficient evidence to conclude, beyond reasonable doubt, that, as alleged by the applicant, Mr Slavchev was ill-treated prior to his death, so as to find a violation of Article 3.

It remains to be determined whether the authorities were nonetheless responsible for Mr Slavchev's death (see, *mutatis mutandis*, *Demiray v. Turkey*, no. 27308/95, § 45, ECHR 2000-XII).

According to the investigation's findings, Mr Slavchev died as a result of coming into contact with unsecured electrical wiring while trying to remove a pendant light from the ceiling of the prison's projection room. The Court must therefore determine whether the authorities knew or ought to have known about that risk, and whether they took the necessary practical measures to prevent it from materialising.

The Court finds, firstly, that the authorities had no way of knowing that Mr Slavchev would try to remove the pendant light. Indeed, the investigation specifically dealt with that point and concluded that Sergeant K.K., the prison officer who had allowed Mr Slavchev to enter the cinema room, could not have foreseen his actions there. Nor does it seem that the authorities were aware of the defects in the electrical installation, which had been fitted in 1976 and had apparently not been touched ever since.

It must, however, also be established whether the authorities ought to have known about the defect in the installation and about the risk that it might represent to inmates. On that point, the Court starts by observing that as a rule, and barring special circumstances, the mere fact that an electrical installation is not properly secured would hardly raise an issue under Article 2, as this would mean imposing an excessive burden on the authorities (see, *mutatis mutandis*, *Leray and Others v. France* (dec.), no. 44617/98, 16 January 2001, concerning a shipwreck; *Pereira Henriques v. Luxembourg* (dec.), no. 60255/00, 26 August 2003, concerning safety at a construction site; *Bone v. France* (dec.), no. 69869/01, 1 March 2005, concerning a railway accident; *Dodov v. Bulgaria*, no. 59548/00, § 100-03, ECHR 2008-..., concerning the disappearance of an elderly lady suffering from Alzheimer's from a nursing home; *Furdík v. Slovakia* (dec.), no. 42994/05, 2 December 2008, concerning a mountain-rescue operation; and *Molie v. Romania* (dec.), §§ 39-48, no. 13754/02, 1 September 2009, concerning a fatal accident in a school sport facility). It remains to be seen whether such an issue arose in the special circumstances of the present case.

The prison building where Mr Slavchev met his death was erected, owned and operated by the authorities. In addition, the investigation found that his death was due not to a mere failure to secure an otherwise properly fitted electrical installation against mishandling, but to a negligent construction defect which made that installation more risky. However, the Court is not persuaded that in the circumstances those two factors are sufficient to lead to the conclusion that the State's responsibility for the death is engaged. The installation had been in operation for about twenty years without apparently causing any incidents. As pointed out by the experts, the defect in it became a source of heightened risk to Mr Slavchev solely as a result of his unpredictable and inherently risky actions when trying to remove a socket from the ceiling. It cannot therefore be said, notwithstanding the tragic circumstances of the case, that the authorities' actions or omissions were the decisive factor behind Mr Slavchev's death

(see, as an example to the contrary, *Kalender v. Turkey*, no. 4314/02, §§ 45-47, 15 December 2009, where the Court identified a series of grave omissions whose combination, rather than the conduct of the individuals concerned, was the decisive factor behind the loss of life in a railway accident). Indeed, Article 2 cannot be interpreted as guaranteeing to every individual an absolute level of security in any activity in which the right to life may be at stake (see *Bone*, and, more recently, *Molie* § 44, both cited above), even in a custodial setting. Bearing in mind, among other things, the unpredictability of human conduct, the scope of the State's positive obligation under that provision must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (see, among other authorities, *Younger*, cited above).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(c) Complaint under Article 13

According to the Court's case-law, Article 13 applies only where an individual has an arguable claim to be the victim of a violation of a Convention right. Having regard to its conclusion that the applicant's complaints under Article 2 are manifestly ill-founded, the Court finds that she did not have an arguable claim. Article 13 is therefore inapplicable to her case (see, among many other authorities, *Banks and Others v. the United Kingdom* (dec.), no. 21387/05, 6 February 2007).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. The applicant's dismissal and the related proceedings

In respect of her complaint about her dismissal and the fairness and length of the ensuing proceedings, the applicant relied on Article 6 § 1 of the Convention.

The Court observes that the proceedings in question ended with a final judgment of 20 December 1999, whereas the applicant's letter in which she raised complaints in respect of them was dated 19 December 2001 and postmarked 3 January 2002. The applicant's request for reopening, which was rejected, did not restart the running of the six-month time-limit (see, as recent authorities, *Eder v. Germany* (dec.), no. 11816/02, 13 October 2005, and *Sapeyan v. Armenia*, no. 35738/03, § 23, 13 January 2009). It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

In so far as the applicant may be taken to complain that her request for reopening was not examined, this complaint is incompatible *ratione materiae* within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4, because Article 6 does not guarantee the

reopening of proceedings concluded by means of a final judgment and does not apply to proceedings in which the courts examine such requests.

C. The proceedings concerning the plot of land

The Court considers that the complaints about the fairness and the length of the proceedings concerning the plot of land fall to be examined under Article 6 § 1 of the Convention. However, it does not find it necessary to deal with their merits, for the following reasons.

The proceedings ended in a judgment of the Yambol Regional Court of 21 May 1997, which was not reviewed by the Supreme Court. The complaint concerning the alleged unfairness of the proceedings is therefore inadmissible for non-exhaustion of domestic remedies. As to the complaint about the length of the proceedings, it is out of time, as the applicant first raised it in the application form dated 6 February 2002 and postmarked 12 February 2002. As explained above, her requests for reopening, which were rejected, did not restart the running of the six-month time-limit.

In so far as the applicant may be taken to complain under Article 1 of Protocol No. 1 that as a result of the courts' decisions she has lost her title to the plot, this complaint is likewise inadmissible for non-exhaustion of domestic remedies, for the reasons set out above.

It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

D. The applicant's detention on 10 February 2003

The Court considers that the complaint relating to the applicant's detention on 10 February 2003 falls to be examined under Article 5 § 1 (e) of the Convention.

The Court has in the past found that Bulgarian law governing detention ordered by a prosecutor for the purpose of a psychiatric examination, as in force at the relevant time, did not correspond to the requirements of this provision (see *Varbanov v. Bulgaria*, no. 31365/96, §§ 43-53, ECHR 2000-X, and *Kepenerov v. Bulgaria*, no. 39269/98, §§ 35-38, 31 July 2003). However, it is not the Court's role to consider in the abstract whether national law conforms to the Convention (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, § 153, Series A no. 324, and *Pham Hoang v. France*, 25 September 1992, § 33, Series A no. 243). It must confine its attention, as far as possible, to the particular circumstances of the case before it (see, among other authorities, *Wettstein v. Switzerland*, no. 33958/96, § 41, ECHR 2000-XII, and *Sommerfeld v. Germany* [GC], no. 31871/96, § 86, ECHR 2003-VIII). It observes that in the present case the decision on the applicant's detention had already been varied at the time when she was actually taken into

custody. She was thus arrested not on the basis of that decision – and the underlying legal provisions –, but by reason of a failure in communication between the prosecutor's office and the police. This state of affairs was later criticised by the higher prosecutors' offices, which, moreover, found that her deprivation of liberty had had no legal basis. In these circumstances, it appears that it was open to the applicant to bring a claim under section 1(1) or section 2(1) of the SRDA (see Relevant domestic law above). Such a claim would have required the courts to review the legality of her detention and to award compensation for any damage sustained. In these circumstances, the Court concludes that the applicant has failed to exhaust domestic remedies (see, *mutatis mutandis*, *A.B. v. France*, no. 18578/91, Commission decision of 19 May 1995, unreported; *Pansart v. France*, no. 24684/94, Commission decision of 29 November 1995, unreported; *Montousse v. France*, no. 21976/93, Commission decision of 29 November 1995, unreported; and *Mathieu v. France* (dec.), no. 68673/01, 2 September 2004).

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Peer Lorenzen
President