



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

FOURTH SECTION

**CASE OF DIMOV AND OTHERS v. BULGARIA**

*(Application no. 30086/05)*

JUDGMENT

STRASBOURG

6 November 2012

*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 Dimov and Others v. Bulgaria,**

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

Lech Garlicki, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Nebojša Vučinić, *judges*,

Pavlina Panova, *ad hoc judge*,

Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 16 October 2012,

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

**PROCEDURE**

1. The case originated in an application (no. 30086/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Bulgarian nationals, Mr Dobromir Todorov Dimov, Mr Danaïl Todorov Dimov and Ms Vera Hristova Todorova (“the applicants”), on 1 August 2005.

2. The applicants were represented by Ms S. Stefanova and Mr M. Ekimdzhev, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicants alleged that the death of their father and husband during a police operation for his arrest had been in breach of Article 2 of the Convention, that the ensuing investigation had not been effective, that the partial destruction of the deceased’s house during the police operation had been in breach of Article 1 of Protocol No. 1, and that they had not had effective remedies in those respects.

4. On 22 October 2009, Ms Zdravka Kalaydjieva, the judge elected in respect of the Republic of Bulgaria, withdrew from sitting in the case. Accordingly, on 15 May 2011 the President of the Fourth Section appointed Ms Pavlina Panova as an *ad hoc* judge from the list of three persons whom Bulgaria had designated as eligible to serve as such judges (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

5. In the meantime, on 29 March 2010 notice of the application was given to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1981, 1979 and 1959 respectively and live in Harmanli.

7. The first two applicants are the sons, and the third applicant is the widow, of Mr Todor Dimov Todorov (alias Chakara), who died on 10 or 11 December 2003 in the course of a police operation for his arrest.

#### A. Background

8. Between 1973 and 2001 Mr Todorov, born in 1955, was convicted six times of various offences. In 1973 he was convicted of inflicting bodily harm of medium severity. In 1974 he was convicted of forming a group intending to engage in sabotage, of trying to cross the border illegally, of stealing public and private property and a motor vehicle, and of unlawfully possessing firearms and ammunition. In 1983 he was convicted of inflicting minor bodily injury on an official in connection with the performance of the latter's duties. In the same year he was convicted of stealing fifty-three lambs. In 1990 he was convicted of trying unlawfully to export valuables. In 1998 he was convicted of stealing two lambs and unlawfully possessing firearms.

9. On 5 July 2001 Mr Todorov was convicted of systematically letting out his house for lewd acts, and sentenced to six months' imprisonment. The conviction and sentence became final on 21 October 2003.

10. On an unspecified date in November 2003 the Harmanli police were notified of that latest conviction and sentence, and dispatched two officers to arrest Mr Todorov with a view to sending him to prison to serve the sentence. The officers went to his house in Harmanli, informed him that he was due to be imprisoned, and asked him to come with them. Mr Todorov, visibly calm, asked the officers to wait for a few minutes, so that he could prepare his luggage. The officers waited for about ten minutes outside the house. When they went in to arrest Mr Todorov, they saw that he had fled. After that they went back to the police station and reported the incident to the head of the Harmanli police and to the Harmanli District Prosecutor's Office.

#### B. Circumstances surrounding Mr Todorov's death

11. The account of the circumstances surrounding Mr Todorov's death is based on the findings of the investigation carried out by the military prosecuting and investigating authorities (see paragraphs 30-43 below).

12. In early December 2003 the Supreme Cassation Prosecutor's Office ordered the police to carry out a series of operations for the arrest of individuals with final convictions and sentences. As a result, in the morning of 10 December 2003 the head of the Harmanli Regional Police Department assembled three groups of officers to arrest Mr Todorov. The first group had to check his house in Harmanli, the second had to check the sheep pen of an associate of his, and the third had to check Mr Todorov's country house, situated near Harmanli. All three groups were armed with their service pistols. They were told that Mr Todorov might try to escape or put up armed resistance, and instructed to use their weapons only as provided for by law.

13. At about 7.15 a.m. the three groups set out to carry out their respective tasks. The first and the second group were unable to find Mr Todorov. The third group, which consisted of three officers, two of whom were in uniform (one wearing a bullet-proof vest) and one in plain clothes, arrived near Mr Todorov's country house at about 7.25 a.m. The house was surrounded by service buildings. All of those were erected on uneven terrain sloping steeply from the north-west to the south-east. The officers stopped their car in front of the gate, close to which they saw a big pile of used car tyres. They noticed that the gate was closed and started to whistle and shout. Several dogs in the yard started barking and Mr Todorov's mother came out of one of the service buildings. One of the officers presented himself and told her that they were looking for her son. Then she opened the gate and held the dogs back. The officers moved towards the house, the one with the bullet-proof vest walking in front, and went through another gate between several service buildings. At that point they spotted Mr Todorov on the steps outside the house, carrying an unidentified weapon. He also saw them, waved to them to go away and fired a shot, apparently in their direction. Two of the officers hid behind the service buildings and one behind some building materials scattered around the yard. He then ran back to the car and radioed the headquarters in Harmanli about the incident. At about 7.30 or 7.45 the head of the three officers ordered them to remain where they were and not to take further action.

14. Shortly after that the head of Harmanli Regional Police Department directed all police teams in the town towards Mr Todorov's country house and requested assistance from the police in two neighbouring towns, Haskovo and Svilengrad. The Haskovo police dispatched an emergency response team consisting of six officers, and the Svilengrad police sent eight officers divided into two teams. The head of the Svilengrad police also went to the scene of the incident.

15. At about 9 a.m. the Harmanli police, some of whom had armed themselves with long barrel weapons, surrounded the house and cut off all access points, waiting for the emergency response team from Haskovo to

arrive. It seems that Mr Todorov fired several shots at them, with one of the bullets hitting the mudguard of a police car. The police did not fire back.

16. Shortly after that the Haskovo team arrived and positioned themselves around the house. The head of the team informed the Minister of Internal Affairs of the situation. The Minister decided to dispatch the special anti-terrorism squad and psychologists of the Ministry of Internal Affairs' Psychology Institute. The Svilengrad police also arrived a few minutes later. Most of them took up position around the house. A fire engine also came to the scene.

17. The head of the Haskovo team decided to try to establish contact with Mr Todorov through relatives of his. At about 9.30 a.m. Mr Todorov's sister was called in and asked to help the police. At the same time Mr Todorov's elder son (the first applicant) also arrived. He offered to take his father a mobile phone so that he could communicate more easily with the police. The head of the Haskovo police team refused, apparently for fear that the first applicant might be taken hostage by Mr Todorov. Some time after that the two officers hiding behind the service buildings managed to get out of the yard with the help of Mr Todorov's mother.

18. At about 11 a.m. Mr Todorov's sister approached the house and brought her mother out. She spotted Mr Todorov, who waved at her. She understood the gesture to mean that he wished to talk to somebody on the phone, and asked the police to allow her to take a mobile phone or a megaphone to Mr Todorov. Her request was turned down with the explanation that the police were waiting for psychologists, who would try to establish contact with Mr Todorov, to arrive.

19. Shortly after that two psychologists of the Ministry of Internal Affairs' Psychology Institute arrived. They started gathering information about Mr Todorov's personal history, character and relations with his family, in order to decide whether his relatives might be able to exert a positive influence on him. The first applicant again asked for permission to take his father a mobile phone, but his request was turned down due to security concerns.

20. Shortly after that the special anti-terrorism squad arrived. They gathered information about the internal structure of the house from Mr Todorov's relatives, with a view to determining safe ways of approaching the house.

21. Around 11.30 a.m. the psychologists tried to make contact with Mr Todorov from a height situated at about one hundred metres from the house, using a megaphone. As communication from such a distance was difficult, at the suggestion of the first applicant they advanced to twenty-five or thirty metres from the house. They tried to persuade Mr Todorov to surrender. He requested to speak with his mother and his sister, but his request was denied. He then apparently said that if anyone was to get hurt, it would be him. As the psychologists believed that the first applicant would

be able to exert a positive influence on Mr Todorov, they tried to continue the negotiations with his participation until 2.30 p.m. As Mr Todorov did not reply for about forty minutes, they gave up. According to the first applicant, the reason for the discontinuation of the negotiations was the fact that the megaphone's battery had run out.

22. Around 3.30 p.m. the police decided to attack the house, because they believed that Mr Todorov had prepared a secret escape route and might try to flee. The head of the anti-terrorism squad split his men into two groups. The first, consisting of six officers, was to attack from the north-west, from high ground, and the second from the service buildings. The first group was moving in a column, with the first officer carrying a protective shield. They fired about thirty smoke bombs at the house, with a view to forcing Mr Todorov out of it. However, as the windows and the doors were covered with linoleum, cardboard and blankets, most of the smoke bombs failed to penetrate. Mr Todorov started firing at the first group, and this forced them to take cover in a ditch. The head of the squad ordered the second group to fire at the house to divert Mr Todorov's attention and Mr Todorov fired back at them. The skirmish lasted for about an hour, after which both groups of officers retreated. At about 5 p.m. the Haskovo police, who were hiding behind the pile of tyres, were also ordered to retreat to a safe distance.

23. After that the police tried to resume the negotiations. A group of officers and the first applicant advanced to about ten or fifteen metres from the house and invited Mr Todorov to continue negotiating. He did not reply and the police gave the megaphone to the first applicant, who called upon his father to surrender. Again, there was no reply. At that point the police saw that as a result of the earlier attack a room on the first floor of the house had caught fire. The psychologists and the first applicant then retreated. The first applicant shouted towards the house "Father, please come out unarmed and surrender, so that this whole episode can be over", but his supplication went unanswered.

24. At about 6 p.m. the head of the anti-terrorism squad ordered his men to blow up holes in the walls of the house. They used stunt grenades. According to his later statements, this led to explosions and a short skirmish. According to the first applicant, after 5 p.m. Mr Todorov did not talk or shoot back at the police, or react to their attacks in any other way.

25. After that the head of the anti-terrorist squad informed the Minister of Internal Affairs about the latest developments. The Minister called a halt to all actions pending the arrival of the Secretary General of the Ministry, general B.B., on the spot. In the meantime, police vehicles were placed on a height facing the house, so as to shed light on the scene with their headlights.

26. The Secretary General arrived at about 8.30 or 9 p.m. and took command of the operation. He ordered the police to blow a hole in the walls

of the house. The police carried out the order. According to a later statement by the Secretary General, after the first explosion there was a second one, coming from the upper levels. As a result, the roof caught fire and quickly burned down. Apparently several unsuccessful attempts were then made to enter the house, but it is unclear in what exactly they consisted. Meanwhile, an individual who had worked on the house and who had heard about the incident on the radio came to the police and told them that Mr Todorov had warned him that the house was booby-trapped.

27. Around 10 p.m., on the orders of the Secretary General, a border police unit was called in to monitor the house and its surroundings with night-vision devices. The monitoring continued until the next morning.

28. Later, following a discussion with other senior officers, the Secretary General ordered the police to use a rocket propelled grenade launcher, in order to diffuse any possible booby traps and speed up the search of the house. The launcher was brought at about 1.30 a.m. on 11 December 2003, and given to the anti-terrorism squad. Between 2 and 2.30 a.m. an officer of the squad fired fifteen rocket propelled grenades at the lower parts of the house and a room on the first floor, which made a big breach in the wall. It was decided to await daylight to attack.

29. Around 6 or 7 a.m. the police formed a thick cordon around the house. They started entering the house and checking the ground and the first floor. When they reached the attic floor, using a fire-ladder, they saw the legs of Mr Todorov's charred body. The operation was then terminated, the house was sealed off, and the incident was reported to the military prosecuting authorities.

### **C. The investigation**

30. The same day, 11 December 2003, the Plovdiv Regional Military Prosecutor's Office opened an investigation into the above events. An investigator carried out an inspection of the scene of the incident and took photographs.

31. The next day, 12 December 2003, a doctor from the forensic ward of the Haskovo hospital performed an autopsy on Mr Todorov's body. He noted the following:

“The body is split in two and the vertebral column is severed at the fifth or the sixth vertebra. The body is as a whole charred. The configuration of the skull is intact. The hair is missing. There are remains of charred soft tissue on the calvaria and the face. The lower jaw is broken at the level of the right ramus mandibulae, with broken fragments and teeth. The skull bones are crumbly, charred. The configuration of the brain is intact, as if it has been parched. The brain tissue is not damaged and there are no haematomas in the cranial cavity. The skin at the neck is charred. Part of it, near the trachea and right part of the neck, is missing, which allows one to see the charred underlying neck muscles. The upper third of the thorax is preserved, but the soft tissue is fully charred. The lungs and the heart are still connected to their holders; they have

shrunk, they are parched and dry with charred surfaces and hard to cut. The surrounding tissue of the section has no visible structure. The liver, shrunk and charred, reduced in size and parched, lies beneath. The vertebral column is segmented at the level of the fifth or the sixth vertebra, and what remains of it, including the lumbar part, has charred vertebrae covered with remains of charred tissue. The remaining two thirds of the abdominal wall are missing. The pelvis, including the wings of the iliums, the ischium and the pubic bone, is broken into pieces. The symphysis is separated. Parts of the intestines, charred, and remains of fatty tissue were found inside the pelvic cavity. Limbs: the right arm is strongly flexed at the elbow joint; the bones in the joint are apart. The wrist is flexed and the fist is clenched. A safety-loop from a hand grenade was found on the third finger, between the first and the second phalanges. The skin and the muscles of the hand are charred. The palm and two thirds of the forearm of the left hand are missing, and the remains have an uneven edge and are strongly flexed at the elbow joint. The soft tissue is charred. The skin and the muscles on the entire surface of the right thigh are charred. The skin on the front surface of the knee and on the front surface of the upper two thirds of the shank is preserved. The soft tissue on the back surface of the shank is charred to the bone, and the back surface of the heel is burned. The foot is encased in a [military-type] shoe. One can see the remains of trousers and of woollen socks. The skin and the muscles of the left leg and of the thigh are charred. The left shank has been affected in the same way as the right one, with a [military-type] shoe and a charred sock on. There are greyish metal pellets driven into the tissue and the bones of the pelvis area. Two such pellets were taken out of the left ilium and given to the investigator. We made X-rays of the body in the autopsy room... On the images one can see oval-shaped foreign bodies with similar diameters driven into the tissue, mostly in the pelvis and the thorax. One can see a metal safety-loop attached to the third finger of the right hand. ...”

32. In the following months the authorities interviewed all officers who had taken part in the operation: thirty-nine officers from the Harmanli Regional Police Department, six officers from the Haskovo Regional Directorate of Internal Affairs, sixteen officers from the Svilengrad Regional Police Department, thirty-one officers from the special anti-terrorism squad, nineteen border police officers, three psychologists from the Ministry of Internal Affairs’ Psychology Institute, and the Secretary General of the Ministry of Internal Affairs. They also interviewed the applicants and other eyewitnesses, and commissioned a number of expert reports.

33. On 3 August 2004 the investigator in charge of the case proposed that the prosecuting authorities discontinue the investigation. On 3 September 2004 the Plovdiv Regional Military Prosecutor’s Office agreed to the proposal. It said that the investigation had categorically established that Mr Todorov’s death had been due to the explosion of a hand grenade which he had himself detonated close to his body. No officers were responsible for that. The actions of the police had fully complied with the applicable rules and had been the only actions possible under the circumstances, in view of the resistance put up by Mr Todorov and the fact that he had fired at them.

34. On 17 September 2004 the applicants sought judicial review of the discontinuance.

35. On 28 September 2004 the Plovdiv Military Court, sitting in private, set the discontinuance aside and referred the case back for additional investigation. It noted that the investigation had failed to establish the exact time of Mr Todorov's death, which had prevented the prosecuting authorities from assessing fully the lawfulness of the actions of the police, including the use of explosives, smoke bombs and a grenade launcher. It went on to say that the prosecuting authorities had failed to analyse the evidence properly and give reasons why they believed that all actions of the police had been lawful. In particular, they had failed to give any reasons why they considered that the actions of the police after 9 or 9.30 p.m. on 10 December 2003, including the firing of fifteen rocket propelled grenades, had been warranted, especially in view of the fact that the evidence showed that after that time Mr Todorov had not resisted or fired at the police. Lastly, it could not be categorically concluded that Mr Todorov's death had been caused by a hand grenade which he had activated himself; a number of other explosive devices had been used by the police.

36. Accordingly, on 5 October 2004 the Plovdiv Regional Military Prosecutor's Office sent the case back to the investigator, instructing him to (a) ask ballistics experts to identify all explosive devices which had been used, explain their mode of operation, and express their opinion on whether the smoke bombs fired at the house had been capable of creating a concentration of gases sufficient to cause the death of Mr Todorov; (b) seek the opinion of forensic and ballistics experts on the exact time of Mr Todorov's death, on the origin of the metal fragments found in his body, and on whether the death had resulted from a hand grenade; (c) interview again the participants in the operation and ask them why it had been deemed necessary to use a grenade launcher and other explosive devices at a time when Mr Todorov had no longer been showing any signs of resistance; (d) establish whether booby-traps had indeed been planted in or around the house; and (e) identify the officers who had caused damage to the house and ascertain whether their actions had amounted to a criminal offence. It went on to note that Mr Todorov's heirs had not been given an opportunity to acquaint themselves with the materials in the case file, which had been a serious breach of the rules of procedure.

37. The investigator asked several experts to draw up the reports requested by the prosecuting authorities.

38. In a report drawn up on 11 November 2004 an expert said that no devices which could be described as booby-traps had been found in Mr Todorov's house or yard. Two fully operational defensive hand grenades had been found inside the house.

39. In their report, drawn up on 23 November 2004, the ballistics experts described the characteristics of the weapons and ammunition used during

the operation or found on the spot (Kalashnikov assault rifle and ammunition for it, anti-tank rocket propelled grenades, tear-gas grenades, small wall-blasting explosives, a defensive hand grenade), and said that the wall of the house had been demolished by the anti-tank rocket propelled grenades fired during the operation. They also said that from the materials in the case file it appeared that no tear-gas grenades had fallen inside the house, and that the concentration of any such gas in the room where Mr Todorov had been standing had not been high enough to kill him.

40. The combined forensic and ballistics expert report, drawn up by a forensic doctor, an army weapons specialist and an expert in automatic weapons, became ready on 2 December 2004. It said that the complete charring of Mr Todorov's body prevented a medical determination of the time of his death. The explosive device which had killed him had been very close to his body at the moment of detonation, with the result that the body had suffered the impact of all components of the explosion: the detonation, the gases, parts of the explosive, soot, parts of the device's casing and fragments of it. Mr Todorov's body had been destroyed and had sustained deep burns, to the point of charring, and multiple wounds from the device's casing and filling. The metal fragments found inside the body showed that the device was a hand grenade, of the type used in the Bulgarian army, consisting of a metal casing and, underneath it, plastic shells containing 200 to 400 pellets. All of those had impacted on Mr Todorov's body. The mechanism of the grenade and the force needed to pull its lever were such as to prevent accidental detonation, including detonation resulting from the close-by detonation of another device, which meant that Mr Todorov had been fully conscious of his actions when activating the grenade. He had thus blown himself up, as could be seen from the safety-pin loop found on the third finger of his right hand. However, it was probable that the charring of his body was due to a secondary fire in the room, and had occurred after his death.

41. On 4 January 2005 the Plovdiv Regional Military Prosecutor's Office again decided to discontinue the investigation. It set out its findings of fact and the conclusions of the expert reports, and reasoned as follows:

"... The initial steps taken by officers of the Harmanli Regional Police Department with a view to [Mr] Todorov's localisation and arrest were lawful. When he used firearms against them, they duly reported that to their superiors. They, in turn, lawfully decided to use firearms as a means of last resort, in accordance with section 80(1)(1) and (1)(4) of the Ministry of Internal Affairs Act [1997]. As [Mr] Todorov refused to obey their order to surrender and continued to fire at them, it was lawful to bring in the anti-terrorism squad. This was in line with section 157(1)(2) of the [Act] and based on a decision of the Minister of Internal Affairs. The police were confronted with an individual who had committed numerous criminal acts and had numerous convictions and who, during an operation for his arrest to enforce a sentence ..., put up armed resistance. This was established on the basis of the statements made by the officers and by [Mr] Todorov's relatives. The fact that he

fired upon the police is also confirmed by the bullet-hole in the left mudguard of [a police car] and the asbestos cement sheets placed outside the house.

The steps taken by the officers of the [anti-terrorism] squad after their arrival were also lawful. They were faced with an urgent special operation which required fast appraisal of the situation and decision-making. Their decisions were taken on the basis of the situation described above. After [Mr] Todorov failed to heed the advice of his relatives and the psychologists to turn himself in, it was lawful and in line with section 159(1)(1) of the [Act] and regulations 8(3), (5) and (7) to resort to the use of pyrotechnical devices and explosives. One of the walls of the ground floor of the house was blown up with a view to storming it and making a passage to the inside. However, in view of the explanations of [the individual who had worked on the house] about booby traps in various unknown locations in and around the house and the darkness, the attack was postponed. It was only at that point that a decision was taken to use anti-tank grenades, in line with regulation 8(3). The purpose was to diffuse any explosive devices and clear a passage for the storming party, which was supposed to attack in the morning. As a result of the firing of those grenades, part of the ground floor of the building was destroyed. When the goal had been achieved, the firing stopped. The attack began in the early morning of 11 December 2003 in order to protect the health and the lives of the police officers. Then they found the body of [Mr] Todorov.

In this case, there was overt resistance by [Mr] Todorov and refusal to obey police orders. Also, before using weapons the police officers and the members of the anti-terrorism squad considered the specific situation, the nature of [Mr Todorov's] act and [his] personality. They took all necessary safety measures and discontinued the use of weapons immediately after achieving their goal – opening a breach for the storming party.

The actions of the officers would be criminal only if they were socially dangerous, committed with *mens rea*, and punishable... The lack of any of those characteristics makes their actions not criminal. By Article 12a of the Criminal Code, it is not criminal to cause damage to a person who has committed an offence in order to effect his arrest and prevent him from committing further offences, if there is no other way to carry out the arrest and if the necessary and lawful measures are not exceeded. This equally fully applies to the house used by [Mr] Todorov as a shelter. Since there was no other way of entering it, it became necessary to demolish part of it. The available evidence shows that the actions of the police were not socially dangerous, but socially necessary, and, indeed, the only ones possible under the relevant provisions of the Ministry of Internal Affairs Act [1997] and the regulations. Therefore, there has been no criminal offence. All exculpatory circumstances under Article 12a are in place. ...

Moreover, under section 159(3) of the Ministry of Internal Affairs Act [1997], the identities of the members of the special anti-terrorism squad are to be kept secret, which means that they cannot be held criminally liable.

The investigation categorically and unequivocally found that [Mr] Todorov's death was due to his blowing himself up with an offensive hand grenade which he detonated close to his body. No officers are responsible for that. No other offences committed by the officers in connection with the performance of their duties were established. ...”

42. On 25 January 2005 the applicants sought judicial review of the discontinuance. They argued that not enough evidence had been gathered on the time and the causes of Mr Todorov's death, and that only experts in pathology would be able to give an informed opinion on those points. It was

also hard to believe that Mr Todorov had blown himself up with a hand grenade. He was a right-hander and the grenade safety-loop was found on a finger of his right hand, whereas it was highly unusual for someone to draw the safety-loop of a hand grenade with his strong hand and hold the grenade itself with his weak hand. The investigation had not done enough to elucidate that paradox, which was central to its conclusions. It was also incomprehensible how the experts, none of whom was a psychologist, were able to give an opinion about Mr Todorov's state of mind before his death. No explanation was provided about the type of explosives used at 9 p.m. on 10 December 2003 to blow up the hole in the wall of the house. This seriously weakened the prosecutor's conclusion that the metal pellets found in Mr Todorov's body were from a hand grenade. After 5 p.m. on 10 December 2003 the police were not acting in self-defence because Mr Todorov had not fired any shots at them after that time. They clearly overstepped the limits set by Article 12a of the Criminal Code and did not try to contact him or arrest him without using force after that time. The conclusion that a grenade launcher was needed to diffuse possible booby traps could not withstand scrutiny. No such traps were found, and it was absurd to believe that trained police officers could suppose that such traps had been laid around a house whose yard was used by Mr Todorov, his family and domestic animals. The police apparently only resorted to using a grenade launcher to speed up the operation. It was also telling that the names of the officers who ordered the use of a launcher were not mentioned in the prosecutor's decision. Lastly, the applicants pointed out that this Court's case-law under Article 2 of the Convention required that there should be an effective official investigation when individuals have been killed as a result of the use of force by the police.

43. On 8 February 2005 the Plovdiv Military Court, sitting in private, decided to uphold the discontinuance in the following terms:

“... After fully checking the materials in the case file, the court comes to the only possible conclusion, namely, that the decision to discontinue the proceedings was correct, well-founded and lawful.

The investigation was objective, all-inclusive and comprehensive. The investigating and the prosecuting authorities have taken all necessary steps to establish the truth. All circumstances surrounding the main fact – the cause of [Mr] Todorov's death – have been examined. The authorities have not committed serious breaches of the rules of procedure. The remitting of the case for additional investigation was a major factor in that respect. The prosecutor's conclusions are correct, well-founded, not internally inconsistent, accurate and fully correspond to the evidence and the facts. To come to them, the prosecutor, along with an assessment of the available materials, has taken into account the constant case-law of the Supreme Court of Cassation and academic studies of criminal law.

The prosecutor's conclusion that the proceedings should be discontinued corresponds to the totality of the evidence, which has been precisely analysed and assessed. The court finds that the prosecutor was right to conclude that the police were acting in a situation falling under Article 12a [of the Criminal Code]. They were

aiming to arrest an individual who had committed an offence, and who had been convicted and sentenced by means of a final decision. He refused to obey their orders and put up fierce armed resistance. His actions consisted in an attack against the police that seriously endangered their lives. This leads to the incontestable and unequivocal conclusion that the police officers were acting in pursuance of their duties and that their actions were correct, lawful and adequate in a situation which was extreme, critical and gravely dangerous for their health and lives.

The court fully shares the remaining conclusions of the prosecutor ... which it considers correct and accurate.

On that basis, the court finds that the arguments raised in the application [for judicial review] are groundless and ill-founded. Firstly, the arguments ... that the 'prosecutor's findings about the time of death are unconvincing and solely based on the conclusions of the medical expert's report' ... are groundless. If the [applicants' lawyers] had bothered to acquaint themselves with [the] evidence ..., they would not have reached those conclusions. The prosecutor's findings about the causes and the time of [Mr] Todorov's death were based not only on the conclusions of the medical expert's report and the complex ballistics and medical experts' report, but also on the statements of all eyewitnesses. The lawyers should be aware that a fact, namely the time and the causes of death, can be established through all types of evidence allowed under the rules of criminal procedure, not solely expert reports. Since the experts' conclusion, whose accuracy the court does not doubt, is supported by an abundance of other evidence, including eyewitness statements, the court finds this fact to be unequivocally established ... For that reason, the court finds that the time and the cause of [Mr] Todorov's death have been unequivocally established, and that this has been accurately described in the prosecutor's decision. The court therefore finds the [applicants'] arguments in that connection unfounded and not corresponding to the evidence in the case. For the same reasons, the court finds no force in the [applicants'] arguments relating to the lack of clarity of the prosecutor's decision about the type of expert report to be ordered by the investigator. The court reiterates that if the [applicants' lawyers] had read the complex medical and ballistics report, they would have understood this alleged lack of clarity ...

The [applicants'] assertion relating to the 'strong' and the 'weak' hand of [Mr Todorov] is also groundless and lacking legal logic. The safety-loop from the detonator of a grenade, the specific dismemberment of the body in the middle (near the stomach and the groins), and the remains of a defensive grenade (pellets and fragments) in the body lead to the only possible conclusion that [Mr Todorov] blew himself up in the way described in detail by the prosecutor ... This unequivocally proves that the grenade was not thrown, as asserted by the [applicants], because if that were the case there would be no pieces of a detonated grenade on the body of [Mr] Todorov. The court finds whether [Mr] Todorov was right- or left-handed irrelevant and for this reason shall not engage in further discussion on that point.

The complex medical and ballistics experts' report gave a conclusion about [Mr] Todorov's psychological state at the time of his 'self-detonation', which the court finds accurate and corresponding to the evidence analysed by the experts. It is necessary to note that the 'psychological' state of [Mr] Todorov has been analysed and assessed by the experts in the context of the grenade's specificity as a type of weapon, the particularities of its construction and the manner in which it needs to be handled and detonated. On that basis, the court finds no force in the [applicants'] argument concerning the mandatory participation of a psychologist in the elucidation of the above fact.

The [applicants'] assertion that there is no explanation about types of explosives used again shows that [their lawyers] have not acquainted themselves with all the evidence. The court finds it ill-founded and unsupported by any arguments. The experts have given an accurate, clear and comprehensive description of the type and character of all types of explosives and munitions used [in the operation].

The court does not share the [applicants'] arguments ... concerning the alleged incorrectness of the prosecutor's decision. The above considerations lead it to the conclusion that the police were acting in a situation which falls within the ambit of Article 12a of the Criminal Code ... It must also be observed that the [applicants'] arguments are one-sided and analyse solely the lawfulness of the actions of the police without commenting on the lawfulness of the actions of [Mr] Todorov. Basing itself on the rules of objectivity and impartiality, and analysing the direct and circumstantial evidence in isolation and jointly, the court finds the [applicants'] arguments incorrect and ill-founded.

The court fully shares the [applicants'] assertion that, in view of the requirements of the [Convention] and the criteria developed by the European Court of Human Rights in its case-law, there must be a thorough and comprehensive investigation whenever there has been an interference with a person's right to life during a police operation. However, the court does not share the [applicants'] view that there has been no such investigation in the present case. On the contrary, in view of what has been said above, the court finds that the investigation was objective, comprehensive and full, that the authorities have taken all necessary steps to uncover the truth, and have taken their decisions freely and after assessment of relevant facts. The prosecutor's conclusions are correct, accurate and well-founded, and the court fully shares them.

In view of above, the court ... finds that the decision to discontinue the proceedings ... has to be upheld as lawful and well-founded."

#### **D. Information concerning the legal status of Mr Todorov's house and the land on which it had been built**

44. The case file contains no information on whether at the time of his death Mr Todorov had a valid title to the house or the plot of land on which it had been erected. It does not appear that he had applied for or obtained a building permit for the house. During the investigation it was established that on 15 June 2004 the Harmanli lands commission, in proceedings brought by the first applicant (Mr Todorov's son) under the lands restitution laws, decided to restore the plot to the heirs of an ancestor of Mr Todorov.

45. The applicants presented a notary deed showing that on 19 May 2006 the first applicant bought from third parties a plot of land in the area where the house is situated. From certificates issued by the cadastre authorities it appears that this plot is the same on which the Mr Todorov's house had been built.

46. The applicants also presented a certificate of 20 January 2007 in which the building control department of the municipality of Harmanli said that the house was a tolerable building within the meaning of the building control legislation. Under that legislation, tolerable buildings are those that have not been erected pursuant to a building permit but which nonetheless

comply with the applicable zoning plans and building regulations, and have either been built before a certain date or been declared to the authorities within certain time-limits. Tolerable buildings are not subject to demolition.

## II. RELEVANT DOMESTIC LAW

### **A. Relevant provisions of the Ministry of Internal Affairs Act 1997 and of the regulations issued pursuant to it**

#### *1. Use of firearms by the police*

47. Section 80 of the Ministry of Internal Affairs Act 1997, as in force at the material time, provided, in so far as relevant:

“(1) The police may use firearms as a means of last resort:

1. in cases of armed attack or threat to use firearms;

...

3. in self-defence [or the defence of others];

4. after giving a warning, to arrest a person who has committed or is committing a publicly prosecutable offence, if he or she resists or tries to escape;

...

(2) When using firearms the police are under a duty to protect, as far as possible, the life of the person against whom they use force, and not put in danger the life and the health of others.”

48. The wording of section 74(1)(1), (1)(3) and (2) of the Ministry of Internal Affairs Act 2006, currently in force, repeats verbatim that of section 80(1)(1), (1)(4) and (2) of the 1997 Act.

49. On 30 May 2012 Parliament enacted a bill amending section 74 of the 2006 Act; the amendment came into force on 1 July 2012. The words “as a means of last resort” in section 74(1) were changed to “only where absolutely necessary”, and the words “to protect, as far as possible” in section 74(2) were replaced by “do everything possible to protect”. A new subsection 5 was added to section 74, providing that “[t]he police shall discontinue the use of firearms immediately after attaining its lawful aim”, as well as a new subsection 6, providing that “[i]t shall be prohibited to use firearms to arrest or prevent the escape of a person who is about to commit or has committed a non-violent offence if that person does not pose a danger to the life or health of another”. A new section 74a was added, providing 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.

## 2. *The special anti-terrorism squad*

50. The special anti-terrorism squad was a unit of the Ministry of Internal Affairs whose task was to, among other things, combat terrorism and prevent and uncover serious offences (section 156 of the 1997 Act). It could arrest or neutralise persons who had committed especially dangerous offences and who were putting up or likely to put up armed resistance (section 157(1)(2)). The squad's intervention had to be authorised in writing by the Minister of Internal Affairs in each case (section 157(2)). Its mode of operation was governed by regulations issued by the Minister (section 157(3)).

51. Those regulations, which were apparently not published, were issued by the Minister on 27 May 2003. Under regulation 7, when carrying out a special operation the squad had to set up an appropriate organisational structure. However, the overall control of a given operation was to be ensured by the head of the authority which had requested the use of the squad or a person designated by him or her (regulation 26(1)). The squad's plan of action in a given operation had to be included in the plan of the requesting authority (regulation 25). In its operations the squad could use, *inter alia*, firearms and grenade launchers (regulation 8(3)), pyrotechnical devices and explosives (regulation 8(5)) and chemical substances (regulation 8(7)).

52. By section 159(3) of the Ministry of Internal Affairs Act 1997, "in the performance of the squad's tasks, the identity of its members [was] to be kept secret". This rule currently features in section 91(3) of the Ministry of Internal Affairs Act 2006 and extends to all police officers who take part in armed police operations for the arrest of dangerous offenders who put up armed resistance. Regulation 150s of the regulations for the application of the 2006 Act repeats it with reference specifically to the members of the special anti-terrorism squad.

## **B. Relevant provisions of the Criminal Code**

53. Article 12a § 1 of the Criminal Code 1968, added in August 1997, provides that causing harm to a person while arresting him or her for an offence is not criminal where no other means of effecting the arrest exist and the force used is necessary and lawful. According to Article 12a § 2, the force used is not necessary when it is manifestly disproportionate to the nature of the offence committed by the person to be arrested or the resulting harm is in itself excessive and unnecessary.

### C. Discontinuance of preliminary investigations

54. Under Article 237 § 1 (1) of the Code of Criminal Procedure 1974, public prosecutors were to discontinue a preliminary investigation if they found that, *inter alia*, the acts alleged did not constitute an offence. Article 237 §§ 3 and 4, as in force at the material time, provided that the decision to discontinue a preliminary investigation was reviewable by a first-instance court whose decision was final.

### D. State liability for damage caused to private persons

55. Section 1 of the State Responsibility for Damage Caused to Citizens Act 1988 (*Закон за отговорността на държавата за вреди, причинени на граждани*), in July 2006 renamed the State and Municipalities Responsibility for Damage Act (*Закон за отговорността на държавата и общините за вреди* – “the 1988 Act”), provides that the State is liable for damage suffered by individuals (and since 1 January 2006 also legal persons) as a result of unlawful decisions, actions or omissions by civil servants, committed in the course of or in connection with the performance of their duties.

56. The general rules of the law of tort are set out in sections 45 to 54 of the Obligations and Contracts Act 1951 (*Закон за задълженията и договорите* – “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. Section 49 provides that a person who has entrusted another with carrying out a job is liable for the damage caused by that other person in the course of or in connection with the performance of the job. Legal persons cannot incur liability under section 45(1), as they cannot act with *mens rea*. They may, however, be vicariously liable under section 49 for the tortious conduct of individuals employed by them (пост. № 7 от 30 декември 1959 г., ВС, Пленум). One of the prerequisites of the liability under sections 45 to 50 of the 1951 Act is wrongfulness of the impugned conduct (реш. № 567 от 24 ноември 1997 г. по гр. д. № 775/1996 г., ВС, петчленен състав). The Bulgarian courts have on occasion examined claims against the authorities under section 49 (see the domestic cases cited in *First Sofia Commodities EOOD and Paragh v. Bulgaria* (dec.), no. 14397/04, § 17, 25 January 2011).

## THE LAW

### I. ALLEGED VIOLATIONS OF ARTICLE 2 OF THE CONVENTION AND OF ARTICLE 13 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 2

57. The applicants complained of the death of Mr Todorov and of the alleged ineffectiveness of the investigation into the circumstances in which he had lost his life. They relied on Article 2 of the Convention, which provides, in so far as relevant:

“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; ...”

#### A. Admissibility

58. The Government submitted that the applicants could not claim to be victims of a violation because the investigation had categorically established that Mr Todorov’s death had been self-inflicted and not the result of actions taken by the police. It had therefore not engaged the State’s responsibility under Article 2 of the Convention, and the applicants could not claim to be victims of a breach of that provision.

59. The Government also submitted that the applicants had not exhausted domestic remedies, because they had not tried to bring claims for damages against the authorities under section 1 of the 1988 Act or under section 45 of the 1951 Act (see paragraphs 55 and 56 above). There was a close procedural relationship between the outcome of the criminal investigation and the compensatory remedy available to the applicants.

60. The applicants did not comment on the Government’s submissions.

61. Concerning the Government’s objection of lack of victim status, the Court observes that all that Article 34 requires is that an applicant should claim to have been affected by an act, omission or situation said to be in breach of the Convention (see *Klass and Others v. Germany*, 6 September 1978, § 33, Series A no. 28). The questions whether the applicant has in fact been so affected and whether he or she is actually the victim of a breach go to the merits of the case (*ibid.*, § 38, as well as *Doğan and Others v. Turkey*, nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 93, ECHR 2004-VI

(extracts), and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 106-07, ECHR 2011-...). The Court will therefore address those points in its examination of the substance of the applicants' complaint.

62. The objection must therefore be rejected.

63. The Court now turns to the Government's objection of non-exhaustion of domestic remedies. It firstly observes that a claim for damages would not in itself be capable of remedying the alleged breach of the State's procedural obligation under Article 2 (see, among other authorities, *McKerr v. the United Kingdom*, no. 28883/95, §§ 121 and 156, ECHR 2001-III). In the present case, the Court does not consider it necessary to determine whether a claim for damages would in itself be capable of remedying the alleged breach of the substantive limb of Article 2. Even assuming that such a claim would in principle be capable of remedying the applicants' grievance in that respect, the Court is not persuaded, for the reasons set out in the next paragraph, that it would have stood a reasonable prospect of success.

64. The prosecuting authorities discontinued the investigation into Mr Todorov's death with the conclusion that the force used against him had been lawful and proportionate (see paragraph 41 above). That conclusion was fully upheld by the Plovdiv Military Court in the proceedings for judicial review of the discontinuance (see paragraph 43 above). It is true that those findings were not formally binding on a civil court examining the same facts in the context of a separate claim for damages (see *Anna Todorova v. Bulgaria*, no. 23302/03, § 82, 24 May 2011, citing *Assenov and Others v. Bulgaria*, 28 October 1998, § 112, *Reports of Judgments and Decisions* 1998-VIII). However, it cannot be overlooked that in previous cases where a criminal investigation into the use of firearms by the police had been discontinued by the prosecuting authorities, the Bulgarian civil courts were reluctant to uphold subsequent claims for damages in that respect. In one such case, *Tzekov v. Bulgaria* (no. 45500/99, §§ 23-27, 23 February 2006), those courts dismissed a claim concerning the use of firearms against an unarmed individual who – not being suspected of a violent offence or of being dangerous – had failed to stop his horse cart when ordered to do so. In a more recent case, *Vasil Sashov Petrov v. Bulgaria* (no. 63106/00, §§ 21 and 60-61, 10 June 2010), the Supreme Court of Cassation dismissed a similar claim, holding that the actions of the police had been proportionate and lawful, even though the individual against whom they had used firearms had not been suspected of committing a violent offence or of being dangerous. This Court criticised that approach, saying that it had fallen short of the standards stemming from its case-law, which require a careful review of whether life-threatening force used during police operations is more than "absolutely necessary", that is, strictly proportionate in the circumstances. The Government did not cite any domestic court decisions in which such review has been undertaken. In

these circumstances, the Court is not persuaded that a claim for damages by the applicants would have stood a reasonable chance of succeeding, especially bearing in mind that Mr Todorov was resisting arrest, was armed, and was shooting at the police (see, *mutatis mutandis*, *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 161, *Reports* 1997-VI). It is incumbent on a Government claiming non-exhaustion to satisfy the Court that the remedy that they rely on is effective and available in theory and in practice (see, among many other authorities, *Zlinsat, spol. s r.o. v. Bulgaria*, no. 57785/00, § 56, 15 June 2006).

65. This objection must therefore be rejected as well.

66. The Court further considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

## **B. Merits**

### *1. The death of Mr Todorov*

67. The Government submitted that the police had used firearms as a means of last resort to arrest Mr Todorov with a view to enforcing his custodial sentence, and had never had the intention of killing him. Their actions had been proportionate, because Mr Todorov had been convicted of a number of serious offences, had been armed and dangerous, and had fired at the police first. The authorities had tried to resolve the situation by peaceful means, calling in psychologists and relatives of Mr Todorov and persistently trying to negotiate with him. However, Mr Todorov had fired at the police, putting their lives at serious risk. The rocket propelled grenades had been fired at the lower storey of the house to avoid hitting Mr Todorov; the aim had been solely to make an opening in the wall of the house for the assault party, not to harm Mr Todorov. Given that he had been armed and dangerous, the police could not allow him to escape and possibly harm others. It had therefore been imperative to attack the house. The next morning the police had entered the house without using firearms. The entire operation, and in particular the participation of the special anti-terrorist squad, had been fully in line with the relevant rules on the use of force, and had been based on the written orders of the Minister of Internal Affairs.

68. The applicants submitted that while the police operation had started with the intention of apprehending Mr Todorov, it had turned into an operation for his assassination, in breach of the prohibition on the intentional deprivation of life set out in Article 2 § 1 of the Convention. This was evidenced by the decision to fire a number of rocket propelled grenades at the house in which he had been hiding, many hours after he had stopped offering any resistance. No attempts had been made to enter the

house after 5 p.m. on 10 December 2003, and Mr Todorov's relatives had not been allowed to bring him a mobile phone or another communication device allowing him to be in contact with the police. The decision to use rocket propelled grenades had been apparently motivated by the wish of the police to end the stand-off quickly rather than preserve Mr Todorov's life. In this connection, it had to be emphasised that the house had been surrounded by dozens of police officers, including special forces, who could prevent Mr Todorov from fleeing. In spite of that, the authorities had not devised a strategy obviating the need to resort to deadly force.

69. Since *McCann and Others v. the United Kingdom* (27 September 1995, Series A no. 324) the Court has had to deal with a number of cases in which the police had used force, typically firearms, against armed or dangerous individuals (see, among other authorities, *Andronicou and Constantinou*, cited above, §§ 181-86 and 191-93; *Gül v. Turkey*, no. 22676/93, §§ 79-83, 14 December 2000; *Brady v. the United Kingdom* (dec.), no. 55151/00, 3 April 2001; *Makaratzis v. Greece* [GC], no. 50385/99, §§ 64-71, ECHR 2004-XI; *Bubbins v. the United Kingdom*, no. 50196/99, §§ 138-52, ECHR 2005-II (extracts); *Perk and Others v. Turkey*, no. 50739/99, §§ 58-73, 28 March 2006; *Halit Çelebi v. Turkey*, no. 54182/00, §§ 49-52, 2 May 2006; *Yüksel Erdoğan and Others v. Turkey*, no. 57049/00, §§ 91-101, 15 February 2007; *Huohvanainen v. Finland*, no. 57389/00, §§ 96-109, 13 March 2007; *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 280-82 and 288-89, ECHR 2007-II; *Bakan v. Turkey*, no. 50939/99, §§ 52-56, 12 June 2007; *Ekrem v. Turkey*, no. 75632/01, §§ 56-61, 12 June 2007; *Usta and Others v. Turkey*, no. 57084/00, §§ 51-61, 21 February 2008; *Kasa v. Turkey*, no. 45902/99, §§ 82-89, 20 May 2008; *Gülen v. Turkey*, no. 28226/02, §§ 33-39, 14 October 2008; *Golubeva v. Russia*, no. 1062/03, §§ 94-111, 17 December 2009; *Wasilewska and Kalucka v. Poland*, nos. 28975/04 and 33406/04, §§ 49-58, 23 February 2010; *Vachkovi v. Bulgaria*, no. 2747/02, §§ 72-77, 8 July 2010; *Vlaevi v. Bulgaria*, nos. 272/05 and 890/05, §§ 70-82, 2 September 2010; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 183-96, 211-18 and 252-62, 24 March 2011; and *Finogenov and Others v. Russia*, nos. 18299/03 and 27311/03, §§ 217-66, 20 December 2011). The Court has also examined a number of cases concerning the use of force – firearms or heavier weapons such as grenades, artillery rounds, and aerial bombs or missiles – by military forces (see *Güleç v. Turkey*, 27 July 1998, §§ 70-73, *Reports* 1998-IV; *Ergi v. Turkey*, 28 July 1998, §§ 79-81, *Reports* 1998-IV; *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 174-200, 24 February 2005; *Isayeva v. Russia*, no. 57950/00, §§ 179-201, 24 February 2005; *Anık and Others v. Turkey*, no. 63758/00, §§ 55-67, 5 June 2007; *Khatsiyeva and Others v. Russia*, no. 5108/02, §§ 130-40, 17 January 2008; *Akhmadov and Others v. Russia*, no. 21586/02, §§ 98-103, 14 November

2008; *Suleymanova v. Russia*, no. 9191/06, §§ 78-87, 12 May 2010; *Abuyeva and Others v. Russia*, no. 27065/05, §§ 196-203, 2 December 2010; *Esmukhambetov and Others v. Russia*, no. 23445/03, §§ 140-51, 29 March 2011; *Kerimova and Others v. Russia*, nos. 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, §§ 241-58, 3 May 2011; *Khamzayev and Others v. Russia*, no. 1503/02, §§ 175-90, 3 May 2011).

70. As a result of those judgments, the principles governing the use of force by the authorities, the conduct and planning of police operations, and the legislative, administrative and regulatory measures that the Contracting States need to adopt to reduce as far as possible the adverse consequences of the use of force have become well-settled in the Court's case-law. They have recently been set out in great detail in paragraphs 174-82, 208-10 and 244-50 of the judgment of the Court's Grand Chamber in the case of *Giuliani and Gaggio* (cited above), and there is no need to repeat them here.

71. Turning to the facts of the present case, the Court notes that the investigation into the death of Mr Todorov came to the conclusion that he had died as a result of the detonation of a hand grenade which he had activated himself. It is not for the Court to determine whether this was so; it suffices to note that Mr Todorov died in the course of a police operation involving the use of deadly force against him.

72. The responsibility of the State is not confined to cases in which there exists significant evidence that the use of force by State agents has directly caused the death of a person. It may also be engaged where those agents fail to take all feasible precautions in the choice of means and methods with a view to avoiding or at least minimising incidental loss of life. Thus, even if it is not established beyond reasonable doubt that Mr Todorov's death was directly caused by shots or grenades fired by the police or explosives activated by them, the Court must consider whether their operation was planned and conducted in such a way as to avoid or minimise, to the greatest extent possible, any risk to life (see *Ergi*, cited above, §§ 77-79).

73. In this connection, it should be noted that when the police operation began Mr Todorov was alive and when it ended he was dead, and that the ensuing investigation did not make any findings as to the exact time of his death. The Court therefore considers that it cannot be excluded that Mr Todorov remained alive until the ultimate stages of the use of force against him in the early hours of 11 December 2003. It follows that the actions of the police throughout the entire operation, including those stages, must be scrutinised as to their compatibility with the requirements of Article 2 of the Convention.

74. Given that the police started the operation with the intention of apprehending Mr Todorov and that he fired at the officers who tried to arrest him, the case prima facie falls to be examined under Article 2 § 2 (a) and (b) (see *Perk and Others*, cited above, §§ 62-63). The applicants alleged that as the incident unfolded the police in fact decided to kill Mr Todorov

instead of arresting him, and on that basis argued that the case falls to be examined under Article 2 § 1, which prohibits in absolute terms intentional deprivation of life in the absence of a death sentence. However, such an allegation needs to be supported by convincing evidence (see *McCann and Others*, § 179, and *Perk and Others*, § 59, both cited above). Save for the nature of the force used by the police – explosives and rocket propelled grenades – there is little in the case file to support such a conclusion. In particular, the fact that a special anti-terrorist unit was called in is not sufficient proof in that respect (see *McCann and Others*, cited above, § 183). The Court is therefore not persuaded that this was the case.

75. However, accepting that the police did not intend to kill Mr Todorov, it remains to be established whether the force used by them was strictly proportionate, and whether their operation was planned and controlled so as to minimise, to the greatest extent possible, recourse to lethal force.

76. Since in the instant case the actual use of force – in the form of in particular explosives and rocket propelled grenades – appears inextricably linked with the planning and control of the police operation, the Court will examine these two aspects jointly. It does not consider it appropriate to make specific findings concerning the legal framework governing the planning and control of the actions of, in particular, the special anti-terrorism squad (see paragraphs 50-51 above). The parties did not address that question in their observations, and it is unclear whether the chain of events which led to Mr Todorov's death was the result of specific shortcomings in that framework (contrast, *mutatis mutandis*, *Makaratzis*, cited above, §§ 34 and 59-71). Unlike previous cases against Bulgaria in which the Court found that the rules governing the use of force for the arrest of unarmed and non-dangerous individuals were deficient in that they allowed the police to use firearms against them (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, §§ 99-102, ECHR 2005-VII; *Tzekov*, cited above, §§ 53-56; *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, §§ 43-47, 10 June 2010; and *Karandja v. Bulgaria*, no. 69180/01, §§ 56-60, 7 October 2010), the present case concerns an armed and dangerous individual who was using firearms against the police. The Court's findings in those four cases are therefore not readily transposable to the situation at hand. The Court must have regard to the context in which the incident occurred and to the way in which the situation developed over the course of the day (see, among other authorities, *Andronicou and Constantinou*, cited above, § 182).

77. The police, who had been fired upon, knew that they were dealing with an armed and dangerous individual, and the Court finds nothing inherently wrong with the decisions to use firearms and bring in a special anti-terrorist unit (see *Andronicou and Constantinou*, § 185, and *Perk and Others*, § 62, both cited above).

78. However, the salient question is whether, in view of the way the situation unfolded, the subsequent decisions to resort to the use of explosives and rocket propelled grenades were warranted. In the Court's view, three factors show that they were not, especially as regards the rocket propelled grenades. First, the police were not faced with a perceived immediate threat to innocent lives that would lend urgency to the use of force (contrast *McCann and Others*, § 200; *Andronicou and Constantinou*, § 185; and *Perk and Others*, §§ 63-68, all cited above). It is doubtful whether precipitate action was indeed necessary, and it appears that the police, who were quite numerous and well-equipped, had enough time to cordon off the house in which Mr Todorov was hiding, make arrangements to prevent his escape, and prepare carefully his arrest (compare with *Golubeva*, § 106, and *Anik and Others*, §§ 63-65, both cited above). The decisions to use explosives and rocket propelled grenades were taken – a fact specifically mentioned by the Plovdiv Military Court in its first decision (see paragraph 35 above) – a considerable time after the last shot had been fired by Mr Todorov, and were thus not a direct result of an abrupt violent reaction of his, or of an immediate attempt to take the life of another (contrast *Andronicou and Constantinou*, § 191; *Yüksel Erdoğan and Others*, §§ 97-98; and *Huohvanainen*, §§ 97 and 106 *in fine*, all cited above). It is true that the police had attempted to negotiate with Mr Todorov earlier in the day, but they did not try to bring an end to the incident through persuasion and dialogue right up to the last possible moment (contrast *Andronicou and Constantinou*, cited above, § 183), and doubts remain as to the effectiveness of their communication with Mr Todorov. Secondly, it seems that the police did not sufficiently appreciate the possibility that some of their assessments – for instance, that the house and its yard had been booby-trapped – might be erroneous (see, *mutatis mutandis*, *McCann and Others*, cited above, § 213). Thirdly, they used weapons which appear far too powerful for the aim they were trying to achieve (see, *mutatis mutandis*, *Isayeva and Others*, cited above, § 195), apparently without sufficiently considering the dangers that such methods invariably entail (see, *mutatis mutandis*, *Isayeva*, cited above, § 189). It is questionable whether the use of explosives and the firing of no less than fifteen rocket propelled grenades, which inevitably placed in danger the lives of anyone in proximity to their impact points, was justified by a reasonable belief that officers' or civilian lives were at risk from Mr Todorov or by the need to secure access to the house. While it is not for the Court, with detached reflection, to substitute its own opinion of the situation for that of police officers who were required to react in a tense situation in which they were facing an armed and dangerous individual, and while errors of judgment or mistaken assessments, unfortunate in retrospect, will not in themselves entail responsibility under Article 2 (see, among other authorities, *Andronicou and Constantinou*, § 192, and *Brady*, both cited above), the use of heavy

weapons and explosives, with the attendant risk for human life, cannot be regarded as justified in the circumstances.

79. The Court does not consider that it is for it to reach a conclusion as to how exactly Mr Todorov lost his life (see, *mutatis mutandis*, *Vachkovi*, cited above, § 76). However, in the light of the reasons set out above, it finds that it has not been demonstrated that the force used, which in one way or another brought about Mr Todorov's death, was no more than absolutely necessary, as required by Article 2 of the Convention.

80. There has therefore been a violation of that provision.

## 2. *Effectiveness of the investigation*

81. The Government submitted that the investigation into Mr Todorov's death had been comprehensive, objective and sufficiently speedy. It had been opened the same day. An autopsy had been carried out the next day and had identified all injuries on Mr Todorov's body and the cause of his death. All police officers who had taken part in the operation had been interviewed, and expert opinions had been obtained. The authorities which had conducted the investigation had been independent from the persons who had taken part in the police operation. In deciding to discontinue the proceedings, the prosecutors and the courts had duly applied Article 12a of the Criminal Code, and their findings had been fully consistent with this Court's case-law under Article 2 of the Convention.

82. The applicants submitted that the investigation had been tendentious and had failed to elucidate a number of points. It had at first not been able to ascertain the exact time of Mr Todorov's death. Following the remittal by the Plovdiv Military Court, the prosecutor had asked a ballistics expert to address that question, which could however be answered only by a pathologist. All experts had taken as a given that Mr Todorov had blown himself up. The conclusion that his death had been due to his detonating a hand grenade found very little support in the evidence. No information had been gathered about the explosives used by the authorities to blow a hole in the wall of the house; the conclusion that the metal fragments found inside Mr Todorov's body had come from a hand grenade was thus open to question. Lastly, the statements taken by the officers who had participated in the operation had been identical, containing the same words and expressions. A separate problem had been the impossibility to identify, prosecute or even interview officers from the special anti-terrorism squad, which had stemmed from the construction put by the authorities on section 159(3) of the Ministry of Internal Affairs Act 1997.

83. The Court observes that the principles governing the State's procedural obligation to carry out an effective investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State are well-settled in its case-law. They have recently been

set out in detail in paragraphs 298-306 of the Grand Chamber's judgment in the case of *Giuliani and Gaggio* (cited above).

84. The investigation in the present case started promptly and progressed at a good pace. The authorities interviewed a considerable number of witnesses and obtained expert opinions on various aspects of the case. However, the investigation may be regarded as deficient in at least two crucial respects. First, it does not appear that the standard applied by the authorities was comparable to the "no more than absolutely necessary" standard required by Article 2 § 2 (see, *mutatis mutandis*, *Nachova and Others*, §§ 113-14; *Tzekov*, § 71; *Vasil Sashov Petrov*, § 52; *Karandja*, § 65; and *Vlaevi*, § 88, all cited above). A reading of the prosecutor's decision to discontinue the investigation and the court's decision that upheld it (see paragraphs 41 and 43 above) shows that both were of the view that any amount of force, including explosives and rocket propelled grenades, was warranted to overcome Mr Todorov's resistance (see, *mutatis mutandis*, *Ank and Others*, § 60, and *Wasilewska and Kahucka*, § 62, both cited above). Secondly, the prosecuting authorities said that members of the anti-terrorist squad could not be investigated or prosecuted because by section 159(3) of the Ministry of Internal Affairs Act 1997 their identities were to be kept secret (see paragraphs 41 and 52 above). The Court first expressed concern about that approach in *Rashid v. Bulgaria* (no. 47905/99, §§ 63-65, 18 January 2007). Later, in *Vachkovi* (cited above, §§ 81-83 and 87-89), it specifically found that it fell foul of the requirements of Article 2, on the basis that any deficiency in the investigation which undermines its ability to establish the identity of the persons responsible is liable to render it ineffective (see also *Hristovi v. Bulgaria*, no. 42697/05, §§ 88-91, 11 October 2011). It sees no reason to hold otherwise in the present case.

85. It follows that there has been a violation of the respondent State's obligation under Article 2 of the Convention to investigate effectively the circumstances in which Mr Todorov lost his life.

### *3. Alleged violation of Article 13 of the Convention read in conjunction with Article 2*

86. The applicants further complained that they had not had an effective remedy in respect of the alleged breaches of Article 2 of the Convention. They relied on Article 13 of the Convention.

87. Article 13 provides as follows:

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

88. The parties did not comment on this complaint in their observations.

89. Having regard to the reasons for which it found a breach of the State's procedural obligation under Article 2 of the Convention, the Court

considers that it is not necessary to examine whether there has also been a violation of Article 13 (see, as a recent authority, *Karandja*, cited above, § 72).

## II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL No. 1 AND OF ARTICLE 13 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

90. The applicants complained that the partial destruction of Mr Todorov's house had been the result of the use of unlawful and disproportionate force. They relied on Article 1 of Protocol No. 1, which provides as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

91. They further complained under Article 13 of the Convention that they had not had effective remedies in that regard. The text of Article 13 has been set out in paragraph 87 above.

92. The Government submitted that the applicants had not exhausted domestic remedies in respect of their complaint under Article 1 of Protocol No. 1 because they had not sought compensation for the damage caused to the house by way of claims under section 45 of the 1951 Act or section 1 of the 1988 Act (see paragraphs 55 and 56 above).

93. Concerning the substance of the complaint under Article 1 of Protocol No. 1, the Government submitted that the applicants could not claim a valid right of property to the house, because it had been erected unlawfully, without the requisite building permit. It was accordingly subject to demolition and did not benefit from the protection of the law. No procedure for its legalisation had been initiated. In the alternative, the Government argued that the partial destruction of the house had been lawful and in the public interest. Mr Todorov had barricaded himself inside and had been shooting at the police from there. He had therefore himself provoked the situation and had partly contributed to the damage caused to the house. The police had had to act to get him out of the house, and there had been indications that booby-traps had been set in and around it. The damage had thus been unavoidable. The police, who had had to operate under very difficult conditions, had not intended to cause damage to the house and had ceased fire immediately after blowing a hole allowing the storming party to gain entry.

94. The applicants pointed out that the Government had not cited any examples showing the effectiveness of the remedies suggested by them. A claim under section 45 of the 1951 Act would not be available, because the 1988 Act was *lex specialis* in respect of claims against the authorities. As for a claim under section 1 of the 1988 Act, it would not have had any prospects of success, because the civil courts were bound by the conclusion of the criminal investigation that the actions of the police had been lawful. In previous cases the Court had held that the lack of an effective investigation engaged the State's responsibility under Article 13 of the Convention.

95. Regarding the substance of the complaint under Article 1 of Protocol No. 1, the applicants submitted that the house had been built on a plot of land owned by Mr Todorov and that at the relevant time he had been living in it with his mother. Before the police operation for Mr Todorov's arrest, no authority had ever found that the house had been unlawfully built. Some time after the incident, on 20 January 2007, the competent authorities had issued a certificate to the effect that the house was a tolerable building, which meant that it complied with the applicable building regulations and was not subject to demolition. Moreover, the house featured in the cadastral plans. In any event, the domestic law position was not conclusive on the question whether there was a possession within the meaning of Article 1 of Protocol No. 1.

96. For the applicants, the partial destruction of the house during the police operation for Mr Todorov's arrest had amounted to interference with their possessions. In as much as the force used by the police had been disproportionate and thus in breach of Article 12a of the Criminal Code, the interference could not be regarded as lawful. It could be accepted that it had pursued the legitimate aim of ensuring the arrest of Mr Todorov, but it had been clearly disproportionate for the achievement of that aim in view of the use of heavy weapons without sufficient justification.

97. The Court does not find it necessary to determine whether the applicants have exhausted domestic remedies in respect of their complaint under Article 1 of Protocol No. 1, or whether they may claim to be victims of an alleged breach of that provision (see, *mutatis mutandis*, *Finozhenok v. Russia* (dec.), no. 3025/06, 31 May 2011, where the destroyed property had belonged to the applicant's mother and brother), because it considers that their complaint in this respect is in any event inadmissible, for the following reasons.

98. Before it can analyse whether the partial destruction of the house was justified, the Court must decide whether Mr Todorov's legal position in relation to the house was such as to attract the application of Article 1 of Protocol No. 1. It observes that there is no evidence showing that at the time of the alleged interference – the police operation for his arrest on 10-11 December 2003 – Mr Todorov had a valid title to the house or the

plot of land on which it had been built. From the evidence presented by the applicants it appears that that plot was either returned to them under the land restitution legislation several months after that, in June 2004 (see paragraph 44 above), or was purchased by the first applicant from third parties even later, in May 2006 (see paragraph 45 above). Although this lack of proof of domestic-law title does not conclusively establish that Mr Todorov had no possession within the autonomous meaning of Article 1 of Protocol No. 1 (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; *Zwierzynski v. Poland*, no. 34049/96, § 63, ECHR 2001-VI; *Hamer v. Belgium*, no. 21861/03, § 75, ECHR 2007-V (extracts); *Depalle v. France* [GC], no. 34044/02, § 68, ECHR 2010-...; and *Brosset-Triboulet and Others v. France* [GC], no. 34078/02, § 71, 29 March 2010), the applicants did not provide any information – such as the year in which the house had been built, details concerning Mr Todorov’s usage of the house, or anything showing that the authorities had been aware of the existence of the house and had tolerated it or had treated Mr Todorov as its owner – that would allow the Court to conclude that Mr Todorov had a proprietary interest in the peaceful enjoyment of the house that was sufficiently established and weighty to amount to a possession (contrast *Zwierzynski*, cited above, §§ 64-65; *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 127-29, ECHR 2004-XII; *Osman v. Bulgaria*, no. 43233/98, §§ 96-97, 16 February 2006, and *Hamer*, § 76; *Depalle*, § 65; and *Brosset-Triboulet and Others*, § 68, all cited above).

99. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

100. According to the Court’s established case-law, Article 13 of the Convention applies only where an individual has an arguable claim to be the victim of a violation of a Convention right (see, among many other authorities, *Menteşe and Others v. Turkey*, no. 36217/97, § 88, 18 January 2005). Having regard to its above findings in relation to Article 1 of Protocol No. 1, the Court does not consider that the applicants have an arguable claim under that provision. Article 13 is therefore not applicable.

101. It follows that this complaint is also incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. Article 41 of the Convention provides:

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

#### A. Pecuniary damage

103. The applicants claimed 11,271.23 Bulgarian leva (BGN) in respect of the pecuniary damage suffered as a result of the partial destruction of the house. This was the amount which according to an expert report obtained in the course of the investigation would have to be expended for repairs; the applicants had later carried out those repairs.

104. The Government did not comment on this head of claim.

105. The Court observes that compensation for damage can be awarded only in so far as the damage is the result of a violation found. In the present case, the Court did not find a breach of Article 1 of Protocol No. 1. There is therefore no room to make an award under this head.

#### B. Non-pecuniary damage

106. The applicants claimed 100,000 euros (EUR) each in respect of the non-pecuniary damage stemming from the death of Mr Todorov and the ineffectiveness of the ensuing investigation. Referring to the Court's case-law, they argued that these had caused them great suffering and frustration. The applicants further claimed EUR 6,000 each in respect of the non-pecuniary damage stemming from the destruction of the house, which they submitted had caused them an emotional trauma.

107. The Government submitted that the first head of claim was exorbitant and far above the awards made by the Court in previous cases in which it had found breaches of Article 2 of the Convention due to actions of the police. The second head of claim was likewise exorbitant. In the Government's view, in the present case the finding of a violation would amount to sufficient just satisfaction.

108. The Court observes that in the present case an award of just satisfaction can be based only on the violations of Article 2 of the Convention. That said, it considers that the applicants must have suffered considerably as a result of the violations of their rights under that provision. Ruling in equity, as required under Article 41, the Court awards them jointly EUR 50,000 under this head. To this amount is to be added any tax that may be chargeable.

### C. Costs and expenses

109. The applicants sought reimbursement of EUR 1,520 incurred in fees for nineteen hours of work by their lawyers on the proceedings for judicial review of the discontinuance of the domestic criminal investigation, at EUR 80 per hour, and of EUR 7,520 for ninety-four hours of work by the same lawyers on the Strasbourg proceedings, also at EUR 80 per hour. They also sought reimbursement of EUR 40 spent on postage, EUR 30 spent on office supplies, and BGN 360 (the equivalent of EUR 184.07) spent on the translation of their observations and claims. They submitted a fee agreement, a time-sheet, a translation bill, and a declaration that they agreed that any costs and expenses awarded by the Court be paid directly to their lawyers.

110. The Government argued that the claim was exorbitant, especially when seen against the backdrop of the standard of living in Bulgaria. They pointed out that the applicants had failed to present a detailed breakdown of the hours spent by their lawyers on the case. They suggested that in assessing the quantum of the award the Court should have regard to the rules governing the amounts payable to counsel for their appearance before the national courts. Lastly, they pointed out that the claim for other expenses was not supported by documents.

111. According to the Court's case-law, costs and expenses claimed under Article 41 of the Convention must have been actually and necessarily incurred and reasonable as to quantum. Costs incurred to prevent or obtain redress for a violation of the Convention through the domestic legal order are recoverable under that provision (see, as a recent authority, *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 123, 25 November 2010). When considering a claim in respect of costs and expenses for the proceedings before it, the Court is not bound by domestic scales or standards (*ibid.*, § 125).

112. Having regard to the materials in its possession and these considerations, the Court finds it reasonable to award jointly to all applicants the sum of EUR 4,500, plus any tax that may be chargeable to them, to cover their legal costs under all heads. This sum is to be paid directly to the applicants' legal representatives.

113. Concerning the claim for other expenses, the Court observes that the applicants have submitted documents only in support of their claim in respect of translation expenses. In those circumstances, and bearing in mind the terms of Rule 60 §§ 2 and 3 of its Rules, the Court makes no award in respect of the other heads of claim, and awards the applicants EUR 184.07 in respect of their translation expenses. This sum is to be paid directly to the applicants' legal representatives as well.

#### **D. Default interest**

114. 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**

1. *Declares* unanimously the complaints concerning the death of Mr Todorov, the effectiveness of the ensuing investigation, and the alleged lack of effective remedies in this respect admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 2 of the Convention in respect of the death of Mr Todorov;
3. *Holds* by six votes to one that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation into the circumstances in which Mr Todorov lost his life;
4. *Holds* unanimously that there is no need to examine the complaint under Article 13 of the Convention read in conjunction with Article 2;
5. *Holds* unanimously
  - (a) that the respondent State is to pay jointly to all applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
    - (i) EUR 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 4,684.07 (four thousand six hundred and eighty-four euros and seven cents), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the bank account of the applicants' legal representatives, Ms S. Stefanova and Mr M. Ekimdzhiev;
  - (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;

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

Done in English, and notified in writing on 6 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Lech Garlicki  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Panova is annexed to this judgment.

L.G.  
F.A.

## PARTLY DISSENTING OPINION OF JUDGE PANOVA

(Translation)

While agreeing with the majority that there has been a breach of Article 2 of the Convention under its substantive limb, I do not believe that there is convincing evidence that there has been a breach of that provision under its procedural limb.

In order to find that there has been such a breach, in paragraph 84 of the judgment the majority relies on two points: (a) that, in assessing the results of the investigation into Mr Todorov's death, the authorities did not apply a standard that was comparable to the "no more than absolutely necessary" standard required by Article 2 § 2; and (b) that they did not interview the members of the anti-terrorist squad, because they preferred to preserve their anonymity. In my view, in the specific circumstances of this case the failure to interview the officers of the anti-terrorist squad did not have any effect on the thoroughness of the investigation carried out by the national authorities. It is beyond doubt that in spite of the rule applicable at the time of the investigation – section 159(3) of the Ministry of Internal Affairs Act 1997, which required that the identities of those officers be kept secret – there was a procedural possibility under Bulgarian law to interview them, for instance by questioning them as anonymous witnesses. Interviewing such officers is clearly required in cases similar to *Vachkovi v. Bulgaria* (no. 2747/02, 8 July 2010), where the Court found that there had been a breach of Article 2 of the Convention precisely because of the failure to interview the officers of the anti-terrorist squad. However, I do not find that the facts of the present case match those of *Vachkovi*. In that case, the unquestioned witnesses were the only ones who had been in close proximity to the victim at the time his death. It was therefore natural that they would be the most useful witnesses and that, without interviewing them, the authorities could not maintain that they had done all they could to uncover the truth. In the instant case, the special anti-terrorist squad took part in the last stages of the operation, and none of its members was any closer to the house where the victim was hiding than any of the other witnesses. In the course of the investigation the authorities interviewed enough persons who were close to Mr Todorov and almost all police officers who had taken part in the operation. After the case was referred back for additional investigation, the authorities obtained additional expert evidence, the purpose of which was to establish the time and the manner in which Mr Todorov had died. In as much as the majority finds that those two points were not elucidated, and that the authorities did not therefore carry out an effective investigation into the death of the applicants' relative, I am not convinced that it was possible to obtain any further clarification by interviewing the officers of the anti-terrorist squad. I consider that the investigation obtained sufficient

evidence – in the form of expert reports and witness statements – that allowed the competent authorities to determine whether any offences had been committed.

In the final analysis, States cannot be blamed for enacting legislation which protects the identities of police officers who are, by law, required to discharge very important duties in challenging situations. The essential issue in the present case is whether by interviewing those officers the authorities would have arrived at a different conclusion. I do not believe that this would have been the case, for the above-mentioned reasons. The effectiveness of an investigation is not determined by the quantity of the evidence but by the quality of the information conveyed by that evidence. For this reason, I find that the national authorities cannot be faulted for the way in which they conducted the investigation, which was comprehensive and full in terms of elucidating the manner in which the events of 10 and 11 December 2003 had unfolded. As regards the time and the manner of Mr Todorov's death, interviewing those officers would not have helped clarify these points, which were obviously something that could be determined solely through expert evidence. In view of this, and of the Court's settled case-law concerning the effectiveness of investigations into suspicious deaths, I am of the view that the national authorities gathered enough evidence to be able to determine speedily the cause of Mr Todorov's death and the person or persons who bore responsibility for it. In examining the procedural limb of Article 2 of the Convention, the Court should not seek to determine that, on the basis of the available evidence, the national authorities should have made fundamentally different findings of fact or law. This is a matter falling into the exclusive purview of the national authorities, which should not be supplanted by the Court.

In this connection, I also cannot agree with the majority's view under the procedural limb of Article 2 of the Convention that the national authorities did not assess the evidence concerning the use of force by the police in a way compatible with the "no more than absolutely necessary" standard under that provision. This finding is, in my view, an assessment of the ends, not of the means, and should not have featured in the Court's analysis under the procedural limb of Article 2. This point is relevant only for the finding of a substantive breach of Article 2, a finding with which I fully agree.

For these reasons, I believe that the Court should have found a breach of Article 2 of the Convention under its substantive limb in relation to the death of Mr Todorov, but not a breach of the State's duty under the procedural limb of that provision to carry out an effective investigation of the circumstances in which that death took place.