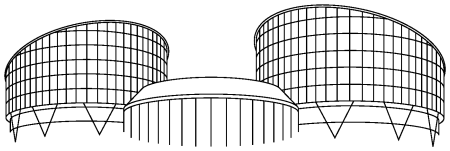

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ANZHELO GEORGIEV AND OTHERS v. BULGARIA

(Application no. 51284/09)

JUDGMENT

STRASBOURG

30 September 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Anzhelo Georgiev and Others v. Bulgaria,

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

Ineta Ziemele, *President*,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Krzysztof Wojtyczek, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 9 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 51284/09) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Bulgarian nationals, Mr Anzhelo Angelov Georgiev, Ms Kameliya Ivanova Dekova, Mr Georgi Mirchev Kosev, Mr Nikolay Angelov Dragnev and Mr Pavel Yonkov Tsekov ("the applicants"), on 1 September 2009.

2. The applicants were represented intially by Ms H. Dimitrova and subsequently by Ms Zh. Kaleva, both lawyers practising in Varna. The Bulgarian Government ("the Government") were represented by their Agents, Ms N. Nikolova and Ms Y. Stoyanova, of the Ministry of Justice.

3. The applicants alleged, in particular, that they had been ill-treated by masked police officers during a special operation and that the authorities had not carried out an effective investigation into their complaints.

4. The application was communicated to the Government on 13 January 2012.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. The applicants worked for a private company ("the company"). The company is one of the main Internet service providers in the city of Varna; it

operated out of at least two offices in Varna, both of which were located on the same street. The first applicant was the company's manager; the second, third and fourth applicants were employees of the company; the fifth applicant was a freelance expert providing services to the company at the time of the events.

7. On 16 June 2008 the Varna District Public Prosecutor initiated criminal proceedings (*досъдебно производство*) against a person unknown, suspected of disseminating materials in violation of intellectual property laws by using the company's servers during the period January to May 2008 and thus committing a continuous offence as defined in Article 172a (1) of the Criminal Code. The proceedings were not directed at anyone specifically at the company. The prosecutor's order for opening criminal proceedings comprised the following instructions: that the facts be established; that unlicensed software be identified and seized, and a forensic examination be carried out in respect of it; that the results be discussed with the prosecutor without delay; and that the investigation be carried out by officers of the Central Service for Combating Organised Crime (CSCOC).

A. The events of 18 June 2008

8. The following facts are undisputed between the parties.

9. Following the prosecutor's order of 16 June 2008, a special police operation was carried out on 18 June 2008 in two of the company's offices located in the same street in Varna. The operation was aimed at the search and seizure of illegal software and was carried out pursuant to the instructions of the supervising prosecutor. Ya.K., a CSCOC officer and the head of the operation, had given the operational instructions to the officers involved shortly before the operation began. Those instructions were to enter the company's premises as quickly as possible, to overpower all individuals found there in order to prevent them from interfering with any electronic evidence, and to seize the computer equipment found in the offices. A district court judge confirmed the validity of the search-and-seizure operation within 24 hours of its having taken place. A number of computers and black boxes, the latter referred to in the search-and-seizure reports as "computer systems", as well as one folder of paper documents, were seized in the presence of certifying witnesses during the operation. The manager of the company, Anzhelo Angelov Georgiev, was not present in the company's offices when the operation took place. The second applicant was working in the first company office at the time of the operation and the third, fourth and fifth applicants were present in the second company office.

10. The parties disagree in particular in respect of whether the force used by some of the CSCOC officers during the above-mentioned operation had

been provoked by the applicants and therefore whether it had been excessive or absolutely necessary in the circumstances.

1. The applicants' version of the events

11. The applicants, in their complaints to the prosecutor on 19 June 2008 about having been ill-treated during the operation the previous day, described the conduct of the operation as follows.

12. Anzhelo Angelov Georgiev, the first applicant, submitted that on 18 June 2008 CSCOC officers barged into two offices of the company, having broken the entrance doors to one of the offices. Then, he claimed, they had broken the cameras in the first office, ordered the employees found there, including the second applicant, to lie on the ground and hit them with electroshock batons, as well as kicked them in the chest and the head despite the absence of any resistance or provocation. The first applicant also claimed that a similar situation had arisen in the second company office. Copies of medical certificates, evidencing injuries allegedly sustained by several employees during those events, were enclosed with the complaint.

13. Kameliya Ivanova Dekova, the second applicant, submitted that at around 4.00 p.m. on 18 June 2008 masked armed men had cut the lock of the entrance door to the company's first office where she was working, saying they were police. Then, she claimed, they had made her lie on the ground and had kicked her in the chest and head, as well as applied electroshock discharges from a baton-like device to her body before handcuffing her. She had not resisted in any way and had done nothing to provoke such treatment. One of the masked men had been shouting threats and insults at her and her colleagues present in the office, including threatening to shoot a firearm.

14. Georgi Mirchev Kosev, the third applicant, submitted in particular that he had heard loud bangs on the entrance door of the company's second office at about 4.30 p.m. on 18 June 2008. After a colleague had opened the door, men had rushed in, pushed and shoved him and then handcuffed him to the window grill. While he was still attached to the grill, they had applied electroshock discharges from a baton to his abdominal area.

15. Nikolay Angelov Dragnev, the fourth applicant, submitted that at around 4.30 p.m. on 18 June 2008 several armed masked men had broken into the company's second office, where he was at the time. Although he had not resisted in any way, they had hit him in the face and his lip had started bleeding. They had handcuffed his arms behind his back and then made him stay on his knees for an hour during which time they had continuously insulted him.

16. Pavel Yonkov Tsekov, the fifth applicant, submitted that at about 4.30 p.m. on 18 June 2008, while he had been working in the company's second office together with seven other colleagues, he had heard strong bangs on the door and shouts "Open! Police!". As soon as a colleague of his

had opened the door, several men had thrown Mr Tsekov to the ground, then had handcuffed his arms behind his back and dragged him outside. Next they had made him remain crouching with his hands cuffed behind his back for around an hour. They had asked no questions of him or his colleagues nor asked them to produce their identity documents; instead, they had ordered the employees in the office to keep quiet.

17. Some of the twelve employees, including the second, third, fourth and fifth applicants, who were heard during the inquiry on 2 and 3 July 2008 following the applicants' complaints (see paragraph 24 below), stated that police officers had cut open the entrance door to the first of the company's offices in which they had been working on the afternoon of 18 June 2008. Following that the officers had hit them in the face, kicked them, stepped with a boot on their heads, applied electroshock discharges on them which had caused them very strong pain and a feeling of paralysis, insulted them and continuously shouted at them to keep silent. The officers had been wearing what some employees described as "helmets" and "hoods" on their heads. They had been dressed in black police uniforms and had been armed with machine guns. Once the masked officers had noticed that there were cameras on the premises, they had signaled this to each other and stopped hitting the employees. Shortly afterwards civilian police officers had entered the office premises; none of the civilian officers had ill-treated any of the employees.

2. The authorities' version of the events

18. The Government submitted to the Court statements of thirteen police officers who had taken part in the operation. The statements were given to the prosecution on 7 July 2008, 27 August 2008, 2 September 2008 and 18 September 2008, as part of a preliminary inquiry carried out into the allegations of the company's employees that they had been ill-treated by the police at the time of the operation. The Government also submitted to the Court the statements of twelve employees of the company given to the prosecution during the same inquiry (see paragraph 17 above).

19. Officers from the CSCOC who had participated in the operation were heard during the inquiry in August and September 2008 in Sofia following instructions of the Varna prosecutors. The CSCOC officers submitted that, prior to the operation they had received information from operative police sources and various media publications, that the company was connected to organised criminal groups. Given that the employees had refused to open the door to one of the offices which had been disguised as a family apartment, masked police officers had had to cut it open in order to prevent the destruction of evidence. The other office had been opened from inside by employees. CSCOC officers (it was not specified who or how many) had entered through the window into yet a third "hidden" office, thus "taking by surprise an employee found there who was attempting to destroy

evidence"; they had handcuffed that employee, and then an unspecified person had opened the door to that office with a key. During the operation the company's employees had refused to comply with the police orders and had actively disobeyed the officers, thus obstructing the operation. The officers had not used electroshock on any employee. They had used handcuffs on individual members of staff who had refused to open the entrance door or to move away from their computer stations and who had continued to erase data from the computers instead. The wife of the company's manager had behaved arrogantly towards the officers, insulting and threatening them with revenge, and had ordered the employees to continue with their work.

20. Officers of the Varna Regional Police Directorate ("*Областна Дирекция на Полицията Варна*" or "VRPD") who were heard during the inquiry in July 2008 in Varna submitted that they had been called in to assist their colleagues from the CSCOC in an operation to find company servers containing unlicensed software, films and music. None of the VRPD officers had been masked. They had not been involved in the opening of the entrance doors to the company's offices as that had been done by masked officers from the CSCOC. They had entered the office premises after the doors had been opened. They had seen some masked officers on the company premises but had not seen what they had done. Some of them had heard calls of "Open! Police!" during a period of about 10 to 15 minutes and after that the sound of an electric grinder. They had not witnessed any physical force being used against any employee. Some of the VRPD officers had seen in the first office several women – none of whom bore any sign of injury – sitting on chairs guarded by two masked officers; in the entrance hall leading to the second office they had seen several company employees, some wearing handcuffs. While the VRPD officers had been waiting for the entrance doors to the offices to be opened, they had thought it likely that the company employees would delete most if not all of the information sought to be collected during the operation. All the employees had been calm and, at times, the officers had let them smoke outside the building before asking them to return inside to wait until the conclusion of the search-and-seizure operation. After officers had brought in another woman called A.G., acting as the manager of the company, ten computer systems were seized in her presence and in the presence of several certifying witnesses. The VRPD officers had left at around 8 p.m.

B. Medical certificates

21. On 19 June 2008, the day after the police operation, at their request, a forensic expert examined Ms Dekova, Mr Kosev and Mr Tsekov, respectively the second, third and fifth applicants.

22. According to the medical reports, Ms Dekova had a swollen right upper eyelid and a swelling and a cut next to her right eyebrow, a bruise and an abrasion in her right armpit, four reddish-brown burns on and below her right shoulder blade and bruises on her right thigh and arm. The conclusion of the medical expert was that the burns on her back were of first to second degree and it was plausible that they had been sustained from not less than four strikes with an electroshock baton at the time and in the circumstances described by the applicant. Mr Kosev had a jaw injury, injuries to both arms, an injury and an open wound in the abdominal area and six reddish strips on his abdomen. Mr Tsekov had three long bruises around his left armpit which could have been the result of pressure applied with non-sharp, hard objects, possibly squeezing by hands. The medical expert concluded that the bruises and injuries could have been caused by blows with or against a blunt object, and that the injuries described above had caused the second, third and fifth applicant pain and suffering, and the second applicant also temporary non-life-threatening health disorder.

C. The applicants' complaints to the prosecutor

23. On 19 June 2008 the applicants, and five other individuals, complained to the prosecutor, in particular, that masked men had broken into two of the company's offices the previous day and had used violence towards them, as well as shouting and insulting. Because the officers had been masked, they could not identify them. Civilian officers who had entered the office premises in order to search and seize computer equipment after the masked men had broken in had not mistreated the company employees. The prosecutor took the applicants' statements which are summarised in paragraphs 12 to 16 above. They submitted the medical certificates drawn up on the same day (see paragraph 21 and 22 above).

D. The inquiry into the applicants' complaints

24. A preliminary inquiry into the above complaints was opened the day after the operation took place. During the months of July, August and September 2008, investigators took statements from thirteen officers who had participated in the operation and twelve staff members of the company who had been present during the operation. The police statements are summarised in paragraphs 19 and 20 above and the employees' statements are summarized in paragraph 17 above. The Government did not submit, and the documents in the file do not show, that any other investigative steps, apart from the questioning of several police officers and the company's employees, were carried out.

25. The questions put to the officers during the inquiry were: 1) whether during the operation any employee had disobeyed or showed manifest lack

of cooperation; 2) whether any of the masked officers had used electroshock batons against any employee and, if yes, why; 3) who among the officers (masked or not) had used physical force and auxiliary means for restraint (*помощни средства*), against whom of the employees, in which of the company's offices and why; 4) officers from which police department (specialised in breaking into premises or in arresting individuals) had taken part in the operation; and 5) whether the entrance doors to the company's offices had been opened voluntarily or whether they had to be forced open.

26. All the officers heard during the inquiry stated that they had learned about the police operation of 18 June 2008 and had been called to assist with it earlier on the same day; none of them had used force against the applicants, apart from handcuffing individuals who had disobeyed the officers' orders; no electroshock discharges had been applied to anyone. Not all police officers answered all questions asked as part of the inquiry.

E. Refusal to open criminal proceedings

27. The inquiry ended with a decision of the Varna Regional Military Prosecutor of 7 October 2008 not to institute criminal proceedings, finding that the officers involved in the operation had not exceeded the prerogatives vested in them by law. Upon appeal by the applicants, on 24 November 2008 the Varna Appellate Military Prosecutor returned the case with instructions that further acts be carried out (see paragraph 38 below, third sentence). More specifically, he observed that the file did not contain any documents showing that criminal proceedings had been opened against the applicants. Likewise, there was no information in the file showing that a search-and-seizure operation had been carried out and that it had been authorised by a judge. No information on file showed either that evidence had actually been found on the premises searched, or that there had been reasonable suspicion that evidence could have been found there. The prosecutor held that the scant assertions of several police officers who had been heard during the preliminary inquiry were not sufficient to establish the circumstances as recorded in the refusal to open criminal proceedings of 7 October 2008. Consequently, additional investigative acts had to be carried out. The higher prosecutor asked, in particular, that copies be collected of the orders for opening criminal proceedings on suspicion of violating intellectual property laws and for bringing charges on those grounds, as well as records of the search-and-seizure operation and "other documents of importance for the inquiry". It is unclear whether any investigative steps were taken thereafter.

28. On 13 March 2009 the Varna District Public Prosecutor, to whom the file was sent for competence reasons following a legislative amendment, refused to open criminal proceedings (see paragraph 37 below) against the police officers. She found that a special police operation aimed at gaining

access to the offices of the company and seizing unlicensed software had been carried out on 18 June 2008. The initial information available had been that the company had connections with organised criminal groups and that its main activity was the collecting and disseminating of unlicensed software. Officers from CSCOC had been in charge of the operation; masked officers from CSCOC Sector "Operational Intervention" (*сектор "Оперативна реализация"*) and officers from different units of the Varna Regional Police Directorate, had taken part in the operation. Following a preparatory briefing session, at around 3.30 in the afternoon the officers had tried to enter the office premises of the company. Someone on the inside had locked the front door; following this, the company's employees had gone to their computers and started deleting data sought by the police. The employees had not complied with several orders by the police officers to open the doors. Acting upon the instructions to enter the company's premises rapidly and to establish full control over all individuals there without giving them the opportunity to erase data or to obstruct the seizure of computers, the CSCOC officers had cut the entrance door lock to the building, thus breaking into the premises. They had then ordered all the individuals found there to lie on the floor and refrain from touching the computer equipment. However, the company's employees had disobeyed the orders and, using different pretexts, had remained instead in front of their work stations, acting so as to delete information from the company's computers. The officers had used physical force, electroshock batons and handcuffs in respect of some of the employees to overcome their resistance and prevent them from touching the computers located on the premises. During the operation, some employees had been knocked over. Those findings had been corroborated by the statements of all persons, civilians and police officers, collected during the inquiry, as well as by documents submitted by the Varna Regional Police Directorate. The prosecutor further found, on the basis of medical reports, that some complainants (without naming them) had sustained injuries during the operation and that they could not identify the officers who had caused the injuries as the latter had been wearing masks. The prosecutor concluded that it had been established unequivocally during the inquiry that the injuries sustained by the civilians during the police operation of 18 June 2008 had been the result of the use of force and auxiliary means for restraint by police officers in order to overcome the complainants' resistance and to prevent them from destroying crucial evidence for the ongoing criminal proceedings. The officers had not exceeded their statutory right under section 72 of the Ministry of Interior Act to use force, as they had been faced with refusals to obey their orders. The material collected during the inquiry had shown that the search-and-seizure operation had been carried out in accordance with the instructions of the supervising prosecutor and had been approved by a

judge. The prosecutor concluded that the police officers involved had not committed a criminal offence.

29. Following an appeal by the applicants and one of the other complainants, on 8 April 2009 the Varna Regional Public Prosecutor ("*Окръжна Прокуратура Варна*") upheld the lower prosecutor's decision. He held, in particular, that the officers had used force for the purposes of gathering physical evidence and in compliance with the applicable legislation.

II. RELEVANT DOMESTIC LAW

A. Intellectual property offences

30. Article 172a of the Criminal Code prohibits the recording, storage, reproduction, emission, transmission or usage of material which is the object of someone else's intellectual property rights. It is punishable by imprisonment of up to five years and a fine of up to 5,000 levs (around 2,500 Euros).

B. Search and seizure

31. Search-and-seizure operations must be authorised in advance of their commission by a first instance court judge in accordance with Article 161 of the Code of Criminal Procedure. In urgent cases, the investigating authorities may carry out search-and-seizure acts without prior approval by a judge; however, a judge's approval has to be sought and obtained within twenty four hours of the search-and-seizure operation.

C. Use of force and auxiliary means for restraint by police officers

32. Section 72 of the Ministry of Internal Affairs Act 2006 ("the 2006 Act") in force at the relevant time provided that, in the exercise of their duties, the police could use force and special auxiliary means for restraint only "as a measure of last resort" in cases of, *inter alia*, resistance or refusal to obey a lawful order, arrest of an offender who disobeys or resists a police officer, and attacks against citizens and police officers.

33. Pursuant to section 73 of the 2006 Act, as in force at the time, the police could use force and auxiliary means for restraint only after giving a warning, and the use of force had to be commensurate with the specific circumstances and the personality of the offender. The same section imposed a duty on police officers to protect, wherever possible, the health of people against whom force was used as well as to take all measures to

preserve those people's lives. The use of force had to be discontinued as soon as the objective for which it was being used was attained.

34. As of 1 July 2012, the words "as a measure of last resort" in section 72 were changed to "only where absolutely necessary". As of the same date, a new section 74a of the 2006 Act provides that "[t]he planning and control of the use of physical force, auxiliary means and firearms by the police ... shall include [the taking of] measures to attain the lawful aim at minimal risk to the life and health of the citizens". In the explanatory notes to the bill the Government had referred to, *inter alia*, the need to bring domestic law fully into line with the applicable international standards and the Court's case-law.

35. Article 12a of the Criminal Code provides that causing harm to a person while arresting them for an offence is not punishable where no other means of effecting the arrest exists and the force used is necessary and lawful. The force used will not be considered "necessary" where it is manifestly disproportionate to the nature of the offence committed by the person to be arrested or is in itself excessive and unnecessary.

36. Regulations of the Ministry of Interior on the use of auxiliary means of restraint by police officers were issued on 7 February 2011. Section 2 (1) stipulates that the police may use auxiliary means for restraint in cases where the grounds under section 72 of the Ministry of the Interior Act are present. As regards more specifically electroshock weapons, according to section 8 of the Regulations, electroshock batons can be used in the following situations: during arrest of persons who physically resist; in order to stop an attack on a police officer; during escape attempts by detainees; or during hostage-freeing operations. Section 2 (2) of the same Regulations provides that any auxiliary means may only be used following a warning, other than in cases of a sudden attack on an officer or another person, as well as during hostage-freeing activities.

D. Refusal to institute criminal proceedings

37. In cases where the prosecutor refuses to institute criminal proceedings, and thus to carry out a full investigation, the higher prosecutor may, on his or her own initiative or following a complaint by a victim, order the institution of criminal proceedings and the opening of an investigation into the events (Article 213 of the Code of Criminal Procedure 2006). Refusals to open criminal proceedings cannot be appealed in court.

E. Institution of criminal proceedings

38. Criminal proceedings (*досъдебно производство*) are instituted where, as a result of preliminary information or following a preliminary inquiry into the events, there is a legitimate reason and sufficient

information that a crime has been committed (Article 207 of the Code of Criminal Procedure 2006). Criminal proceedings for publicly prosecutable offences may be instituted only by a decision of a prosecutor (Article 212 of the Code of Criminal Procedure 2006). Written orders of the higher prosecutor are mandatory for the lower prosecutor (section 143 (3) of the Judiciary System Act 2007).

F. Victims' rights during the pre-trial criminal proceedings

39. At the time of the events, during the pre-trail criminal proceedings victims had the right to personal safety, to be informed of the criminal proceedings' progress, to take part in the investigation and to appeal against the acts suspending or terminating the proceedings (Article 75 of the Code of Criminal Procedure). An amendment introduced in that Article in May 2010 added to the above-mentioned rights the right to make requests, comments and objections in the context of the pre-trial criminal proceedings.

G. Prosecution for ill-treatment of individuals

40. Pursuant to Articles 128, 129 and 130 of the Criminal Code, causing minor, moderate or severe bodily harm to another person is a criminal offence. 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 offence is an aggravated one. The offence is publicly prosecutable.

H Rules of tort

41. The general rules of the law of tort are set out in section 45 of the Obligations and Contracts Act 1951 ("the 1951 Act"). Section 45(1) provides that everyone is obliged to make good the damage which they have, through their fault, caused to another. Under section 45(2), fault is presumed until proved otherwise.

III. RELEVANT NATIONAL AND INTERNATIONAL MATERIALS

A. The Council of Europe

42. The 20th General Report on the Activities of the Committee for the Prevention of Torture (CPT), dated 26 October 2010, stated, *inter alia:*

> "72. Electrical discharge weapons ["EDW"] are increasingly being used when effecting arrests, and there have been well-publicised examples of their misuse in this

context (e.g. the repeated administration of electric shocks to persons lying on the ground). Clearly, the resort to EDW in such situations must be strictly circumscribed. The guidance found by the CPT in some countries, to the effect that these weapons may be used when law enforcement officials are facing violence – or a threat of violence – of such a level that they would need to use force to protect themselves or others, is so broad as to leave the door open to a disproportionate response. If EDW gradually become the weapon of choice whenever faced with a recalcitrant attitude at the time of arrest, this could have a profoundly negative effect on the public's perception of law enforcement officials.

...

78. Electrical discharge weapons issued to law enforcement officials commonly offer different modes of use, in particular a 'firing' and a 'contact' (drive-stun) mode. In the former, the weapon fires projectiles which attach to the person targeted at a short distance from each other, and an electrical discharge is generated. In the great majority of cases, this discharge provokes generalised muscular contraction which induces temporary paralysis and causes the person concerned to fall to the ground. In contrast, when the 'contact' mode is used, electrodes on the end of the weapon produce an electrical arc and when they are brought into contact with the person targeted the electrodes cause very intense, localised pain, with the possibility of burns to the skin. The CPT has strong reservations concerning this latter mode of use. Indeed, properly trained law enforcement officials will have many other control techniques available to them when they are in touching distance of a person who has to be brought under control."

B. Other relevant material

43. Amnesty International has expressed, in a 2007 statement given to the United States Justice Department, particular concern about using electrical discharge weapons in drive-stun mode, noting that "... the potential to use Tasers in drive-stun mode – where they are used as 'pain compliance' tools when individuals are already effectively in custody – and the capacity to inflict multiple and prolonged shocks, renders the weapons inherently open to abuse. In that statement Amnesty International called on all governments and law enforcement agencies to either cease using Tasers and similar devices pending the results of thorough, independent studies, or limit their use to situations where officers would otherwise be justified in resorting to deadly force where no lesser alternatives are available. Strict guidelines and monitoring should govern all such use. The degree of tolerable risk involving Tasers, as with all weapons and restraint devices, must be weighed against the threat posed and ... the vast majority of people who have died after being struck by Tasers have been unarmed men who did not pose a threat of death or serious injury when they were electro-shocked. In many cases they appear not to have posed a significant threat at all."

C. Ombudsman of Bulgaria

44. In a position, published in 2006 in connection with a widely publicised arrest of a drug-trafficking suspect, the Ombudsman expressed strong concerns about a number of cases of police violence during arrest, identified in the United States Department of State Report for 2005, as well as in reports by non-governmental organisations. The Ombudsman called upon the Ministry of Interior to strengthen their efforts in human rights training for police officers, referring specifically to the standards of the Council of Europe. He also invited the Ministry to present its strategy on eliminating unlawful use of police force vis-à-vis individuals for broad public discussion[1].

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicants complained that police officers had ill-treated them by using excessive force when they had broken into the company's offices on 18 June 2008 and that no effective investigation had been carried out into the applicants' related complaints. They relied on Article 13 of the Convention.

46. Since the Court is master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by the applicant or the Government. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009). In the present case, the Court finds that the complaints are best examined under Article 3 of the Convention, which reads as follows:

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

1. http://www.ombudsman.bg/public-positions/391?page=7#middleWrapper

A. Admissibility

1. Victim status

(a) The parties' submissions

47. The Government submitted, first, that the complaints of the first and fourth applicants were inadmissible as those applicants lacked victim status. In particular, Mr Georgiev had not been present in the offices during the police operation in question and Mr Dragnev had not sustained any injuries. The applicants did not comment on this point.

(b) The Court's assessment

48. The Court reiterates that, in order to be able to lodge an application by virtue of Article 34, a person must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see *Burden v. the United Kingdom* [GC], no. 13378/05, §§ 33 and 34, 29 April 2008; *Open Door and Dublin Well Woman v. Ireland*, 29 October 1992, § 44, Series A no. 246-A; *Tănase v. Moldova* [GC], no. 7/08, ECHR 2010, § 104).

49. The Court further observes that allegations of ill-treatment must be supported by appropriate evidence (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV; *Hristovi v. Bulgaria*, no. 42697/05, § 71, 11 October 2011).

50. Turning to the circumstances of the present case, in the absence of submissions to the contrary by the applicants and in the light of the material at its disposal, the Court finds that the first applicant, Mr Georgiev, was not present during the police operation.

51. As to the fourth applicant, Mr Dragnev, he did not provide any medical certificates in support of his allegations of ill-treatment. In the initial application submitted to the Court, Mr Dragnev did not claim that he had been arrested or otherwise prevented from obtaining medical evidence and did not allege that the ill-treatment to which he had been subjected had caused him psychological suffering. Reference, not sufficiently substantiated, to his having felt humiliated by the way he had been treated by the police officers appeared only in the applicant's observations in reply to those of the Government. Therefore, this additional complaint falls outside the scope of the present application and, as such, will not be examined by the Court.

52. On the basis of the submitted evidence it cannot be established that Mr Georgiev and Mr Dragnev have made an arguable claim that the police had used force against them. The Court therefore accepts the Government's submissions that no arguable claim concerning their ill-treatment has been put forward. The Court consequently finds that the first and fourth

applicants cannot claim to be victims of a Convention violation. It follows that the application in respect of them is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Exhaustion of domestic remedies

(a) The parties' submissions

53. In respect of the other three applicants, namely Ms Dekova, Mr Kosev and Mr Tsekov, the Government submitted that they had failed to exhaust domestic remedies. In particular, they had not sought civil damages under section 45 of the Obligations and Contracts Act, nor had they complained to the Inspectorate of the Ministry of the Interior.

54. The applicants argued that in order for such a civil claim for damages to be admissible, they would have had to demonstrate that the police officers had been at fault. That would have been impossible, given that the prosecutor had refused to institute criminal proceedings into their complaints of ill-treatment. The applicants also stated that a complaint before the Inspectorate of the Ministry of the Interior was not a remedy for the protection of their right not to be ill-treated.

(b) The Court's assessment

55. The Court has previously held that a tort action is not capable of leading to the identification and punishment of those responsible and would at most result in an award of damages (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 58, 12 April 2007). It also reiterates that in cases of serious ill-treatment by State agents, an alleged breach of Article 3 cannot be remedied exclusively through the payment of compensation (see, among many other authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 61, ECHR 2000-VII; *Ivan Vasilev*, cited above, § 58). If the authorities could confine their reaction to such incidents solely to the payment of compensation, while not doing enough to identify and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity. Thus the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice (see *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004).

56. The Court observes that the second, third and fifth applicants complained about the incident to the prosecution authorities, who opened an inquiry into their allegations of ill-treatment. The second, third and fifth applicants also appealed against the prosecutor's refusal to institute criminal proceedings (see paragraphs 13 to 35 above) and had no further criminal law remedy at their disposal.

57. Given that the remedies available within the Bulgarian criminal justice system are the normal avenue of redress for alleged ill-treatment by the police (see, on that point, *Kemerov v. Bulgaria* (dec.), no. 44041/98, 2 September 2004; *Hristovi*, cited above, § 53), and in line with its consistent case-law, the Court considers that, having used the possibilities available to them within the criminal justice system, the second, third and fifth applicants were not required either to attempt to obtain redress by instituting separate civil proceedings for tort (see *Assenov and Others*, § 86, and *Ivan Vasilev*, § 57, both cited above), or to complain before the Inspectorate of the Ministry of the Interior.

58. The Court therefore dismisses the Government's objection regarding non-exhaustion of domestic remedies by the second, third and fifth applicants.

59. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The Government's submissions

60. The Government submitted that the operation on 18 June 2008 had been carried out pursuant to a lawful order. The police had planned the operation in advance and they had aimed solely at controlling the situation and not at ill-treating the applicants. Furthermore, when the police had arrived at the offices in which the applicants worked, they had manifested themselves clearly and had asked that the entrance door be immediately opened. Once inside, the police had repeatedly instructed all those present to refrain from touching anything and to lie on the floor. Instead, one of the applicants had started to move in the direction of the corridor and a room. By ignoring the officers' clear instructions the applicants had given the police officers the impression that they were going to attack them and actively obstruct their orders. Thus, by their own actions the applicants had contributed to and provoked the use of force by the police.

61. The use of force had been necessary and proportionate to the applicants' conduct and, in any event, could not be qualified as "ill-treatment". In particular, section 72(1)(1) of the Ministry of Internal Affairs Act authorised the use of force by the police in cases of "resistance or refusal to obey a lawful order". The officers had been firmly convinced that they were working towards the solving of an offence and that the applicants had attempted to destroy or hide evidence. Given the difficulty to gather reliable evidence in respect of the offence under investigation, the police had had to act expeditiously. Also, the level of suffering caused to the

applicants by the actions of the police had not reached the threshold required by Article 3.

62. Lastly, following a complaint brought before the prosecution service, the Varna Regional Military Prosecution Office had opened an inquiry, which subsequently had been referred for competence reasons to the Varna District Public Prosecution Office (see paragraph 24 above). The inquiry had concluded that there was no reason to institute criminal proceedings into the applicants' allegations. As part of that inquiry the authorities had taken statements from all company employees present during the operation. Although the identity of the masked police officers who had participated in the operation had not been established and they had not been questioned, the inquiry had unequivocally established that the applicants had disobeyed a lawful police order, and had thus provoked the use of force by the officers.

2. The applicants' submissions

63. The second, third and fifth applicants submitted that police officers had injured them in breach of their rights under Article 3 of the Convention. They further asserted that the police officers involved in the operation of 18 June 2008 had acted in violation of the Ministry of Internal Affairs Act, which circumscribed the situations in which force could be used by officers in the performance of their duties (see paragraphs 32 and 33 above). The force employed by the police had been excessive and completely unwarranted. The assertions of the Government that the applicants had disobeyed, resisted, and tried to hide or destroy evidence, were false and unproven. The applicants had not provoked the officers' violent behaviour in any way. Had that been the case, criminal proceedings would have been brought against them, and that had not happened.

64. The applicants further submitted that the prosecutors had based their refusals to institute criminal proceedings exclusively on statements made by the police officers during the preliminary inquiry, thus entirely disregarding the statements made by the applicants themselves. The authorities had not established all the circumstances related to the police operation, including how the applicants had sustained their injuries.

3. The Court's assessment

(a) General principles

65. The Court reiterates that Article 3 of the Convention enshrines one of the fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 of the Convention,

even in the event of a public emergency threatening the life of the nation (see *Assenov and Others*, cited above, § 93; *Van der Ven v. the Netherlands*, no. 50901/99, § 46, ECHR 2003-II; *Poltoratskiy v. Ukraine*, no. 38812/97, § 130, ECHR 2003-V). In order to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *A, B and C v. Ireland* [GC], no. 25579/05, § 164, ECHR 2010-...; *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 110, ECHR 2012 (extracts)).

66. The Court notes that Article 3 does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive (see, among others, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 30; *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; *Hulki Güneş v. Turkey*, no. 28490/95, § 70, ECHR 2003-VII (extracts); *Krastanov v. Bulgaria*, no. 50222/99, §§ 52 and 53, 30 September 2004; and *Günaydın v. Turkey*, no. 27526/95, §§ 30-32, 13 October 2005; *Kurnaz and Others v. Turkey*, no. 36672/97, § 52, 24 July 2007; *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). When a person is confronted by the police or other State agents, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement of the rights set forth in Article 3 of the Convention (see *Kop v. Turkey*, no. 12728/05, § 27, 20 October 2009; *Rachwalski and Ferenc v. Poland*, no. 47709/99, § 59, 28 July 2009; *Timtik v. Turkey*, no. 12503/06, § 47, 9 November 2010). Such a strict proportionality approach has been accepted by the Court also in respect of situations in which an individual was already under the full control of the police (see, among others, *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII; *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269; *Milan v. France*, no. 7549/03, 24 January 2008, § 68). The Court attaches particular importance also to the type of injuries sustained and the circumstances in which force was used (see *Güzel Şahin and Others v. Turkey*, no. 68263/01, § 50, 21 December 2006; *Timtik v. Turkey*, cited above, § 49; *Najafli v. Azerbaijan*, no. 2594/07, § 38, 2 October 2012; *R.L. and M.-J.D. v. France*, no. 44568/98, § 68, 19 May 2004; *Tzekov v. Bulgaria*, no. 45500/99, § 57, 23 February 2006).

67. Where injuries have been sustained at the hands of the police, the burden to show the necessity of the force used lies on the Government (see, among other authorities, *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; *Rashid v. Bulgaria*, no. 47905/99, § 46, 18 January 2007; *Lewandowski and Lewandowska v. Poland*, no. 15562/02, § 65, 13 January 2009;

Lenev v. Bulgaria, no. 41452/07, § 113, 4 December 2012, *Georgi Dimitrov v. Bulgaria*, no. 31365/02, §§ 56-57, 15 January 2009).

68. Furthermore, where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII; *Gäfgen v. Germany* [GC], no. 22978/05, § 117, 1 June 2010). The authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (see *Assenov and Others*, cited above, § 103 et seq.).

(b) Application of the above principles to the present case

69. The Court notes that the prosecutor unequivocally established that masked CSCOC officers had used force, as well as handcuffs and electroshock batons, against some employees of the company who had sustained injuries as evidenced by medical reports submitted during the inquiry (see paragraphs 28 and 29 above). In addition, the forensic medical reports showed that the second, third and fifth applicants had been physically injured and, in particular, had sustained numerous bruises, abrasions and burns (see paragraph 22 above). Having regard to those injuries, as well as to the medical conclusions that they had caused the second, third and fifth applicants pain, suffering and temporary non-life-threatening health disorders, the Court finds that the treatment and injuries were sufficiently serious to reach the minimum level of severity required for a complaint to pass the threshold of Article 3.

70. It remains to be established whether the use of force during the operation of 18 June 2008 was strictly necessary in the circumstances. The burden of proof rests on the authorities. They must account for the applicants' injuries by providing a satisfactory and convincing explanation of the circumstances in which they were caused. This is so in view of the fact that the authorities did not dispute that the injuries had been caused by the CSCOC officers and also taking into account the contents of the medical certificates of 19 June 2008, and the consistent description of the events by the second, third and fifth applicants.

71. The authorities started a preliminary inquiry aimed at establishing whether there was a legitimate reason and sufficient information showing that an offence had been committed, which in turn would have justified the opening of a fully-fledged investigation as part of criminal proceedings against the suspected offenders. At the end of this preliminary inquiry the

prosecutors decided not to prosecute the police officers, and so not to carry out a full investigation (see paragraphs 28 and 29 above), on the ground that the used force was permitted by the law and was exercised in order to overcome the applicants' failure to abide by the police orders. The position of both the prosecution and the Government in their observations to the Court was that the police had not exceeded their statutory right under section 72 of the Ministry of Interior Act to use force as they had faced refusals to obey their orders.

72. However, the inquiry did not give an answer to the key question exactly what resistance the applicants had put up, nor did it explain whether the force used had been inevitable in the circumstances. The Court further notes that, while victims should be able to participate effectively in the investigation (see *Husayn (Abu Zubaydah) v. Poland*, no. 7511/13, § 480, 24 July 2014; *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167), the applicants were not involved during the inquiry because they could only effectively participate once a full investigation had been opened and legal rights had been granted to them (see paragraph 39 above). In addition, the Court is not convinced that a plausible explanation was provided during the inquiry of the circumstances in which the second, third and fifth applicants sustained their injuries during the police operation on 18 June 2008. In particular, the investigating authorities did not seek to establish whether there were video cameras in the company's offices as suggested by the employees (see paragraph 17 above) and, if so, whether they had been recording at the time of the operation to provide an objective picture of the events. Furthermore, the investigating authorities heard no independent witnesses; instead, they collected statements solely of police officers and employees present at the scene, but not of the certifying witnesses who had been called in during the operation to assist with the seizure of the computer equipment (see paragraph 9 above).

73. Although the terms of reference of the inquiry included the question who among the officers had used physical force and against whom of the employees (see paragraph 25 above), this was not determined. The questioning of the CSCOC police officers took place in Sofia by delegation at the request of the Varna investigation authorities (see paragraph 19 above). Taken together with the fact that at the time of the operation the CSCOC officers wore masks and had no identification signs, this made it impossible for the applicants to identify those directly involved in the use of force. This was also noted by the prosecutor (see paragraph 28 above). However, no further questions were posed and no further attempts were made with a view to clarifying their individual role in the events. The Court recalls that the investigation must be capable of leading to the identification of those responsible with a view to their punishment (see *Stoev and Others v. Bulgaria*, no. 41717/09, § 42, 11 March 2014; *Nikolay Dimitrov v. Bulgaria*, no 72663/01, § 68, 27 September 2007, and *Biser Kostov*

v. Bulgaria, no 32662/06, § 78, 10 January 2012). In this connection the Court notes that it has earlier held that, where the circumstances are such that the authorities are obliged to deploy masked officers to effect an arrest, those officers should be required to visibly display some anonymous means of identification – for example a number or letter, thus allowing for their identification and questioning in the event of challenges to the manner in which the operation was conducted *(see Hristovi v. Bulgaria*, no. 42697/05, § 92, 11 October 2011). The Court further notes that the authorities did not establish whether specifically the second, third and fifth applicants disobeyed the CSCOC officers' orders and, if so, how exactly, or whether the officers themselves sustained any injuries as a result of the employees' disobedience and opposition. The Court finds it unsatisfactory and particularly striking that the prosecution authorities could conclude, without supporting evidence other than statements of police officers involved in the operation, that the employees actively had disobeyed the officers' orders in a manner which required the use of physical force. To make such an assumption runs contrary to the principle under Article 3 that, when the police confront an individual, recourse by them to physical force which had not been made strictly necessary by the individual's own conduct is in principle an infringement of his or her rights (see *Assenov and Others*, cited above, § 104; *Kaçak and Ebinç v. Turkey*, no. 54916/08, § 42, 7 January 2014).

74. The Court further observes that it has not been shown either that the authorities made an attempt to assess the veracity of the second, third and fifth applicants' particular allegations, despite their gravity, namely that the third applicant had been subjected to electroshocks while handcuffed to a window grill, that the second applicant had been subjected repeatedly to electroshocks and that the fifth applicant had been forced to crouch for an hour. Similarly, the authorities have not tried to evaluate whether the manner in which the CSCOC officers treated the applicants, had been strictly necessary to the latter's conduct. The Court observes that even if some officers may have been under the impression, as they claimed, that the employees would attack them so as to justify the use of the electroshock weapons, the prosecution authorities did not attempt to establish whether such an attack had been attempted, or indeed intended, and whether those officers had clearly warned the people to whom electroshock discharges had been applied before applying them.

75. What is more, the authorities have not identified either the CSCOC officers who had used electroshock weapons or the precise type of electroshock weapons used or the duration for which they had been applied to company employees. The Court observes that electroshock discharges applied in contact mode (known also as "drive-stun" mode) are known to cause intense pain and temporary incapacitation (see paragraphs 42 and 43 above). It further notes that at the time of the facts Bulgarian law lacked any

specific provisions about the use of electroshock devices by the police and did not lay down any instructions for their usage (see, *mutatis mutandis*, in the context of the use of tear gas, *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, § 48, 16 July 2013; *İzci v. Turkey*, no. 42606/05, § 64, 23 July 2013). The Regulations of the Bulgarian Ministry of Interior on the use of auxiliary means of restraint by police officers were issued in 2011, circumscribing the use of electroshock weapons to a limited number of situations (see paragraph 36 above) and following a warning. As the regulations were issued almost three years after the events, they were not applicable at the time of the operation.

76. However, the fact that there were no specific instructions related to the use of electroshock weapons did not in itself absolve the police authorities from their obligation to abide by the standard under Article 3 of the Convention of strict necessity of the use of force. In that regard the Court observes that section 72 of the Ministry of Interior Act, as applicable at the time, allowed the use of force only as a last resort. Furthermore, section 73 of the same Act specified that the police could use force and auxiliary means for restraint only after giving a warning and had to discontinue it as soon as the objective for which it was being used was attained (see paragraphs 32 and 33 above). The Court further points out with respect to the use of electroshock weapons that the CPT, it its 20th General Report (see paragraph 41 above), expressed strong reservations in particular in respect of the use of electrical discharge weapons used in contact mode, as the ones that allegedly have been used on the second and third applicants. The Court, like the CPT, considers that properly trained law enforcement officers have many other control techniques available to them when they are in touching distance of a person who has to be brought under their control.

77. Insofar as the national authorities and the Government submit that the use of force was justified by the necessity to prevent destruction of electronic evidence contained in the company's computers, the Court is not convinced that this legitimate aim could not be achieved by more appropriate and less intrusive means which did not require using physical force after entering the offices.

78. Given the inquiry's failure to establish in detail the exact circumstances of the incident and to account in full for the reasons the CSCOC officers had used force, of the extent and type in which the second, third and fifth applicants sustained their injuries, the Court concludes that the authorities failed to discharge the burden satisfactorily to disprove the applicants' version of the events (see, *mutatis mutandis*, *Abdullah Yaşa and Others*, cited above, § 47). Consequently, the Government have not furnished convincing arguments to justify the degree of force used against the second, third and fifth applicants (see, *mutatis mutandis*, *Zelilof*, cited above, § 51; *Mustafa Aldemir v. Turkey*, no. 53087/07, §§ 49-51, 2 July 2013; *Kaçak and Ebinç v. Turkey*, no. 54916/08, § 41, 7 January 2014). The

Court is therefore satisfied that during the police operation of 18 June 2008 the police subjected the second, third and fifth applicants to treatment incompatible with Article 3 of the Convention and that the authorities failed to carry out an effective official investigation into the applicants' allegations to this effect. There has, therefore, been a violation of both the substantive and the procedural aspects of Article 3.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

80. The applicants claimed 2,500 euros (EUR) each in respect of non-pecuniary damage.

81. The Government submitted that the requested amount was excessive and unjustified.

82. The Court, having regard to the violations found under Article 3, considers that the ill-treatment which the second, third and fifth applicants endured and the failure of the authorities effectively to investigate their related complaints must have caused them psychological suffering. It accordingly awards them each EUR 2,500 in respect of non-pecuniary damage.

B. Costs and expenses

83. In a letter of 20 July 2012 the applicants' former representative submitted to the Court a claim for just satisfaction on behalf of the applicants. In that claim she requested EUR 1,278 for legal fees in connection with the proceedings before the Court, without submitting an itemised break-down of the sum. In the meantime, in a letter of 13 July 2012 the applicants had informed the Court that as of 9 July 2012 they had appointed a new legal representative before the Court. In view of that, the Court informed the parties on 23 October 2012 that the submissions sent on 20 July 2012 by the applicants' former representative would not be included in the file for consideration by the Court. The Court also gave a new deadline to the newly appointed representative for submission of claims for just satisfaction on behalf of the applicants. Those were submitted within the time-limit. However, no specific sum was requested for costs and expenses and no itemised bills were presented.

84. The Government considered that the claims for costs and expenses were utterly unsubstantiated and pointed out that no itemised bills had been presented.

85. According to the Court's case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and were reasonable as to quantum (see *The Sunday Times v. the United Kingdom* (Article 50), judgment of 6 November 1980, Series A no. 38, p. 13, § 23). In the present case, the Court finds that the claim for costs and expenses has not been substantiated and no itemised bills have been presented in support of it. Consequently, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application in respect of the second, third and fifth applicants admissible and the remainder inadmissible;

2. *Holds* that there has been a violation of both the substantive and the procedural aspects of Article 3 of the Convention in respect of the second, third and fifth applicants;

3. *Holds*

(a) that the respondent State is to pay each of the second, third and fifth applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 2,500 (two thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatos Aracı	Ineta Ziemele
Deputy Registrar	President