CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 46317/99
by Zoya Kirilova OGNYANOVA and Giulfere Yusein CHOBAN
against Bulgaria

The European Court of Human Rights (First Section), sitting on 6 January 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having regard to the above application lodged on 17 November 1998 and registered on 23 February 1999,

Having regard to the decision of 15 May 2003 to communicate the application to the respondent Government under Rule 54 § 2 (b) of the Rules of Court,

Having regard to the fact that no observations were submitted by the respondent Government,

Having regard to the observations submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Zoya Kirilova Ognyanova and Ms Giulfere Yusein Choban, are Bulgarian nationals of Roma ethnic origin who live in the village of Dabovo. They are represented before the Court by Mr I. Dimitrov and Mr Y. Grozev, lawyers practising in Sofia.

A. The circumstances of the case

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

At approximately 2 a.m. on 6 June 1993 Mr Zahari Alexandrov Stefanov, a person of Roma ethnic origin, de facto spouse of the first applicant and son of the second applicant, died after having fallen down from room 36 on the third floor of the police station in the town of Kazanlak the previous morning. Numerous injuries were found on his body. The ensuing investigation ended with the conclusions that Mr Stefanov had voluntarily jumped from the window of the room where he had been brought for questioning and that all injuries had been the result of his fall. The applicants contest these conclusions.

1. The events of 4 June and the morning of 5 June 1993

At an unknown time on 4 June 1993 Mr Stefanov, then aged twenty-three, was arrested by the police in the town of Nikolaevo together with another person, Mr O., also of Roma ethnic origin. Apparently they were suspected of numerous thefts and burglaries. They were brought to the Kazanlak police station, where they were questioned until late in the evening. The applicants submit that Mr Stefanov was in good health at the time of his arrest.

The events of the next morning are only known from the statements of lieutenant I.C. and chief sergeant H.B., two police officers who participated in the events, of *Mr O.*, and partly from the statement of chief sergeant B.B., an officer guarding the cell block of the police station. Apparently the only eye-witnesses of what happened in the room from which Mr Stefanov fell to the ground were lieutenant I.C., chief sergeant H.B. and Mr O.

Lieutenant I.C. arrived at the Kazanlak police station at approximately 10 a.m. on 5 June 1993 and first proceeded to question Mr O. about a number of thefts and burglaries allegedly committed by him and Mr Stefanov.

The questioning took place in lieutenant I.C.'s office, room 36 on the third floor of the police station. The room, measuring 5 to 2.8 meters, was looking eastwards. It had two two-wing windows which gave to the back yard of the police station. The windows were at 96 cm from the floor. It seems that the south window was opened. In the middle of the room there were two desks, adjacent to each other.

In the back yard, beneath the room's windows, 70 cm south of the open one, there was a penthouse for motorcycles, 1.95 meters tall, covered with an iron sheet roof. Beside the penthouse there was a channel for automobiles, leading to an underground garage. The channel had a concrete edge. The distance between the room's windows and the ground was 9.6 meters, that between the windows and the concrete edge was 7.9 meters, and that between the windows and the iron sheet roof – 5.9 meters.

After questioning Mr O., lieutenant I.C. sent him back to the cells, which were on the first floor, and brought Mr Stefanov up for questioning. During the questioning Mr Stefanov was seated in a chair behind the south desk in room 36. Lieutenant I.C. was seated opposite him, behind the northern desk. Throughout the questioning Mr Stefanov was handcuffed. However, it is unknown whether his hands were secured behind his back or in front of him.

According to the later statements of lieutenant I.C., sergeant H.B. and Mr O., during the questioning the lieutenant established discrepancies between the versions of Mr Stefanov and Mr O. At that point, at approximately 11 a.m., he called sergeant H.B. and ordered him to bring Mr O. up from the cell block in order to be able to confront the two. Sergeant H.B. took Mr O. and brought him in front of room 36. Sergeant H.B. and Mr O. stood a little south of the room's door, so that Mr O. and Mr Stefanov could not have eye contact. Lieutenant I.C. started questioning both Mr Stefanov and Mr O. and comparing their answers. Apparently their versions differed and an argument erupted between the two, as they were accusing each other of being the protagonist in the alleged thefts.

Then Mr O. made a sign with his head to lieutenant I.C. that he wanted to tell him something without Mr Stefanov hearing it. The lieutenant got off his chair, approached the half-open door and stood at the doorsill. At that moment Mr Stefanov, still handcuffed, jumped off his chair, made towards the open window and climbed on the frame, using as a step a chair placed under the window. Chief sergeant H.B. cried: “This one is going to run”. Lieutenant I.C. turned around and saw Mr Stefanov at the window frame, one leg out of the window and the other leg inside the room. The lieutenant cried: “Don't jump!”, but Mr Stefanov threw his other leg out of the window as well and jumped. The lieutenant rushed towards the window.

There is a divergence in the lieutenant's statements as to whether he saw Mr Stefanov falling or only managed to see him after he had touched the ground. In his report dated 11 June 1993 the lieutenant stated that he had only seen Mr Stefanov's body down on the ground. However, when questioned about the incident on 20 June 1994, the lieutenant stated that when he had rushed to the window, he had been able to see Mr Stefanov's fall, and that he had seen his body hit the iron sheet roof of the penthouse situated beneath the window before hitting the ground. When questioned for a second time on 21 July 1997, the lieutenant stated that he could not recall

exactly the mechanism of Mr Stefanov's fall and could not tell whether Mr Stefanov had first hit the roof of the motorcycle penthouse, as he did not remember whether he had gone to the window at once.

There is also a divergence in Mr O.'s statements as to whether he saw Mr Stefanov's fall. When first questioned about the incident on 8 June 1993, he stated that he had not directly seen Mr Stefanov jump. During his second questioning on 13 December 1993 Mr O. maintained that he had seen Mr Stefanov standing up with his handcuffs on, moving towards the window and jumping. However, he did not state that he had seen Mr Stefanov's fall, but had only seen him lying down on the ground.

Chief sergeant H.B. rushed down the stairs to the back yard, where he found Mr Stefanov lying unconscious, half on his back, half on his right side, on an iron grill in front of the garage. His handcuffs had broken, he was bleeding and breathing heavily. Chief sergeant H.B. poured water over him to try to restore him to consciousness. An ambulance was called shortly afterwards and Mr Stefanov was taken to the regional hospital in Kazanlak.

2. The ensuing investigation into the events of 4 and 5 June 1993

Having been notified about the incident at 12.10 noon, investigator G.S. of the District Investigation Service in Kazanlak carried out an inspection of the site. Starting at 1.15 p.m., he first inspected the back yard of the police station, where Mr Stefanov had fallen on the ground, and then room 36. The minutes of the inspection state that the site of the incident had "not been preserved – the injured person [was] not there". The minutes describe the ground beneath the windows of room 36 as covered partly with an iron grill, the remainder being a concrete surface. Two bloodstains are described: one on the iron grill, and one beneath it. The bloodstain beneath the grill measured 5 to 6 cm. During the inspection of room 36 a chair was found just beside the window and a piece of plaster 5 cm long was found under the window frame.

The same day, while Mr Stefanov was still alive but in a coma, colonel P., prosecutor at the Plovdiv Military Prosecutor's Office, ordered that he be examined by Dr B. (no relation to chief sergeant H.B.), medical doctor at the forensic medicine ward of the Stara Zagora regional hospital.

At 7 p.m. on 5 June 1993 Dr B. examined Mr Stefanov in the presence of Dr K., a neurosurgeon from the Kazanlak regional hospital. He found that Mr Stefanov was in a coma and could not communicate. He recorded that the on-duty police officer had told him that Mr Stefanov had jumped through the window of a room on the third floor of the police station, that he had fallen on a sheet iron roof and then on the ground in front of the underground garage of the station, on an iron grill.

He noted the following injuries on Mr Stefanov's body:

> "The lids of the right eye are suffused and are bluish-violet in colour. A graze with underlying surface, measuring 6 by 6 cm, was found in the area of the right cheekbone. A wound with uneven and suffused edges, with arch-shaped form and

2 cm long, was found on the outer edge of the right eye. Two slit-shaped parallel violet suffusions, 1 cm wide and 8 cm long, are visible on the back surface of the right shoulder. The distance between them is 3.5 cm. At the middle of the thorax one can observe a slanted violet suffusion with longish shape, measuring 4 to 1 cm. A similar suffusion, measuring 3 to 2 cm, was found on the left part of the buttocks. The right upper limb is immobilised with a plaster dressing. Three oval grazes with underlying surface, the biggest measuring 1 by 1 cm, were found on the lateral surface of the right knee. The skin on the lateral surface of the right sole is suffused, with bluish-violet colour. A spotted suffusion, measuring 8 by 3 cm, was found on the inner surface of the left sole. An underlying graze, measuring 6 to 4 cm, is visible on the lateral surface of the right calf. A superficial slit-shaped wound with uneven edges and length 3 cm was found on the left parietal-temporal area."

Dr B. concluded that the described injuries could have been occasioned by a two-stage fall from a height.

Mr Stefanov died at approximately 2 a.m. the following morning.

The following day, 6 June 1993, Dr B. performed an autopsy on Mr Stefanov's dead body. In his report the doctor described his findings in detail. He noted the following:

"EXTERNAL INSPECTION[:]

... The eyelids are closed. The lids of the right eye are suffused and bluish-violet in colour. An arch-shaped wound with uneven and suffused edges, 2 cm long, is visible in the outer eye angle of the right eye, on the orbital edge. A grazed spot at the level of the skin, covered with reddish scab, 6 by 6 cm, is visible in the area of the right cheekbone. ... A slit-shaped wound with uneven and suffused edges, 3 cm long, is visible in the parietal-occipital-temporal area. Small tissue bridges are visible at the bottom of the wound. ... An oblique bluish suffusion, measuring 4 by 2 cm, is visible on the frontal part [of the thorax], in the middle part, in the projection of the sternum. Two strip-shaped bluish-violet blood suffusions, parallel to one another, measuring 8 by 2 cm, at a distance of 3.5 cm between them, are visible on the back surface of the right shoulder. ... A bluish-violet suffusion, measuring 4 by 3 cm, was found on the left part of the buttocks. ... The right armpit bone is broken in the middle third with suffusions in the musculature. A wound with irregular form, even edges, measuring 3 by 2 cm, is visible in this area, on the lateral surface. The bone fragments are at its bottom. Two strip-shaped grazed areas covered with whitish scab at the level of the skin, each measuring 40 by 3 mm, and a distance between them of 5 mm, were found in the area of the right wrist. Three grazed areas covered with reddish scab at the level of the skin, the biggest one measuring 1 cm in diameter, were found on the lateral surface of the right knee. A similar grazed area, measuring 4 by 6 cm, was found on the lateral surface of the right calf. The skin on the lateral part of the right sole is suffused and bluish. A similar suffusion, measuring 8 by 3 cm, was found on the internal surface of the left sole.

Deep skin incisions were made on the back surface of the corpse, and thereupon suffusions of the soft tissues and the musculature of the right part of the back, in the area of the right shoulder-blade, measuring 18 by 8 cm, vertically oriented, were found. ... A suffusion of the tissues was found in the musculature and the sub-cutaneous layer of the left buttock, in the projection of the above-described suffusion.

INTERNAL INSPECTION[:] Head. The soft cranial membranes have suffusions on the right frontal-temporal area, on the left parietal-occipital-temporal area, below the

above described lacerated-contusion wound. ... A linear fracture was found at the base of the skull, beginning from the right frontal-temporal area, passing on the roof of the right orbit, and ending in the area of the sella turcica. ... The soft meninges are suffused in the temporal parts. ... Rounded violet suffusions, with diameter of not more than 2 mm, were found at the base of the brain, in the area of the right frontal parts.

... The first, seventh, and eight ribs on the right side are broken on the posterior sub-arm line with a suffusion in the intercostal musculature. The fractures are wide open inward."

In the concluding part of the report Dr B. summarised the injuries on Mr Stefanov's body as follows:

"Combined cranial-cerebral and thoracic trauma after falling from a high place. Fracture of the base of the skull. Cerebral contusion, cerebral oedema, with wedging of the cerebellar tonsils. Suffusion of the meninges. Fracture of ribs on the right side. Lacerated-contusion wounds on the head and the face. Suffusions of the cranial membranes, the face, the thorax, and the limbs. Grazes on the face and the limbs. Open fracture of the right armpit bone. Suffusion of the buttocks. Lack of alcohol in the blood and the urine."

Dr B. concluded that the death had been caused by a cranial-cerebral trauma, consisting of fracture of the skull, contusion and oedema of the brain.

Addressing the question of the manner in which the injuries had been caused, Dr B. stated:

"The described traumatic injuries were caused by the action of solid blunt objects and it is possible for them to have been sustained in a two-stage fall from a height. The inspection and the autopsy revealed traumatic injuries on two surfaces: head – on the right frontal-temporal area [and] on the left parietal-occipital-temporal area; body – frontal and at the back, better marked on the right side; limbs – right upper limb, lateral surface of the right leg and internal surface of the left sole. The first stage of the fall is on the roof of the penthouse, and it produced the injuries on the right side of the forehead and the face and frontal surface of the body. The second stage of the fall was on the on the ground in front of the underground garage, and it resulted in the injuries on the back surface of the body, the left parietal-occipital-temporal area of the head and lower limbs. The two grazed areas of the right wrist correspond well to having been produced by handcuffs. The right armpit bone was broken during the first stage of the fall if the hands were handcuffed in front of the body, and during the second stage if the hands were handcuffed behind it."

Dr B. finished his autopsy report with the following findings:

"All traumatic injuries were produced while [Mr Stefanov was alive], which can be seen from the suffusions in the areas of the broken bones. These injuries were obtained at the same time and it is possible that they occurred at the time stated in the preliminary data.

The inspection of the body and the autopsy did not establish traumatic injuries which cannot be explained by a fall from a height.

> As of the time of death [Mr] Stefanov was not under the influence of alcohol, but the expertise cannot confirm the same for the moment of the fall, because the alcohol test sample was taken more than twelve hours after the incident."

An investigation was opened on 17 June 1993 by the Plovdiv Military Regional Prosecutor's Office. Mr S., the investigator in charge of the case, collected the reports of lieutenant I.C., chief sergeant H.B. and sergeant B.B., but did not question them. He questioned Mr O. twice, on 8 June and 13 December 1993. Lieutenant I.C. was questioned on 20 June 1994 by Mr N., another military investigator at the Plovdiv Military Regional Prosecutor's Office to whom apparently the case had been assigned in the meantime.

On 30 June 1994 the investigator, Mr N., recommended that the investigation be discontinued, as there was no evidence of a crime. He found that the medical expert report had established that all Mr Stefanov's injuries had been sustained during his fall, which had been a two-stage one. That finding coincided with lieutenant I.C.'s statement that he had seen Mr Stefanov first hit the penthouse roof situated beneath the window and then fall on the ground in front of the underground garage. The investigator concluded that Mr Stefanov had jumped from the window of his own free will, and that this had not been provoked by the conduct of lieutenant I.C. or another police officer.

On 27 December 1995 colonel T., prosecutor at the Plovdiv Military Regional Prosecutor's Office, discontinued the investigation for lack of evidence of a crime. He reasoned, without going into detail, that it had not been established that lieutenant I.C. or another police officer had abused his office, had brought about Mr Stefanov's suicide, or had failed to discharge his duties.

Apparently the applicants were not informed about these developments, although they had requested information about the unfolding of the investigation on 7 July 1993, 7 and 26 April and 5 October 1994, and 14 October 1996.

A copy of the prosecutor's decree was obtained by the applicants' lawyer on 12 November 1996. On 9 December 1996 he filed an appeal against it with the Military Prosecutor's Office in Sofia, arguing that the investigation had been incomplete, that a number of investigative steps had not been undertaken and that various facts had remained unelucidated.

In a decree of 9 January 1997 prosecutor P. of the Military Prosecution Office in Sofia found that the investigation had not been full and comprehensive. It had not been established at what time on 4 June 1993 Mr Stefanov had been arrested, by whose order he had not been released after the end of the workday, whether there had been a decision for his administrative detention for a period of twenty-four hours; if so, who had issued this decision and on what legal grounds. The legality of the police officers' actions had to be evaluated also from the angle of Article 127 of the Criminal Code ("the CC"). Another fact which had not been established

were the conditions of Mr Stefanov's detention until the incident on 5 June 1993. Also, it was unclear how many times and where Mr Stefanov's body had hit different objects during its fall. No inspection had been carried out of the roof of the motorcycle penthouse. On the pictures it could be seen that it was not deformed but, in contrast to this, the doctor's report had stated that on his way down Mr Stefanov had first hit the roof and only then the iron grill on the ground. The doctor's report had also stated that the body had sustained two bumps during the fall and that all injuries could had been caused by two consecutive bumps. Finally, not all persons who could have elucidated the facts had been questioned, including chief sergeant H.B., chief sergeant B.B., and others who had been in the back yard and the garage of the police station and might have seen the fall.

Accordingly, the prosecutor quashed the decree for discontinuation of the investigation and ordered that the following investigative measures be undertaken:

1. Gathering of all documents in the Kazanlak police station relating to Mr Stefanov's arrest and detention on 4 June 1993;

2. Additional inspection of the site of the incident with a view to establishing the exact material of which the iron sheet roof was made and whether there were any deformations on it; also, establishing what the distance between the window and the ground was and whether the bloodstain found on the iron grill was situated exactly beneath the window;

3. A doll-test to determine the place of falling of Mr Stefanov's body from the window;

4. Questioning of other possible witnesses; also, re-questioning of Mr O. about the circumstances of his and Mr Stefanov's detention and stay in the police station, the possible use of violence against them and all other circumstances possibly relevant to the case;

5. A forensic report by three experts to establish the cause of death and whether there were injuries on Mr Stefanov's body which had not been caused by the fall form the window.

Following the remittal of the case, on 8 March 1997 an investigator inspected the iron sheet roof of the motorcycle penthouse situated beneath room 36, and performed a doll test.

During the inspection it was found that the iron sheet roof had no marks of bending or deformation.

A human-size leather doll was thrown twice out of the window of room 36. The first time the doll was thrown perpendicularly and fell directly on the ground in front of the garage, without touching the iron sheet roof of the penthouse. The second time it was thrown at an angle south of the window and hit the iron sheet roof, then a concrete edge on which the roof was attached, and then fell on the ground. When the doll hit the iron sheet roof during the second throwing, the roof was bent.

Following the doll test, three medical experts were appointed to re-examine the conclusions as regards the mechanism in which

Mr Stefanov's injuries had been sustained. More specifically, they were requested to establish what was the cause of Mr Stefanov's death and whether some of the injuries found on his body could have been the result of factors other than the fall from the window of room 36. Dr B., the doctor who had examined Mr Stefanov on 5 June 1993 and had performed an autopsy on his death body, was one of the experts. The others were Dr H.E. and Dr T.T., doctors at the chair of forensic medicine and ethics of the university of Stara Zagora.

On 18 April 1997 the three experts delivered their report, which was based solely on documents contained in the investigation case file.

The experts confirmed the previous findings about the cause of death, namely that it had happened because of a cranial and brain trauma, consisting of a fracture of the base of the skull, contusion and oedema of the brain, with wedging of the cerebellum and paralysis of vital brain centres. They concluded that the death had also been caused by the inhalation of blood, although not a considerable one.

As to the cause of the injuries, the experts concluded that:

> "such injuries may occur in a consecutive (step-like) fall. Such a fall [occurs] when during its fall to the ground a body encounters impediments at various heights. Such information was gathered during the doll test. When thrown at a right angle, the doll hit the iron sheet roof situated under the window adjacent to the one from which [Mr] Stefanov fell. ... It is possible that [Mr] Stefanov ran tangentially against the edge of the iron sheet roof and that his body was given a spinning movement, thus not leaving deformations on the roof. It [was] also possible that [Mr] Stefanov, regardless of whether he hit the iron sheet roof, hit the concrete edge on which the roof was built. This edge is visible on the photographs and is situated at approximately 23 cm from the penthouse wall. The final stage of the fall was on the ground in front of the garage, where the grill is. It [was] possible for the suffusions on the back surface of the right shoulder to be a mark from the grill. The lacerated-contusion wound on the head, in case it was turned left, as well as fracture of the right armpit and the suffusion on the buttocks, occurred during this final stage of the fall. The other injuries were caused at an earlier stage of the fall. The two grazes on the right wrist correspond well to having been caused by handcuffs.
>
> The hit which caused the cranial fracture and the brain contusion [was] in the right frontal part of the head, where the lacerated-contusion wound, the grazing and the suffusion [were]. This hit was a strong one and happened during an earlier stage of the fall, most probably against the above-mentioned concrete edge.
>
> All injuries have the same age. No injuries were found which cannot be explained with a consecutive (step-like) fall from a height. [There were no injuries] from sharp weapons, firearms, or electricity. No injuries of a defensive character were established on the body or the limbs.

On 21 June 1997 lieutenant I.C. was questioned by captain S., the military investigator who was initially in charge of the investigation. The questioning took place in the presence of Mr Dimitrov, the applicants' lawyer.

Mr O. was not questioned. The Kazanlak police tried to locate him but found that his whereabouts after 1993 were unknown. There were some indications that he was living on the territory of the Troyan municipality, in one of the mountain villages there, but his exact address was unknown, as he had not communicated it to the address register of his previous domicile, the municipality of Maglij. His mother's whereabouts were also unknown, his grandfather and uncle had deceased, and there were no other relatives in Maglij who could give information about him. The applicants' lawyer requested that the investigation remain open until Mr O. was located and questioned.

Also, no documents were gathered about Mr Stefanov's arrest and detention on 4 and 5 June 1993. It was reported that the register of detentions of the Kazanlak police station for 1993 was no longer available.

On 13 August 1997 captain N., prosecutor at the Plovdiv Military Regional Prosecutor's Office, discontinued the investigation. He reasoned that all instructions contained in the January 1997 decree of the Military Prosecutor's Office in Sofia had been complied with. The doll test, the additional medical expert report and the newly questioned witnesses had all confirmed the circumstances established at the first discontinuation of the investigation. There were no injuries on Mr Stefanov's body which could not be explained by a two-stage fall from a height. The doll test had determined that Mr Stefanov had first hit the concrete edge under the iron sheet roof and had then fallen on the ground.

On 3 and 12 February 1998 the applicants' lawyer requested information about the course of the investigation. He was informed that it had been discontinued but was not given a copy of the 13 August 1997 decree. He managed to obtain such a copy on 4 March 1998 and immediately appealed it before the Military Prosecutor's Office in Sofia. He argued that Mr O. had not been questioned and that there were inconsistencies in the conclusions about the mechanism of Mr Stefanov's fall from the window.

On 31 March 1998 colonel Y., prosecutor at the Military Prosecutor's Office in Sofia, dismissed the appeal, reasoning that the investigation had been “objective, comprehensive and full”.

The applicants' lawyer then filed an appeal with the Chief Prosecutor's Office.

On 18 May 1998 prosecutor P., who at that time had become head of the investigative department of the Military Prosecutor's Office in Sofia, dismissed the appeal. He reasoned that there were no indications that Mr Stefanov's “attempt to flee” had been caused by cruel treatment by the police officers who had questioned him. According to the medical expert report all his injuries had been occasioned by the fall.

A copy of the prosecutor's decree was sent to the applicants' lawyer on 9 June 1998.

B. Relevant domestic law

1. Duty to investigate deaths and ill-treatment

According to Article 115 of the CC, murder is punishable with ten to twenty years' imprisonment. According to Article 116 § 2 of the Code, if a murder is committed by a police officer in the course of or in connection with the performance of his or her duties, it is punishable with fifteen to twenty years' imprisonment, or life, with or without parole.

Article 127 of the CC makes it a crime to aid or incite suicide, if the person concerned does commit suicide or makes an attempt to suicide him or herself.

Articles 128, 129 and 130 of the CC make it a crime to cause a light, intermediate or severe bodily injury to another. Article 131 § 1 (2) provides that if the injury is caused by a police officer in the course of, or in connection with, the performance of his or her duties the crime is an aggravated one.

Murder, incitement to suicide and bodily injury by a police officer are publicly prosecutable offences (Article 161 of the CC).

Under Bulgarian law criminal proceedings for publicly prosecutable offences can be brought only by the decision of a prosecutor or of an investigator (Article 192 of the Code of Criminal Procedure ("the CCrP")). The prosecutor or the investigator must open an investigation whenever he or she receives information, supported by sufficient evidence, that a crime might have been committed (Articles 187 and 190 of the CCrP). If the information to the prosecuting authorities was not supported by evidence, the prosecutor had to order a preliminary inquiry in order to determine whether the opening of a criminal investigation was warranted (Article 191 of the CCrP, as in force at the material time). A prosecutor may discontinue an investigation when, *inter alia*, there is no evidence of a crime, or the alleged act does not constitute a crime (Articles 21 § 1 (1) and 237 § 1 (1) and (2) of the CCrP). At the relevant time his or her decision was subject to appeal to a higher prosecutor (Article 181 of the CCrP). In 2001 the CCrP was amended to provide for judicial review of a prosecutor's decision to discontinue an investigation.

Offences committed by police officers in the course of or in connection with the performance of their duties are investigated by military investigators and prosecuted by military prosecutors (Article 388 and following of the CCrP).

2. Arrest and detention

A person may be arrested and placed in detention in the context of pending criminal proceedings, if charges have been brought against him or her (Article 146 § 1 in conjunction with Article 207 of the CCrP).

A person could also be arrested by order of an investigator and detained for up to three days if he was suspected of having committed a crime punishable by imprisonment, but there was not enough evidence to bring charges. The circumstances in which this could occur were limited and included the cases where (1) he or she had been caught during or immediately after the commission of the alleged crime, (2) he or she had been named by an eyewitness, (3) overt traces of the alleged crime were found on the person's body or clothes or in his or her place of abode, or (4) the person tried to flee or his or her identity could not be established and there was enough data that he or she might have committed a crime (Article 202 § 1 of the CCrP, as in force at the material time).

The National Police Act of 1976, in force at the relevant time, provided that the police could also arrest a person if (1) his or her identity could not be ascertained, (2) he or she behaved violently or grossly breached public order, (3) he or she refused, without just cause, to appear after having been properly summoned, (4) he or she knowingly impeded the police from carrying out its duties, (5) he or she carried or used unlicensed firearms or cold arms or other dangerous devices (section 20(1) of the Act). In all these cases the police had to immediately carry out the necessary checks. After that, but in no case later than three hours after the person's arrest, he or she had to be released, if no other order for his or her detention was issued. Only when the person's identity could not be ascertained that deadline was prolonged to twenty-four hours (section 20(2) of the Act).

C. The United Nations Model Autopsy Protocol

The "Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions" (U.N. Doc. E/ST/CSDHA/.12 (1991)) adopted by the United Nations in 1991 includes a Model Autopsy Protocol aimed at providing authoritative guidelines for the conduct of autopsies by public prosecutors and medical personnel. In its introduction, it noted that a systematic and comprehensive examination and report were required to prevent the omission or loss of important details:

> "It is of the utmost importance that an autopsy performed following a controversial death be thorough in scope. The documentation and recording of those findings should be equally thorough so as to permit meaningful use of the autopsy results... It is important to have as few omissions or discrepancies as possible, as proponents of different interpretations of a case may take advantage of any perceived shortcomings in the investigation. An autopsy performed in a controversial death should meet certain minimum criteria if the autopsy report is to be proffered as meaningful or conclusive by the prosector, the autopsy's sponsoring agency or governmental unit, or anyone else attempting to make use of such an autopsy's findings or conclusions."

COMPLAINTS

1. The applicants raised two separate complaints under Article 2 of the Convention:

(a) They submitted that Mr Stefanov had died as a result of intentional ill-treatment by the police. In particular, they averred that in the morning of 5 June 1993 he had either been directly pushed by the police officers or forced to jump through the window of room 36 of the Kazanlak police station to avoid further ill-treatment from them.

(b) They further submitted that the authorities had failed to conduct a prompt, thorough and effective investigation into the circumstances surrounding Mr Stefanov's death.

2. The applicants alleged two separate violations of Article 3 of the Convention:

(a) They submitted that following Mr Stefanov's arrest on 4 June 1993 and prior to his fall from the window of room 36 of the Kazanlak police station in the morning of 5 June 1993 he had been subjected to ill-treatment. They averred that apart from the skull fracture which had caused his death, Mr Stefanov had suffered a number of other injuries which had caused him pain and suffering before that.

(b) The applicants also maintained that the authorities had not carried out an effective and impartial investigation into the allegations of ill-treatment which Mr Stefanov had suffered prior to his death, while in police custody.

3. The applicants complained under Article 5 § 1 (c) of the Convention that Mr Stefanov's arrest had not been effected in compliance with domestic law. They submitted that the applicant had apparently not been charged with a criminal offence and his detention had hence not been based on the provisions of the CCrP. Thus, he should not have been kept in custody for longer than three hours, as provided by the National Police Act. Moreover, there was no evidence that Mr Stefanov's arrest had been properly entered in the register of detainees kept at the police station.

The applicants also asserted that by failing to investigate the police officers for this detention effected in breach of domestic law, the domestic authorities had failed foul of their obligations under Article 5 § 1 (c) read in conjunction with Article 1 of the Convention.

4. The applicants also alleged violations of Article 13 of the Convention. They submitted that the authorities had not conducted a thorough and effective investigation into the alleged ill-treatment and death of Mr Stefanov and that they had not afforded the applicants effective access to the investigation. The applicants also submitted that they had not had an effective remedy against the prosecution authorities' failure to carry out a thorough and effective investigation into Mr Stefanov's ill-treatment and death. In particular, under domestic law they could not launch a private prosecution or, alternatively, effectively challenge the prosecution

authorities' failure to carry out an effective investigation and their eventual decision to discontinue it. In the applicants' view, they should have had the opportunity to seek judicial review of the prosecution authorities' decision to discontinue the investigation.

5. Finally, the applicants complained under Article 14 of the Convention that the alleged violations of Mr Stefanov's rights under the above Articles of the Convention had been due to his Roma ethnic origin. They submitted, referring to the findings of various international organisations, that Roma in Bulgaria ran a high risk of being ill-treated or tortured by law enforcement officers.

THE LAW

1. In respect of their complaints that the authorities were responsible for Mr Stefanov's death and that there had not been an effective investigation into the circumstances surrounding his death the applicants relied on Article 2 of the Convention, which provides:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

The applicants submitted that Mr Stefanov's fall from the window of room 36 had been either a suicide attempt provoked by severe torture, or an attempt by the police to cover up his prior ill-treatment. There was no evidence that the fall had been an attempt to escape, since the window was situated at 9.6 meters above ground level. No one could be expected to jump from such a height and subsequently be able run away. There were no structures which could cushion the blow resulting from the fall; in particular, it was obvious that Mr Stefanov's body had not touched the iron sheet roof before touching the ground. An attempt to flee was all the more improbable in view of the facts that Mr Stefanov had been handcuffed and that all his injuries were to be found in the upper half of his body, which indicated that he had fallen head down. Equally, there was no indication that the fall had been the result of a suicide attempt. Mr Stefanov had no history of mental illness and had been facing only a trivial burglary charge.

Moreover, such an explanation had not been proffered during the investigation.

The only plausible explanations of Mr Stefanov's fall were a suicide attempt provoked by torture or an intentional push by the police officers in an effort to conceal his prior torture. These hypotheses were supported by the number and extent of Mr Stefanov's injuries, most of which he had probably suffered before his fall, during questioning by the police. There was no indication that these injuries had been self-inflicted or sustained at the time of his arrest or before that.

The applicants submitted that they could not prove beyond doubt what was the exact cause of Mr Stefanov's fall, but that it was upon the authorities to provide a plausible explanation, which they had failed to do.

In deciding that the fall had been the result of an attempt to flee the prosecution authorities had heavily relied on the testimony of lieutenant I.C., the statements of chief sergeant H.B. and the testimony of Mr O.. However, these were extremely unreliable. Firstly, the two police officers had an obvious interest in exonerating themselves, whereas Mr O. was favourably treated by the police. Secondly, this testimony had been inconsistent and had varied over time and had obviously been geared towards exonerating the police officers from responsibility for Mr Stefanov's death. Moreover, the tenor of Mr O.'s statements had remarkably followed that of lieutenant I.C.'s statements and their twists and turns during the course of the investigation.

To conclude that all of Mr Stefanov's injuries had been sustained during a two-stage fall the authorities had also relied on the results from the autopsy and on the conclusions of the subsequent medical expert report. However, the autopsy report was deficient in a number of respects and did not measure up to the standards set forth in the United Nations Model Autopsy Protocol, which was referred to by the Court in its judgment in the case of *Salman v. Turkey* ([GC], no. 21986/93, ECHR 2000-VII). For instance, the conclusion that all injuries on Mr Stefanov's body had been sustained during the fall was based on the completely uncorroborated assumption that fall had been a two-stage one. Moreover, the autopsy report and the subsequent medical expert report did not contain a detailed description of the manner in which all injuries had been sustained, instead averring in a general manner that all injuries had been the result of a two-stage fall.

As regards the effectiveness of the investigation, the applicants argued that it had been slow, biased and aimed at exonerating the police officers of all responsibility for Mr Stefanov's death. The applicants pointed to a number of defects in the investigation. In particular, the position of the victim's body on the ground after the fall had not been marked, the investigation had not started immediately, before the remitting by the Military Prosecutor's Office the investigation had been very superficial, the doll-test had been carried out four years after the investigated events, and

the medical experts had not been instructed properly. Moreover, the applicants had not been regularly informed about the unfolding of the investigation and had been hindered in their efforts to intensify it. The applicants also referred to their arguments in respect of the deficiencies in the autopsy and the medical expert reports.

The Court considers, in the light of the applicants' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. In respect of their complaints that prior to his fall from the window of room 36 Mr Stefanov was subjected to ill-treatment and that the authorities did not carry out an effective investigation into this allegation the applicants relied on Article 3 of the Convention, which provides:

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

The applicants submitted that a number of injuries found on Mr Stefanov's body could not be the result of his impact with the ground after his fall and were indicative of torture. However, these injuries had remained without a proper explanation, because the autopsy report and the ensuing medical expert report had stated, without a sufficient factual basis, that all injuries had been sustained during the allegedly two-stage fall. The applicants submitted that in view of the lack of a plausible explanation as to the origin of these injuries, the authorities could be considered responsible for their infliction during the Mr Stefanov's detention.

Referring to their arguments in respect of the investigation under Article 2 of the Convention, the applicants also argued that there had also been a breach of the duty of the authorities to conduct an effective investigation into the allegations that Mr Stefanov had been ill-treated.

The Court considers, in the light of the applicants' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. In respect of their complaint that Mr Stefanov's arrest had been unlawful and that the authorities had not investigated this the applicants relied on Article 5 § 1 (c) of the Convention, which provides:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...”

The applicants submitted that Mr Stefanov had been arrested and detained without an order to that effect, in breach of domestic law. They further complained that this aspect of the case had not been investigated by the authorities.

The Court considers, in the light of the applicants' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. In respect of their complaint that they did not have effective remedies in respect of the alleged violations of Articles 2 and 3 the applicants relied on Article 13 of the Convention, which provides:

“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.”

The applicants repeated their arguments in respect of the complaints under the procedural limbs of Articles 2 and 3 of the Convention.

The Court considers, in the light of the applicants' submissions, that the part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

5. In respect of their complaint that the alleged breaches of Articles 2, 3 and 13 of the Convention had taken place because of Mr Stefanov's Roma ethnic origin the applicants relied on Article 14 of the Convention, which provides:

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

The applicants submitted that Mr Stefanov's ill-treatment and the ensuing refusal of the prosecution authorities to bring charges against those responsible for it had been due to his Roma ethnic origin. In their view, this allegation had to be seen against the backdrop of a pattern of police abuse and ill-treatment of Roma in Bulgaria and of a failure of the prosecution

authorities to investigate and prosecute racially motivated police violence. In this respect the applicants relied on a number of reports by governmental and non-governmental organisations. They also referred to the Court's judgment in the case of *Nachova and Others v. Bulgaria* (nos. 43577/98 and 43579/98, 26 February 2004) and submitted that in view of the high incidence of police violence against Roma in Bulgaria, the prosecution authorities should have also investigated that aspect of the case, which they had completely omitted to do.

The Court considers, in the light of the applicants' submissions, that the part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President