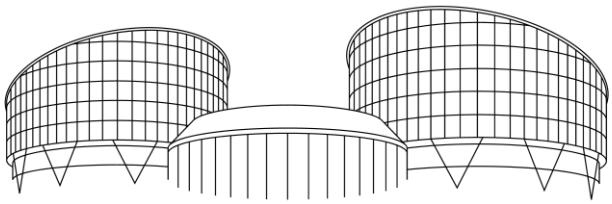

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF KOLEVI v. BULGARIA

(Application no. 1108/02)

JUDGMENT

STRASBOURG

5 November 2009

FINAL

05/02/2010

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

In the case of Kolevi v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 13 October 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 1108/02) against the Republic of Bulgaria lodged with the Court on 17 December 2001 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Nikolai Georgiev Kolev, a Bulgarian national who was born in 1949. Mr Kolev was shot dead on 28 December 2002. His wife, Mrs Nanka Koleva, his daughter, Ms Christina Koleva, and his son, Mr Georgi Kolev, stated that they wished to pursue the application. They also submitted additional complaints.

2. The applicants were represented by Mr Y. Grozev and Mr B. Boev, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Karadjova, of the Ministry of Justice.

3. The applicants alleged, in particular, that Mr Kolev's detention in 2001 had been unlawful and unjustified, that his appeals against his detention had not been examined speedily and that the investigation into the first applicant's murder had not been independent and effective.

4. By a decision of 4 December 2007, the Court declared the application partly admissible and partly inadmissible.

5. The applicants, but not the Government, filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations and submitted additional information requested by the Chamber.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. Mr Kolev was a high-ranking prosecutor. Between 1994 and 1997 he was Deputy Chief Public Prosecutor of Bulgaria and, thereafter, a prosecutor at the Supreme Cassation Prosecution Office and later at the Supreme Administrative Prosecution Office.

7. His wife, Mrs Nanka Koleva, the second applicant, is a high-ranking prosecutor.

A. The facts submitted by Mr Kolev in his application of 17 December 2001 and letter of 22 October 2002

1. Mr Kolev's dismissal

8. On 10 January 2001 Mr Kolev was dismissed from his position by decision of the Supreme Judicial Council, on an application by the Chief Public Prosecutor, Mr F. The decision ordered Mr Kolev's retirement.

9. During the months preceding Mr Kolev's dismissal, several other high-ranking prosecutors were dismissed and ordered to take early retirement.

10. Mr Kolev lodged an appeal before the Supreme Administrative Court against his dismissal, stating, *inter alia*, that he had never applied for retirement and that he had not reached retirement age. By a judgment of 23 May 2001 a chamber of the Supreme Administrative Court quashed the dismissal as contrary to the law, noting that Mr Kolev had not reached retirement age and that even though he was eligible for early retirement this could only be ordered if requested by the person concerned.

11. On appeal, that judgment was upheld on 10 December 2001 by a five-member chamber of the Supreme Administrative Court.

12. On an unspecified date in 2002 Mr Kolev resumed his office as a prosecutor. He started work at the Supreme Administrative Prosecution Office.

2. Mr Kolev's and others' accusations against the Chief Public Prosecutor

13. Between 1999 and 2006 Mr F. was the Chief Public Prosecutor of Bulgaria.

14. According to Mr Kolev, the real reason for attempting to force him to retire was a conflict between him and the Chief Public Prosecutor. Mr Kolev allegedly knew the Chief Public Prosecutor very well as they had

been in the same class as university students and had worked together for an unspecified period. Observing the behaviour of the Chief Public Prosecutor, Mr Kolev gradually formed the opinion that he was suffering from a psychiatric disorder. Also, a conflict between the two allegedly erupted in relation to plans – which Mr Kolev resisted – to allow public access to the archives of the military intelligence service dating from the communist period. According to Mr Kolev's statements, supported by several other public figures, the conflict also arose from the fact that the Chief Public Prosecutor had developed an authoritarian style and had repeatedly ordered other prosecutors to act unlawfully against persons whom the Chief Public Prosecutor perceived as his enemies. In particular, on numerous occasions the Chief Public Prosecutor had ordered his subordinate colleagues to open criminal proceedings against other persons on fabricated charges.

15. On 23 February 2001 the Chief Public Prosecutor met Mr Kolev and allegedly ordered him to withdraw his appeal against the dismissal order of 10 January 2001 (see paragraph 8 above), threatening him with arrest and criminal prosecution if he did not comply.

16. In March and April 2001 Mr Kolev made public his suspicions about the mental health of the Chief Public Prosecutor. In interviews for the press he stated that the Chief Public Prosecutor constantly feared plots, mistrusted his colleagues and regularly ordered unlawful actions to put pressure on persons whom he considered to be against him. He referred to the recent suicide of a high-ranking prosecutor, who had left a note stating that the Chief Public Prosecutor should resign. Also, in January 2001 the Chief Public Prosecutor had allegedly been very irritated by journalists who had reported that his brother had been arrested in Germany on suspicion of smuggling ancient coins and had ordered a series of criminal investigations and reprisals against the journalists and other persons connected with them. The car of one of the journalists had been set on fire soon after the reports had been published. Many persons had been summoned for questioning and various charges brought against some of them.

17. Mr Kolev also wrote to the President of Bulgaria, informing him of his suspicions concerning the mental health of the Chief Public Prosecutor.

18. At the relevant time other public figures also voiced the opinion that the Chief Public Prosecutor was suffering from a mental disorder and had committed numerous serious criminal acts. In 2002 Mr E.S., a former member of Parliament known for his publications about alleged crimes committed by high-ranking officials, published an open letter to the Supreme Judicial Council and other institutions, stating that the Chief Public Prosecutor had committed crimes and that he had a mental disorder. One of the allegations was that in February 2000 the Chief Public Prosecutor had murdered Mrs N.G., a lawyer who had allegedly served as an intermediary for the payment of bribes by criminals to prosecutors.

Several public figures, including prosecutors, made statements to the press on the matter, some of them supporting the allegations.

19. The Chief Public Prosecutor and other politicians denied the allegations and stated that they were the victims of a campaign by criminal groups which sought to destabilise the country and hamper pending investigations.

20. In January 2002 Mr Kolev initiated proceedings before the Supreme Administrative Court seeking a declaration that the decision of the Supreme Judicial Council of 1999 to propose that the President of Bulgaria appoint Mr F. as Chief Public Prosecutor had been invalid because of procedural irregularities. In January 2002 the Chief Public Prosecutor requested a ruling from the Constitutional Court on the question whether the Supreme Judicial Council's proposals to the President were amenable to appeal before the Supreme Administrative Court. On 28 March 2002 the Constitutional Court ruled that those proposals were not amenable to appeal. On 18 May 2002 the proceedings before the Supreme Administrative Court were discontinued.

3. Alleged campaign against Mr Kolev by the Chief Public Prosecutor

21. Allegedly in reaction to Mr Kolev's public accusations, within a short period several sets of criminal proceedings were instituted against him and members of his family. It appears that prior to these events, Mr Kolev had never been the object of criminal investigations.

22. On 8 March 2001 Mr Kolev was charged with illegal possession of weapons, as a handgun and a hand grenade had been found in his former office after his dismissal. The proceedings were terminated by the Sofia District Court on 29 June 2001 on the ground that Mr Kolev, who was still a prosecutor as the decision ordering his retirement had not yet entered into force, enjoyed immunity from prosecution.

23. In April 2001 criminal proceedings were instituted against Mr Kolev on charges that he had breached the law in connection with an investigation he had conducted in 1991. Those proceedings were terminated by a decision of the Sofia City Court of 9 August 2001.

24. In June 2001 criminal proceedings were opened against Mr Kolev's father on charges of illegal possession of fifty cartridges for a hunting rifle. Mr Kolev's father was later indicted. On 2 October 2002 he was acquitted. By a judgment of 13 January 2005 of the Sliven District Court the prosecuting authorities were ordered to pay Mr Kolev's father non-pecuniary damages for the anxiety caused by his indictment on charges that had proved unfounded.

25. In June 2001 criminal proceedings were instituted against Mr Kolev in relation to a telephone conversation of 31 May 2001 (see paragraph 28 below). Those proceedings were terminated by the Sofia District Court on 2 August 2001.

26. In June 2001 Mr Kolev was charged with aiding and abetting the murder of Mrs N.G. in February 2000 (of which others had accused the Chief Public Prosecutor). According to the charges, he had provided advice which had facilitated the commission of the offence.

27. In September 2001 criminal proceedings were instituted against Mr Kolev and his son on charges that between 1995 and 1998 Mr Kolev had abused his office to provide his son with a handgun free of charge. Those proceedings were terminated on 18 July 2003 on the grounds that Mr Kolev had died and that it could not be considered that his son had acted wilfully.

4. Mr Kolev's arrest and detention

28. On 31 May 2001 Mr Kolev wrote to the Minister of the Interior and also gave interviews to the press in which he stated that he had learned that the Chief Public Prosecutor had ordered the fabrication of criminal charges against him, which would consist of drugs being "planted" on him with the aim of having him arrested on drug charges and silencing him. This information was published widely. On the same day Mr Kolev telephoned a former colleague and told him not to participate in this planned operation. In connection with that conversation, in June 2001 Mr Kolev was charged with having attempted to put undue pressure on an official (see paragraph 25 above).

29. Mr Kolev repeated his accusations in a complaint he sent to the Supreme Judicial Council on 12 June 2001. He gave details, indicating the names of several persons who were allegedly involved in the plot and insisted, as he had done in previous complaints, that the Supreme Judicial Council should appoint a commission to investigate the crimes allegedly committed by the Chief Public Prosecutor.

30. On 20 June 2001 Mr Kolev was arrested in Sofia in front of his home by officers of the anti-terrorist squad accompanied by Mr P. and Mr Ts.I., two high-ranking prosecutors. Immediately after the arrest Mr Kolev's flat and a vehicle belonging to Mr Kolev's son were searched. According to the record drawn up on that occasion and the charges brought later, several paper envelopes containing 2.6 grams of heroin and 1.89 grams of cocaine were found in Mr Kolev's pockets and in the car. The authorities seized a handgun lawfully owned by Mr Kolev's wife, and other belongings. A handgun and eight cartridges were found in Mr Kolev's son's car, according to the official record. The searches and seizures were approved the next day by a judge at the Sofia City Court.

31. On 20 June 2001 a prosecutor ordered Mr Kolev's provisional detention for a period of 72 hours, relying on Article 202 (1)(1) and (1)(3) of the Code of Criminal Procedure.

32. On the expiry of the 72-hour period, on 23 June 2001 another prosecutor issued a fresh order for Mr Kolev's provisional detention for another period of 72 hours, without mentioning the order of 20 June 2001.

The new order was based on Article 152a (2) and (3) of the Code of Criminal Procedure.

33. On 23 June 2001 Mr Kolev was charged with illegal possession of drugs and a firearm.

34. On 24 June 2001 a lawyer acting for Mr Kolev protested against his detention in a complaint filed with the Supreme Judicial Council.

35. On 25 June 2001 Mr Kolev was brought before a judge at the Sofia City Court.

36. The prosecutor asked the court to order Mr Kolev's pre-trial detention. Mr Kolev and his lawyer stated that the detention was unlawful and was the result of a plot. Mr Kolev stated that he had seen prosecutors P. and Ts.I., who had been present during his arrest, placing two small paper packets among his belongings. Shortly after that the same persons had placed, in Mr Kolev's presence, a handgun in his son's car. Mr Kolev requested a fingerprint test, stating that such a test would prove his allegations.

37. Mr Kolev also invoked immunity from prosecution on the strength of the fact that he was still a prosecutor. He also complained that he had been detained unlawfully after the expiry on 23 June 2001 of the 72-hour statutory period.

38. The Sofia City Court remanded Mr Kolev in custody. The court found that the record drawn up during the arrest, which showed that drugs and a handgun had been found, was sufficient evidence to establish a reasonable suspicion that Mr Kolev had committed a serious offence. It also noted that several sets of criminal proceedings were pending against him (see paragraphs 21-27 above), which pointed to a danger of him committing an offence. The court considered that Mr Kolev did not have immunity from prosecution following his dismissal.

39. The court refused to rule on the lawfulness of Mr Kolev's detention during the period before 25 June 2001, stating that it was not subject to judicial control and that its lawfulness had no bearing on the issue to be decided by the court, namely whether or not to remand Mr Kolev in custody.

40. On 28 June 2001 Mr Kolev's lawyer submitted a complaint to the Supreme Judicial Council stating that on 21 June 2001 Mr Ts.I., a high-ranking prosecutor, had told him that he risked having criminal charges brought against him if he persisted in defending Mr Kolev. A week later, the lawyer had been asked to appear before a prosecutor and "furnish explanations" in relation to a case he had worked on in 1992 as investigator. The lawyer stated that inadmissible pressure had been brought to bear on him and requested an investigation.

41. On 3 July 2001 the Sofia Court of Appeal dismissed a consequent appeal by Mr Kolev. One of the three judges gave a dissenting opinion.

42. The majority stated that the court had no power to deal with Mr Kolev's allegations that the drugs and firearm found during his arrest had been "planted" by prosecutors, as that was a question which concerned the merits of the criminal case and could not be discussed in relation to Mr Kolev's detention.

43. The dissenting judge stated that Mr Kolev enjoyed immunity from prosecution and that in any event, having regard to all the available information, Mr Kolev's detention had not been justified.

44. On 7 August 2001 Mr Kolev submitted a fresh appeal against his continuing pre-trial detention. In accordance with the relevant procedural requirements, the appeal was lodged with the Sofia Investigation Service, which was in charge of the investigation against him. On 14, 23 and 28 August 2001 Mr Kolev and his lawyers complained, in submissions to the Sofia Investigation Service and the Sofia City Prosecutor's Office, of the delay in the examination of the appeal, which should have been transmitted to the Sofia City Court. As the appeal was not transmitted, on 5 September 2001 Mr Kolev lodged an appeal directly with the Sofia City Court. The court heard the case on 13 September 2001 and decided to release the applicant from custody and place him instead under house arrest.

45. On an unspecified date an indictment was submitted to the Sofia City Court against Mr Kolev on charges of illegal possession of drugs and a firearm.

46. On 22 November 2001 the Sofia City Court terminated the proceedings before it and referred the case back to the prosecuting authorities. The court noted that Mr Kolev enjoyed immunity from prosecution, his dismissal not having entered into force.

47. On 29 November 2001, on an appeal by Mr Kolev against his house arrest, the Sofia City Court ordered his release.

48. On 4 February 2002, following a final judgment of 10 December 2001 quashing the order for Mr Kolev's dismissal from his position as a prosecutor (see paragraphs 10 and 11 above), the Sofia Court of Appeal terminated the criminal proceedings against him as he enjoyed immunity from prosecution. That decision was upheld on 30 April 2002 by the Supreme Court of Cassation.

49. The courts found that the criminal proceedings against Mr Kolev had been inadmissible from the outset. Pending examination of his appeal against his dismissal, the immunity conferred on him by the Constitution had not been removed. In such cases criminal proceedings could be brought and pre-trial detention ordered only if the Supreme Judicial Council had given its authorisation. That had not been done in Mr Kolev's case.

50. Another set of criminal proceedings against Mr Kolev was terminated by the courts on 9 July 2002 on the same grounds.

B. The Supreme Judicial Council's decision concerning the Chief Public Prosecutor

51. In November 2002 the Supreme Judicial Council agreed to deal with the public allegations against the Chief Public Prosecutor submitted by Mr E.S., a former member of Parliament.

52. On an unspecified date Mr Kolev requested leave to appear and speak before the Supreme Judicial Council about the alleged unlawful activities of the Chief Public Prosecutor. The request was refused.

53. On 4, 11 and 18 December 2002 the Supreme Judicial Council heard several statements and examined documentary material. The Chief Public Prosecutor was also invited to speak, but he did not attend.

54. Mr A.A., the Head of the National Security Service, testified that in June 2001 Mr F., the Chief Public Prosecutor, and another high-ranking prosecutor, Mr. Ts.I., had given instructions that a cargo aeroplane loaded with military equipment be allowed to leave Bulgaria despite suspicions that the shipment violated a UN-imposed arms embargo. Mr F. had personally explained in private to Mr A.A. that he had intervened at the request of the President of Ukraine, Mr Kuchma, as the latter's son was co-owner of the company to which the aircraft belonged. Mr A.A. had refused to approve the actions of the prosecutors and had informed the President of Bulgaria and the Minister of the Interior. Since these events, two sets of criminal proceedings had been opened against Mr A.A. by prosecutors.

55. Mr E.I., a former Interior Minister, testified that Mr F. had threatened him with bringing criminal proceedings against him. In 2001 he had been summoned to appear before high-ranking prosecutors and questioned about the purchase of several cars by the Ministry of the Interior. Mr E.I. also testified that while he was Minister of the Interior, numerous sets of criminal proceedings had been opened on dubious grounds against Ministry officials working with him, including his press officer.

56. Mr V.M., a prosecutor from the Varna Appeals Prosecution Office, stated that he had been the victim of intimidation and threats ordered by Mr F., the Chief Public Prosecutor. He stated that Mr F. had created a climate of fear and submission in the prosecution service. Terrorising subordinates had become the usual method of management and unconditional submission to the Chief Public Prosecutor was the most valued quality of a subordinate prosecutor or staff member. Mr F. and his small circle of trusted individuals ruled the prosecution service. There was a practice of giving unlawful orders orally, with which prosecutors and staff were required to comply. Refusal was punished by arbitrary transfers of prosecutors to other functions and towns and the bringing of criminal charges against members of their families. Mr V.M. cited examples in this respect. Mr V.M. also spoke about specific cases of unlawful termination of

criminal proceedings and unlawful intervention by high-ranking prosecutors in private disputes.

57. Mrs V.S., a prosecutor from Pleven, testified that she and several of her colleagues had been improperly prevented from working on a case involving a substantial financial interest. She complained to the Supreme Judicial Council, whereupon she was summoned to furnish explanations before the Deputy Chief Public Prosecutor, Mr H.M., and three other high-ranking prosecutors, and was told to withdraw her complaint. Having heard her refusal, the Deputy Chief Public Prosecutor said: "A second case of a prosecutor committing suicide may occur", apparently referring to the suicide, three months earlier, of a high-ranking prosecutor. After this meeting, disciplinary proceedings were instituted against Mrs V.S. and she was deprived of salary bonuses. Following appeals by Mrs V.S., these measures were set aside by the courts.

58. Mr I.I., an investigator, testified that he had investigated the murder of Mrs N.G., a lawyer from Yambol, who had had a close relationship with the Chief Public Prosecutor. In this context, Mr I.I. discovered evidence of criminal acts committed by prosecutors. His efforts to secure evidence and investigate were frustrated, however, apparently as a result of repeated information leaks. Since the only persons who knew about the planned searches and seizures had been the Chief Public Prosecutor and five high-ranking prosecutors from his close circle, the leak must have come from them. The Chief Public Prosecutor personally supervised the course of the investigation despite his close relationship with the victim. Also, Mr I.I. discovered that two persons probably implicated in the murder had fled the country with the help of the Chief Public Prosecutor. As "punishment" for his probing into these facts, Mr I.I. was later unlawfully ordered to retire.

59. The Supreme Judicial Council heard evidence from other prosecutors who also testified about an atmosphere of fear and submission in the prosecution service, unlawful oral orders issued by high-ranking prosecutors and repression against dissenters in the form of deprivation of salary bonuses, transfers and threats.

60. Two other persons who gave evidence to the Supreme Judicial Council did not share these views.

61. Following heated debates, during which divergent views were expressed by members of the Council, on 18 December 2002 it adopted a decision in which it stated, *inter alia*, that the Chief Public Prosecutor had introduced an authoritarian style and unlawfully "punished" prosecutors by transferring them or depriving them of salary bonuses, and that an atmosphere of fear was paralysing the normal functioning of the prosecution system. On the basis of these and other findings concerning specific violations of the administrative rules, the Council called on Mr F. to resign. The 25-member Council adopted the decision by thirteen votes to nine with one abstention. The decision was not legally binding, as at the relevant time

the constitutional grounds for termination of the Chief Public Prosecutor's appointment were very limited (see paragraphs 128-131 below). Mr F. refused to resign.

C. Mr Kolev's murder and the ensuing investigation

1. Mr Kolev's declarations that he feared for his life

62. In his application to the Court, dated 17 December 2001, Mr Kolev complained under Article 5 of the Convention about his detention earlier that year. He stated that the violations of his rights were the result of a merciless campaign against him orchestrated by the Chief Public Prosecutor and that he had fears for his and his family's safety.

63. Mr Kolev repeatedly voiced in public and in letters to State institutions his fear that he might be eliminated physically.

2. The murder and the authorities' first steps

64. On 28 December 2002 in the evening Mr Kolev was shot dead by an unknown assailant in front of his home in Sofia.

65. The police were alerted immediately by passers-by. Several police officers and an investigator from the Sofia Investigation Service arrived at the scene, searched the area for several hours and interviewed passers-by.

66. At the scene the police found and collected bullets and cartridges, a revolver and a hand grenade which had not exploded.

67. The Deputy Chief Public Prosecutor, the Interior Ministry Secretary and other high-ranking officials visited the scene the same evening.

68. On the same day an investigator from the Sofia Investigation Service opened an investigation into the murder of Mr Kolev.

69. On 29 December the police and another investigator from the Sofia Investigation Service searched the area again in daylight.

70. On 29 December 2002 the case was entrusted to an investigator from the Sofia Investigation Service. On the same day the investigator ordered ballistic and other expert reports and an autopsy.

71. The autopsy carried out on 29 December revealed that Mr Kolev had received eight shots, some of them in the head.

72. On 29 December the investigator interviewed twelve persons who had been in the area at the time of the murder. Some of them had noticed two to four men shortly before the shooting, but had not seen their faces.

73. On 29 December the Deputy Chief Public Prosecutor appointed prosecutor A.I., Head of Division at the Supreme Cassation Prosecution Office, to supervise the investigation in the case. The case was registered as under “special supervision” by that office.

74. On 30 December 2002 a senior officer of the national anti-terrorist squad, Mr V.D., was shot and killed by an unknown assailant. In statements they made later, the second applicant and other persons stated that his murder was probably connected with Mr Kolev's murder, since Mr V.D. had allegedly possessed information about Mr Kolev's murderer.

3. Statements made immediately after the events

75. On 29 December 2002 Mr E.S., a former member of Parliament who had previously accused the Chief Public Prosecutor of committing crimes, appeared before the investigator as he wished to help with the murder investigation. He had met Mr Kolev many times as both of them had been interested in investigating the crimes allegedly committed by the Chief Public Prosecutor. Their last meeting had been on 22 or 23 December 2002.

76. Mr E.S. passed to the investigator information he had obtained from Mr Kolev, with several supporting documents. In particular, he stated that at their last meeting Mr Kolev had spoken about his findings implicating the Chief Public Prosecutor in the murder of the lawyer Mrs N.G. in February 2000. Mr Kolev had promised to put Mr E.S. in contact with a fugitive who had been falsely charged with that murder.

77. Mr E.S. also stated that Mr Kolev, who had engaged for a certain period in unlawful activities ordered by the Chief Public Prosecutor, had later refused to continue and had started collecting evidence about those activities. Owing to his mental disorder the Chief Public Prosecutor constantly feared plots and considered as his enemy anyone who criticised him or did not execute his orders. Thus, Mr Kolev had been asked to open criminal proceedings on fabricated charges against persons the Chief Public Prosecutor considered his enemies, or even to commit murder. Among those "enemies" had been Mr V.M., a prosecutor at the Varna Appeals Prosecution Office and a former candidate for the post of Chief Public Prosecutor, as well as journalists who had revealed that the brother of the Chief Public Prosecutor had been charged in Germany with illegal trading in coins. Mr Kolev had told Mr E.S. that a number of high-ranking prosecutors at the Supreme Cassation Prosecution Office and other persons spent their time organising "revenge" against the "enemies". Mr Kolev had named Mr A.P., an officer of the national anti-terrorist squad, as one of the Chief Public Prosecutor's "confidants". Mr A.P. had blackmailed a banker, Mr G.P.Ts., and had managed to obtain large amounts of money from him. The banker had finally complained but "in response" had been arrested on fabricated charges and later a bomb had been found in his flat. Mr E.S. submitted to the investigator a copy of a written statement made by the banker in December 2000.

78. Mr E.S. described in detail several more cases of alleged crimes committed by Mr A.P. and the Chief Public Prosecutor, about which he had learned from Mr Kolev. He gave the names of the persons involved.

79. Mr E.S. also gave the name of an investigator who had told him that he had been threatened by the Chief Public Prosecutor and who had allegedly witnessed the latter's fits of insane rage. The investigator had also learned that electronic files from the hard drive of the computer found in the office of Mrs N.G., the lawyer murdered in February 2000, had been deleted in the course of the investigation because they had contained information implicating prosecutors.

80. Mr E.S. affirmed that Mr Kolev had told him that he feared for his life and considered that the Chief Public Prosecutor had instructed Mr A.P. to have him killed.

81. On 2 January 2003, a former trade union leader, Mr P.S., who had been charged with criminal offences on allegedly fabricated grounds, made public statements and also wrote to the investigation authorities. He stated, *inter alia*, that he had had numerous conversations with Mr Kolev, the last one having been on the day of his murder. Mr Kolev had told him about his efforts to collect information incriminating the Chief Public Prosecutor. Mr P.S. suggested that the records of those conversations could be found, as he was convinced that his and Mr Kolev's telephones had been tapped.

82. On 15 January 2003 the second applicant, Mr Kolev's wife, a prosecutor from the Supreme Cassation Prosecution Office, made a public statement addressed to the Supreme Judicial Council. A copy was also sent to the investigator in the case. She accused Mr F., the Chief Public Prosecutor, of having ordered her husband's murder, together with Mr F.S. and Mr A.P. of the national anti-terrorist squad. In her view, the Chief Public Prosecutor was suffering from a mental disorder. Her late husband had refused to engage in unlawful acts ordered by the Chief Public Prosecutor and had revealed the latter's mental problems publicly, which had triggered a merciless campaign against him. Mr Kolev had been arrested on fabricated charges and several sets of criminal proceedings had been brought in 2001 and 2002 against him and his family members.

83. The second applicant called on the Supreme Judicial Council to initiate proceedings for the removal of the Chief Public Prosecutor from office and to entrust the investigation of Mr Kolev's murder to independent prosecutors. That was vitally necessary in her view, having regard to the hierarchical structure of the prosecution system, which allowed total control by the Chief Public Prosecutor, and the atmosphere of fear which reigned among prosecutors and investigators.

4. The investigation

84. On 2 January 2003 prosecutor A.I. appointed a team of five investigators to work on the case. Three of them were from the Sofia Investigation Service and the other two from the National Investigation Service.

85. In the following days the experts appointed by the investigator submitted their reports, describing in detail their findings and conclusions. In particular, the shots that had killed Mr Kolev had been fired at very close range, between 20 and 80 cm. The bullets found in his body and at the scene had all been fired from the same weapon, a 9 mm calibre handgun. Comparison with data kept by the police had not linked the bullets with a weapon previously used to commit another criminal offence. The revolver found next to Mr Kolev's body had a different calibre. It could not be linked to information about weapons used in criminal offences. The experts did not find traces of powder on Mr Kolev's fingers or hand. The expert who analysed the hand grenade noted that it was of a type used in the army and the police and also considered that it had been placed next to the body. It was further established that the hair taken from the victim's clothes was Mr Kolev's hair.

86. On 6 January 2003 the second applicant, Mr Kolev's wife, appeared before the investigator but refused to answer his questions and challenged the independence of the investigation.

87. In January 2003 the investigator searched Mr Kolev's office.

88. At the beginning of February 2003 the investigator interviewed persons who had seen Mr Kolev on 28 December 2002 and also obtained from the police information about telephone calls made from or received by Mr Kolev's home telephone on the day of the murder. The calls were traced and the persons who had received them or made them interviewed. One of the calls had been made from a mobile telephone whose number was no longer valid and whose holder could not be identified.

89. On the basis of witness statements it was established that on the evening of 28 December 2002 Mr Kolev had left his home intending to buy food in a nearby shop. He had been shot on his way back from the shop.

90. In February 2003 the investigators questioned a man serving a prison term who had allegedly told other persons that he had bribed Mr Kolev in order to obtain release from prison. The man denied having said or done so. Also in February 2003, a man who walked into a police station and confessed to the murder of Mr Kolev was detained, but released shortly after it was established that he suffered from a mental disorder.

91. In January and February 2003 several persons who had been passing in the area at the time of the murder were questioned for a second time. The police officer who had arrived first at the scene was also questioned. A politician whose telephone number had been dialled from Mr Kolev's home on the day of the murder was also questioned.

92. The investigator also questioned a journalist who had known Mr Kolev. The journalist stated that Mr Kolev had shared his fears with him, stating that Mr F., the Chief Public Prosecutor, and two senior officers of the national anti-terrorist squad – Mr A.P. and Mr F.S. – wanted to liquidate him. The journalist further stated that Mr F., the Chief Public

Prosecutor, suffered from a mental disorder and that guards from the National Guard Service and the Sofia chief of police could testify to that.

93. In March 2003 the investigators questioned another journalist, who had published a book based on conversations with the notorious boss of a criminal gang, Mr I.K. According to the journalist, Mr I.K. had told her that Mr Kolev had worked for another criminal gang. In 1995 the two gangs had clashed over a consignment of illegally imported cigarettes and Mr Kolev had tried to use his position to have Mr I.K. moved to another detention facility, allegedly intending to use the opportunity to have him killed. The transfer had been prevented by two investigators of the National Investigation Service.

5. Suspension of the investigation, appeals and additional investigative measures

94. On 26 September 2003 the investigator reported that it had not been possible to identify the perpetrator, and proposed that the proceedings be stayed. He transmitted the file to Mr Ts.I. from the Supreme Cassation Prosecution Office since the case was under "special supervision" by that office. The file was then transmitted to the Sofia Prosecutor's Office, which decided on 8 October 2003 to stay the proceedings.

95. Mr Kolev's relatives, including the second applicant, appealed.

96. On 16 June 2004 the Sofia City Court quashed the decision to stay the proceedings and instructed the prosecuting authorities to take additional measures. That decision was upheld by the Sofia Appeal Court on 12 July 2004. The courts found that the investigation had not taken all the measures that could lead to identifying the perpetrator. In particular, Mr Kolev's wife, the second applicant, had not been questioned. Having regard to her statement addressed to the Supreme Judicial Council, it was important to question her and then carry out further investigative measures to verify her allegations. In addition, the investigator had not attempted to establish whether there might be a link between Mr Kolev's murder and persons affected by high-profile cases he had worked on. The courts also noted that contrary to the relevant procedural rules, the case file did not contain information about any efforts on the part of the investigator to continue his inquiry after the proceedings had been stayed and report periodically. The courts also considered that ballistic and other experts should try to establish further details.

97. On 27 July 2004 the Sofia Prosecutor's Office instructed the investigator to undertake further investigations.

98. On 25 August 2004 the second and third applicants were questioned. They stated that they would not testify in the absence of their lawyer. The second applicant was summoned again and appeared on 21 September 2004 but refused to discuss the case, stating that the case should be investigated independently by the National Investigation Service.

99. In September 2004 the experts appointed to clarify details about the shooting submitted their report.

100. The investigator also requested and received from the Supreme Administrative Prosecution Office a list of cases of "public interest" on which Mr Kolev had worked after his reinstatement in 2002.

101. On 13 October 2004 the investigation was suspended by a decision of the Sofia Prosecutor's Office on the ground that it had proved impossible to identify the perpetrator.

102. The applicants appealed. They stated, *inter alia*, that the investigation was fully under the control of the Chief Public Prosecutor and gave the authorities' failure to secure the independence of the investigation as their reason for refusing to testify.

103. By decisions of 13 July and 22 August 2005 the Sofia City Court and the Sofia Court of Appeal quashed the order staying the investigation and instructed the prosecuting authorities to undertake further investigations.

104. The courts stated that the applicants were not entitled to refuse to testify, regardless of their fears that the investigation was not independent. Therefore, the applicants should be summoned again and questioned. The applicants' request for Mr F., the Chief Public Prosecutor, and several high-ranking prosecutors to be questioned should be considered afterwards. The courts also instructed the investigation authorities to collect information about cases that Mr Kolev had handled at the Supreme Cassation Prosecution Office, where he had worked earlier in his career.

105. In so far as the applicants had insisted that the investigation should be handled by the National Investigation Service, which in their view was more independent, the courts stated that that request was inadmissible. The choice of investigators was at the discretion of the prosecutor supervising the case. The courts lacked the power to control that choice or to examine the applicant's allegations, namely that the investigation was not independent owing to the hierarchical structure of the prosecution system and the personal involvement of the Chief Public Prosecutor in the case.

106. The second applicant was questioned on 19 October 2005. She made the same statements as those contained in her open letter of January 2003 to the Supreme Judicial Council (see paragraph 82 above). She stated her conviction that her husband had been killed because he had known too much about the Chief Public Prosecutor and had been working to secure his removal from office. Following the appointment of Mr F. as Chief Public Prosecutor, Mr Kolev had initially obeyed some of his unlawful orders, such as to put pressure on Mr V.M., a prosecutor from the Varna Appeals Prosecution Office. However, at some point Mr F. had asked Mr Kolev to kill Mr V.M. and he had refused. He had later refused to obey other orders and had thus become an "enemy" in Mr F.'s eyes. The Chief Public Prosecutor had first tried to intimidate him and silence him through

dismissal and fabricated criminal charges and had later decided to eliminate him physically.

107. Mrs Koleva also stated that she had herself witnessed the atmosphere of fear and paranoia created by the Chief Public Prosecutor among her colleagues. She insisted that all high-ranking prosecutors should be questioned, including the Chief Public Prosecutor. She also requested the questioning of Mr F.S., the head of the national anti-terrorist squad.

108. Mrs Koleva also stated that the murder, two days after Mr Kolev's death, of Mr V.D., a senior officer at the national anti-terrorist squad with whom Mr Kolev had been in contact in the context of his private inquiry, had not been a coincidence. Mrs Koleva also noted that Mr Ts.I. and Mr P., the prosecutors who had participated in planting drugs and arresting Mr Kolev on fabricated charges in June 2001, had been promoted soon thereafter and that the arrest had been effected by officers of the national anti-terrorist squad loyal to the Chief Public Prosecutor.

109. In October 2005 the investigator questioned three persons who had been Mr Kolev's lawyers. One of them, the former Chief Public Prosecutor, Mr I.T., assessed as absurd the suggestion that Mr F., the Chief Public Prosecutor, had been responsible for Mr Kolev's death.

110. In November 2005 the investigator questioned Mr Kolev's son, who confirmed his mother's views. He also stated that his father had received threats by telephone. He stated that the investigation should look for a link between his father's murder and the murder, committed only two days after that, of Mr V.D. of the anti-terrorist squad.

111. In November 2005 the investigator also questioned Mr V.M., a prosecutor from the Varna Appeals Prosecution Office and a former candidate for the post of Chief Public Prosecutor (see paragraph 56 above). He described in detail events dating from 2000, when Mr Kolev had asked him to resign and threatened him with proceedings, allegedly on the instructions of the Chief Public Prosecutor. Mr V.M. had refused, whereupon he had been transferred to a small town by order of the Chief Public Prosecutor. Mr V.M.'s complaint against the transfer, examined by the Supreme Judicial Council in 2000, had been widely publicised. Shortly after that, on 24 April 2000, his wife's notary office had been set on fire. On 25 May 2000 a bomb had exploded in the same office. Mr V.M. considered that those attacks had been part of the Chief Public Prosecutor's campaign against him. Mr V.M. stated that later, in 2001, Mr Kolev had contacted him and spoken openly about his conflict with the Chief Public Prosecutor. He had shared his fears, telling him that Mr A.P. of the anti-terrorist squad was probably organising an attempt on his life.

112. In November 2005 the investigator questioned another prosecutor, who stated that he knew Mr Kolev only vaguely.

113. On 17 February 2006 the Sofia City Prosecutor's Office ordered the investigation to be stayed on the grounds that the identity of the perpetrator could not be established.

114. In February 2006 the seven-year term of Mr F. as Chief Public Prosecutor expired.

115. On 11 and 17 October 2006, the second and third applicants, Mr Kolev's wife and son, were questioned again. They reiterated the facts on the basis of which they believed that Mr F., the Chief Public Prosecutor, and persons close to him, such as Mr F.S. and Mr A.P. of the national anti-terrorist squad, had been involved in Mr Kolev's murder. They also gave further details about criminal acts allegedly committed by the former Chief Public Prosecutor.

116. On unspecified dates after February 2006 the investigators questioned Mr F.S. and Mr A.P. of the national anti-terrorist squad. They also questioned five other officers of the same service who had participated in Mr Kolev's arrest on 20 June 2001. The investigators also received information from the Sofia police that Mr G.G., one of those five officers of the national anti-terrorist squad, had been named as the murderer by a "voluntary informant" who had refused, however, to disclose his name and would not testify, even as a protected witness. On 24 September 2008 a prosecutor of the Sofia Prosecution Office ordered the suspension of the investigation, considering that there was insufficient evidence to bring charges in relation to Mr Kolev's murder.

II. RELEVANT DOMESTIC LAW

A. Detention without a court order

117. Articles 202 (1) and 203 of the Code of Criminal Procedure 1974 ("CCP 1974"), as in force at the relevant time, provided that a suspect might be held in custody without official charges for up to 72 hours by a decision of a prosecutor.

118. Article 152a of the CCP 1974 provided that a person officially charged with having committed a criminal offence might be detained provisionally for up to 72 hours by a decision of a prosecutor. Within that time-limit the accused person had to be brought before a court.

119. There is no reported domestic case-law on the question whether or not the 72-hour detention periods under Articles 202 and 152a may be consecutive.

B. Processing of appeals against remand in custody

120. Under Article 152b of the CCP 1974, as in force at the relevant time, appeals against remand in custody must be submitted to the relevant investigator or prosecutor, who is under a duty to transmit them to the competent court "immediately". The court must hold an oral hearing in the matter within three days of receipt of the appeal.

C. Prosecutors' immunity and procedure for bringing criminal charges against prosecutors

121. Until September 2003, all judicial officers, including prosecutors, enjoyed immunity from prosecution. According to Article 132 of the Constitution, as in force until September 2003, read in conjunction with its Article 70, criminal proceedings against prosecutors could only be instituted if their immunity had been lifted by decision of the Supreme Judicial Council. The Judiciary Act 1994 (section 27(1)(6) and section 134(3)) provided that the power to make proposals to the Supreme Judicial Council for the lifting of a judicial officer's immunity was vested in the Chief Public Prosecutor.

122. Since immunity could only be lifted on a proposal by the Chief Public Prosecutor, which meant that it was not possible to lift the immunity of the Chief Public Prosecutor against his will, in 1998 Parliament amended the Judiciary Act 1994 empowering the Presidents of the Supreme Court of Cassation and the Supreme Administrative Court and the Minister of Justice to submit to the Supreme Judicial Council proposals to lift the immunity of any judicial officer. On 14 January 1999 the Constitutional Court struck down the amendment finding that it violated Article 127 (1) of the Constitution, which vested in the prosecuting authorities the exclusive power to bring charges and maintain the accusation against suspected offenders (реш. № 1 по к.д. № 34/1998).

123. In June 2002 Parliament adopted another amendment aimed at remedying the deficiency in the law. During the debates on the amendment, several members of Parliament considered that it was unconstitutional in view of the 1999 judgment of the Constitutional Court and expressed the view that the deficiency had its origins in the text of the Constitution and that it could only be remedied by amending the Constitution. Parliament nevertheless adopted a text according to which one fifth of the members of the Supreme Judicial Council could propose to the full Council that the immunity of any judicial officer be lifted.

124. On 16 December 2002 the Constitutional Court set aside the amendment (реш. № 13 по к.д. № 17/2002) referring to the reasons given in its 1999 judgment. The Constitutional Court did not comment on the question whether the resulting impossibility of lifting the immunity of the

Chief Public Prosecutor was compatible with the constitutional principle of legality and the fundamental rights protected by the Constitution.

125. The deficiency was remedied with effect from 30 September 2003 when Parliament amended the Constitution, introducing, under Article 132 (4), the possibility for one fifth of the members of the Supreme Judicial Council to seek a decision by that Council authorising the bringing of charges and the detention of any judicial officer. Furthermore, Article 132 of the Constitution as amended no longer used the term "immunity" and limited the number of cases in which the authorisation of the Supreme Judicial Council was needed. According to the amended text, such prior authorisation was only necessary for the bringing of charges against judges and prosecutors where the charges concerned criminal offences allegedly committed by them in the exercise of their functions. Such authorisation was also necessary for detention orders against judges and prosecutors, regardless of the nature of the charges underlying the detention request. The Judiciary Act was amended with effect from 9 April 2004 to reflect these new constitutional provisions.

126. Following the above-mentioned amendments, in theory any prosecutor or investigator could bring charges against the Chief Public Prosecutor without prior authorisation in respect of a criminal offence unrelated to the exercise of the latter's functions. However, the Chief Public Prosecutor could set aside any such decision taken by a subordinate prosecutor or investigator. Also, the Supreme Judicial Council's authorisation remained necessary for the Chief Public Prosecutor to be remanded in custody.

127. By further amendment of the Constitution in February 2007 all the procedural limitations specific to criminal proceedings against judicial officers were abolished. The new Judiciary Act 2007 reflects this amendment in its provisions. Since February 2007, in theory any prosecutor or investigator has the power, without prior authorisation, to bring charges against the Chief Public Prosecutor or request the relevant court to order his pre-trial detention where there is sufficient information that he may have committed a criminal offence. As mentioned above, however, the Chief Public Prosecutor may set aside any such decision taken by a subordinate prosecutor or investigator.

D. The prosecution system

1. Appointment, tenure, dismissal and temporary removal from office of judicial officers in general and the Chief Public Prosecutor in particular.

128. Under the 1991 Constitution, all prosecutors have the status of judicial officers (магистрати) and are thus part of the judicial system. After

three years of service they obtain tenure. Appointment and dismissal of judicial officers is only possible if decided upon by the Supreme Judicial Council (see paragraphs 136 and 137 below). The Chief Public Prosecutor, who is also a judicial officer, is appointed by the President of Bulgaria on a proposal by the Supreme Judicial Council for one non-renewable seven-year term of office. Before the expiry of his term of office, the same grounds for dismissal apply as for all other judicial officers. He can be dismissed by the President of Bulgaria on a proposal by the Supreme Judicial Council.

129. Under Article 129 of the 1991 Constitution, as in force until 30 September 2003, judicial officers with tenure, including prosecutors, could only be dismissed upon retirement, in cases of permanent physical incapacity or where they had been sentenced to deprivation of liberty following a final conviction on charges concerning a wilfully committed offence.

130. Since 30 September 2003, when the Constitution was amended, dismissal is also possible on grounds of "a serious breach of, or systematic non-compliance with, the judicial officer's duties" and in cases of "acts harming the stature of the judiciary". In 2006 Parliament adopted an amendment to the Constitution according to which not only the Supreme Judicial Council but also two thirds of the members of Parliament could propose to the President to dismiss the Chief Public Prosecutor or the Presidents of the two Supreme Courts on the grounds mentioned above. On 13 September 2006 the Constitutional Court struck down the amendment ruling that it purported to change the balance between the branches of power, whereas the Constitution required that such changes should be adopted by a Grand National Assembly. Several dissenting justices considered that the amendment was indispensable as the existing legal regime did not offer sufficient safeguards against unlawful acts committed by high-ranking prosecutors or judges. In her dissenting opinion, one of the justices noted the following:

> "Having regard to the fact that the Supreme Judicial Council includes members who are subordinate to the [Chief Public Prosecutor and the Presidents of the two Supreme Courts] or are in friendly relations with them, it is very likely that the Supreme Judicial Council would not be able to form a majority in favour of the dismissal of those three high-ranking judicial officers ... despite breaches of the law committed by them ...
>
> Prior to [the impugned constitutional amendment] the domestic legal order was helpless in such situations and the unlawful behaviour of judicial officers had to be endured over long periods.
>
> Tolerating lack of control and unaccountability is contrary to the spirit of the Constitution. [Unfortunately], as a consequence of [the majority's decision in the case under examination] the control over the activities of high-ranking judicial officers will remain ineffective, since it is exercised by themselves and their subordinates."

131. Under the Judiciary Act 1994 (section 40) and the Judiciary Act 2007 (section 230), the Supreme Judicial Council has the power to remove temporarily from office any judicial officer against whom criminal charges have been brought.

2. Powers of the Chief Public Prosecutor

132. The prosecution system in Bulgaria is centralised. All prosecutors are under the authority of and report to the Chief Public Prosecutor (section 112 of the Judiciary Act 1994, in force until 2007, and section 136 of the Judiciary Act 2007).

133. The Chief Public Prosecutor, as the highest prosecutor in the hierarchy, has the power to issue binding orders concerning the work of every prosecutor, including work on particular cases, or to take over a case handled by another prosecutor (section 116 of the Judiciary Act 1994, in force until 2007, and sections 139 and 143 of the Judiciary Act 2007).

134. The Chief Public Prosecutor has the power to submit to the Supreme Judicial Council proposals for the promotion, dismissal or disciplinary punishment of prosecutors (sections 27, 30 and 172 of the Judiciary Act 1994, in force until 2007, and section 38 and 312 of the Judiciary Act 2007).

135. Under the CCP 1974, in force until 2006, the prosecutor controlled the investigation (Article 48 (3) of the CCP 1974). This included the power to give specific instructions, overrule the investigator or take over the entire investigation (Article 176 (1) of the same Code). The CCP 2006 reinforced the prosecutors' control and direct participation in the investigation of criminal offences. Furthermore, as a result of constitutional and legislative amendments of 2006, 2007 and 2009, the investigation service was integrated into the prosecution system and is now administratively subordinate to the Chief Public Prosecutor (Articles 127 and 128 of the Constitution and sections 136, 148-153 of the Judiciary Act 2007). In 2009 the Constitutional Court rejected a motion to declare unconstitutional the 2009 amendments to the Judiciary Act which provided for such subordination.

E. The Supreme Judicial Council

136. The Supreme Judicial Council has 25 members. The Presidents of the Supreme Court of Cassation and of the Supreme Administrative Court and the Chief Public Prosecutor are members *ex officio*. Parliament elects eleven members, among whom there may be judges, prosecutors, investigators and lawyers. The remaining eleven members are elected at separate delegates' assemblies of judges (electing six members), prosecutors (electing four members) and investigators (electing one member)

(Article 130 of the Constitution, sections 17-20 of the Judiciary Act 1994, in force until 2007 and sections 17 and 20-26 of the Judiciary Act 2007).

137. Decisions concerning, *inter alia*, the dismissal of a judicial officer or a proposal to the President of Bulgaria to dismiss the Chief Public Prosecutor must be taken by the members of the Supreme Judicial Council by secret ballot. Until September 2003, when Article 131 of the Constitution was amended, that was not the case in respect of decisions concerning the lifting of judicial officers' immunity from prosecution, which were taken by an open voting procedure. Between September 2003 and February 2007 those decisions had to be taken by secret ballot as well. Since February 2007 the Supreme Judicial Council's authorisation is no longer necessary for the bringing of charges of any kind against a judicial officer (see paragraph 127 above).

II. COMPARATIVE LAW AND OTHER RELEVANT MATERIAL

138. The following paragraphs describe the relevant aspects of several member States' legal systems, with the emphasis on the guarantees that exist to secure the effective and independent investigation of cases involving suspicion against high-ranking prosecutors. The report was prepared on the basis of an overview of the legal systems of Croatia, Cyprus, Estonia, France, Germany, Greece, Ireland, Italy, Malta, Russia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia and the United Kingdom.

139. As regards the status of high-ranking prosecutors, in many jurisdictions they are part of the executive branch of the government, within which they enjoy functional independence. In a few countries, such as Italy and Greece, they are considered as part of the judiciary.

140. In three countries special permission is required for the institution of criminal proceeding against the Chief Public Prosecutor. These are Croatia (from Parliament), Russia (from a panel of three Supreme Court judges on a proposal by the President of Russia) and Switzerland (from the Federal Department of Justice and Police). In Switzerland, authorisation can only be refused if the proceedings concern petty offences and it is estimated that a disciplinary sanction would be sufficient. The decision not to grant authorisation is subject to appeal before the Federal Court.

141. In all other countries there are no such specific procedural obstacles to bringing charges against the highest-ranking prosecutors.

142. The prosecution systems of the countries surveyed are structured hierarchically with higher-ranking prosecutors having the power to give orders and instructions to the lower-ranking prosecutors. Despite this structure, a number of safeguards are in place in the legal systems of member States to ensure the effectiveness and independence of the organs

in charge of criminal investigations in respect of high-ranking prosecutors. These safeguards include:

– transfer of the case to another entity within or outside the prosecution system;

– special investigation procedure in cases involving suspicion against high-ranking prosecutors;

– suspension of the prosecutor under suspicion from his duties (in the case of the highest-ranking prosecutor this decision would be made by the political bodies in charge of his appointment); and

– general safeguards such as guarantees ensuring functional independence of prosecutors from their hierarchy and judicial control of the acts of the prosecution service.

143. In particular, in Sweden, a special unit within the prosecution system, the national police-related crimes unit, handles the investigation and subsequent indictment of prosecutors and police officers. The prosecutor handling the investigation must have, if this is possible, a higher rank than the one being investigated. If a head prosecutor or his deputy is suspected of having committed a crime the case is handled by the Prosecutor-General. The Parliamentary Ombudsman or the Chancellor of Justice, two independent bodies outside the prosecution system, will carry out the investigation if the Prosecutor-General is concerned.

144. In Malta the inquiry may be assigned to an *ad hoc* body in cases concerning the conduct of public officers or of officers or servants of a statutory body.

145. According to the law in Spain, criminal proceedings against the highest-ranking prosecutors (*Fiscal General del Estado, Fiscales de Sala del Tribunal Supremo*) fall within the competence of the Criminal Section of the Supreme Court. In criminal proceedings against judges, judicial officers and prosecutors in general for crimes committed in the exercise of their functions, the competence lies with the Criminal Section of the High Court of each region. In both these cases the investigating judge is chosen from among the members of the section.

146. The Code of Criminal Procedure in Italy has introduced a special mechanism for determining the competent judge in cases where judges or prosecutors are parties, with the aim of ensuring the autonomy of the judge's decision in cases in which his or her colleagues are involved.

147. In a number of other countries, the investigation in cases involving suspicion against high-ranking prosecutors is carried out following the ordinary criminal procedure (Cyprus, England and Wales, Estonia, France, Germany, Greece, Ireland and the Former Yugoslav Republic of Macedonia). Nonetheless, there exist rules governing the distribution of cases aiming at ensuring independence. In Germany, in cases where the competent public prosecutor is subordinate to the public prosecutor under suspicion, the case may be entrusted to a prosecutor who is not bound by the

instructions of the public prosecutor under suspicion. Moreover, by agreement between the *Länder*, the investigation can be taken over by another prosecution entity which has no personal connections to the prosecutor under suspicion and which is neither his subordinate nor his superior in the hierarchy.

148. General procedural safeguards applicable in most countries include provisions guaranteeing the institutional or functional independence of public prosecutors, whether they are members of the judiciary or civil servants. In England and Wales the institution of public prosecution is based on a model described by academics as that of institutional dependence and functional independence. In Ireland, prosecutors are entirely independent in the performance of their functions.

149. Prosecutors are protected from undue pressure through additional safeguards such as the obligation to prosecute all offences except petty offences (Germany, Switzerland, Italy, Spain and Greece). In England and Wales and France, which recognise the principle of discretionary prosecution, importance is attached to the transparency of official guidelines.

150. Many of the countries studied (Cyprus, Estonia, Germany, Greece, Ireland, Italy, the Former Yugoslav Republic of Macedonia and Spain) provide for the transfer or suspension of public prosecutors during the course of criminal proceedings against them.

151. Finally, in the legal system of England and Wales, any prosecutor's decision made "corruptly" or considered as grossly unreasonable can be challenged by judicial review or through the procedure of abuse of process. In Switzerland all procedural acts of the Federal Public Prosecutor are subject to appeal before the Federal Criminal Court. Judicial control of the acts of the prosecution service is an important safeguard also in Germany. If necessary, this control can be transferred to another court outside the radius of action of the prosecution service concerned.

152. The Council of Europe Commissioner for Human Rights has issued an Opinion concerning independent and effective determination of complaints against the police, published on 12 March 2009 (document CommDH(2009)4). The document describes as best practice in that area the operation of an independent complaints body, with responsibility for the investigation of complaints which may concern Articles 2 or 3 of the Convention. The Commissioner further noted that in some member states, in order to address concerns about lack of independence of prosecutors when they work on cases against the police with whom they might have a close working relationship, specialist criminal prosecution authorities with their own investigators had been established. The example of ombudsman institutions which possess powers to bring charges before the court on their own authority was cited in this respect.

THE LAW

I. PRELIMINARY ISSUE

153. The Court notes at the outset that the first applicant died after lodging the present application and that his wife, daughter and son have expressed their wish to continue the proceedings before the Court and have submitted additional complaints (see paragraph 1 above). It has not been disputed that the applicant's wife and children are entitled to pursue the application on his behalf and the Court sees no reason to hold otherwise (see *Kozimor v. Poland*, no. 10816/02, §§ 25-29, 12 April 2007, and *Lukanov v. Bulgaria*, 20 March 1997, § 35, *Reports of Judgments and Decisions* 1997-II). For reasons of convenience, the text of this judgment will continue to refer to Mr Kolev as an "applicant", although his wife and children are today to be regarded as having this status.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

154. The Court will deal with these complaints in the chronological order of the events complained of.

A. Alleged violation of Article 5 § 3 (brought promptly before a judge)

155. Mr Kolev complained that he was brought before a judge five days and eight hours after his arrest on 20 June 2001, in violation of Article 5 § 3 of the Convention. This provision reads, in so far as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power ..."

156. Mr Kolev submitted that it was unclear whether the three-day period of detention under Articles 202 and 203 CCP and the three-day period under Article 152a CCP could be applied consecutively but averred that the long delay before he was brought before a judge was in violation of the Convention and that the relevant domestic law did not provide sufficient guarantees against such violations occurring. He also argued that the delay in bringing him before a judge was part of a series of arbitrary actions taken against him by order of the Chief Public Prosecutor.

157. The Government submitted that under domestic law it was lawful to keep a suspect in detention for up to six days without bringing him before a judge. Under Articles 202 and 203 CCP 1974, a suspect could be detained for up to three days without charge. If no charges were brought before the

expiry of that period, the suspect had to be released. However, Mr Kolev had been charged on the third day of his detention. Thereafter, he had been detained on different grounds, namely under Article 152a of the CCP 1974. Detention under that provision could last for up to 72 hours. Mr Kolev was brought before a judge on 25 June 2001, before the expiry of the second 72-hour period.

158. The Court observes that Article 5 § 3 requires that an arrested individual be brought promptly before a judge or judicial officer, the purpose of this guarantee being prevention of ill-treatment and unjustified interference with individual liberty. While promptness has to be assessed in each case according to its special features (see, among others, *Aquilina v. Malta*, [GC], no. 25642/94, § 48, ECHR 1999-III), the strict time constraint imposed by this requirement of Article 5 § 3 leaves little flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee to the detriment of the individual and the risk of impairing the very essence of the right protected by this provision (see *McKay v. the United Kingdom* [GC], no. 543/03, § 33, ECHR 2006-X).

159. In its case-law, the Court has found that even in the context of terrorism a period of four days and six hours between the arrest and the presentation of the arrested person before a judge is excessive and violates Article 5 § 3 (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 62, Series A no. 145-B, and *Günay and Others v. Turkey*, no. 31850/96, §§ 20-23, 27 September 2001).

160. In the case of *Kandzhov v. Bulgaria* (no. 68294/01, §§ 65-67, 6 November 2008), the Court found that a period of three days and twenty-three hours violated Article 5 § 3 of the Convention, noting in particular that Mr Kandzhov had been arrested on charges of a minor non-violent offence and that without a valid reason the prosecutors had awaited the very last moment when the relevant period of detention under domestic law had been about to expire (ibid.).

161. In the present case the Government have not argued that it was not possible to bring Mr Kolev before a judge earlier than five days and eight hours after his arrest. The prosecutor's order of 23 June 2001 prolonging Mr Kolev's detention for a second 72-hour period did not explain why it had not been possible to bring him before a judge between 20 and 23 June 2001 and did not even mention the fact that he had already been in detention for 72 hours (see paragraphs 30-35 above).

162. Having regard to the above and the particular features of the present case, the Court considers that by delaying bringing Mr Kolev before a judge for five days and eight hours without any reason, the prosecutors committed an arbitrary act incompatible with their duties under Article 5 § 3 of the Convention.

163. As in previous cases, the Court reiterates that what is at stake here is the protection of the individual against arbitrary interferences by the State

with his right to liberty. Prompt judicial control is an essential feature of the guarantee embodied in Article 5 § 3, which is intended to minimise the risk of arbitrariness and to secure the rule of law, one of the fundamental principles of a democratic society (see *Brogan and Others*, cited above, § 58, and *Aksoy v. Turkey*, 18 December 1996, § 76, *Reports* 1996-VI).

164. The Court observes that Bulgarian law either gave blanket authorisation for (see paragraph 157 above) or did not clearly prohibit consecutive periods of police or prosecutor-ordered detention before an arrested person was brought before a judge (twenty-four hours in police detention, seventy-two hours' detention under Article 202 CCP 1974 and seventy two hours' detention under Article 152a CCP 1974) (see paragraphs 117-119, 157 and 158 above). This deficiency in the relevant law resulted in unacceptable delays incompatible with Article 5 § 3, as seen in the present case and in the case of *Kandzhov* (cited above).

165. In the present case the Court therefore concludes that there has been a violation of Article 5 § 3 of the Convention.

B. Alleged violations of Article 5 §§ 1 and 3 in respect of the alleged unlawfulness and arbitrary nature of Mr Kolev's deprivation of liberty

166. Mr Kolev complained that his deprivation of liberty in 2001 had been unlawful and arbitrary and that it had been excessively lengthy. He relied on Article 5 §§ 1 and 3 of the Convention, which reads, in so far as relevant:

> "1. 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; ...
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article ... shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

1. The parties' submissions

167. The applicants submitted that Mr Kolev had been deprived of his liberty on the basis of fabricated evidence and that there had not therefore been a reasonable suspicion that he had committed an offence. The drugs and the firearm allegedly found on his arrest had been planted by

prosecutors. Mr Kolev's fingerprints had not been found on them. Mr Kolev stated that his deprivation of liberty had been arbitrary and constituted a gross violation of Article 5 and the principles underlying the Convention, as it had been the result of a criminal campaign against him on the part of the Chief Public Prosecutor. The applicants stressed that since high-ranking prosecutors never took part in arrests and searches, the participation of two such prosecutors in Mr Kolev's arrest had been highly suspicious. One of them, Mr Ts.I., had been the head of the investigation department and reported directly to the Chief Public Prosecutor. His partiality had been clearly exposed by the fact that on 21 June 2001 he had threatened Mr Kolev's lawyer, but that incident had never been investigated.

168. The applicants submitted that the unlawfulness of Mr Kolev's deprivation of liberty also stemmed from the fact that at the relevant time he had enjoyed immunity, which could only be lifted by a decision of the Supreme Judicial Council.

169. The applicants further maintained that Mr Kolev's detention had not been justified under Article 5 § 3. There had been no danger that he would abscond, as evidenced by Mr Kolev's public statements and the fact that he had remained at the authorities' disposal at all relevant times.

170. In the Government's view, the domestic courts had established that there had been a reasonable suspicion against Mr Kolev. Therefore, his detention had been justified.

171. As far as Mr Kolev's immunity from prosecution was concerned, the Government's position was that at the time of Mr Kolev's arrest and detention the question whether or not he continued to enjoy immunity pending the examination of his appeal against his dismissal had not been settled in domestic case-law. In June and July 2001 the Sofia City Court and the Sofia Court of Appeal had considered that the effect of the dismissal order of January 2001 had been to terminate Mr Kolev's appointment and remove his immunity with immediate effect, regardless of any pending appeal proceedings. Eventually, the opposite view had prevailed and the criminal proceedings against Mr Kolev had been terminated. However, what was decisive in the present case was the fact that the authorities had not acted in bad faith. Therefore, it could not be said that Mr Kolev's arrest and detention had been unlawful under domestic law.

2. The Court's assessment

172. The Court points out at the outset that it has declared the above complaints admissible only in so far as they concerned Mr Kolev's deprivation of liberty between 13 September and 29 November 2001, when he was under house arrest. While the parties' arguments and the relevant facts concern both this period and Mr Kolev's deprivation of liberty before 13 September 2001 without drawing a distinction, the Court will limit its findings to the period between 13 September and 29 November 2001.

(a) Alleged unlawfulness (Article 5 § 1)

173. It is well established in the Court's case-law that any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a)-(f), be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. Arbitrariness may take different forms but it is clear that detention will be arbitrary where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008-...; *Bozano v. France*, 18 December 1986, Series A no. 111; and *Čonka v. Belgium*, no. 51564/99, ECHR 2002-I).

174. "Lawfulness" also refers to the quality of the law in question, requiring that it should be foreseeable as to its effects (see *Amuur v. France*, 25 June 1996, § 50, *Reports* 1996-III). Where this aspect of the lawfulness of deprivation of liberty is disputed, the Court must ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. In matters concerning deprivation of liberty it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application (see *Baranowski v. Poland*, no. 28358/95, §§ 51 and 52, ECHR 2000-III, with further references).

175. The Court observes that by a final judgment of 30 April 2002 the Supreme Court of Cassation established that the criminal proceedings against Mr Kolev had been inadmissible at the outset as he had enjoyed immunity from prosecution at all the relevant times (see paragraphs 48 and 49 above). As the Court noted in its admissibility decision in the present case, for all legal purposes that was an acknowledgment that Mr Kolev's deprivation of liberty had been unlawful under domestic law.

176. It is true that not every fault discovered in a detention order renders the underlying detention as such unlawful for the purposes of Article 5 § 1. A period of detention is, in principle, lawful if it is based on a court order. A subsequent finding of a superior domestic court that a lower court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention (see *Mooren v. Germany* [GC], no. 11364/03, § 74, 9 July 2009).

177. In the present case, however, the flaw identified in Mr Kolev's detention order can fairly be described as a "gross and obvious irregularity" (ibid., § 75), given that domestic law prohibited in absolute terms the

institution of criminal proceedings and the detention of persons enjoying immunity from prosecution (see paragraphs 48, 49 and 121 above). The detention order was therefore issued in excess of jurisdiction and was thus invalid and as such contrary to Article 5 § 1.

178. The Court is not convinced by the Government's argument that the domestic case-law had not been settled at the time of Mr Kolev's deprivation of liberty and that it had been unclear whether dismissal from office removed immunity with immediate effect or only if the order was upheld on appeal. In the present case, a relevant consideration is the fact that the unlawfulness of Mr Kolev's dismissal was flagrant and obvious – he was ordered to retire despite the fact that he had not reached retirement age and had not requested early retirement (see paragraphs 8-12 above). In any event, if it is true that in 2001, ten years after the adoption of Bulgaria's Constitution in 1991 and nine years after the Convention's entry into force in respect of Bulgaria in 1992, domestic law had not yet been settled on the issue mentioned by the Government, the Court considers that this absence of clarity can be seen in itself as a failure by the State authorities to comply with their duties under Article 5 § 1 of the Convention. These duties include an obligation to secure, in legislation and case-law in matters concerning deprivation of liberty, a high level of legal certainty, clarity and foreseeability of the law (see the case-law cited in paragraph 174 above). A lack of clarity in the legal rules regulating the essential conditions for lawfulness of deprivation of liberty opens the door to arbitrariness and is therefore incompatible with Article 5 § 1.

179. The foregoing is sufficient to establish that Mr Kolev's deprivation of liberty during the relevant period was not lawful in the sense of the Convention and was thus contrary to Article 5 § 1.

180. It is not necessary, therefore, to examine whether it violated this provision on the additional ground that it was based on fabricated charges, as alleged by the applicants.

(b) Alleged lack of justification and excessive length (Article 5 § 3)

181. Mr Kolev also complained, relying on Article 5 § 3, that his deprivation of liberty between 13 September and 29 November 2001 (see paragraph 172 above) had been unjustified and excessively lengthy.

182. Having regard to its conclusion under Article 5 § 1 above, the Court considers that it is not necessary to examine this complaint separately.

C. Alleged violation of Article 5 § 4

183. Mr Kolev complained under Article 5 § 4 that his appeal against his detention, which was lodged on 7 August 2001, had not been examined speedily. Article 5 § 4, in so far as relevant, reads as follows:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily ..."

184. The Government's position was that a number of procedural steps had been under way at that time which, in the Government's view, justified the delay. The applicants disagreed.

185. The Court observes that the appeal, which was lodged on 7 August 2001, was examined on 13 September 2001. It is not disputed that the appeal's transmission to the courts was delayed by the Sofia Investigation Service for almost one month, between 7 August and 5 September. Moreover, it is unclear whether that service transmitted the appeal eventually or withheld it (see paragraph 44 above). Having regard to the fact that domestic law prescribed that appeals against detention must be transmitted to the courts "immediately" (see paragraph 120 above), the manner in which the Sofia Investigation Service treated the first applicant's appeal was unlawful and arbitrary. Also, additional unlawful delay occurred between 5 and 13 September (see paragraphs 44 and 120 above). In these circumstances, the Court considers that the period of 36 days is difficult to reconcile with the requirement of "speedy examination" (see *Rehbock v. Slovenia*, no. 29462/95, §§ 85-88, ECHR 2000-XII, *G.B. v. Switzerland*, no. 27426/95, §§ 28-39, 30 November 2000 and *Mooren v. Germany* [GC], no. 11364/03, §§ 103-107, 9 July 2009). The Government's argument that pending procedures justified the delay is unsubstantiated and in any event unconvincing, the authorities being under a duty to secure effective enjoyment of the detained person's rights under Article 5 § 4, which in the event could have been achieved, for example, by transmitting a copy of the file to the relevant court.

186. It follows that there has been a violation of Article 5 § 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

187. The second, third and fourth applicants complained that the investigation into Mr Kolev's death had not been independent or effective. This complaint falls to be examined under Article 2 § 1 of the Convention, which reads in so far as relevant:

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

A. The parties' submissions

188. The applicants asserted that the authorities had failed to discharge their positive obligations stemming from Article 2 as they had not secured the investigation's independence and had failed to investigate the allegations

against the Chief Public Prosecutor and other high-ranking officials with whom Mr Kolev had been in conflict, despite serious indications that this was the most obvious line of inquiry to be pursued. This had been the result of structural deficiencies of the Bulgarian legal system, which did not provide for the possibility of conducting a meaningful criminal investigation against the Chief Public Prosecutor or against other persons whom he sought to protect. Against this background, the steps undertaken in the investigation, although necessary, were clearly not sufficient in a case of contract killing.

189. The Government stated that numerous investigative steps had been undertaken and all possible measures to identify the perpetrator had been tried. The investigation had been handled in accordance with the normal procedure and there was no reason to doubt its independence and impartiality.

190. The Government submitted a written opinion by Mr V. Parvanov, Deputy Chief Public Prosecutor, dated 23 April 2009, admitting that for a certain period of time it had been constitutionally impossible to bring criminal charges against the Chief Public Prosecutor. Moreover, according to the Deputy Chief Public Prosecutor, despite the constitutional amendments of 2003 and 2007, it was still practically impossible to bring charges against the Chief Public Prosecutor since, in accordance with the "internal hierarchical order" in the prosecution service, as provided for by law, "nobody ha[d] the power to issue a final order for the opening of an investigation against him".

B. The Court's assessment

1. Applicable principles

191. The obligation of States to protect the right to life under Article 2 of the Convention requires by implication that there should be an effective official investigation when individuals have been killed. The duty to conduct such an investigation arises in all cases of killing and other suspicious death, whether the perpetrators were private persons or State agents or are unknown (see *Menson v. the United Kingdom* (dec.), no. 47916/99, ECHR 2003-V; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 110, ECHR 2005-VII; *Kaya and Others v. Turkey*, no. 4451/02, § 35, 24 October 2006; and *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 93, ECHR 2007-IX).

192. The investigation must be effective in the sense that it is capable of leading to the establishment of the relevant facts and the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident. The investigation's conclusions must be based on thorough,

objective and impartial analysis of all relevant elements. While the obligation to investigate is of means only and there is no absolute right to obtain a prosecution or conviction, any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness (see *Nachova and Others*, cited above, § 165; *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 321, ECHR 2007-...; and *Brecknell v. the United Kingdom*, no. 32457/04, § 66, 27 November 2007).

193. For an investigation to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice. This means not only a lack of hierarchical or institutional connection with those implicated in the events but also a practical independence (see *Ramsahai and Others*, cited above, §§ 325 and 333-346; *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, §§ 78 and 80-86, 7 February 2006; and *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports* 1998-IV).

194. 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. Furthermore, a requirement of promptness and reasonable expedition is also implicit in the notion of effectiveness. It must be accepted that there may be obstacles or difficulties which prevent progress in an investigation in a particular situation. However, a prompt response by the authorities in investigating a use of lethal force is essential (see *McKerr v the United Kingdom*, no. 28883/95, § 114, ECHR 2001-III and *Ramsahai and Others*, cited above, § 321).

2. Application of those principles in the present case

195. It is undisputed that the investigation into Mr Kolev's killing started promptly and that numerous urgent and indispensible investigative steps were taken without delay in the days after his death (see paragraphs 64-74 above). The applicants' main grievance was, however, that the investigation had lacked independence and objectivity owing to institutional deficiencies and unlawful practices in the prosecution system and had not examined the possible involvement of high-ranking prosecutors and other officials.

196. The Court observes that the Bulgarian authorities investigating Mr Kolev's killing had before them solid evidence of a serious conflict between Mr Kolev and Mr F., the Chief Public Prosecutor at the time (see paragraphs 8-30, 52, 62 and 63 above).

197. They also had evidence that Mr F. and other high-ranking prosecutors might have ordered, initiated or at least approved a series of unlawful acts against Mr Kolev and his family during the relevant period. These included: (i) Mr Kolev's dismissal in January 2001 (see

paragraphs 8-12 above), (ii) a campaign against him and his family, which consisted of bringing criminal charges against Mr Kolev, his son and his father on various unrelated grounds within a short period of time between March and September 2001, some of these charges having proved to be unfounded and none of them having been upheld by the courts (see paragraphs 21-27 above), (iii) Mr Kolev's unlawful arrest on 20 June 2001 effected in a manner predicted by him (see paragraphs 28-30, 49 and 179 above), (iv) an unlawful delaying of Mr Kolev's bringing before a judge when he was detained by prosecutors' orders in June 2001 (see paragraphs 31-35, 162 and 165 above) and (v) unjustified delays in the transmission to the courts of his appeal against his detention in August 2001, resulting in an extension of Mr Kolev's deprivation of liberty (see paragraphs 44 and 185 above).

198. The investigators also had knowledge of accusations having been made by a number of public figures, including prosecutors, about the working methods of Mr F. as Chief Public Prosecutor, which allegedly included resort to threats and unlawful bringing of fabricated charges against persons he wished to put pressure on and an authoritarian style consisting in centralising all decisions in his hands (see paragraphs 18 and 51-61 above). They also knew that the Supreme Judicial Council had received information about alleged unlawful and criminal acts committed by the Chief Public Prosecutor and that, as a result, in December 2002, it had called on him to resign. Witness evidence concerning some of those alleged unlawful acts had been given before the investigators (see paragraphs 75-83 above) and the respondent Government have not informed the Court of any other evidence demonstrating the unreliability of the allegations against the Chief Public Prosecutor. In addition, the investigators were aware that public figures had expressed doubts about Mr F.'s mental health (see paragraphs 18, 77, 82 and 92 above).

199. Finally, the investigators had before them Mr Kolev's public statements made shortly before his death to the effect that he feared for his life, naming the Chief Public Prosecutor and persons close to him as persons who might be interested in seeing him dead. The same allegation was made after Mr Kolev's death by his family and other persons (see paragraphs 62, 63, 82 and 106 above).

200. It is not the Court's role to express views about the soundness of the allegation that Mr F. and other high-ranking prosecutors and officials were implicated in Mr Kolev's murder. Its task is limited to examining the effectiveness of the investigation into his death, in the light of the State's obligations flowing from Article 2 of the Convention.

201. In this context the Court considers that, having regard to the material available to them as described in the preceding paragraphs, the investigators should have explored the allegation that the Chief Public Prosecutor and other high-ranking prosecutors and officials might have been

implicated in Mr Kolev's murder, even if the allegation was eventually to prove unfounded. That is so because, as the Court has stated in previous cases, the investigation's conclusions must be based on thorough, objective and impartial analysis of *all* relevant elements. Failing to follow an obvious line of inquiry undermines the investigation's ability to establish the circumstances of the case and the person responsible. Such an investigation cannot be seen as effective (see the judgements cited in paragraph 192 above, and *Anguelova v. Bulgaria*, no. 38361/97, § 144, ECHR 2002-IV).

202. The Court must therefore examine whether the investigation into Mr Kolev's murder was effective in the sense of exploring all relevant elements in an objective manner and in the sense of being independent.

203. It notes that apart from hearing the testimonies of those who stated that high-ranking prosecutors from the Chief Public Prosecutor's circle, the Chief Public Prosecutor himself and officers of the national anti-terrorist squad might have been behind the murder, the investigation did nothing else to explore these allegations (see paragraphs 62-116 above). In particular, neither the Chief Public Prosecutor nor the other prosecutors whose names had been mentioned repeatedly in the testimonies were ever questioned.

204. Indeed, until September 2003 it was legally impossible in Bulgaria to bring criminal charges against the Chief Public Prosecutor without his consent. As a result, he could not be removed from office against his will even if he happened to commit the most serious crime, as his conviction was a prerequisite for the termination of his term of office under the Constitution, as in force at the relevant time (see paragraphs 121-125 and 129 above). Moreover, the Chief Public Prosecutor could not be temporarily suspended from duty, as that could only be done if charges had been brought against him (see paragraph 131 above). In these circumstances, in the initial period of the investigation into Mr Kolev's murder, it was legally impossible to investigate any suspected involvement of the Chief Public Prosecutor.

205. Furthermore, even though the above deficiency was eventually remedied (see paragraphs 125-127 above), the Court observes that it is undisputed by the respondent Government that as a result of the hierarchical structure of the prosecution system and, apparently, its internal working methods, no prosecutor would issue a decision bringing charges against the Chief Public Prosecutor. This appears to have been due to the fact that the Chief Public Prosecutor and high-ranking prosecutors have the power to set aside any such decision taken by a subordinate prosecutor or investigator. As a result, it is still the case that the Chief Public Prosecutor cannot be temporarily suspended from duty against his will, as that can only be done if charges have been brought against him (see paragraphs 125-127, 132-135 and 190 above).

206. In the proceedings before the Court, the Government have not shown that at least some of the numerous grave allegations made during the

relevant period against Mr F., the Chief Public Prosecutor (see paragraphs 51-61 above), were ever investigated, at least at the level of preliminary inquiries. In the Court's opinion, this fact is highly relevant in the present case as it corroborates the applicants' allegation concerning the absence in Bulgarian law of sufficient guarantees for an independent investigation into offences of which the Chief Public Prosecutor or other high-ranking officials close to him may be suspected.

207. This situation was apparently the result of a combination of factors including the impossibility of bringing charges against the Chief Public Prosecutor, the authoritarian style of Mr F. as Chief Public Prosecutor, the apparently unlawful working methods he resorted to and also institutional deficiencies. In particular, the prosecutors' exclusive power to bring criminal charges against offenders, combined with the Chief Public Prosecutor's full control over each and every decision issued by a prosecutor or an investigator and the fact that the Chief Public Prosecutor can only be removed from office by decision of the Supreme Judicial Council, some of whose members are his subordinates, is an institutional arrangement that has been repeatedly criticised in Bulgaria as failing to secure sufficient accountability (see paragraphs 121-127, 129, 135 and 136 above).

208. The Court is not oblivious to the fact that a variety of State prosecution systems and divergent procedural rules for conducting criminal investigations may be compatible with the Convention, which does not contemplate any particular model in this respect (see information concerning the legal systems of several Contracting States in paragraphs 138-152 above). Independence and impartiality in cases involving high-ranking prosecutors or other officials may be secured by different means, such as investigation and prosecution by a separate body outside the prosecution system, special guarantees for independent decision-making despite hierarchical dependence, public scrutiny, judicial control or other measures. It is not the Court's task to determine which system best meets the requirements of the Convention. The system chosen by the member State concerned must however guarantee, in law and in practice, the investigation's independence and objectivity in all circumstances and regardless of whether those involved are public figures.

209. In the present case, the Court accepts as plausible the applicants' assertion that, given the centralised structure of the Bulgarian prosecution system, based on subordination, its exclusive power to bring charges and the procedural and institutional rules allowing full control by the Chief Public Prosecutor over every investigation in the country, in the circumstances prevailing when Mr F. was the Chief Public Prosecutor it was practically impossible to conduct an independent investigation into circumstances implicating him, even after the constitutional amendment allowing in theory the bringing of charges against him.

210. In addition, in the present case, high-ranking prosecutors like Mr Ts.I., who had participated personally in Mr Kolev's arrest on 20 June 2001, found to have been unlawful by the domestic courts, and whom Mr Kolev had publicly accused of having "planted" fabricated evidence on him, were involved in the investigation (see paragraphs 30, 36, 40, 49, 54 and 94 above). Furthermore, having regard to the evidence before the Court, there is little doubt that the investigation into Mr Kolev's murder was for practical purposes under the control of the Chief Public Prosecutor, Mr F., until the end of his term of office in 2006 (see paragraphs 67, 73, 84, 94, 132-135 and 190 above).

211. In the Court's view, this involvement of persons against whom the victim and his relatives had made serious complaints based on specific facts is incompatible with the principles of impartiality and independence required under the procedural limb of Article 2 of the Convention.

212. In the investigation of Mr Kolev's murder, although the investigators performed numerous acts such as analysing physical evidence, questioning bystanders and probing possible threats that Mr Kolev might have received, the fact that the investigation was under the control of the very persons whom the victim and his relatives had accused and the fact that it failed to follow one of the possible lines of inquiry which clearly appeared to be relevant, undermined decisively its effectiveness.

213. The Court finds, therefore, that the investigation into Mr Kolev's death was not independent, objective or effective. Moreover, the nature of its serious deficiencies was such that the authorities can be said to have failed to act adequately to secure accountability and maintain the public's confidence in their adherence to the rule of law and their determination to avoid collusion in or tolerance of unlawful acts.

214. While it is true that the investigation continued after the expiry in February 2006 of Mr F.'s term of office, the Court observes that no serious investigation measures were undertaken after that point and that the investigation was suspended (see paragraphs 114-116 above). The investigation did not, therefore, meet the requirements of Article 2 of the Convention, as interpreted in the Court's case law.

215. It follows that there has been a violation of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

216. 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

217. The applicants claimed EUR 50,000 in respect of non-pecuniary damage for the violations of Article 5 found in the present case. They invited the Court to take into account the totality of the period of Mr Kolev's unlawful detention despite the fact that it had declared inadmissible, for failure to exhaust domestic remedies, his complaint concerning part of that period.

218. The applicants also claimed EUR 300,000 in respect of non-pecuniary damage in relation to the violation of Article 2. They submitted that the authorities' indifference and failure to investigate effectively Mr Kolev's murder had led to intense feelings of vulnerability and injustice and significant suffering.

219. The Government did not comment.

220. The Court, having regard to the violations found in the present case, awards to the second, third and fourth applicants jointly EUR 30,000 in respect of all non-pecuniary damage.

B. Costs and expenses

221. The applicants claimed EUR 5,280 in respect of legal fees charged by their lawyer for sixty-six hours' work on the proceedings before the Court at an hourly rate of EUR 80. They submitted a legal fees agreement between the second applicant and her lawyer and a time sheet. They also asked the Court to order the payment of the costs award directly into the bank account of their legal representative.

222. The Government did not comment.

223. The Court considers that the costs claimed were necessarily incurred and, having regard to the exceptional nature of the present case, are reasonable as to quantum. It awards the claim in full, the award being payable directly into the bank account of the applicants' legal representative.

C. Default interest

224. 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. *Holds* that the first applicant's widow and children have standing to continue the proceedings in his stead;

2. *Holds* that there has been a violation of the first applicant's right under Article 5 § 3 of the Convention to be brought promptly before a judge or other officer authorised by law to exercise judicial power;

3. *Holds* that the first applicant's deprivation of liberty between 13 September and 29 November 2001 was unlawful and contrary to Article 5 § 1 of the Convention;

4. *Holds* that it is not necessary to examine separately the complaint under Article 5 § 3 of the Convention that the first applicant's deprivation of liberty was not justified and was excessively lengthy;

5. *Holds* that there has been a violation of the first applicant's right under Article 5 § 4 of the Convention to have his appeal against detention examined speedily;

6. *Holds* that there has been a violation of Article 2 of the Convention in that the investigation into Mr Kolev's murder was ineffective and lacked the requisite independence;

7. *Hold*

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

(i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,280 (five thousand two hundred and eighty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, payable directly into the bank account of the applicants' legal representative;

(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;

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

Done in English, and notified in writing on 5 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President