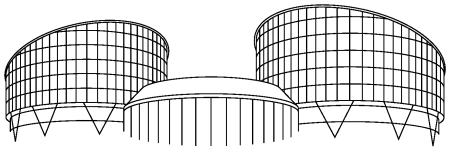

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DZHABAROV AND OTHERS v. BULGARIA

(Applications nos. 6095/11, 74091/11 and 75583/11)

JUDGMENT

STRASBOURG

31 March 2016

FINAL

30/06/2016

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

In the case of Dzhabarov and Others v. Bulgaria,

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

Angelika Nußberger, *President*,
Ganna Yudkivska,
Erik Møse,
Faris Vehabović,
Síofra O'Leary,
Mārtiņš Mits, *judges*,
Pavlina Panova, ad hoc *judge*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 March 2016,

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

PROCEDURE

1. The case originated in three applications (nos. 6095/11, 74091/11 and 75583/11) 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 Deyan Georgiev Dzhabarov, Ms Vaska Kirilova Nikolova and Mr Stanislav Dimitrov Petkov ("the applicants"), on 11 December 2010, 18 November 2011 and 7 October 2011 respectively.

2. Mr Dzhabarov and Mr Petkov were represented by Mr S. Karov, a lawyer practising in Burgas. Ms Nikolova was represented by Mr M. Ekimdzhiev and Ms S. Stefanova, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms K. Radkova, of the Ministry of Justice.

3. The applicants alleged, in particular, that they had been detained unlawfully by the police and that their claims for non-pecuniary damages in respect of that detention had been dismissed without proper justification.

4. On 5 May 2015 Mr Yonko Grozev, the judge elected in respect of Bulgaria, withdrew from sitting in the cases (Rule 28 § 3 of the Rules of Court). Accordingly, on 7 January 2016 the President selected Ms Pavlina Panova as *ad hoc* judge from the list of five persons whom the Republic of Bulgaria had designated as eligible to serve as such a judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court).

5. On 17 June 2015 the Court gave the Government notice of the complaints concerning the lawfulness of the applicants' detention and the dismissal of their claims for damages in that respect, and declared the remainder of the applications inadmissible under Rule 54 § 3 of its Rules.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Dzhabarov was born in 1975 and lives in Burgas.

7. Mr Petkov was born in 1981 and lived in Burgas. He died on 31 May 2014. On 4 September 2014 his mother, who is his only heir, expressed the wish to pursue the application on his behalf.

8. Ms Nikolova was born in 1962 and lives in Sandanski.

A. The case of Mr Dzhabarov and Mr Petkov

1. The detention on 20 and 21 December 2007

9. On 20 December 2007 Mr Dzhabarov, Mr Petkov and a friend of theirs were travelling in a car in Stara Zagora. At about 3 a.m. they were stopped by a police patrol, arrested, and, at approximately 3.10 a.m., taken to a local police station.

10. The police issued an order for Mr Dzhabarov's detention for twenty-four hours at 12 noon. The order said that he was being detained under section 63(1)(1) of the Ministry of Internal Affairs Act 2006 ("the MIAA" – see paragraph 41 below) in conjunction with Article 195 § 1 (3) and (4) of the Criminal Code 1968, which criminalise burglary and theft committed by using a motor vehicle, technical means or a special technique.

11. The police issued an order for Mr Petkov's detention for twenty-four hours at 1.30 p.m. That order likewise said that he was being detained under section 63(1)(1) of the MIAA, but in his case in conjunction with 198 § 1 of the Criminal Code 1968, which criminalises robbery.

12. Neither of the two orders mentioned the factual grounds on which they had been issued.

13. The applicants were released at 12 noon on 21 December 2007.

2. The proceedings brought by Mr Dzhabarov

(a) The judicial review proceedings

14. In the beginning of 2008 Mr Dzhabarov sought judicial review of the order for his detention.

15. On 16 April 2008 the Stara Zagora Administrative Court quashed the order. It noted that Mr Dzhabarov had been detained under section 63(1)(1) of the MIAA. However, the order had not specified the offence of which he was suspected. That was both a breach of the rules of procedure and an indication that there did not exist a reasonable suspicion that Mr Dzhabarov had committed an offence. The lack of such suspicion was also demonstrated by the absence of any evidence in the police file. Two police

reports, drawn up later and suggesting that Mr Dzhabarov had been detained with a view to elucidating whether he was implicated in the robbery of a petrol station and a number of burglaries, could not *ex post facto* justify his detention; they moreover contained discrepancies and were based on investigative steps carried out after Mr Dzhabarov's arrest. The court went on to say that the order had been issued more than nine hours after Mr Dzhabarov's *de facto* arrest, which was out of line with the object and purpose of the law. The court partly allowed Mr Dzhabarov's claim for costs, awarding him 200 Bulgarian levs (BGN) (102 euros (EUR)) in lawyers' fees and BGN 10 (EUR 5) in court fees.

16. The police appealed on points of law. Mr Dzhabarov did not ask the Stara Zagora Administrative Court to vary its ruling in relation to costs, as was possible under the applicable rules of procedure. He did however ask the Supreme Administrative Court to award him the costs incurred in the appeal proceedings.

17. In a judgment of 2 December 2008 (реш. № 13157 от 02.12.2008 г. по адм. д. № 7441/2008 г., ВАС, III о.), the Supreme Administrative Court upheld the lower court's judgment. It held that the detention order, which had been issued at 12 noon on 20 December 2007, was chiefly tainted by the undisputed lack of contemporaneous evidence that Mr Dzhabarov might have been implicated in an offence. The court did not mention Mr Dzhabarov's claim in respect of the costs incurred in the appeal proceedings. Mr Dzhabarov did not ask it to supplement its judgment by doing so, as provided under the applicable rules of procedure.

(b) The claim for damages

18. In January 2009 Mr Dzhabarov brought a claim under section 1(1) of the State and Municipalities Liability for Damage Act 1988 (see paragraph 47 below) against the Stara Zagora Regional Directorate of the Ministry of Internal Affairs. He alleged, *inter alia*, that his detention had been unlawful and had caused him psychological trauma. He sought BGN 2,000 (EUR 1,023) in non-pecuniary damages and, under the head of pecuniary damages, reimbursement of the remainder of the costs that he had allegedly incurred in the judicial review proceedings: BGN 206 (EUR 105).

19. On 27 November 2009 the Burgas Administrative Court dismissed the claim. It held that Mr Dzhabarov had failed to prove that he had suffered non-pecuniary damage – such as negative emotions, stress or discomfort – as a result of his detention. He had not provided any evidence, in particular medical expert reports, on that point. The statement of Mr Petkov, who had been called by Mr Dzhabarov to testify, only contained information about the events surrounding their arrest and detention. The court went on to say that it was not possible to seek costs incurred in proceedings for judicial review of a detention order by way of a claim for damages under section 1(1) of the 1988 Act.

20. Mr Dzhabarov appealed on points of law. He argued, *inter alia*, that it was logical to presume that a person who had been unlawfully detained had endured mental suffering on account of that, and that he was entitled to compensation because his detention had been in breach of his fundamental rights.

21. In a judgment of 15 June 2010 (реш. № 7954 от 15.06.2010 г. по адм. д. № 753/2010 г., ВАС, III о.), the Supreme Administrative Court upheld the lower court's judgment. It held that claimants in proceedings under section 1(1) of the 1988 Act bore the burden of making out all elements of the tort, including the existence of damage, and that the only evidence that could be used to prove non-pecuniary damage in the form of mental suffering was medical expert evidence, not witness evidence. The court went on to agree fully with the lower court's ruling in relation to the claim for costs in the judicial review proceedings.

3. The proceedings brought by Mr Petkov

(a) The judicial review proceedings

22. In January 2008 Mr Petkov sought judicial review of the order for his detention.

23. On 10 March 2008 the Stara Zagora Administrative Court quashed the order. It noted that Mr Petkov had been detained under section 63(1)(1) of the MIAA. However, the order for his detention, while formally valid, was out of line with the object and purpose of the law. The police were given the power to detain persons suspected of offences with a view to being able to investigate those offences. That is why the law did not require conclusive evidence of an offence but simply information enabling the police to form a reasonable suspicion in that regard. The police detention log showed that Mr Petkov had been brought to the police station at 3.10 a.m. on 20 December 2007, whereas the three witness statements submitted by the police in the judicial review proceedings in support of their contention that Mr Petkov was suspected of an offence spoke of a robbery of a petrol station committed at 4.50 a.m. This showed that, at the time of Mr Petkov's arrest, the police did not have a reasonable suspicion of him committing an offence. It was also striking that although Mr Petkov had in fact been arrested at 3.10 a.m. on 20 December 2007, the order for his detention said that his detention had started at 1.30 p.m. that day. The court partly allowed Mr Petkov's claim for costs, awarding him BGN 200 (EUR 102) in lawyers' fees and BGN 10 (EUR 5) in court fees.

24. On 30 September 2008 the police appealed on points of law against that judgment. Mr Petkov did not ask the Stara Zagora Administrative Court to vary its ruling in relation to costs, as was possible under the applicable rules of procedure. He did however ask the Supreme Administrative Court to award him the costs incurred in the appeal proceedings.

25. In a bench ruling of 18 November 2009 (опр. от 18.11.2009 г. по адм. д. № 14761/2008 г., ВАС, III о.), the Supreme Administrative Court declared the appeal inadmissible, finding that the time-limit for the police to lodge an appeal had expired as early as 25 March 2008. The court did not mention Mr Petkov's claim in respect of the costs incurred in the appeal proceedings. On 3 December 2009 Mr Petkov asked the court to supplement its decision by doing so. In a decision of 7 January 2010 (опр. № 162 от 07.01.2010 г. по адм. д. № 14761/2008 г., ВАС, III о.), the Supreme Administrative Court refused the request, finding that it had been made out of the applicable seven-day time-limit, which had started to run on 18 November 2009. Mr Petkov appealed, but a five-member panel of the court dismissed the appeal in a decision of 3 February 2010 (опр. № 1399 от 03.02.2010 г. по адм. д. № 1511/2010 г., ВАС, петчл. с-в).

(b) The claim for damages

26. In July 2008 Mr Petkov brought a claim under section 1(1) of the State and Municipalities Liability for Damage Act 1988 (see paragraph 47 below) against the Stara Zagora Regional Directorate of the Ministry of Internal Affairs. He alleged, *inter alia*, that his detention had been unlawful and had caused him psychological trauma. He sought BGN 2,000 (EUR 1,023) in non-pecuniary damages and, under the head of pecuniary damages, reimbursement of the remainder of the costs that he had allegedly incurred in the judicial review proceedings: BGN 206 (EUR 105).

27. On 6 October 2008 the proceedings were stayed pending the determination of the appeal against the Stara Zagora Administrative Court's judgment of 10 March 2008 (see paragraph 25 above). On 12 April 2010 the proceedings were resumed.

28. On 29 September 2010 the Burgas Administrative Court dismissed the claim. It held that Mr Petkov, who bore the burden of proof in that respect, had failed to show that he had suffered non-pecuniary damage – such as negative emotions, stress or discomfort – as a result of his detention. He had not provided any evidence, in particular medical expert evidence, on that point. The evidence of Mr Dzhabarov and the other person with whom Mr Petkov had been detained, who had been called by Mr Petkov to testify, and the expert evidence on the lawfulness of those conditions adduced in the course of the proceedings, gave information about the material conditions in the detention facility but not about Mr Petkov's state of mind or subjective perceptions. These could only be established on the basis of medical expert evidence, which had not been provided. The court went on to say that it was not possible to seek costs incurred in proceedings for judicial review of a detention order by way of a claim for damages under section 1(1) of the 1988 Act.

29. Mr Petkov appealed on points of law. He argued, *inter alia*, that it was absurd to hold that the mental suffering flowing from unlawful

detention could only be established on the basis of medical expert evidence. It was natural to presume that a person unlawfully deprived of his liberty for more than thirty hours would endure such suffering.

30. In a judgment of 11 April 2011 (реш. № 5046 от 11.04.2011 г. по адм. д. № 13852/2010 г., ВАС, III о.), the Supreme Administrative Court upheld the lower court's judgment. It held that claimants in proceedings under section 1 of the 1988 Act bore the burden of proving all elements of the tort, including the existence of damage, and that the only evidence that could be used to prove non-pecuniary damage in the form of mental suffering was medical expert evidence, not witness evidence. The statements of the witnesses called by Mr Petkov had established the conditions in the detention facility and the attitude of the police officers towards him, but could not serve as proof of negative changes in his physical, psychological or neurological status.

B. The case of Ms Nikolova

31. In 2006 Ms Nikolova was working as head of the audit unit of the Blagoevgrad division of the National Revenue Agency. She was in charge of, among others, the towns of Petrich and Sandanski.

1. The events of 9 September 2006

32. At about 11 a.m. on Saturday 9 September 2006, Ms Nikolova went to the Sandanski office of the National Revenue Agency, according to her to practise filling in tests on the ethical duties of tax officials. She said that, on her way there, she ran into an acquaintance of hers, Mr B.T., who asked her whether she could run a check on the identities of certain persons that he needed for court papers that he was about to file in connection with the registration of the United Macedonian Organisation Ilinden-PIRIN as a political party. Ms Nikolova decided that there was no legal impediment to that and together with Mr B.T. went inside the Agency's office. However, their entry set off the alarm and shortly after that three police officers came to the office and found Ms Nikolova and Mr B.T. inside, checking the personal data of certain individuals in the Agency's computer database. The officers asked the two of them to produce their identification papers and to accompany them to the local police station.

33. Ms Nikolova and Mr B.T., under police escort, arrived at the police station at about 11.15 a.m. Ms Nikolova was asked to draw up a written explanation of her presence in the Agency's office. In the meantime, two plain-clothes officers arrived at the station; it later transpired that they were officers of the National Security Agency. They interviewed Ms Nikolova without identifying themselves and without explaining the reasons why she was detained. Ms Nikolova was released at about 3.40 p.m. It appears that, in the meantime, at about 1.50 p.m., she was briefly taken by the police

back to the office of National Revenue Agency to be present while the police drew up a record, and then returned to the police station.

2. The criminal proceedings against Ms Nikolova

34. Following this incident, the prosecuting authorities opened criminal proceedings against Ms Nikolova on charges that she had knowingly divulged confidential information to which she had access by virtue of her position as a tax administration official, contrary to Article 248 § 1 of the Criminal Code 1968. However, on 22 May 2007 the Sandanski District Prosecutor's Office decided to discontinue those proceedings. It noted that while Ms Nikolova had indeed misused her office to divulge confidential information – the personal data of two persons – to which she had access by virtue of her position, Article 248 § 1 required, in addition, that this divulgation give rise to prejudice for the State or a private person. There was no evidence, however, that the applicant's act had prejudiced the State or those two persons, both of whom, when interviewed, had stated that they had not suffered any negative consequences as a result of the applicant's divulging their personal data to Mr B.T.

3. The complaints to the prosecuting authorities

35. Shortly after the incident, Ms Nikolova and Mr B.T. complained to the military prosecuting authorities about the actions of the police officers who had detained them. On 29 November 2007 the Sofia Military Prosecutor's Office refused to open criminal proceedings pursuant to those complaints. Its decision was upheld by the Appellate Military Prosecutor's Office on 19 February 2008 and by the Supreme Cassation Prosecutor's Office on 4 June 2008.

4. The claim for damages

36. In January 2010 Ms Nikolova brought a claim under section 1(1) of the State and Municipalities Liability for Damage Act 1988 (see paragraph 47 below) against the Blagoevgrad Regional Directorate of the Ministry of Internal Affairs and the National Security Agency. She alleged that her detention had been unlawful because it had not been based on a written order as required under section 65(1) of the MIAA. She also alleged that the deprivation of liberty and the pressure to which she had been subjected by the police had caused her stress and humiliation and had aggravated her health, and sought BGN 10,000 (EUR 5,113) in non-pecuniary damages.

37. On 29 July 2010 the Blagoevgrad Administrative Court dismissed the claim. It noted that it was not disputed that between about 11 a.m. and about 3.30 p.m. on 9 September 2006 Ms Nikolova had been detained by officers of the Sandanski police. That was further proved by the register of

detainees kept by the Sandanski police station and the statements of the officers concerned. However, a claimant in proceedings under section 1(1) of the 1988 Act (see paragraph 47 below) had to make out all elements of the tort under that provision: a wrongful act or omission by officials, damage, and a sufficient causal link between the two. The claimant bore the full burden of proof in relation to each of those, and the lack of any element meant that the claim should fail. However, Ms Nikolova had not categorically shown that she had suffered non-pecuniary damage as a result of her arrest and detention. There was no evidence that the officers concerned had done anything to hurt her dignity. Their testimony, which was internally consistent and matched the rest of the evidence, showed that Ms Nikolova had not been subjected to any physical or psychological abuse. Ms Nikolova's evidence that one of the officers had acted rudely was contradicted by the evidence of all officers and was vague; it could not therefore be credited. It was not supported by the statement of Mr B.T. either. Ms Nikolova's assertions in respect of the damage that she had allegedly suffered were in addition very general and could not be upheld. The police had been apprised of a possible offence and had detained her for less than twenty-four hours to elucidate the case, as possible under section 64 of the MIAA (see paragraph 42 below). Had the detention lasted more than twenty-four hours, the outcome of the case would probably have been different.

38. Ms Nikolova appealed on points of law. She argued, *inter alia*, that the court had not clarified under which point of section 63(1) of the MIAA she had been detained, or commented on the fact that her detention had not been sanctioned by a written order. She also argued, by reference to Article 5 § 5 of the Convention, that the mere fact of unlawful detention gave rise to non-pecuniary damage because it was an infringement of the fundamental right to liberty, guaranteed by, *inter alia*, Article 5 § 1 of the Convention. Since she had been detained unlawfully, she was entitled to non-pecuniary damages in relation to that.

39. In a judgment of 19 May 2011 (реш. № 7036 от 19.05.2011 г. по адм. д. № 245/2011 г., ВАС, III о.), the Supreme Administrative Court dismissed the appeal. It fully agreed with all of the lower court's findings, including that Ms Nikolova had been placed under police detention within the meaning of section 63 of the MIAA, but did not mention Article 5 §§ 1 or 5 of the Convention.

II. RELEVANT DOMESTIC LAW

A. Police detention under the Ministry of Internal Affairs Act

40. Section 70(1) of the Ministry of Internal Affairs Act 1997, in force until the end of April 2006, provided that the police could detain a person in

a number of cases set out in the subsection. This provision was almost identical to its predecessor, section 33(1) of the National Police Act 1993. On 1 May 2006 it was superseded by section 63(1) of the MIAA, which was likewise worded almost identically. On 1 January 2015 that provision was in turn superseded by section 72(1) of the Ministry of Internal Affairs Act 2014, also worded almost identically.

41. Section 63(1) of the MIAA allowed the police to detain a person only where (a) there were indications that that person had committed an offence (point 1); (b) the person had, in spite of being warned, knowingly prevented a police officer from carrying out his or her duties (point 2); (c) the person displayed serious psychological troubles and disturbed public order or exposed his or her life or the lives of others to manifest danger (point 3); (d) the person was a juvenile who had left his or her home or guardian or the institution where he or she had been placed (point 4); (e) the identity of the person could not readily be established on the basis of identity documents, the statements of others, or otherwise (point 5); (f) the person had absconded from prison or pre-trial detention (point 6); (g) the person had been put up for international tracing at the request of a foreign State in connection with an extradition request or a European Arrest Warrant (point 7); or (h) detention was authorised under another legal provision (point 8).

42. Section 64 of the MIAA, which was the exact equivalent of section 71 of the 1997 Act and section 34 of the 1993 Act, provided that no rights other than the right to liberty of the person concerned could be curtailed, and that detention under section 63(1) could not last longer than twenty-four hours. Section 73 of the 2014 Act is worded in an identical way.

43. Section 35(1) of the 1993 Act, section 72(1) of the 1997 Act and section 65(1) of the MIAA, which were worded almost identically, provided that to take a detained person to a detention facility the police had to issue a written order. Section 74(1) of the 2014 Act is to the same effect, but section 74(2) goes on to set out in detail the required contents of the order, and section 74(5) provides that such orders need to be entered in a special register.

44. Section 70(4) of the 1997 Act provided that the detainee could seek judicial review of the lawfulness of his or her detention, and that the court had to rule on the order's lawfulness forthwith. Section 63(4) of the MIAA and section 72(4) of the 2014 Act were worded almost identically.

45. The Supreme Administrative Court has held that the absence of a written order could in itself affect the lawfulness of a period of police detention and that this point may be examined in proceedings for judicial review of the *de facto* detention (see опр. № 1273 от 09.02.2005 г. по адм. д. № 922/2005 г., ВАС, V о.). It has also held that the act of police detention is to be itself regarded as an administrative decision whose

lawfulness can be examined in judicial review proceedings (see реш. № 8176 от 17.06.2010 г. по адм. д. № 437/2010 г., ВАС, III о.). However, in other cases that court has held that the lawfulness of a short period of police detention carried out in the absence of a written order could only be examined in proceedings for damages under section 1 of the State and Municipalities Liability for Damage Act 1988 (see paragraph 47 below), because the act of police detention was not an administrative decision that could be judicially reviewed (see опр. № 2556 от 21.03.2005 г. по адм. д. № 1553/2005 г., ВАС, V о., and опр. № 1788 от 17.02.2006 г. по адм. д. № 1388/2006 г., ВАС, V о.).

46. The Supreme Administrative Court has also held that the proper construction of section 65(1) of the MIAA (see paragraph 43 above) showed that it required that the detention order be issued immediately and set out the legal and factual grounds on which it is based (see реш. № 14976 от 08.12.2010 г. по адм. д. № 3969/2010 г., ВАС, III о.).

B. Claims for damages in relation to police detention

47. Section 1(1) of the State and Municipalities Liability for Damage Act 1988 provides that the State is liable for damage suffered by individuals or legal persons as a result of unlawful decisions, acts or omissions by civil servants, committed in the course of or in connection with administrative action. By Article 204 § 1 of the Code of Administrative Procedure 2006, a claim relating to damage allegedly caused by an unlawful decision can only be made if that decision has been duly set aside. By Article 204 § 2 of the Code, the claim for damages may be brought jointly with the claim for judicial review of the decision. Article 204 § 4 of the Code provides that if the claim relates to an unlawful act or omission, its unlawfulness may be established, as a preliminary point, by the court hearing the claim of damages.

48. Section 4 of the 1988 Act provides that the State's liability extends to all pecuniary and non-pecuniary damage which is a direct and proximate result of the impugned decision, act or omission.

49. It is possible to seek damages resulting from unlawful police detention in proceedings under these provisions (see реш. № 14976 от 08.12.2010 г. по адм. д. № 3969/2010 г., ВАС, III о.; реш. № 11974 от 01.10.2012 г. по адм. д. № 1808/2012 г., ВАС, III о.; реш. № 2363 от 19.02.2013 г. по адм. д. № 4187/2012 г., ВАС, III о.; and реш. № 7915 от 10.06.2013 г. по адм. д. № 11237/2012 г., ВАС, III о.). If the detention is based on a written order, the claimant must first have that order quashed, either in separate judicial review proceedings (see опр. № 9381 от 13.07.2009 г. по адм. д. № 8436/2009 г., ВАС, III о.), or in the course of the proceedings for damages (see опр. № 13297 от 09.11.2010 г. по адм. д. № 13269/2010 г., ВАС, III о.). Failure to have the order quashed

beforehand renders the claim for damages inadmissible (see опр. № 17130 от 18.12.2013 г. по адм. д. № 16066/2013 г., ВАС, IV о.).

50. When dealing with such claims, the Supreme Administrative Court has in some cases accepted that the mere fact of unlawful detention gives rise to non-pecuniary damage, either on the basis that it infringes the fundamental right to liberty (see реш. № 14976 от 08.12.2010 г. по адм. д. № 3969/ 2010 г., ВАС, III о.; реш. № 16746 от 19.12.2011 г. по адм. д. № 11474/2011 г., ВАС, III о.; and реш. № 10871 от 18.07.2013 г. по адм. д. № 2627/2013 г., ВАС, III о.), or on the basis that it could fairly be assumed that any person would experience stress and anxiety if unlawfully detained (see реш. № 7915 от 10.06.2013 г. по адм. д. № 11237/2012 г., ВАС, III о.; реш. № 7113 от 27.05.2014 г. по адм. д. № 12936/2013 г., ВАС, III о., and реш. № 7292 от 29.05.2014 г. по адм. д. № 13651/ 2013 г., ВАС, III о.). However, in other cases it has held that non-pecuniary damage flowing from an infringement of the right to liberty could only be made out by presenting objective, and even expert, evidence that it has materialised (see, apart from the judgments in the cases brought by the applicants in the present applications, реш. № 8176 от 17.06.2010 г. по адм. д. № 437/2010 г., ВАС, III о., and реш. № 15332 от 20.11.2013 г. по адм. д. № 5615/2013 г., ВАС, III о.). In a third line of cases, the court held that in the absence of specific evidence of mental suffering, relatively moderate sums should be awarded by way of non-pecuniary damages (see реш. № 5230 от 09.05.2008 г. по адм. д. № 11884/2007 г., ВАС, III о.; реш. № 8347 от 12.06.2013 г. по адм. д. № 5170/2013 г., ВАС, III о.; and реш. № 3245 от 07.03.2014 г. по адм. д. № 15896/2013 г., ВАС, III о.).

THE LAW

I. PRELIMINARY POINT

51. Mr Petkov died in the course of the proceedings. His mother, who is his only heir, expressed the wish to pursue the application on his behalf (see paragraph 7 above). There is no reason not to accede to her request (see *Lukanov v. Bulgaria*, 20 March 1997, § 35, *Reports of Judgments and Decisions* 1997-II, and *Kolevi v. Bulgaria*, no. 1108/02, § 153, 5 November 2009).

II. JOINDER OF THE APPLICATIONS

52. The cases of the three applicants and their complaints are almost identical. Their applications should therefore be joined under Rule 42 § 1 of the Rules of Court.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

53. The applicants complained that their detention had been unlawful and carried out in the absence of a reasonable suspicion that they had committed an offence. They relied on Article 5 § 1 of the Convention, which provides, in so far as relevant:

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

A. Admissibility

1. The parties' submissions

54. The Government submitted that the complaints were out of time. The proceedings for judicial review of Mr Dzhabarov's and Mr Petkov's detention – which were entirely distinct from the ensuing proceedings for damages and the only ones to be taken into account for the purposes of Article 35 § 1 of the Convention with respect to the complaint under Article 5 § 1 – had ended more than six months before their applications were lodged. In Ms Nikolova's case, the six-month time-limit had started to run either at the time of her release or at the latest when the Supreme Cassation Prosecutor's Office had upheld the refusal to open criminal proceedings against the police officers who had detained her. Both were more than six months before she had applied to the Court.

55. Mr Dzhabarov and Mr Petkov submitted that it was well-established law that the proper sequence of remedies in cases of unlawful police detention was first to seek judicial review of the detention and then to bring a claim for damages. Applicants had to use both of those procedures before applying to the Court.

56. Ms Nikolova submitted that, in as much as the police had not issued an order for her detention, the only manner in which she could have had the lawfulness of that detention judicially examined was by way of a claim for damages under section 1(1) of the State and Municipalities Liability for Damage Act 1988. She had applied to the Court within six months after the end of those proceedings.

2. The Court's assessment

57. The term "final decision" in Article 35 § 1 of the Convention as a rule refers to the final decision resulting from the exhaustion of all domestic remedies according to the generally recognised rules of international law. This is because the requirements of this provision concerning the exhaustion of domestic remedies and the six-month period, which are combined in a single sentence whose grammatical construction implies such correlation, are closely intertwined. The remedies to be taken into account are those capable of effectively and sufficiently redressing the wrong which is the subject of the application (see *Nikolova and Velichkova v. Bulgaria* (dec.), no. 7888/03, 13 March 2007, and *Nenkov v. Bulgaria* (dec.), no. 24128/02, 7 October 2008).

58. In Bulgaria, to obtain redress in respect of a period of detention based on a detention order issued by the police, the person concerned must first seek judicial review of that order and then, having obtained its quashing by the courts, bring a claim for damages under section 1(1) of the State and Municipalities Liability for Damage Act 1988; it is equally possible to combine the two proceedings into one (see paragraphs 47 and 49 above; as well as *Kandzhov v. Bulgaria*, no. 68294/01, § 45, 6 November 2008, and *Petkov and Profirov v. Bulgaria*, nos. 50027/08 and 50781/09, § 35, 24 June 2014). Taken in isolation, proceedings for judicial review of the detention order are usually not capable of providing sufficient redress because all they can achieve is an *ex post facto* judicial declaration that the order was unlawful. They must thus be seen as a mere first step in a two-step system of remedies rather than as being entirely distinct from the claim for damages to which they open the way. In such situations, the "final decision" is therefore not that given at the end of the proceedings for judicial review of the detention order, but the one given at the end of the ensuing proceedings for damages. In the cases of the two applicants whose detention was based on a detention order – Mr Dzhabarov and Mr Petkov – those decisions were given less than six months before they lodged their applications (see paragraphs 1, 21 and 30 above).

59. When, as in the case of Ms Nikolova, a period of detention by the police is carried out in the absence of a written order, the usual way to seek redress in respect of it is by directly bringing a claim for damages under section 1(1) of the 1988 Act (see the case-law cited in paragraph 45 above). That is exactly what Ms Nikolova did (see paragraph 36 above). The "final decision" in her case was therefore that given at the end of those proceedings, which was less than six months before she lodged her application (see paragraphs 1 and 39 above).

60. The Government's objection that the applications are out of time must therefore be dismissed.

61. The complaints are furthermore not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

62. The Government submitted that, although subsequently impugned by the courts, Mr Dzhabarov's and Mr Petkov's detention had been in line with the formal requirements of the law and based on a reasonable suspicion, which did not presuppose the existence of categorical evidence of them committing an offence. As for Ms Nikolova, she had not been detained but simply taken to a police station for a short time to be questioned. The Government went on to emphasise that both the Code of Criminal Procedure 2005 and the Code of Administrative Procedure 2006 laid down a number of safeguards intended to prevent unlawful and arbitrary deprivation of liberty.

63. Mr Dzhabarov and Mr Petkov submitted that the alleged suspicion against them had not been based on any concrete facts. Their detention had been justified by the police by reference to an offence committed after they had been taken into custody.

64. Ms Nikolova submitted that she had been deprived of her liberty. She had been taken by force to a police station and held there for about five hours, under the control of five police officers and without the opportunity to go out of the building or even the room. The only time when she had left the room had been when she had been taken back by the police to the office of the National Revenue Agency. The courts dealing with her claim for damages had found that she had been detained. Ms Nikolova also claimed that her detention had not been based on a reasonable suspicion of her having committed an offence. The fact that she had carried out an unauthorised entry into the office of the National Revenue Agency did not amount to an offence. The criminal proceedings later opened against her had been discontinued for lack of evidence that she had committed an offence. Moreover, the police had not issued a written order for her detention, had not informed her of her rights, and had not permitted her to contact a lawyer. In any event, her detention had been clearly disproportionate and thus in breach of section 63 of the MIAA.

2. The Court's assessment

65. Mr Dzhabarov and Mr Petkov were taken to a police station and, albeit with a substantial delay after their *de facto* arrest, formally detained by the police (see paragraphs 9-11 above).

66. For her part Ms Nikolova, although not formally placed in detention, was taken to a police station under police escort and questioned there for four and half to five hours (see paragraphs 32 and 33 above, and compare with *I.I. v. Bulgaria*, no. 44082/98, § 87, 9 June 2005; *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010; and *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 163, 9 November 2010). Even if, as asserted by the Government, that was not regarded as detention under Bulgarian law, this cannot affect the Court's conclusion that, during this time, the applicant was deprived of her liberty, regardless of whether this lasted for only a few hours (see *Creangă v. Romania* [GC], no. 29226/03, §§ 92 and 93 *in fine*, 23 February 2012). It cannot either be overlooked that, contrary to the Government's assertion, the Bulgarian courts dealing with Ms Nikolova's ensuing claim for damages had little doubt that she had been placed in police detention (see paragraphs 37 and 39 above).

67. All three applicants were therefore deprived of their liberty within the meaning of Article 5 § 1 of the Convention. It must therefore be determined whether their detention fell under one of the permissible grounds under sub-paragraphs (a) to (f) of that Article, and whether it was "in accordance with a procedure prescribed by law" and "lawful".

68. On the first point, it appears that the only sub-paragraph relied on by the Government to justify the applicants' detention was (c). The salient question is therefore whether there was indeed a "reasonable suspicion" that each of them had committed an offence.

69. In Mr Dzhabarov's and Mr Petkov's case, the courts which reviewed the orders for their detention specifically found that, at the time of their arrest, the police did not have a reasonable suspicion that they had committed an offence (see paragraphs 15, 17 and 23 above). Their detention could not therefore be regarded as justified under Article 5 § 1 (c) of the Convention.

70. As regards compliance with Bulgarian law, the Court notes that, in the case of these two applicants, the Bulgarian courts quashed the orders for their detention on the basis that they were unlawful (see paragraphs 15, 17 and 23 above). In the light of these findings, the Court cannot but conclude that these applicants' detention was not "in accordance with the law" and "lawful" within the meaning of Article 5 § 1 of the Convention (see, *mutatis mutandis*, *G.K. v. Poland*, no. 38816/97, § 76, 20 January 2004).

71. Moreover, by section 64 of the MIAA police detention under section 63(1) of the Act could only last twenty-four hours, whereas Mr Dzhabarov and Mr Petkov spent a considerably longer amount of time in custody (see paragraphs 9, 13 and 42 above).

72. It follows that there has been a breach of Article 5 § 1 of the Convention with respect to Mr Dzhabarov and Mr Petkov.

73. Ms Nikolova was, for her part, suspected of divulging confidential information to which she had access by virtue of her position as a tax

official and was later investigated for that offence. It can thus fairly be assumed that her detention was based on a reasonable suspicion of her having committed an offence. The fact that the prosecuting authorities decided to drop the charges against her on the basis of findings made in the course of their further inquiries does not alter that (see *X v. the United Kingdom*, no. 8083/77, Commission decision of 13 March 1980, Decisions and Reports 19, p. 223).

74. However, the police failed to issue a detention order with respect to Ms Nikolova, whereas section 65(1) of the MIAA provided that to take a detainee to a detention facility the police had to issue such an order (see paragraph 43 above). The Supreme Administrative Court has held that the order must be issued immediately and that its absence could in itself affect the lawfulness of police detention (see paragraphs 45 and 46 above). The point was raised in the proceedings for damages brought by Ms Nikolova but not expressly addressed by the Bulgarian courts because they dismissed her claim on different grounds. However, failure to observe domestic law gives rise to a breach of Article 5 § 1 of the Convention, which refers directly back to that law, and even relatively minor procedural irregularities may result in such a breach (see *Mooren v. Germany* [GC], no. 11364/03, §§ 72-73, 9 July 2009; *Creangă*, cited above, § 101; and *Voskuil v. the Netherlands*, no. 64752/01, § 83, 22 November 2007). The absence of a written order in Ms Nikolova's case cannot either be described as a minor procedural omission, and her attempt to have that issue reviewed at national level did not succeed. In view of the importance of the right to liberty and the need to prevent arbitrary deprivations of it, the Court has consistently emphasised that detention needs to be attended by sufficient formalities (see *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III; *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV; and *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006-III). Indeed, in *Anguelova* (cited above, § 155), the Court found that police detention not based on a written order was in breach of the previous version of section 65(1) of the MIAA, section 35(1) of the 1993 Act (see paragraph 43 above), and thus contrary to Article 5 § 1 of the Convention.

75. There has therefore been a breach of that Article in the case of Ms Nikolova as well.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 5 OF THE CONVENTION

76. The applicants complained that the courts had dismissed their claims for damages in respect of their detention by the police. They relied on Articles 5 § 5 and 13 of the Convention.

77. Noting that when it comes to compensation for detention, Article 5 § 5 is a *lex specialis* in relation to Article 13 of the Convention (see, among

other authorities, *Alexov v. Bulgaria*, no. 54578/00, § 139, 22 May 2008), the Court finds that the complaint falls to be examined solely by reference to the former. It provides as follows:

> "Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. The parties' submissions

78. The Government submitted that Bulgarian law gave those who had fallen victim to unlawful detention a real possibility to obtain compensation. This possibility, however, was subject to findings that the detention had been unlawful and that it had given rise to damage. In as much as the means of obtaining such compensation was a claim for damages examined in adversarial judicial proceedings, the existence of damage had to be proved by the claimant. There was no presumption that every unlawful administrative decision gave rise to damage. The factors that needed to be taken into account in this assessment included the duration of the detention and its effects on the person concerned. The fact that the applicants' claims had been examined in this way and dismissed for lack of evidence did not render proceedings under section 1(1) of the State and Municipalities Liability for Damage Act 1988 an ineffective remedy for the purposes of Article 5 § 5 of the Convention. In the case of Mr Nikolova, the courts had not even found that she had been unlawfully detained.

79. Mr Dzhabarov and Mr Petkov submitted that the national courts had impermissibly refused their claims for damages solely on the basis that they had not led medical evidence of their mental suffering.

80. Ms Nikolova submitted that the courts' finding that the police had not subjected her to physical or psychological abuse had prevented her from obtaining compensation for her detention.

B. The Court's assessment

1. Admissibility

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

2. Merits

82. The Bulgarian courts found that the detention of Mr Dzhabarov and Mr Petkov had been unlawful (see paragraphs 15, 17 and 23 above). The Court, for its part, has found a breach of Article 5 § 1 of the Convention in the case of each of the three applicants (see paragraphs 72 and 75 above). Article 5 § 5 is therefore applicable.

83. The general position under that provision is that an award of compensation may be made dependent upon the ability of the person concerned to show damage resulting from the breach of the previous paragraphs of Article 5 (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A; *Pavletić v. Slovakia*, no. 39359/98, § 95, 22 June 2004; and *Włoch v. Poland (no. 2)*, no. 33475/08, § 32, 10 May 2011).

84. However, the position in relation to non-pecuniary damage in the form of mental suffering resulting from a breach of Article 5 § 1 of the Convention, which is one of the heads of damage most likely to be claimed in such circumstances, has some particularities. Detention carried out in breach of that provision can normally be presumed – although this presumption can be rebutted – to cause some mental suffering to the detainee not only while it lasts but also thereafter. Such suffering, which will not necessarily rise to the level of a psychological trauma or disorder, or produce outward manifestations or symptoms, does not invariably lend itself to extrinsic proof, such as expert psychiatric or medical evidence. An automatic refusal to award any compensation to a person who has been unlawfully detained simply because he or she has not provided such evidence is therefore excessively formalistic and in breach of Article 5 § 5 of the Convention (see *Danev v. Bulgaria*, no. 9411/05, §§ 34-35, 2 September 2010). Indeed, in *Iovchev v. Bulgaria* (no. 41211/98, § 146, 2 February 2006), the Court held the same with respect to the refusal of the Bulgarian courts to award any compensation for mental suffering allegedly sustained as a result of inhuman and degrading conditions of detention (see also *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 229, 10 January 2012, and *Neshkov and Others v. Bulgaria*, nos. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, §§ 190, 198 and 204, 27 January 2015).

85. In the instant cases, the applicants' claims for non-pecuniary damages in respect of the mental suffering that they had allegedly endured as a result of their unlawful detention were dismissed because the Bulgarian administrative courts, adhering strictly to the principle *affirmanti incumbit probatio*, held that that suffering had not been sufficiently made out, in particular through the provision of expert medical evidence (see paragraphs 19, 21, 28, 30, 37 and 39 above). This sits in stark contrast with cases where the same courts have held that the mere fact of unlawful detention must be regarded as giving rise to non-pecuniary damage (see paragraph 50 above), which is the correct approach under Article 5 § 5 of the Convention.

86. There has therefore been a breach of that provision.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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. The applicants' claims and the Government's comments on them

88. Mr Dzhabarov and Mr Petkov claimed 1,000 euros (EUR) each in respect of the non-pecuniary damage suffered as a result of their detention.

89. Ms Nikolova claimed EUR 10,000 in respect of the non-pecuniary damage suffered as a result of her unlawful detention and the impossibility to obtain compensation in respect of it.

90. The Government submitted that the finding of a violation would in itself amount to sufficient just satisfaction, and that the applicants' claims were clearly exaggerated.

2. The Court's assessment

91. The applicants must have experienced some mental suffering on account of their unlawful detention and the failed attempts to obtain compensation in respect of it. Taking into account the awards made in previous similar cases (see *Petkov and Profirov*, cited above, § 81) and, most importantly, the amount of time spent by each of them in custody and the circumstances of that custody, and ruling in equity, as required under Article 41 of the Convention, the Court awards them the following sums, plus any tax that may be chargeable on them: EUR 1,000 to Mr Dzhabarov, EUR 1,000 to Mr Petkov (to be paid to his mother, which pursued the application on his behalf after his death – see paragraphs 7 and 51 above), and EUR 700 to Ms Nikolova.

B. Costs and expenses

1. The applicants' claims

92. Mr Dzhabarov and Mr Petkov sought reimbursement of the costs allegedly incurred by them in the domestic proceedings (EUR 920 in Mr Dzhabarov's case and EUR 910 in Mr Petkov's case), and in the Strasbourg proceedings (EUR 750 each). In support of these claims, they submitted retainers according to which Mr Dzhabarov had incurred BGN 400 (EUR 205) in counsel's fees for the judicial review proceedings and BGN 1,400 (EUR 716) in counsel's fees for the proceedings for

damages, and Mr Petkov BGN 800 (EUR 409) in counsel's fees for the judicial review proceedings and BGN 780 (EUR 399) in counsel's fees for the proceedings for damages. Each of the two applicants also sought reimbursement of EUR 169 allegedly incurred for office supplies, postage, and translation of the Court's communications to them as well as the Government's observations into Bulgarian and their observations into English. In support of these claims, the two applicants submitted an invoice showing that their counsel had paid BGN 174 (EUR 89) for the translation of their submissions into English.

93. Ms Nikolova sought, under the head of pecuniary damage, reimbursement of BGN 745 (EUR 381) and BGN 742 (EUR 379) that she had been ordered to pay in costs to the defendants in the proceedings for damages. She also claimed BGN 64.15 (EUR 32.79) in respect of the fees paid by her to obtain copies of the documents in the case file of those proceedings, and BGN 1,100 (EUR 562) incurred in counsel's fees for them. In support of these claims, she submitted bank documents showing that she had paid the costs, receipts and retainers.

94. Ms Nikolova also sought reimbursement of BGN 75 (EUR 38) paid for legal advice by her representatives, BGN 3,520 (EUR 1,800) paid in fees for her representation in the Strasbourg proceedings, BGN 20.07 (EUR 10.26) paid for sending documents to her representatives, and BGN 126 (EUR 64.42) that her representatives had paid for the translation of the observations and claims for just satisfaction made on her behalf into French. Ms Nikolova requested that the Court's award with respect to the first three items be made payable directly to her, and the award with respect to the fourth item to the law firm in which her first representative, Mr M. Ekimdzhiev, was partner. In support of her claim, Ms Nikolova submitted retainers and fee agreements with her legal representatives, invoices and receipts.

95. The Government did not comment on these claims.

2. The Court's assessment

96. Costs and expenses are recoverable under Article 41 of the Convention if it is established that they were actually and necessarily incurred and are reasonable as to quantum.

(a) Costs incurred in the domestic proceedings

97. An applicant is entitled to an award in respect of the costs and expenses incurred at domestic level to prevent or redress a breach of the Convention (see, among other authorities, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 256, ECHR 2009). In this case, the purpose of the judicial review proceedings brought by Mr Dzhabarov and Mr Petkov and the proceedings for damages brought by these two applicants and by Ms Nikolova was precisely to obtain redress for the breach of Article 5 § 1

of the Convention and secure compliance with Article 5 § 5. Accordingly, costs incurred in relation to them are in principle recoverable under Article 41 of the Convention.

98. Taking into account all the materials in the case file, and bearing in mind that Mr Dzhabarov and Mr Petkov could have recouped the costs incurred in the judicial review proceedings domestically, the Court finds it reasonable to award BGN 1,400 (EUR 716) to Mr Dzhabarov and BGN 780 (EUR 399) to Mr Petkov. Any tax chargeable to the applicants (or, in Mr Petkov's case, to his heirs) is to be added to these sums.

99. The documents submitted by Ms Nikolova show that she paid the costs incurred by the defendants to the claim for damages brought by her. She is entitled to recover those sums, which amount in total to BGN 1,487 (EUR 760) (see *Minelli v. Switzerland*, 25 March 1983, § 47, Series A no. 62). She is also entitled to recover the BGN 64.15 (EUR 32.79) that she paid for copies of documents, as well as the counsel's fees paid for the proceedings for damages, which, standing at BGN 1,100 (EUR 562), appear reasonable.

(b) Costs incurred in the Strasbourg proceedings

100. Having regard to all materials in the case file, the Court finds it reasonable to award Mr Dzhabarov and Mr Petkov EUR 300 each, plus any tax that may be chargeable to them (or, in Mr Petkov's case, to his heirs).

101. The Court finds it reasonable to award Ms Nikolova a total of EUR 1,074.68, plus any tax that may be chargeable to her. EUR 64.42 of that sum is to be paid to the law firm in which the applicant's first representative, Mr M. Ekimdzhiev, is partner, and the remainder to the applicant herself. To these sums is to be added any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints under Article 5 §§ 1 and 5 of the Convention admissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention with respect to each of the applicants;

4. *Holds* that there has been a violation of Article 5 § 5 of the Convention with respect to each of the applicants;

5. *Holds*

(a) that the respondent State is to pay the 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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) to Mr Dzhabarov, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, as well as EUR 1,016 (one thousand sixteen euros), plus any tax that may be chargeable to Mr Dzhabarov, in respect of costs and expenses;

(ii) to Mr Petkov, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, as well as EUR 699 (six hundred ninety-nine euros), plus any tax that may be chargeable to Mr Petkov or his heirs, in respect of costs and expenses;

(iii) to Ms Nikolova, EUR 700 (seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, as well as EUR 2,429.47 (two thousand four hundred twenty-nine euros and forty-seven cents), plus any tax that may be chargeable to Ms Nikolova, in respect of costs and expenses; EUR 64.42 (sixty-four euros and forty-two cents) of the latter sum is to be paid to the law firm in which the applicant's first representative, Mr Ekimdzhiev, is partner, and the remainder to Ms Nikolova herself;

(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 31 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President