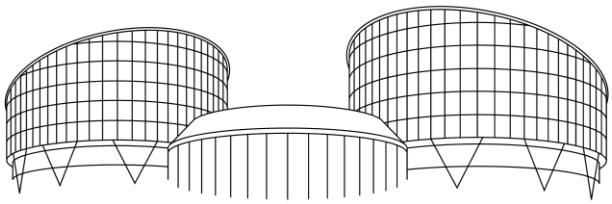

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DIMITROVA AND OTHERS v. BULGARIA

(Application no. 44862/04)

JUDGMENT

STRASBOURG

27 January 2011

FINAL

27/04/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Dimitrova and Others v. Bulgaria**,**

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 44862/04) 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 four Bulgarian nationals, Ms Rayna Sedevcheva Dimitrova, Ms Ekaterina Vaskova Gerasimova, Mr Sedefcho Petrov Gerasimov and Mr Petar Petrov Gerasimov ("the applicants"), on 15 December 2004.

2. The applicants were initially represented by Mr M. Georgiev, a teacher. After the communication of the application they authorised Mr Y. Grozev and Ms N. Dobreva, lawyers practising in Sofia, to represent them. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged that the authorities had failed to investigate effectively the death of a relative of theirs, Mr Georgi Gerasimov, and that they had been discriminated against because of their Roma origin.

4. On 29 January 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention, as worded before 1 June 2010).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first and second applicants were born in 1956 and 1975 respectively.

6. The applicants are of Roma origin. The first applicant is the mother, the second applicant the wife, and the third and fourth applicants the brothers of Mr Georgi Gerasimov, also of Roma origin, born in 1976.

A. The events of 30 May 2003 and Mr Gerasimov's death

7. In the afternoon of 30 May 2003 Mr Gerasimov and three other persons of Roma origin, Mr V.V., Mr I.I. and Mr M.G., were digging out coal in an abandoned opencast coal mine in Pernik. The area was open, with little vegetation, and accessible by a dirt road.

8. At one point another man, Mr B.I., to whom Mr M.G. apparently owed money, passed by on horseback. He asked Mr M.G. when he would pay back the debt and the two of them entered into a short argument. Mr Gerasimov intervened in defence of Mr M.G. After that Mr B.I. left.

9. Some time later Mr Gerasimov and his companions finished digging out the coal and were getting ready to leave. At this moment Mr B.I. returned, accompanied by three friends of his, Mr Z.E., Mr P.K. and Mr N.S., in two cars. A fight flared up between the two groups. The parties disagree as to who started it. Some time later Mr V.V., Mr I.I. and Mr M.G. went to a nearby petrol station, where they asked the staff to call the police, explaining that a friend of theirs had been beaten up. When the police officers reached the scene of the fight they found only Mr Gerasimov, lying on the ground. As he was seriously injured, he was taken to hospital.

10. Later that day the police initiated a search for Mr B.I. and Mr Z.E., suspecting that they had beaten up Mr Gerasimov, but could not find them.

11. Mr Gerasimov was admitted to the hospital in a coma, with a severe cerebral contusion and four wounds to the head. He died in hospital on 4 June 2003.

B. The investigation of Mr Gerasimov's death

12. A criminal investigation was opened on 30 May 2003 by the Pernik regional public prosecutor's office.

1. Initial investigative measures

(a) Inspections, blood analyses and expert reports

13. An inspection of the scene of the fight was carried out on 30 May 2003. The record of the inspection stated that the site had not been preserved. The police officers found the van which had been used by the Mr Gerasimov and his companions abandoned at the site. The windscreen was cracked, the side rear-view mirrors were broken and one of the doors had marks of blows from a hard object. Traces of blood were found near the van. Subsequent analysis showed that the blood might have been Mr Gerasimov's. Traces of blood were also found inside the van. Subsequent analysis showed that it might have been Mr B.I.'s.

14. The police also inspected the cars Mr B.I. and his companions had been travelling in. Traces of blood were found in one of them. Subsequent analysis showed that the blood might have been Mr B.I.'s.

15. On 31 May 2003 the police inspected Mr N.S.'s car (not one of those which had been used the day before) and seized two bats and a knife.

16. On 2 June 2003 Mr B.I., Mr Z.E., Mr P.K. and Mr N.S. were examined by a doctor, who found that Mr B.I. had a small knife wound on the lower part of the back and several bruises on the face and body. The other men also had bruises.

17. The clothes worn by Mr B.I. on 30 May 2003 were also examined by an expert, who found matching cuts in his T-shirt and jacket, most likely caused by a knife.

18. A post-mortem examination of Mr Gerasimov's body, carried out on 5 June 2003, concluded that the death had been caused by a severe cerebral trauma. It found a multi-fragment fracture of the parietal bone, with fragments of the bone depressed to 0.5 centimetres in depth on an area measuring 6 x 3 centimetres. It also found five wounds to the head, a wound on the right arm and two parallel stripe-like bruises on the back, measuring 15 x 2 centimetres. There were other bruises on the face and body. The examination concluded that the injuries had been caused by blunt objects and could have been caused in connection with a beating. The two bruises on the back had been caused by long narrow objects.

(b) Examination of witnesses and of Mr B.I.

19. Mr Gerasimov's companions were questioned by an investigator on 31 May 2003. They were once again questioned before a judge on 3 June 2003.

20. Mr V.V. stated that the four of them had gone in his van to dig coal. They had had a pick but not a knife. At the time when Mr B.I. had arrived with his friends, they had been getting ready to leave. Mr Gerasimov had been sitting in the back part of the van, on the sacks of coal. As soon as he

had got to the site Mr Z.E. had started hitting Mr Gerasimov's legs with a bat. At the same time Mr B.I. had been shouting "Where do you think you are going, you, where will you run, you damn gypsies, who is going to pay?" Mr Gerasimov had attempted to stop Mr Z.E.'s attack. While the two of them were wrestling, Mr B.I. approached Mr Gerasimov from behind and hit him on the back of the head with another bat. Mr Gerasimov fell to the ground. Thus freed, Mr Z.E. turned to Mr V.V. and hit him with his bat, aiming for the head but missing it. Mr V.V. then ran away.

21. Mr I.I. also stated that when Mr B.I. and Mr Z.E. had arrived they had been carrying wooden bats. Mr Z.E. had attacked Mr Gerasimov and while the two of them had been wrestling, Mr B.I. had approached and hit Mr Gerasimov's head, holding the bat with two hands. Mr I.I. had not seen other blows because he had run away, but before doing so he had seen Mr P.K. and Mr N.S. also approaching Mr Gerasimov. He and his companions had not been carrying knives and had not provoked the others' attack.

22. Mr M.G. stated that he had run away immediately after the other men had arrived, because he had known that they were going to beat them.

23. Two employees of the petrol station where Mr V.V., Mr I.I. and Mr M.G. had pulled into after the attack were questioned on 9 and 10 July 2003. They confirmed that the men had been acting nervously and had said that someone had been beaten up.

24. Mr B.I. was questioned on 31 May 2003. He explained that when he had first seen Mr Gerasimov, Mr V.V., Mr I.I. and Mr M.G. they had threatened and sworn at him. Later, he and his friends had gone out to look for a horse, owned by Mr N.S., which had got lost. When they arrived at the place where the Roma had been, the latter had attacked them. Mr Gerasimov had had a knife and a pick and had stabbed him in the back. He had fallen to his knees. Someone had hit him with the wooden handle of a tool. He had managed to grab the handle and hit Mr Gerasimov back.

25. Mr B.I. was again questioned on 2 and 3 June 2003. This time he denied hitting Mr Gerasimov and said that he had seen someone else hit him in the scuffle.

26. Mr Z.E., Mr P.K. and Mr N.S. were questioned by the investigator on 31 May and 2 June 2003. On 3 June 2003 they were questioned before a judge.

27. Mr Z.E. stated that he and his friends had indeed gone to look for Mr N.S.'s horse. He had been in one of the cars with Mr B.I. He did not know why Mr B.I. had approached the Roma men, but supposed that he had intended to ask them if they had seen the horse. Immediately after he and Mr B.I. got out of the car the Roma men attacked them. Mr P.K. and Mr N.S., who had been following close behind them in the other car, came to their aid, but ran away after the Roma men attacked them too. He and his friends had got into their cars and driven away. In the car he realised that

Mr B.I. had been stabbed. He did not know how Mr Gerasimov had ended up fatally injured.

28. Mr P.K. said that on 30 May 2003 he had been in Mr B.I.'s house when Mr N.S. had come and said that his horse had got lost. The three men, together with Mr Z.E., had taken two cars and gone looking for the horse. At one point they had approached the Roma men. Mr Z.E. and Mr B.I. had stopped and got out of their car and had immediately been attacked by the Roma. He and Mr N.S. got out of their car as well. He saw someone stab Mr B.I. and was himself attacked by one of the Roma men, who had a bat and a knife. Then he and Mr N.S. got back into their car and drove away, while all Roma men had gathered around Mr B.I. and Mr Z.E. Mr P.K. did not know why the others had attacked them. He stated that none of his friends had been carrying knives or bats.

29. Mr N.S. also stated that he and his companions had been looking for his horse. At one point he and Mr P.K. had seen the other men beating Mr B.I. and Mr Z.E. and had went to separate them. He admitted that they had been carrying wooden bats in the cars in case they were attacked.

30. Mr N.S.'s brother was questioned on 31 May 2003 and confirmed that on the previous day the family's horse had got lost. In the course of the interview the investigator asked him: "Were you there when the gypsies stabbed [Mr B.I.] and do you know what they stabbed him with?" Mr N.S.'s brother responded that he had not seen the attack. Examined again on 20 June 2003, he confirmed that there had been wooden bats in the family's car, but he did not know who had put them there.

31. Mr K.G., who worked in the area, was interviewed on 20 June 2003. He stated that he had seen the fight from the road, while driving to a nearby shop to buy food. He had not stopped the car but had slowed down to watch. He estimated that the distance between him and the fighting men had been between eighty and a hundred metres. He had recognised Mr B.I., whom he knew, and had seen him grappling with someone else, who had then struck him with a knife. Then all the others gathered together and someone had a wooden bat or tool. Mr K.G. did not see anything in Mr B.I.'s hands.

2. Arrest and detention of Mr B.I. and orders for the arrest of Mr Z.E., Mr P.K. and Mr N.S.

32. Mr B.I. was arrested on an unspecified date.

33. On 2 June 2003 an investigator from the Pernik Regional Investigation Service ordered the arrests of Mr Z.E., Mr P.K. and Mr N.S., finding that there existed reasonable grounds for suspicion that they had acted as accessories in the attempted murder of Mr Gerasimov and noting that they had attempted to abscond. It appears that on the same day the three of them were briefly arrested. However, they were never charged or investigated any further.

34. On 3 June 2003 Mr B.I. was charged with attempted murder committed in an especially cruel manner and with extreme ferocity (Article 116 of the Criminal Code, see paragraph 48 below).

35. On 5 June 2003 the Pernik Regional Court remanded him in pre-trial custody. Referring to the testimony of Mr Gerasimov's companions (see paragraphs 20-22 above), and also taking into account the fact that the charges against Mr B.I. were serious and he had previous convictions, it found that there existed grounds for reasonable suspicion against him and a danger that he might abscond or reoffend.

36. On 11 June 2003 this decision was upheld by the Sofia Court of Appeal.

37. Mr B.I. was released on bail on 25 July 2003.

3. Subsequent developments and discontinuance of the criminal proceedings

38. On 10 December 2003 Mr B.I. was charged under Article 119 of the Criminal Code (see paragraph 49 below) with causing Mr Gerasimov's death by a disproportionate reaction to an attack. On the same day he was questioned again. He stated that during the fight on 30 May 2003 one of the Roma men had "almost" stabbed him, the knife only cutting through his clothes, and that, in the general scuffle when he had tried to defend himself, he might have hit Mr Gerasimov. He had not however meant to injure him badly.

39. In a decision of 25 May 2004 a prosecutor from the Pernik regional public prosecutor's office partially discontinued the criminal proceedings against Mr B.I., dropping the initial charge under Article 116 of the Criminal Code of attempted murder committed in an especially cruel manner and with extreme ferocity, brought on 3 June 2003 (see paragraph 34 above) and retaining the charge under Article 119 of the Criminal Code of causing death by a disproportionate reaction to an attack.

40. In that decision, the prosecutor noted that there were two conflicting versions of the events – the first one maintained by Mr Gerasimov's companions, namely that they had been attacked without provocation, and the second one maintained by Mr B.I. and his companions, namely that the Roma men had attacked them with shovels and knives immediately after their arrival at the scene. Taking into account other evidence, namely the reports of the medical examinations of Mr B.I. and his companions, which showed that they had all sustained injuries (see paragraph 16 above), the report of the examination of Mr B.I.'s T-shirt and jacket, showing matching knife cuts (see paragraph 17 above), and the medical reports establishing that some of the blood found at the scene of the fight might have been Mr B.I.'s (see paragraphs 13-14 above), he concluded that the version presented by Mr B.I. and his companions was tenable and the other one not. He also relied on the testimony of Mr K.G., who had stated that he had seen

nothing in Mr B.I.'s hands and had seen someone stab him (see paragraph 31 above). On the basis of this evidence, the prosecutor concluded that there had been a fight, in the course of which Mr B.I. had been injured and, acting in self-defence, had hit Mr Gerasimov's head only once, with a wooden bat.

41. The parties disagreed as to whether this decision of the Pernik regional public prosecutor's office had been served on the applicants. The applicants alleged that they had never been formally notified of it. The Government contested this assertion. They presented a list of the documents contained in the investigation file, drawn up by the Pernik regional public prosecutor's office and mentioning a receipt signed by the second applicant when the decision was served. However, the Government said that they could not submit the receipt itself, which had been lost. They also presented a request by the prosecuting authorities, addressed to the Pernik municipality, to be informed of the names and addresses of Mr Gerasimov's lawful heirs, with a view to serving documents on them, and the certificate containing that information, issued by the municipality.

42. The applicants submitted that they had on numerous occasions visited the investigator in charge of the case to inquire about the investigation's progress, but had not been provided with any meaningful information.

43. On an unspecified date Mr B.I. entered into a plea bargain with the prosecution. He confessed to killing Mr Gerasimov in a disproportionate reaction to an attack (Article 119 of the Criminal Code) and accepted a suspended sentence of three years' imprisonment. On 22 June 2004 the Pernik Regional Court approved the agreement, finding that it “did not run counter to the law and public morals”, and discontinued the criminal proceedings.

44. Apparently, the applicants became aware of the Pernik Regional Court decision of 22 June 2004 in August 2004, from publications in the local media.

4. Attempt of the first applicant to obtain the reopening of the criminal proceedings

45. On 20 June 2005 the first applicant requested the Chief Public Prosecutor's Office to apply for the criminal proceedings to be reopened. On 6 July 2005 she was informed that this was not possible, as the one-year time-limit for the prosecuting authorities to make such an application had expired on 22 June 2005, and that her request of 20 June 2005 had not been submitted far enough in advance to allow it to be duly examined and an application for reopening prepared.

C. Other developments

46. In a letter dated 24 February 2010 the applicants' initial representative before the Court, Mr Georgiev, informed the Court that in October 2009 his car had been damaged by unknown persons, which had posed a risk to his life when he had later travelled in it. On 17 February 2010 the premises of the non-governmental organisation he heads had been entered by order of the Pernik municipality and numerous documents, including some connected with the present application, had been seized.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

1. Offences Mr B.I. was charged with

47. Article 116 § 1 (6) of the Criminal Code of 1968 provides that anyone committing murder in an especially cruel manner and with extreme ferocity is liable to fifteen to twenty years' imprisonment or life imprisonment with or without a right to parole.

48. Under Article 119 of the Criminal Code, causing death by a disproportionate reaction to an attack is punishable by up to five years' imprisonment.

2. Racially motivated offences

49. The provisions of the Criminal Code relating to racially motivated offences have been summarised in the Court's judgment in the case of *Angelova and Iliev v. Bulgaria* (no. 55523/00, §§ 60-63, ECHR 2007-IX).

B. Code of Criminal Procedure

1. Discontinuance of criminal proceedings

50. By Article 237 § 1 of the Code of Criminal Procedure of 1974, in force at the material time, the prosecuting authorities could in certain circumstances discontinue criminal proceedings. Pursuant to Article 237 § 3, victims of crimes had to be notified of any decision to discontinue the proceedings and could appeal against the decision to the competent district or regional court.

51. Article 237 § 6 of the Code, as worded between May 2003 and April 2006, provided that the prosecuting authorities were not to adopt any formal decision to discontinue partially criminal proceedings in cases where the

charges against the same person and in respect of the same facts were only being amended. That provision was in line with an earlier interpretative decision of the General Assembly of the Criminal Chambers of Supreme Court of Cassation (Interpretative decision no. 2 of 7 October 2002, Тълкувателно решение № 2 от 7 октомври 2002 г. на ВКС по т. н. д. № 2/2002 г., ОСНК), which said:

> "A charge brought at the stage of the investigation is intended to define a general, initial, "working" objective of the proceedings. It can be adjusted depending on the evidence gathered and examined in the course of the investigation. In that sense the charge ... is unstable, varying in accordance with the operative developments. The different wording of the charge in respect of the same act and the adjustment of its legal qualification prior to indictment follow the dynamics of the investigation process and any changes in the circumstances resulting from the evidence gathered."

The General Assembly of the Criminal Chambers of Supreme Court of Cassation went on to conclude that

> "[w]here, in the course of the pre-trial proceedings, the factual basis of the charges changes substantially and new charges are brought against the accused, requiring a more severe, the same or a more lenient punishment ..., the prosecutor is to amend the charges and does not have to adopt a decision discontinuing the criminal proceedings in respect of the initial charges."

2. Participation of victims

52. Until May 2003 Article 60 § 1 of the Code of Criminal Procedure entitled victims of crime to participate in all stages of the criminal proceedings as civil parties. Civil parties were entitled to exercise their procedural rights to the extent necessary for the substantiation of their civil claim.

53. Following an amendment to the Code of 30 May 2003, the participation of victims as civil parties was restricted to the trial stage of the criminal proceedings. That provision remained in force until April 2006.

3. Plea bargaining

54. Plea bargaining was provided for in Articles 414ж-414и of the Code of Criminal Procedure. The procedure was applicable in respect of certain categories of offences.

55. The prosecution and the defence could enter into a plea agreement after the investigation had been concluded. The parties had to agree, *inter alia*, whether an offence had been committed and on the type and severity of the punishment. The prosecutor would then submit the agreement to the competent district or regional court which would examine it in the presence of the prosecutor, the accused and the latter's counsel. If satisfied that the agreement did not run counter to law or morality, the court would adopt a decision approving the agreement and discontinuing the criminal proceedings. No appeal lay against this decision. A plea agreement

approved by a competent court had the same binding force as a final conviction and sentence.

56. Prior to May 2003 the participation of victims in plea bargaining was obligatory and they had to consent to the plea agreement. Following amendments to the Code in May 2003, in cases where the agreement had been made at the pre-trial stage of the proceedings victims' participation and consent were no longer obligatory; however, the court examining the agreement could on its own initiative decide to hear their representations.

57. On the contrary, if a plea agreement had been reached at the trial stage of the proceedings, all parties had to consent to it, including the victims, if they had joined the proceedings as civil parties or private prosecutors.

4. Other provisions

58. Article 192 of the Code provided that criminal proceedings concerning publicly prosecutable offences could only be initiated by a prosecutor or an investigator. The offences referred to in paragraphs 48-50 above are publicly prosecutable ones.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

59. Relying on Articles 2 and 13 of the Convention, the applicants complained that the authorities had failed to carry out an effective and impartial investigation into their relative's death. They contended that the plea agreement between the prosecuting authorities and Mr B.I., approved by the Pernik Regional Court (see paragraph 43 above), ran counter to the law and was not based on the facts of the case. They also complained that Mr B.I.'s companions were never prosecuted or punished. In their view, the evidence gathered by the prosecuting authorities demonstrated that Mr B.I. and his companions had killed Mr Gerasimov in an especially cruel manner and with extreme ferocity, hitting him repeatedly with wooden bats. The applicants also complained that they had not been given any meaningful opportunity to participate in the investigation and the plea bargaining, and that the first applicant had not been able to obtain a reopening of the criminal proceedings (see paragraph 45 above).

60. The Court is of the view that the complaint falls to be examined solely under Article 2 of the Convention which, in so far as relevant, reads:

> "1. Everyone's right to life shall be protected by law."

A. Arguments of the parties

61. The Government contended that the decision of the Pernik regional public prosecutor's office of 25 May 2004 (see paragraphs 39-40 above) had been served on the applicants, who had had the opportunity to appeal against it. They had failed to do so and the present complaint was therefore inadmissible for failure to exhaust domestic remedies. Furthermore, the Government considered that the investigation of Mr Gerasimov's death had been independent and thorough, and contested the applicants' assertion that they had not been able to participate in the proceedings.

62. The applicants contested these arguments. They were of the view that the Government bore the burden of proving that the decision of 25 May 2004 had indeed been served on the second applicant, and as they had failed to present the receipt they were relying on (see paragraph 41 above), it followed that the document had never been served. Furthermore, the applicants considered that the version of the events adopted by the authorities, which had led to Mr B.I.'s lenient punishment, namely that Mr Gerasimov and his companions had been the first to attack and that Mr B.I. had hit Mr Gerasimov only once, acting in self defence, had been unconvincing and was contrary to the evidence gathered. They indicated firstly that the post-mortem examination of Mr Gerasimov had found several wounds on his head and numerous wounds and bruises on the body (see paragraph 18 above). Furthermore, they noted that the authorities' version did not explain the fact that Mr Gerasimov had been hit on the back of the head with considerable force, given that, in the authorities' view, he had been wrestling face to face with Mr B.I. They also pointed out that it had been Mr Gerasimov's companions who had called the police to report that their companion had been beaten up, whereas Mr. B.I. and his companions had gone into hiding (see paragraphs 9-10 and 33 above). Lastly, the applicants argued that the authorities' version of the events did not explain why, if they were not looking for a fight, Mr B.I. and his companions had deliberately driven to the place where the Mr Gerasimov and his companions were. The area was open ground and they could easily have seen the horse they alleged they had been looking for if it had been in the area (see paragraphs 7 and 9 above).

63. The applicants also argued that the investigation had been incomplete. They noted that the knife found in Mr N.S.'s car (see paragraph 15 above) had never been examined for fingerprints and that the prosecuting authorities had not put the veracity of Mr K.G.'s testimony to the test (see paragraph 31 above), by carrying out an experiment to establish whether he could have indeed seen the fight. The applicants also stated that the authorities were wrong not to have obtained a more detailed report from Mr Gerasimov's post-mortem examination and not to have taken other steps to establish the circumstances, such as, for example, examining the

footprints at the site of the fight, which could have revealed the movements of the participants in the fight.

64. The applicants considered that as a result of the above the investigation of Mr Gerasimov's death had been ineffective, in that it had been incapable of leading to the identification of those responsible and to punishing them accordingly.

B. The Court's assessment

1. Admissibility

(a) Victim status of the applicants

65. The Court notes that the prosecuting authorities carried out an investigation into Mr Gerasimov's death, which identified Mr B.I. as the person responsible for that death and resulted in his conviction and sentence (see paragraphs 12-44 above). A question may therefore arise as to whether the applicants have ceased to be victims of the alleged violation of Article 2 of the Convention.

66. Under the subsidiarity principle, it falls first to the national authorities to redress any alleged violation of the Convention. A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. The applicant's ability to claim to be a victim will depend on the redress which the domestic remedy has given him (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-80, ECHR 2006-V, and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 49, 20 December 2007).

67. The Court observes that by convicting and sentencing Mr B.I. the domestic authorities acknowledged that Mr Gerasimov's life had been taken unlawfully, as a result of a criminal offence. The Court is ready to assume that this represented sufficient acknowledgement on the part of the authorities that there had been a violation of Mr Gerasimov's right to life. It must therefore assess whether Mr B.I.'s conviction and sentence provided the applicants with appropriate and sufficient redress, that is, whether the investigation that led to this outcome was effective (see *Nikolova and Velichkova*, cited above, § 56). However, this question is closely linked to the merits of the present complaint. The Court thus considers it appropriate to join the question of the applicants' victim status to the merits of the complaint (see *Özcan and Others v. Turkey*, no. 18893/05, § 55, 20 April 2010).

(b) Exhaustion of domestic remedies

68. The Court notes further that the Government raised an objection for non-exhaustion of domestic remedies, based on the applicants' failure to appeal against the decision of the Pernik regional public prosecutor's office of 25 May 2004 (see paragraph 61 above).

69. The Court observes that pursuant to Article 237 § 3 of the Code of Criminal Procedure, as in force at the relevant time, victims of crimes could appeal against any decision to discontinue criminal proceedings (see paragraph 50 above). However, Article 237 § 6 of the Code provided that the prosecutor in charge was not required to adopt any formal decision to discontinue criminal proceedings in part in cases where the charges against the same person and in respect of the same facts were only being amended. This corresponded to an earlier interpretative decision of the Supreme Court of Cassation (see paragraph 51 above). It appears that the situation in the present case, where the initial charges against Mr B.I., of murder committed in an especially cruel manner and with extreme ferocity were substituted with new charges, of causing death by a disproportionate reaction to an attack, fell under Article 237 § 6 of the Code of Criminal Procedure. Nevertheless, the prosecutor adopted the decision to discontinue in part the proceedings to which the Government referred. While it is not for the Court to interpret national legislation and assess the legal effect of that decision, it notes that domestic law did not require it, viewing the charges as an unstable element, dependent on the course of the investigation, and their amendment as a mere adjustment and not a formal stage of the investigation (see paragraph 51 above). In view of that, and also noting that the Government have not presented any evidence which could persuade it to consider otherwise, the Court has serious doubts as to whether the domestic courts would have indeed admitted for examination an appeal by the applicants against the decision of 25 May 2004.

70. Moreover, the Court is of the view that the Government have failed to establish satisfactorily that the applicants had indeed been aware of that decision. The Government failed to present the receipt on which they relied (see paragraph 41 above) and which could have established with certainty that the decision at issue had been served on the second applicant. The additional documents relied on by the Government, namely a list of the documents in the case file drawn up by the Pernik regional public prosecutor's office, a letter addressed to the municipal authorities and a certificate of Mr Gerasimov's heirs (ibid.), are not sufficient to satisfy the Court that the applicants were indeed aware of the decision at issue, given their repeated denial of this fact (ibid., see also paragraph 62 above).

71. Furthermore, the applicants' complaint under Article 2 of the Convention does not concern solely the issue which could have been remedied through such an appeal, namely the legal characterisation of the offence committed by Mr B.I., but also other issues, such as the authorities'

failure to investigate the alleged participation of Mr B.I.'s companions, Mr Z.E., Mr P.K. and Mr N.S. (see paragraph 59 above). The Court does not see how the remedy referred to by the Government could have addressed the latter issue.

72. In conclusion, the Court considers that the remedy at issue would not have provided the applicants with any adequate redress for their grievances. Their failure to employ it cannot therefore lead to the application being rejected for non-exhaustion of domestic remedies.

(c) Conclusion on the complaint's admissibility

73. Lastly, the Court considers that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

74. The Court observes that Article 2 § 1 imposes on the State a duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions (see *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports of Judgments and Decisions* 1998-VIII). That obligation requires by implication that there should be some form of effective official investigation when individuals have died in violent or suspicious circumstances, even if there is no indication that the death is due to State action (see, concerning inter-prisoner violence, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 69, ECHR 2002-II; concerning homicides by prisoners benefiting from early release or social re-integration schemes, *Mastromatteo v. Italy* [GC], no. 37703/97, §§ 89, 92 and 93, ECHR 2002-VIII, and *Maiorano and Others v. Italy*, no. 28634/06, §§ 123-26, 15 December 2009; concerning racist attacks, *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V, and *Angelova and Iliev*, cited above, §§ 91-105; concerning high-profile assassinations, *Kolevi v. Bulgaria*, no. 1108/02, §§ 191-215, 5 November 2009; concerning domestic violence, *Opuz v. Turkey*, no. 33401/02, §§ 150 and 151, ECHR 2009-...; concerning motor-car accidents, *Al Fayed v. France* (dec.), no. 38501/02, §§ 73-78, 27 September 2007; *Rajkowska v. Poland* (dec.), no. 37393/02, 27 November 2007; and *Railean v. Moldova*, no. 23401/04, § 28, 5 January 2010; concerning deadly accidents on construction sites, *Pereira Henriques v. Luxembourg*, no. 60255/00, §§ 12 and 54-63, 9 May 2006; and, concerning suspicious deaths, *Rantsev v. Cyprus and Russia*, no. 25965/04, § 234, 7 January 2010, and *Iorga v. Moldova*, no. 12219/05, § 26, 23 March 2010). The Court recently described the obligation under Article 2 to carry out an effective investigation as having evolved into a "separate and

autonomous duty" (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). However, it would emphasise that that obligation may differ, both in content and in terms of its underlying rationale, depending on the particular situation that has triggered it (see *Banks and Others v. the United Kingdom* (dec.), no. 21387/05, 6 February 2007, and, *mutatis mutandis*, *Beganović v. Croatia*, no. 46423/06, § 69, ECHR 2009-... (extracts)).

75. Even in situations in which there is no suggestion that a violent or suspicious death is due to official action, the authorities are under the obligation to carry out an independent and impartial official investigation that satisfies certain minimum standards as to its effectiveness. The nature and degree of scrutiny which satisfy the minimum threshold of effectiveness depend on the circumstances of each particular case. They must be assessed on the basis of all relevant facts and with regard to the practical realities of investigation work (see *Velikova v. Bulgaria*, no. 41488/98, § 80, ECHR 2000-VI, and *Ülkü Ekinci v. Turkey*, no. 27602/95, § 144, 16 July 2002). Moreover, this is not an obligation of result, but of means only. Article 2 does not entail the right to have others prosecuted or sentenced for an offence, or an absolute obligation for all prosecutions to result in conviction or in a particular sentence (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 94 and 96, ECHR 2004-XII).

76. For those reasons, the Court, while verifying whether such investigations have been objective and thorough, and whether the national authorities have taken reasonable steps to secure the evidence, does not consider it appropriate to interfere with the lines of inquiry pursued by the authorities or the findings of fact made by them, unless they manifestly fail to take into account relevant elements or are arbitrary (see, *mutatis mutandis*, *Drăganschi v. Romania* (dec.), no. 40890/04, 29 *in limine*, 18 May 2010, and *Nikolay Dimitrov v. Bulgaria*, no. 72663/01, § 76, 27 September 2007).

77. At all events, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts (see *Kolevi*, cited above, § 194). The next of kin of the victim must be involved in the procedure to the extent necessary to safeguard their legitimate interests (see *Marinova v. Bulgaria*, no. 29972/02, § 39, 10 June 2010).

78. Applying the principles above to the case at hand, the Court notes that the authorities opened an investigation into Mr Gerasimov's death on the day he was fatally injured (see paragraph 12 above). In the framework of that investigation they examined witnesses, commissioned expert reports and gathered other evidence (see paragraphs 13-31 and 38 above). However, the Court has serious doubts as to whether the investigation was thorough and met even the minimum standards of effectiveness described above (see paragraphs 75-76).

79. The Court notes that the relevant domestic authorities, namely the Pernik regional public prosecutor's office, which carried out the investigation and entered into a plea agreement with Mr B.I., and the Pernik Regional Court, which approved that agreement, concluded that Mr B.I. was solely responsible for the death of Mr Gerasimov, whom he had killed when reacting disproportionately to an attack, with one blow to the head. The Court is struck by the fact that in reaching that conclusion the authorities manifestly failed to take into account important evidence collected during the investigation. The Court refers, first of all, to the results of Mr Gerasimov's post-mortem, which found a multi-fragment fracture of the skull, numerous wounds on the head and wounds and bruises on the body (see paragraph 18 above). Mr Gerasimov's hospital report of 31 May 2003 also indicated that he had four wounds to the head (see paragraph 11 above). For the Court, these findings alone, indicative of repeated blows and not of a single one, as accepted by the authorities, would have been sufficient to refute their version of the events. Furthermore, Mr Gerasimov's post-mortem found a multi-fragment fracture with a depression of the parietal bone (see paragraph 18 above), which might indicate that he had been hit in the back of the head with considerable force. These elements, indicative of a possible deliberate attack, square poorly with the authorities' conclusion that Mr B.I. had acted in self-defence.

80. In accepting that Mr Gerasimov and his companions had been the ones to start the fight and that, therefore, Mr B.I. had acted in self-defence, the authorities disregarded another important circumstance, namely that after the fight it was Mr Gerasimov's companions who alerted the police (see paragraph 9 above). When they reached a petrol station and asked the staff to call the police, they were nervous and said that he had been beaten up (see paragraph 23 above). At the same time Mr B.I. and his companions went into hiding (see paragraphs 10 and 33 above). Although they alleged later that they had been attacked, they never reported the attack to the police and did not request that it be investigated. These elements could have been indicative of the two groups' attitude to the events, but again the authorities seemed to have disregarded them.

81. The authorities' version of the events also failed to explain why Mr B.I. and his companions deliberately drove to the place where Mr Gerasimov and his companions were. If Mr B.I. had indeed, as Mr Z.E. supposed (see paragraph 27 above), intended to ask if they had seen Mr N.S.'s horse, still it is not clear why it was necessary for the four of them to leave the main road and drive along a dirt road to reach the place where the others were working. In adopting the version disputed by the applicants, the authorities failed to take into account other relevant facts established during the investigation, namely, that Mr N.S. had admitted that the group had been carrying wooden bats, that two bats and a knife had been found in his car (see paragraph 16 above), and that, furthermore, it was the van used

by Mr Gerasimov and his companions which had been seriously damaged (see paragraph 13 above). Although this evidence could be seen as disproving the authorities' conclusions, they disregarded it completely. Furthermore, they never sought to explain how Mr Gerasimov had suffered numerous wounds and bruises or why there had been blood in the van used by him and his companions, which was not his but could have been Mr B.I.'s (see paragraph 13 above).

82. For these considerations the Court is of the view that the authorities failed to carry out a thorough, objective and impartial analysis of the relevant evidence gathered during the investigation of Mr Gerasimov's death. Therefore, the investigation itself could not have been thorough and objective. This in principle would have been sufficient to justify a conclusion that there was a breach of Article 2 of the Convention. Nevertheless, the Court considers it necessary to indicate other deficiencies in the investigation.

83. It notes that it has not been informed of any investigative steps aimed at establishing the possible involvement in Mr Gerasimov's death of Mr B.I.'s companions, Mr Z.E., Mr P.K. and Mr N.S. While, as has already been mentioned (see paragraph 76 above), it is not for it to interfere with the lines of inquiry pursued by the investigators, the Court notes that there were strong indications that the three of them might have also been implicated, which the authorities manifestly failed to account for. There were, in the first place, the testimonies of Mr V.V. and Mr I.I., who explained that Mr Z.E. had been the first to attack Mr Gerasimov with a wooden bat. Mr I.I. stated in addition that before running away he had seen Mr P.K. and Mr N.S. also approach Mr Gerasimov (see paragraphs 20-21 above). In the second place, it is noteworthy that Mr Z.E., Mr P.K. and Mr N.S. attempted to abscond after Mr Gerasimov had been beaten up (see paragraphs 10 and 33 above). They were even briefly arrested (see paragraph 33 above). However, notwithstanding the existence of evidence indicating that the three of them could have been involved and their own suspicious behaviour, and the investigator's initial assessment that there existed a reasonable suspicion that they could have acted as accessories in Mr Gerasimov's beating up, which led to their arrests, they were never investigated (ibid.).

84. The Court sees other reasons to doubt the comprehensiveness of the investigation. It notes that in its decision to drop the initial charges against Mr B.I. the Pernik regional public prosecutor's office relied on the testimony of Mr K.G. The latter had been an eyewitness to the fight and had testified that he had recognised Mr B.I. and seen him grappling with someone else, who had then delivered a blow with a knife (see paragraphs 31 and 40 above). However, the prosecuting authorities did nothing to verify this key testimony, regardless of the fact that its credibility could appear doubtful, given that he had observed the fight from a considerable distance while driving (see paragraph 31 above). Moreover, although the prosecuting

authorities found a knife (see paragraph 15 above), they did not take fingerprints from it, did not verify whether it had been the one Mr B.I. had been stabbed with and did not attempt to explain how it had ended up in Mr N.S.'s car. In the Court's view these were obvious and available investigative steps which could have shed light on the circumstances of Mr Gerasimov's death.

85. Also, the prosecuting authorities did not seek to explain the inconsistencies in the testimonies of Mr B.I., who admitted initially to having hit Mr Gerasimov, several days later denied this, and during his last examination on 10 December 2003 acknowledged that he "might have" done it (see paragraphs 24-25 and 38 above). Furthermore, he stated initially that he had been stabbed by Mr Gerasimov, but later on explained that someone had "almost" stabbed him, the knife only cutting through his clothes (see paragraphs 24 and 38 above).

86. The Court considers that it is not its task here to substitute the domestic authorities' assessment of the facts of the case with its own and determine whether or not Mr B.I. had been attacked by Mr Gerasimov and his friends, had acted in self-defence and was solely responsible for Mr Gerasimov's death. Nor is it the Court's task to determine whether it was appropriate to conclude the investigation with a plea bargain and whether Mr B.I.'s punishment thus agreed upon was adequate. The Court has to ensure that a State's obligation to protect the rights of those under its jurisdiction is adequately discharged. To that end, it has to assess whether the investigation of Mr Gerasimov's death was effective in the light of the principles set out in paragraphs 75-77 above. As discussed in the preceding paragraphs, the Court is not satisfied that the authorities carried out a thorough and objective investigation, as required under Article 2 of the Convention, because they failed to take available investigative measures and manifestly disregarded important evidence.

87. Moreover, the Court considers that the applicants, as the next of kin of Mr Gerasimov, could not participate effectively in the investigation into their relative's death, as also required under Article 2 of the Convention (see paragraph 77 above). It already found that the hypothetical possibility for them to appeal against the Pernik regional public prosecutor's office's decision of 25 May 2004 did not amount to an effective remedy within the meaning of Article 35 § 1 of the Convention (see paragraphs 69-70 above). Accordingly, it does not consider that such an appeal would have given the applicants any meaningful opportunity to participate in the proceedings.

88. Nor does the Court consider that the applicants were given any other opportunity to participate and express their views. They could not request to be designated civil parties, because domestic law at the time did not provide for such a possibility, the case never having reached the trial stage (see paragraph 53 above). Moreover, they did not participate in the procedure whereby the Pernik Regional Court approved the plea agreement between

Mr B.I. and the prosecution, because the domestic court did not invite them to make submissions, as it was authorised to do (see paragraph 56 above). In fact, the applicants' views were never sought and never taken into account by the domestic authorities. The applicants were not even formally informed of the outcome of the investigation and only found out about it later through publications in the media (see paragraph 44 above).

89. To sum up, the Court considers that the investigation of Mr Gerasimov's death was not thorough, nor was it objective. Moreover, the applicants were not given any meaningful opportunity to participate in it. Therefore, the investigation into Mr Gerasimov's death carried out by the national authorities fell short of the requirements of Article 2 of the Convention (see paragraphs 75-77 above).

90. On the basis of these considerations, the Court concludes that there has been a violation of that provision.

91. Given its conclusion that the investigation into Mr Gerasimov's death was ineffective, the Court finds also that it did not provide the applicants with adequate and sufficient redress and that they can still claim to be victims of the violation of Article 2, an issue which the Court decided to join to the merits of the present complaint (see paragraph 67 above).

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

92. The applicants also complained that their relative had been killed because of his Roma origin and that, moreover, that origin and their own Roma origin had been the reason for the authorities' failure to investigate his death effectively. The applicants relied on Article 14 of the Convention, which reads:

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

93. Without putting forward any specific arguments, the Government contested the applicants' allegations.

94. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

95. The Court reiterates that discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations. Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (see

Nachova and Others v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII). Furthermore, when investigating violent incidents, States have the duty to take all reasonable steps to unmask any racist motive and to establish whether ethnic hatred or prejudice may have played a role in the events (ibid., § 160). However, while the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence may be seen as implicit in their responsibilities under Article 14 taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination, it is also an aspect of their procedural obligations arising under Article 2 alone. Owing to the interplay of the two Articles, issues such as those in the present case may fall to be examined under one of the them only, with no separate issue arising under the other, or may require examination under both. This is a question to be decided in each case on its facts and depending on the nature of the allegations made (ibid., § 161).

96. Faced with the applicants' complaints under Article 14 of the Convention, the Court's task is to establish first of all whether the prosecuting authorities failed to investigate any possible racist motives in connection with Mr Gerasimov's death. After that the Court must examine whether in carrying out an investigation into that death the authorities were prejudiced owing to Mr Gerasimov's and the applicants' Roma ethnic origin.

97. As to the first limb of the complaint, the Court notes that Mr V.V. stated in his testimony that in rushing towards him and his companions Mr B.I. had uttered the words "you damn gypsies" (see paragraph 20 above). However, the Court does not consider it necessary to decide whether this was sufficient to alert the authorities to possible racist overtones in connection with Mr Gerasimov's death and, accordingly, trigger their procedural obligations under Article 14. The Court notes that the authorities concluded that Mr Gerasimov had been fatally injured as a result of a disproportionate reaction to his own attack on Mr B.I. and his companions and that it found above that this version of the events, which apparently did not presuppose any racist motive on the part of Mr B.I., was adopted after an investigation which fell short of the requirements of Article 2 by reason of not being, *inter alia*, thorough and objective (see paragraphs 78-89 above). In those circumstances, the Court does not consider that the authorities' alleged failure to investigate possible racist overtones in connection with Mr Gerasimov's death raises a separate issue under Article 14 (see, *mutatis mutandis*, *Osman v. Bulgaria*, no. 43233/98, §§ 89-91, 16 February 2006).

98. Turning to the second limb of the complaint, the Court notes that during an examination of a witness on 31 May 2003 the investigator in charge of the case referred to Mr Gerasimov and his companions as "gypsies" (see paragraph 30 above). However, the Court is not convinced that, given the context in which this word was uttered, this is sufficient to

reveal any racial prejudice that could have motivated the conduct of the investigation. Nor is the Court aware of any other discriminatory remarks made by the authorities during the investigation and relating to the applicants' or Mr Gerasimov's Roma ethnic origin (contrast *Moldovan v. Romania (no. 2)*, nos. 41138/98 and 64320/01, § 139, ECHR 2005-VII (extracts), and *Paraskeva Todorova v. Bulgaria*, no. 37193/07, §§ 38-40, 25 March 2010). Therefore, the Court does not find it established that the authorities' failure to conduct an effective investigation into Mr Gerasimov's death was motivated by racial prejudice.

99. Accordingly, the Court concludes that there has been no violation of Article 14 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

100. Lastly, the Court notes that on 24 February 2010 the applicants' initial representative informed the Court that his car had been damaged by unknown persons, which had posed a risk to his life, and that the premises of the non-governmental organisation he heads had been entered and searched by the authorities, who had seized documents related to the present application (see paragraph 46 above).

101. However, these allegations are unsubstantiated. Moreover, no link has been established between the damage to the applicants' representative's car and the present application to the Court. As to the search of his organisation's offices and the seizure of documents, it has not been shown that these actions were indeed intended to exercise any pressure in connection with the present application.

102. Therefore, the Court considers that no issue arises as to any alleged hindrance in the applicants' right to individual petition requiring examination under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

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

A. Damage

1. Pecuniary damage

104. The first applicant claimed 18,000 euros (EUR) in respect of pecuniary damage. She argued that as a result of the death of her son she had lost the financial support he had been providing to her. The remaining applicants did not claim pecuniary damage.

105. The Government contested the first applicant's claim.

106. The Court reiterates that there must be a causal link between the pecuniary damage claimed by an applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings. The Court notes that in the present case private individuals, and not the Government, were responsible for the death of the first applicant's son. Thus, the Government cannot be held liable to compensate the first applicant for the pecuniary damage she might have suffered as a result (see, among others, *Angelova and Iliev*, cited above, § 125). Accordingly, the Court rejects the first applicant's claim for compensation for pecuniary damage.

2. Non-pecuniary damage

107. The first and second applicants claimed EUR 15,000 for each of them in respect of non-pecuniary damage. The third and fourth applicants claimed EUR 5,000 for each of them. The applicants pointed out that they had suffered emotional pain and anguish as a result of the authorities' failure to investigate effectively the death of their son, husband and brother.

108. The Government considered these claims to be excessive.

109. The Court notes that it found that the authorities had breached Article 2 of the Convention (see paragraph 89 above) and considers that as a result the applicants must have suffered serious pain and frustration. Ruling in equity, it awards EUR 10,000 to each of the first and second applicants, Ms Rayna Sedevcheva Dimitrova and Ms Ekaterina Vaskova Gerasimova, Mr Georgi Gerasimov's mother and wife, and EUR 5,000 to each of the third and fourth applicants, Mr Sedefcho Petrov Gerasimov and Mr Petar Petrov Gerasimov, Mr Georgi Gerasimov's brothers.

B. Costs and expenses

110. The applicants claimed EUR 925 for the costs and expenses incurred before the communication of the present application. They claimed another EUR 1,840 for 23 hours of legal work, at a rate of 80 euros an hour, by their representatives after the communication, Mr Grozev and Ms Dobreva. They requested that the sum of EUR 1,840 be transferred directly into Mr Grozev's bank account.

111. In support of the above claims they presented the relevant contracts for legal representation and receipts.

112. The Government considered these claims to be excessive.

113. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the circumstances of the case and the fact that it found no violation in respect of the applicants' complaint under Article 14 of the Convention, the Court awards EUR 2,500 for costs and expenses, EUR 1,840 of which is to be transferred directly into Mr Grozev's bank account.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the question of the applicants' victim status;

2. *Declares* the complaints under Articles 2 and 14 of the Convention admissible and that there is no need to examine further any alleged hindrance in the applicants' right to individual petition;

3. *Holds* that there has been a violation of Article 2 of the Convention and, accordingly, that the applicants may claim to be victims of that violation;

4. *Holds* that there has been no violation of Article 14 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months of 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 on the date of settlement:

(i) EUR 10,000 (ten thousand euros) to each of the first and second applicants, Ms Rayna Sedevcheva Dimitrova and Ms Ekaterina Vaskova Gerasimova, and EUR 5,000 (five thousand euros) to each of the third and fourth applicants, Mr Sedefcho Petrov Gerasimov and Mr Petar Petrov Gerasimov, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) jointly to the four applicants, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, EUR 1,840 (one thousand eight hundred and forty euros) of which to be transferred directly into Mr Grozev's bank account;

(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* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 27 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President