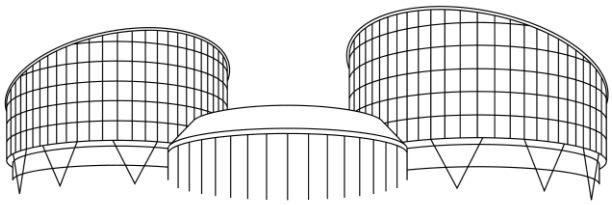

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF LENEV v. BULGARIA

(Application no. 41452/07)

JUDGMENT

STRASBOURG

4 December 2012

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

In the case of Lenev v. Bulgaria,

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

Ineta Ziemele, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney,
Krzysztof Wojtyczek, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 13 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 41452/07) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Yuriy Ivanov Lenev ("the applicant"), on 12 September 2007.

2. The applicant was represented by Ms D. Fartunova, a lawyer practising in Sofia, and the Bulgarian Helsinki Committee. The Bulgarian Government ("the Government") were represented by their Agents, Ms N. Nikolova and Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had been tortured by the police and had not obtained effective redress, and that he could have been subjected to secret surveillance and had no effective remedies in that connection.

4. On 13 July 2010 the Court (Fifth Section) decided to give the Government notice of the complaints concerning (a) the alleged ill-treatment of the applicant and the lack of effective redress in that respect, and (b) the alleged interference with the applicant's right to respect for his private life and correspondence and the alleged lack of effective remedies in that respect, inviting the Government to submit "all ... relevant documents from the files of the criminal courts and the military courts" in the proceedings underlying the application. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

5. The Government enclosed with their observations copies of the minutes of all hearings before the military courts and of the judgments of those courts, but did not submit copies of any medical documents relating to

the applicant's allegations or ill-treatment. The applicant enclosed with his observations in reply copies of a number of such documents, which he had in the meantime obtained from the authorities.

6. Following the re-composition of the Court's sections on 1 February 2011, the application was transferred to the Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1958 and lives in Sofia.

A. The applicant's arrest and alleged ill-treatment

8. At about 6.00 p.m. on 1 June 1999 the National Service for Combating Organised Crime ("*Национална служба 'Борба с организираната престъпност'*") of the Ministry of Internal Affairs was given orders to arrest the applicant in connection with information gathered by colonel B.B., a senior police officer in charge of investigating the assassination on 2 October 1996 of the former Prime Minister of the Republic of Bulgaria, Mr Andrey Lukanov (see *Lukanov v. Bulgaria*, 20 March 1997, §§ 1 *in fine* and 7 *in fine*, *Reports of Judgments and Decisions* 1997-II). The service devised a plan and assigned a number of officers to the operation.

9. According to the findings of the military courts which later examined a set of criminal charges against three officers who took part in that operation (see paragraphs 56 and 63 below), two officers were dispatched to the applicant's address in advance to inspect the surroundings and check whether the applicant was at home. A group of five officers was given the task of carrying out the actual arrest. At about 8.30 p.m. that group arrived at the applicant's home in a block of flats in Sofia, where they joined the two officers previously sent there. The officers had three cars. One of them was a Volkswagen Transporter minivan that they parked at fifteen to twenty metres from the front entrance of the applicant's building. Shortly before 9 p.m. four officers went up to the applicant's flat, two remained in the minivan, and one was left at the building's entrance. The four officers who went up rang the applicant's doorbell. His fourteen-year old daughter answered the door. The applicant showed up at the door moments after that. The officers told him that he was to accompany them to the police station. The applicant went back in, took his passport and a jacket, and followed the officers down. Two officers escorted the applicant in the lift. The two others went inside his flat and remained there until about 11.00 p.m. to prevent the

persons present in the flat – the applicant's family and two neighbours – to make telephone calls. Downstairs, the two officers escorting the applicant were joined by the officer who had remained near the building's entrance. When the group was five or six metres from the minivan, one of the officers who was inside the vehicle opened its side sliding door. At that point, the applicant abruptly tried to move to the back of the minivan instead of its door. The two officers who were escorting him grabbed him by the arms and placed them behind his back. The applicant resisted the officers' attempt to push him into the minivan. One officer tripped him and the applicant fell, face down, on the minivan's floor, his legs remaining outside. The officer inside the minivan tried to pull him in. The minivan set off and, at the same moment, an officer who remained on the street pushed its side sliding door to close it. As the applicant's feet were still hanging outside, he was hit by the door. The officers inside the minivan kept on trying to close the minivan's door and handcuff the applicant, who resisted, keeping his arms under his body and trying to get up. The door could not be closed as the applicant's feet protruded outside. The officers eventually managed to pull the applicant's legs in and handcuff him. A hood was then placed on his head to blind him, so that he could not see where he was being taken.

10. The applicant denied that he had put up any resistance to his arrest, and asserted that the above findings had been based only on evidence given by the police officers involved. According to him, when he approached the minivan he was hit on the neck and fell inside, where he was handcuffed and hooded.

11. The minivan set off for Koprivshtitsa, a small town about one hundred kilometres east of Sofia. It seems that three officers were with the applicant in the back of the minivan, and a fourth one was driving it, but it is equally possible that only two of the officers were in the back and the third one was sitting beside the driver.

12. According to the findings of the military courts, throughout the trip the applicant was lying, undisturbed, on the minivan's floor, and the officers were sitting around him, monitoring his behaviour. The minivan did not stop en route, and arrived in Koprivshtitsa at about midnight.

13. According to the applicant, during the trip the officers asked him questions and hit him. The minivan stopped several times en route. The questioning and the beating continued during those stops. The applicant received blows with solid objects to all parts of his body save for his face and genitals. During one of the stops one of the officers held the applicant's legs and another pushed the minivan's sliding door to strike them. The applicant was hit in the ankles. At one point, pressure was applied to his eyes. The applicant lost consciousness several times.

14. In Koprivshtitsa, the applicant was taken out of the minivan and into a house used by the police as a "secret base". According to him, the

ill-treatment continued there. Objects were inserted under two of his nails. Solid objects were placed between his fingers and his hand was squeezed.

15. According to minutes drawn up by the police, the applicant was questioned between 3.45 a.m. and 7.55 a.m. on 2 June 1999 by colonel B.B. in relation to suspicions that he had been involved in the assassination of Mr Lukanov.

16. According to the transcription of a tape on which the questioning was secretly recorded by the police (see paragraphs 26-28 below), colonel B.B. addressed the applicant as follows:

> "Be careful, if you make a mistake, it will be an enormous one. If you want to go [as a bull] with his horns forward[1], that's your decision. But then we'll also go forward with our horns. And our horns may turn out to be much sharper than yours ... This is because we took our time to sharpen them so as to make them prick cruelly ... If you want to play the hero – please, go ahead ... But I would say that this evening is a fateful one for you. It is decisive for you. A life to gain or lose and not only your life ... And this is the reason why this conversation is taking place here and not elsewhere ... Confession and repentance are the only chance for you ..."

17. At some point during the interrogation the applicant made statements in which he confessed that he had taken part in a plot to assassinate Mr Lukanov.

B. The applicant's detention and his medical examinations

18. At about 10 a.m. on 2 June 1999 the applicant was taken back to Sofia in a police vehicle. He was again hooded. In Sofia he was brought before an investigator who charged him with complicity to premeditated murder.

19. Four other persons, including a Mr A.V., who had allegedly ordered Mr Lukanov's assassination, and a Mr A.R., who had allegedly carried it out by shooting Mr Lukanov dead, were arrested and ill-treated by the police at the end of May and in June 1999, and also charged. Both of them also made confessions.

20. On 2 June 1999, upon being admitted to the detention facility of the Sofia Investigation Service, the applicant was examined by Dr D.D., the facility's on-duty medical doctor, who noted numerous haematomas in the area of his armpits, on his torso under the arms, on his wrists, on his left thigh, on his leg below the knee, and on both of his ankles. She also found open wounds on the applicant's left wrist and the index finger of his left hand. Her estimation was that all those injuries had been sustained one or two days earlier. When interviewed by the authorities in relation to that on 26 July 1999, a colleague of Dr D.D. said that such examinations were

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1. An idiomatic expression in Bulgarian which means "behaving stubbornly".

being carried out routinely on all incoming detainees and did not involve any forensic findings as to the origin of any injuries found on the detainees. Such findings could be made only by forensic medical doctors, and the usual practice was to refer a detainee suspected of having been subjected to physical violence to the Chair of Forensic Medicine of the Medical Faculty of the Sofia University of Medicine. When interviewed by the authorities in relation to that on 17 August 1999, Dr D.D. said that when examined by her on 2 June 1999 the applicant had told her that he had been ill-treated after his arrest.

21. In spite of his request, the applicant was not allowed to contact a lawyer of his own choosing. An *ex officio* counsel was appointed to represent him. The counsel allegedly did not heed the applicant's request to contact his relatives and ask them to arrange for a forensic medical examination.

22. About two weeks after the applicant's arrest his mother and wife were allowed to visit him. After their meeting, the applicant's mother sent letters to the Chief Prosecutor, the Minister of Internal Affairs, the President, the Prime Minister and the media, describing traces of serious violence which she had seen on the applicant and requesting an adequate reaction by the authorities.

23. On 23 July 1999 the applicant was taken, apparently in the face of opposition by the investigator in charge of his case, to the Chair of Forensic Medicine of the Medical Faculty of the Sofia University of Medicine for examination. The doctors' findings included the following: an injury measuring two to one centimetres to the parietal area of the skull; injuries to both wrists; a hematoma on the thumbnail of the left hand; an injury to the fingertip and the nail of the index of the left hand (with half of the nail missing); an injury to the ring finger; two injuries to the front of the left leg under the knee; six injuries to the front of the right leg under the knee.

24. On 26 July 1999 two investigators, assisted by a medical doctor from the Chair of Forensic Medicine of the Medical Faculty of the Sofia University of Medicine and a technical assistant, examined the applicant in the presence of two attesting witnesses. They noted the following injuries on him (all of them in various stages of recovery): an injury measuring three to two centimetres to the parietal area of the skull; an injury measuring one and a half by one and a half centimetres to the inner left elbow; an injury measuring three by one and a half centimetres to the outer left elbow; two parallel linear injuries two centimetres long each to the outer left wrist; a similar injury four centimetres long to the inner left wrist; an eight-millimetre-long hematoma under the thumbnail of the left hand; partially missing nail and swelling of the index of the left hand; a nine-millimetre-long linear injury between the first and the second phalanges of the ring finger of the left hand; six injuries each measuring one or two by two centimetres to the front and inner surfaces of the lower right

leg, situated in the area between seven centimetres below the knee and ten centimetres above the ankle; two similar injuries to the lower left leg; and swelling of the left ankle.

25. The applicant remained in pre-trial detention until late 2000, when he was released on bail.

C. The taping of the applicant's interrogation

26. The applicant's interrogation on 2 June 1999 in the house in Koprivshtitsa was secretly recorded. This was apparently done without the applicant's knowledge and without a judicial warrant. Judicial authorisation to carry out secret recordings in the house in Koprivshtitsa in relation to the applicant was only given on 3 June 1999 by the President of the Sofia City Court, and concerned a ten-day period beginning on 3 June 1999.

27. A visual examination of a photocopy of the document containing the police request for a judicial warrant and the judge's decision shows that the request was dated 1 June and that, apparently, it was not submitted to the judge before 3 June. It can also be seen that the initial proposal by the police was for a period starting on 1 June 1999 and that the number "3" was then written over the number "1".

28. In January 2002 a transcription of the recording was drawn up. According to the applicant, the transcription did not reflect the whole interrogation.

29. At the applicant's trial (see paragraph 33 below), the prosecution sought to rely on the recording. On 11 March 2003, noting that it had been made surreptitiously and without a valid warrant, the Sofia City Court refused to admit it in evidence.

D. Public comments about the case

30. In May, June and July 1999 the police allegedly made statements to the media, implying that they had arrested the persons responsible for Mr Lukanov's assassination.

31. On 26 May 2000 the Minister of Internal Affairs, replying in Parliament to a remark that the police had repeatedly made groundless assertions that they had found Mr Lukanov's assassins, said that since his appointment as Minister he had only once asserted that the assassin had been arrested and that had been the day when Mr A.R. (one of the applicant's co-accused) had been detained.

E. The criminal proceedings against the applicant

32. In the first months after their arrests, the applicant and his two co-accused maintained their initial confessions and gave evidence in this

sense to the investigators in charge of their case. Later, they changed their position and stated that they had never been involved in a plot to assassinate Mr Lukanov and that their confessions had been extracted under torture.

33. During the trial, which started in 2001, the Sofia City Court admitted in evidence medical certificates and witness evidence concerning the ill-treatment to which the applicant had been subjected on 1 or 2 June 1999.

34. In a judgment of 28 November 2003 the Sofia City Court found the applicant and his four co-accused guilty of Mr Lukanov's assassination, and sentenced all of them to life imprisonment (without parole for the applicant's co-accused and with parole for the applicant). The court relied heavily on the confessions made by the applicant and two of his co-accused.

35. Addressing the argument of the defence that those confessions had been extracted under torture, the court accepted that there existed solid evidence that the police had used serious physical violence and psychological harassment against them immediately after their arrests. The court observed that such acts were unacceptable and called for disciplinary and, if appropriate, criminal-law measures against the officers concerned.

36. However, the court went on to observe that the applicant and his two co-accused had maintained their confessions for a long period of time, and that they had not been ill-treated after 2 June 1999. The applicant had maintained his confession in the course of eleven interviews held between 8 June and 6 October 1999 in the presence of counsel of his own choosing, retained by him on an unspecified date. The court considered that it could therefore rely on the confessions made during those interviews, which had been conducted by investigators.

37. The applicant and the other accused appealed.

38. The Sofia Court of Appeal court heard expert evidence concerning the ill-treatment to which the applicant and his two co-accused had been subjected.

39. On 8 June 2006 the Sofia Court of Appeal quashed the Sofia City Court's judgment and acquitted all accused on the charges concerning Mr Lukanov's assassination.

40. The court analysed the evidence concerning the way in which the applicant had been treated on 1 or 2 June 1999, and concluded that he had been subjected to torture in breach of the Constitution and Article 3 of the Convention. The applicant and his co-accused had confessed under ill-treatment which had left long-lasting marks on their bodies. The pain from the injuries had not subsided for several months. It was moreover significant that when one looked at the medical evidence concerning each of the three accused, one could see that the higher the intensity of the torture, the longer the accused concerned had maintained his confession. The applicant, who had suffered the most serious injuries, had been the most consistent in maintaining his confession.

41. The court went on to say that there was evidence of an attempt to delay the proper medical examination of the applicant and his co-accused. During that time, they had been questioned by investigators although their bodies had carried marks of ill-treatment. The investigators' good faith was therefore open to doubt.

42. The court therefore decided that the confessions should not be taken into account and, analysing the remaining evidence, concluded that the charges had not been made out.

43. On 15 March 2007 the Supreme Court of Cassation, hearing the case on an appeal by the prosecution, upheld the acquittal (реш. № 161 от 15 март 2007 г. по н. д. № 843/2006 г., ВКС, I н. о.). It agreed with the finding that the applicant and his co-accused had been subjected to ill-treatment, and held that it could not admit the resulting confessions, which were a "fruit of the poisonous tree", because that would be in breach of the right to a fair trial. The court went on to say that in a democratic legal system unlawful attempts to extract confessions, as in the case at hand, were in the final analysis harmful to the prosecution's case.

F. The criminal proceedings against the police officers

1. The preliminary investigation

44. On 27 July 1999 the Sofia Military Prosecutor's Office opened a preliminary investigation in relation to the applicant's alleged ill-treatment. During the following month the military investigation authorities interviewed a number of people and obtained a medical expert report on the applicant's injuries and the manner in which they had been inflicted.

45. The report, filed on 1 October 1999, reviewed the medical findings of the examinations on 2 June and 23 and 26 July 1999 (see paragraphs 20, 23 and 24 above). The experts said that the injury to the applicant's head had been caused by a blow with or against a blunt object. The injuries to his left elbow, his left ring finger and legs below the knees had been caused in a similar way. The lack of detailed findings in relation to them in the 2 June 1999 examination showed that they had either not been present at that point and had occurred later, or that they had not been properly noted. The injuries to the wrists had been caused by handcuffs. The injuries to the nail of the left index finger had been caused by a frontal traumatic impact to the finger. As the injury had been inflicted a long time before the examination which had noted it, its exact cause could not be determined: it could have consisted of a blow to the distal phalange, the insertion of an object under the nail, or the removal of the nail by the application of pressure to its extremity. The hematoma on the left thumbnail had been caused by a blow or by the pressing of the thumb between hard blunt objects. The hematomas

noted during the examination on 2 June 1999 had been caused by blows with hard blunt objects.

46. On 14 October 1999 the proceedings were stayed because one of the officers who had allegedly ill-treated the applicant was abroad on an official mission and could not be interviewed. On 5 January 2000, following his return, the proceedings were resumed.

47. Between January and May 2000 the investigator in charge of the case charged three officers who had travelled with the applicant in the police minivan which had taken him to the house in Koprivshtitsa with causing him light bodily harm, contrary to Article 131 § 1 (2) in conjunction with Article 130 § 1 of the Criminal Code 1968 (see paragraph 76 below).

48. The investigator also obtained an additional medical expert report with a view to clarifying the exact origin of the applicant's injuries and elucidating the discrepancies in the medical findings made by Dr D.D. on 2 June 1999 and the findings of the forensic doctors of 23 July 1999. However, the report, filed on 1 March 2000, was unable to reach more definite conclusions on that point. Nor were the experts able to say – without being presented with clearer information – exactly what kind of injuries would be caused by an intensive eight-hour beating.

49. On 10 May 2000 the investigator proposed that the three officers be brought to trial. However, on 26 May 2000 the Sofia Military Prosecutor's Office referred the case back for additional investigation. It observed, *inter alia*, that no information had been gathered about the officers in charge of the applicant between his arrival in Koprivshtitsa and his return to Sofia the next day.

50. On 8 December 2000 the proceedings were stayed once again, because one of the applicant's co-accused, who had also been taken to the house in Koprivshtitsa, had left the country and could not be interviewed as a witness. They were resumed on 2 July 2001.

51. On 4 July 2001 the investigator again proposed that the three officers be brought to trial. However, on 30 July 2001 the Sofia Military Prosecutor's Office once more referred the case back for additional investigation. It observed that the charges did not specify which of the three officers had administered which blows to which parts of the applicant's body.

52. On 4 October 2001 the investigator again sent the case to the Sofia Military Prosecutor's Office, which again referred it back on 20 November 2001 for additional investigation, saying that the charges did not specify the exact manner in which the officers had caused the applicant's injuries.

53. On 28 June 2002 the Sofia Military Prosecutor's Office indicted the three officers, but on 8 July 2002 the Sofia Military Court referred the case back for additional investigation. On 10 February 2003 the Sofia Military Prosecutor's Office again indicted the officers, and several days later the Sofia Military Court again referred the case back. It appears that between

2003 and 2005 the case lay dormant with the military prosecuting and investigating authorities.

2. The proceedings before the Sofia Military Court

54. On an unspecified date in 2005 the Sofia Military Prosecutor's Office submitted an indictment against the three officers to the Sofia Military Court.

55. The trial took place on 28 February, 8 June, 19 September and 26 October 2006. At the outset the applicant made a civil claim against the officers, seeking 100,000 Bulgarian levs, plus interest, in non-pecuniary damages.

56. In a judgment of 30 October 2006 the Sofia Military Court acquitted the officers and rejected the applicant's civil claim. The court started by setting out its findings of fact (see paragraphs 9 and 12 above). It went on to hold that, based on those findings, the officers' actions could not be regarded as a criminal offence because, although causing the applicant bodily harm, they had been justified under Article 12a of the Criminal Code (see paragraph 75 below). The court reproduced in its judgment the applicant's allegations concerning his ill-treatment inside the minivan and in Koprivshtitsa, and said that those allegations, if true, meant that the applicant would have had injuries all over his body and would carry horrifying marks of ill-treatment. However, the findings of Dr D.D. (see paragraph 20 above) had not revealed such marks and were fully consistent with the version put forward by the three accused officers. Dr D.D. had not recorded multiple injuries to the applicant's head, but only one injury to the central parietal area. It was implausible to assume that all of the alleged numerous blows to the applicant's head had been administered to a single spot. There were no recorded injuries to the front or the back of his torso, belly or feet, or injuries to his eyes caused by pressing. It could therefore be accepted that the officers' account as to the amount of force that they had used to restrain the applicant and handcuff him was truthful, and that the use of force has stopped after the applicant had been subdued. The officers' aim had been to arrest the applicant, who they believed had committed a criminal offence, and to bring him before the appropriate authority – colonel B.B. The officers had also sought to prevent the applicant from alerting his accomplices. In view of his resistance, there had been no other way of carrying out the arrest. The use of force had also been justified under section 78(1)(1) of the Ministry of Internal Affairs Act 1997 (see paragraph 71 below) because the applicant had failed to heed a lawful order and had put up resistance. The three officers had not used disproportionate force. The applicant had been arrested in relation to a very serious offence – the assassination of a former prime minister –, had resisted arrest, and had not sustained very serious injuries. The use of force had stopped immediately after he had been subdued. Since the officers' actions

had not constituted an offence and had amounted to a lawful use of force, the applicant's civil claim was to be rejected.

3. The proceedings before the Military Court of Appeal

57. On 14 November 2006 the prosecution appealed against the acquittal to the Military Court of Appeal. The applicant also appealed against the acquittal and the rejection of his civil claim.

58. The Military Court of Appeal heard the appeal on 29 January 2007. It drew the officers' attention to the fact that the limitation period for prosecuting them on the charges against them – seven and a half years – had expired on 1 December 2006. The court went on to say that the proceedings could continue only if the officers were to waive the statute of limitations (see paragraph 78 below). All three of them stated that they wished to have the charges against them determined despite the expiry of the limitation period. The court then heard the parties' arguments and announced that it would hand down its judgment in due course.

59. However, on 20 April 2007 the court found that it could not decide the case without re-hearing the applicant and colonel B.B., and called them to testify. At the next hearing, held on 9 May 2007, counsel for one of the police officers requested one of the judges to withdraw from the case. She argued that he had shown bias against her client. The court said that it did not find any grounds for that but that it would accede to her request to avoid any suspicions of partiality. As a result, the appellate proceedings had to start anew, as required under the principle of immediacy. On 31 May 2007 the court, sitting in a new formation, decided to re-hear the applicant; this time, however, it did not mention colonel B.B.

60. When appearing in court on 9 May 2007, colonel B.B. apparently again asserted in front of journalists that the applicant and his co-accused had assassinated Mr Lukanov.

61. The new formation heard the appeal on 6 June 2007. It likewise drew the officers' attention to the fact that the limitation period for prosecuting them had expired, and the officers reiterated that they agreed to waive the statute of limitations. The court then heard the applicant as a witness, and admitted in evidence the judgments of the Sofia Court of Appeal and the Supreme Court of Cassation in the criminal proceedings against the applicant (see paragraphs 39-43 above). It turned down a request by the officers' defence to re-call colonel B.B. and several other witnesses to the stand, finding that this would be superfluous.

62. At the next hearing, held on 11 July 2007, the court turned down a request by counsel for one of the officers for a fresh medical expert report, observing that the medical evidence that had already been adduced – which included the results of the medical examinations of the applicant on 2 June and 23 July 1999 (see paragraphs 20 and 23 above) – was sufficient. The court re-heard the officers and the parties' oral arguments.

63. In a final judgment of 30 July 2007 (реш. № 113 от 30 юли 2007 г. по н. д. № 215/2006 г., ВАпС), the Military Court of Appeal upheld the officers' acquittal. It fully agreed with the lower court's findings of fact, saying that they were based on a proper analysis of the statements of the three accused, the evidence given by the applicant, the medical expert report obtained in the course of the proceedings, and the notes made by Dr D.D. when she had examined the applicant on 2 June 1999. The court went on to say that the indictment did not contain factual allegations in respect of one of the three officers, who was therefore to be acquitted on the basis that he had not used any force in respect of the applicant. The court did not agree with the lower court that Article 12a of the Criminal Code was applicable, holding that this provision referred exclusively to the arrest of offenders who have been convicted by means of a final decision, which was not the case of the applicant. However, it went on to say that the officers' actions were not criminal because they had constituted a lawful and proportionate use of force within the meaning of section 78(1)(1) of the Ministry of Internal Affairs Act 1997 (see paragraph 71 below). The applicant had failed to heed a lawful order and had resisted the officers' efforts to put him into the minivan and to handcuff him inside the minivan. The officers had stopped using force immediately after handcuffing the applicant. Lastly, the court noted that during the preliminary investigation the applicant had given evidence that he had been subjected to violence in the house in Koprivshtitsa, where the three officers had left him. That showed that not all injuries later found on the applicant had been caused by them.

G. The request for reopening of the criminal proceedings against the applicant

64. On an unspecified date in the second half of 2007 the prosecution sought the reopening of the criminal proceedings against the applicant on the ground that the acquittal of the officers was a new relevant fact showing that the applicant had not been ill-treated.

65. In a judgment of 7 July 2008 (реш. № 286 от 7 юли 2008 г. по н. д. № 253/2008 г., ВКС, I н. о.), the Supreme Court of Cassation turned the request down, holding that the conclusion of the criminal proceedings against the officers did not amount to grounds to reopen the criminal proceedings against the applicant because the courts in those proceedings had not found that the applicant had not been subjected to ill-treatment.

H. The claim for damages brought by one of the applicant's co-accused

66. On 22 July 2002 two of the applicant's co-accused were beaten by the officers who escorted them from prison to the Sofia City Court for a

hearing in the trial against them. Noting their injuries, the court adjourned the hearing.

67. In 2006 one of them, Mr A.K., brought a claim under section 1 of the State and Municipalities Responsibility for Damage Act 1988 (see paragraph 84 below) against the Ministry of Justice, seeking 30,000 Bulgarian levs in non-pecuniary damages.

68. On 20 October 2008 the Sofia City Court rejected the claim. It held that although the claimant had proved that he had been ill-treated on 22 July 2002, he had not been able to prove who exactly had ill-treated him and under what circumstances. The facts alleged in his statement of claim did not match the evidence given by a witness called by him (the other co-accused), and that evidence did not match the evidence given by the applicant, who had also been called to testify. Moreover, the first witness had not pointed to the specific individuals who had carried out the beating, whereas torts under section 1 of the 1988 Act had to be attributed to a specified individual.

69. The applicant's co-accused appealed. On 12 May 2009 the Sofia Court of Appeal upheld the lower court's judgment (реш. № 434 от 12 май 2009 г. по гр. д. № 43/2009 г., САС, VII с.). It held that the fact of the beating had been substantiated on the basis of the medical evidence and the applicant's and the other co-accused's testimony. However, it went on to say that at the relevant time the officers escorting detainees from prison to trial had been employees of the National Police, not the Ministry of Justice; the Ministry had taken over that task on 1 January 2003, following a legislative amendment. It could therefore not be held vicariously liable for the officers' actions.

70. It does not seem that the applicant's co-accused tried to appeal on points of law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force by the police

71. Section 78 of the Ministry of Internal Affairs Act 1997, in force until 1 May 2006, provided, in so far as relevant:

> "(1) The police may use physical force and auxiliary means when performing their duties only if those duties cannot be carried out in a different way, in cases of:
>
> 1. resistance or refusal to obey a lawful order;
>
> 2. arrest of an offender who does not obey or resists a police officer;
>
> ...
>
> 5. attacks against civilians or police officers;
>
> ...

(2) Auxiliary means are: handcuffs; straitjackets; rubber and electroshock truncheons and devices; chemical substances approved by the Minister of Health, service animals – dogs, horses; blank cartridges, cartridges with rubber, plastic or shock bullets; devices for the forced stopping of motor vehicles; opening devices, light or sound devices with distracting effect; water-spraying and air-pressure devices; armoured vehicles and helicopters.

(3) The manner in which the means under subsection 2 are to be used shall be laid down by the Minister of Internal Affairs.

72. Section 79 provided:

"(1) Physical force and auxiliary means are to be used only after giving warning, except in cases of sudden attacks or of freeing hostages.

(2) The use of physical force or auxiliary means shall correspond to the specific circumstances, the character of the breach of public order and the personality of the offender.

(3) When using physical force or auxiliary means police officers must if possible protect the health of the persons against whom those are deployed, and must take all measures to safeguard their life of those persons.

(4) The use of physical force or auxiliary means shall be discontinued immediately after they have achieved their aim.

..."

73. On 1 May 2006 those provisions were superseded by sections 72 and 73 of the Ministry of Internal Affairs Act 2006. Until recently, the wording of those provisions was largely identical to that of the earlier ones.

74. However, on 6 March 2012 the Government laid before Parliament a bill for the amendment of the 2006 Act. Parliament enacted the bill on 30 May 2012, and the amendment came into force on 1 July 2012. Section 72(1), as worded after the amendment, provides that physical force and auxiliary means may be used "only if absolutely necessary". A newly added subsection 3 of section 73 provides that "police officers shall use only the force absolutely necessary", and a newly added subsection 7 provides that "[i]t is forbidden to use lethal force to arrest or prevent the escape of a person who has committed or is about to commit a non-violent offence if that person does not pose a risk to the life or health of another". In the explanatory notes to the bill the Government referred to, *inter alia*, the need to bring domestic law fully into line with the applicable international standards and the Court's case-law.

B. Relevant criminal law and procedure

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

nature of the offence committed by the person to be arrested or the resulting harm is in itself excessive and unnecessary.

76. Under Article 131 § 1 (2) taken in conjunction with Article 130 § 1 of the Code, the punishment for light bodily harm inflicted by a police officer is up to three years' imprisonment.

77. Under Article 287 of the Code, as worded at the time when the applicant was allegedly ill-treated, forcing an accused to confess through coercion or other unlawful means was an offence punishable by up to ten years' imprisonment, where the perpetrator was a person in whom relevant official powers were vested.

78. The limitation period for prosecuting offences under Article 131 § 1 (2) taken in conjunction with Article 130 § 1 of the Code is five years (Article 80 § 1 (4) of the Code), and the limitation period for prosecuting offences under Article 287 of the Code is ten years (Article 80 § 1 (3)). Each act of criminal prosecution carried out by the competent authorities in relation to the alleged offender interrupts the limitation period and restarts the running of time (Article 81 § 2). Such interruptions notwithstanding, the alleged offender can no longer be prosecuted if the limitation period has been exceeded by one half (Article 81 § 3), which means that an offence under Article 131 § 1 (2) taken in conjunction with Article 130 § 1 of the Code cannot be prosecuted if more than seven and a half years have elapsed after its alleged commission. However, under Article 21 § 2 of the Code of Criminal Procedure 1974 (superseded by Article 24 § 2 of the Code of Criminal Procedure 2005), the accused may waive the statute of limitations.

C. Secret surveillance

79. A description of the relevant provisions of the 1991 Constitution, the 1974 and 2005 Codes of Criminal Procedure, the Special Surveillance Means Act 1997, the Classified Information Act 2002, and the Access to Public Information Act 2000, as well as the case-law of the domestic courts and other relevant material can be found in paragraphs 7-50 of the Court's judgment in the case of *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria* (no. 62540/00, 28 June 2007).

80. Following the Court's judgment in that case, on 14 October 2008 the Government laid before Parliament a bill for the amendment of the Special Surveillance Means Act 1997. The explanatory notes to the bill referred to the Court's judgment and to the need to bring the Act into line with the requirements of the Convention. The bill was enacted on 15 December 2008 and came into force on 27 December 2008. Along with a host of other changes, the amendment created a National Bureau for Control of Special Means of Surveillance, an independent body whose five members were to be elected by Parliament and whose task was to oversee the use of special

means of surveillance and the storing and destruction of material obtained through such means, and to protect individuals against the unlawful use of such means (new sections 34b(1), 34c and 34d). The Bureau was to be a permanently acting body having its own administration (new section 34b(3)). In carrying out its functions it could (a) ask the relevant authorities to provide it with information in relation to the use of special means of surveillance; (b) check whether those authorities kept accurate records; (c) access premises containing such records or material obtained though surveillance; (d) give mandatory instructions for improvements in the use of special means of surveillance and in the storage and destruction of material obtained though such means; and (e) inform the prosecuting authorities and the heads of the relevant authorities of instances of unlawful use of such means or of irregularities in the storage or destruction of material obtained though such means (new section 34g). The Bureau was to submit to Parliament an annual report setting out aggregated data on the matters that it was overseeing (new section 34b(5)). It was also to inform of its own motion persons who had been unlawfully subjected to surveillance, unless notification could jeopardise the purpose of the surveillance (section 34h).

81. On 22 October 2009, before the Bureau could start operating, Parliament enacted further amendments to the 1997 Act, abolishing the Bureau and replacing it with a special parliamentary commission, which has the same powers and duties, save for the power to give mandatory instructions (point (d) in the above paragraph); it may only make suggestions for improvements (section 34g, as amended in 2009). The amendments came into force on 10 November 2009. Under related amendments to Parliament's standing rules, which came into force on 19 December 2009, that commission is in effect a permanent sub-commission of Parliament's legal affairs commission (new rule 24a(1)). It consists of one MP from each parliamentary group and has its own standing rules approved by Parliament (new rule 24a(2)). Those rules were adopted on 11 February 2010. The commission, whose current five members were elected by Parliament on 22 December 2009, is assisted by fifteen parliamentary staffers (rule 24a(3) of Parliament's standing rules and rule 14 of the commission's standing rules). It must sit, behind closed doors and in line with the rules governing classified information, at least once every week (rules 9 and 13 of the commission's standing rules).

82. Under section 34h of the 1997 Act, as amended, the commission must inform of its own motion persons who have been unlawfully subjected to secret surveillance, unless notification might jeopardise the purpose of the surveillance, allow the divulgation of operational methods or technical devices, or put the life or health of an undercover agent or his or her relatives or friends in jeopardy.

83. The commission has thus far submitted three annual reports: the first was submitted in May 2010 and accepted by Parliament on 16 June 2010, the second was submitted in May 2011 and accepted by Parliament on 18 May 2011, and the third was submitted on 4 July 2012 and has yet to be accepted by Parliament. In that latest report the commission said, *inter alia*, that it had received a number of complaints from individuals, and had taken measures to examine them. It had carried out inspections in seven towns, and had noted many irregularities, such as insufficiently reasoned applications for judicial authorisation of secret surveillance, failures to destroy material obtained through such surveillance within the statutory time-limits, and failures to report back to the court which had authorised surveillance. The commission went on to say that the lack of proper record-keeping made it difficult to oversee the operation of the system as a whole. It also noted the very low percentage of refused applications for judicial authorisation of secret surveillance. The total number of requests in 2011 had been 13,846. Only 116 had been refused, chiefly on purely technical grounds. 7,881 persons had been subjected to surveillance. 747 requests had yielded material subsequently used in criminal trials. The analysis of the available data showed that the authorities were not using secret surveillance as a means of last resort, but routinely, mainly because it was an almost effortless way of gathering evidence. It was therefore necessary to tighten up the relevant regulations and to strengthen judicial control. The commission made a number of specific proposals in that respect.

D. State liability for damage

84. Section 1 of the Act originally called the State Responsibility for Damage Caused to Citizens Act 1988, renamed on 12 July 2006 the State and Municipalities Responsibility for Damage Act 1988 ("the 1988 Act"), provides that the State is liable for damage suffered by individuals (and since 1 January 2006 also legal persons) as a result of unlawful decisions, actions or omissions by civil servants, committed in the course of or in connection with the performance of their duties.

85. Section 2(1) of the Act provides for liability of the investigating and prosecuting authorities or the courts in several situations: unlawful detention; bringing of charges, if the accused has been acquitted or the proceedings have been discontinued on certain grounds; conviction and sentencing, if the conviction has later been set aside; coercive medical treatment or coercive measures imposed by a court, if its decision has later been quashed as being unlawful; and serving of a sentence over and above its prescribed duration.

86. On 10 March 2009 a new point 7 was added to section 2(1). It provides that the State is liable for damage which the investigating and

prosecuting authorities or the courts have caused to individuals through the unlawful use of special means of surveillance. There is no reported case-law under that provision.

87. In their case-law the Supreme Court of Cassation and the Supreme Administrative Court have held that the liability provisions of the 1988 Act – including those added after the Act was originally enacted – confer on the persons concerned a substantive right to claim damages, and have no retrospective effect (реш. № 63 от 21 февруари 1997 г. по гр. д. № 2180/ 1996 г., ВС; реш. № 529 от 17 юли 2001 г. по гр. д. № 24/2001 г., ВКС; опр. № 9134 от 3 октомври 2007 г. по адм. д. № 8175/2007 г., ВАС, III о.; опр. № 1046 от 6 август 2009 г. по гр. д. № 635/2009 г., ВКС, III г. о.; опр. № 1047 от 7 август 2009 г. по гр. д. № 738/2009 г., ВКС, III г. о.; реш. № 335 от 31 май 2010 г. по гр. д. № 840/2009 г., ВКС, III г. о.; реш. № 329 от 4 юни 2010 г. по гр. д. № 883/2009 г., ВКС, IV г. о.).

88. According to a binding interpretative decision of the Supreme Court of Cassation (тълк. реш. № 3 от 22 април 2005 г. по тълк. гр. д. № 3/2004 г., ОСГК на ВКС), persons who have been finally acquitted can obtain compensation for the mere fact that criminal proceedings have been brought against them, on the basis that the charges against them are retrospectively considered to have been "unlawful". According to the same decision, compensation is due in respect of the proceedings themselves and in respect of any incidental measures, such as pre-trial detention.

89. In several judgments given between 2005 and 2008 the Supreme Court of Cassation, when fixing the amount of damages it awarded pursuant to such claims, had regard to, among other things, the suffering of the persons concerned stemming from the hardship of being placed in pre-trial detention (реш. № 1599 от 22 юни 2005 г. по гр. д. № 876/2004 г., ВКС, IV г. о.; реш. № 1017 от 15 декември 2005 г. по гр. д. № 524/2004 г., ВКС, IV г. о.; реш. № 2851 от 23 януари 2006 г. по гр. д. № 2252/2004 г., ВКС, IV г. о.; реш. № 156 от 10 май 2006 г. по гр. д. № 2633/2004 г., ВКС, IV г. о.; реш. № 1557 от 27 декември 2006 г. по гр. д. № 2800/2005 г., ВКС, IV г. о.; реш. № 692 от 12 май 2008 г. по гр. д. № 2394/2007 г., ВКС, IV г. о.).

E. The Obligations and Contracts Act 1951

90. Section 49 of the Obligations and Contracts Act 1951 provides that a person who has entrusted another with carrying out a job is liable for the damage caused by that other person in the course of or in connection with the performance of the job. Liability under that provision – as, indeed, all provisions governing torts – is premised upon the wrongfulness of the impugned conduct (реш. № 567 от 24 ноември 1997 г. по гр. д. № 775/1996 г., ВС, петчленен състав).

F. The binding force of criminal court judgments

91. Article 222 of the Code of Civil Procedure 1952 provided as follows:

> "The final judgment of a criminal court is binding on the civil court which examines the civil consequences of the criminal act in relation to the points whether the act was perpetrated, whether it was unlawful, and whether the perpetrator was guilty of it."

92. Article 300 of the Code of Civil Procedure 2007, which came into force on 1 March 2008, is phrased in identical terms.

III. RELEVANT COUNCIL OF EUROPE MATERIALS

93. The Council of Europe's Committee of Ministers, which under Article 46 § 2 of the Convention has the duty to supervise the execution of the Court's judgments, is still examining the execution by Bulgaria of the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above). According to information published on the Committee's website, the case is currently under "enhanced supervision". The latest developments were that on 2 March 2011 the Bulgarian Government had submitted an action report, that on 23 August 2011 they had provided further information, and that on 26 June 2012 they had submitted a further action report (in which they had, *inter alia*, said that they were not aware of any case-law under the new point 7 of section 2(1) of the 1988 Act – see paragraph 86 above). Bilateral contacts were still under way between the Committee's administration and the Government with a view to gathering more information necessary for the presentation of a revised action plan or report to the Committee.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

94. The applicant complained that he had been tortured by the police and that he had not obtained effective redress in that respect. He relied on Articles 3 and 13 of the Convention, which provide as follows:

Article 3 (prohibition of torture)

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

Article 13 (right to an effective remedy)

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

A. Admissibility

95. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 3 of the Convention, because he had not brought a claim for damages under section 1 of the 1988 Act. One of his co-accused had brought such a claim in relation to a beating by officers who had escorted him from prison to court.

96. The Government also submitted that the complaint under Article 3 of the Convention had been made out of time.

97. The applicant submitted that a claim under section 1 of the 1988 Act would have been rejected, because the State was liable under that provision only in respect of unlawful acts, whereas the Military Court of Appeals had held, in a binding judgment, that the acts of the police officers in relation to the applicant had been lawful. The claim brought by the applicant's co-accused had not faced such an obstacle because the actions of the officers who had ill-treated him had not been subject to examination by a criminal court. Moreover, that claim had been rejected on the basis of absurd reasoning: that the claimant had not been able to identify the officers who had ill-treated him. That was indicative of the extreme formalism of the courts in the examination of such claims and showed that a similar claim brought by the applicant would have been destined to fail. He had been hooded when ill-treated and was not able to say who exactly had ill-treated him.

98. The applicant also submitted that his complaint under Article 3 of the Convention had been introduced less than six months after the end of the criminal proceedings against him and approximately one and a half months after the conclusion of the criminal proceedings against the officers.

99. With regard to exhaustion of domestic remedies, the Court observes that it has rejected almost identical objections on the part of the Government in the cases of *Assenov and Others v. Bulgaria* (28 October 1998, §§ 82-86, *Reports* 1998-VIII), *Toteva v. Bulgaria* ((dec.), no. 42027/98, 3 April 2003), *Rashid v. Bulgaria* (dec.), no. 47905/99, 13 October 2005), *Hristovi v. Bulgaria* (no. 42697/05, §§ 50-54, 11 October 2011) and *Dimitar Dimitrov v. Bulgaria* (no. 18059/05, §§ 28-32, 3 April 2012). It sees no reason to hold otherwise in the present case.

100. Nor does the Court find that the applicant's complaints under Article 3 of the Convention are out of time. The final domestic decision in respect of these complaints was the judgment of the Military Court of

Appeal of 30 July 2007 (see, *mutatis mutandis*, *Vasil Sashov Petrov v. Bulgaria*, no. 63106/00, § 32, 10 June 2010). The complaints were raised on 12 September 2007, less than six months after that.

101. The Court further considers that the applicant's complaints under Article 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) or inadmissible on any other grounds. They must therefore be declared admissible. The applicant's complaint under Article 13 of the Convention is linked to those complaints and must likewise be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

102. The Government, referring to the findings of the investigation against the officers who had allegedly ill-treated the applicant, denied that he had been subjected to any violence after his arrest. They submitted that the physical force used during the arrest had been rendered necessary by the resistance put up by the applicant. Moreover, the officers carrying out the arrest had believed that they were arresting a person who had committed an offence and that the arrest was necessary to prevent him from committing other offences. The force that they had used had been no more than absolutely necessary, and there had been no intention to ill-treat the applicant.

103. The Government went on to argue that the authorities had taken all necessary measures to establish the facts. They had interviewed all persons implicated in the events and all witnesses, and had ordered a medical expert report which had fully disproved the applicant's allegations of ill-treatment. The judgment of the Sofia Military Court, fully upheld by the Military Court of Appeal, had been entirely based on that evidence. In particular, they had found the statements of the officers accused of ill-treating the applicant reliable, trustworthy and fully consistent with the conclusions of the medical expert report, whereas the applicant's assertions at trial had been incoherent and unsupported by other evidence.

104. Lastly, the Government submitted that the applicant had had an effective remedy in respect of the alleged ill-treatment – a claim under section 1 of the 1988 Act. One of his co-accused had brought such a claim against the Ministry of Justice.

(b) The applicant

105. The applicant pointed out that all three levels of court which had dealt with the criminal case against him had found that he had been subjected to torture. Even if he had resisted arrest, which had not been

established, he should not have been subjected to force of such intensity. It was hard to believe that the officers who had carried out the arrest, who were specially trained and outnumbered the applicant, had not been able to subdue and handcuff him earlier. It had to be borne in mind in that connection that the arrest operation had been planned in advance. The multiple injuries noted on the applicant's body during his medical examination on 2 June 1999 were indicative of deliberate ill-treatment, not harm that had been caused accidentally. That was also borne out by the very manner in which the arrest had been carried out: the police minivan had set off with its door still open, throughout the journey to Koprivshtitsa the applicant had been left handcuffed and facing the minivan's floor, and the applicant had been taken to a special house far away from Sofia and interrogated for hours throughout the night. All of that showed that the authorities had been bent on breaking his will and obtaining a confession from him.

106. The applicant also submitted that the authorities had not carried out an effective investigation of those events. The first failure in that respect had been that the applicant's injuries had not been properly documented. It was true that the applicant had been examined on 2 June 1999 by Dr D.D., but she had not been a qualified forensic specialist, had carried out the examination solely for the purpose of checking whether the applicant needed medical treatment, and had noted only the injuries brought to her attention by the applicant. Even though Dr D.D. had noted that the applicant's injuries were indicative of ill-treatment, the applicant had been examined by a forensic specialist as late as fifty-three days after his arrest. A full examination, conducted in the presence of attesting witnesses and an investigator, and accompanied by photographs, had not taken place until the fifty-sixth day after his arrest. That delay had been deliberate: there was evidence that the investigator had tried to put off the applicant's medical examination, which had made it necessary for his superiors to specifically take measures to make that happen.

107. The second respect in which the investigation had fallen short of the requirements of Article 3 of the Convention had been the inordinate delay with which it had been conducted, lasting in total eight years. The applicant surveyed in detail the unfolding of the proceedings, pointing to a number of unjustified gaps. He also drew attention to the facts that the limitation period for prosecuting the offences allegedly committed by the officers in relation to him had been allowed to lapse, and that the proceedings against the officers had continued only because they had opted to waive the statute of limitations.

108. Thirdly, the Sofia Military Court and the Military Court of Appeal had not analysed properly the medical expert report which had served as a basis for the finding of the three levels of court in the criminal proceedings against the applicant that he had been tortured. The Sofia Military Court and

Military Court of Appeal also failed to consider whether there had existed rules enjoining the police not to use disproportionate force in arrest operations. The police officers who had ill-treated the applicant had not been subjected to any sanction. They had not been convicted, in spite of ample evidence that they had ill-treated the applicant, and there was no indication that disciplinary measures had been taken against them or that any of them had been suspended. On the contrary, the officers commanding the arrest operation, including colonel B.B., had later even been promoted.

109. Lastly, the applicant submitted that he had not had an effective remedy in respect of his ill-treatment. A claim under the 1988 Act or under the general law of tort would have been bound to fail following the officers' acquittal declaring the use of force lawful and proportionate. In any event, a remedy which could only lead to an award of damages, as opposed to the sanctioning of those responsible, could not be regarded as effective in the circumstances.

2. The Court's assessment

(a) The applicant's alleged ill-treatment

110. The applicable principles are well-settled. They have recently been set out in detail in paragraphs 87-93 of the judgment of the Court's Grand Chamber in *Gäfgen v. Germany* ([GC], no. 22978/05, ECHR 2010-...), and it is unnecessary to reproduce them here.

111. Turning to the particular facts of this case, the Court observes that the medical examinations carried out on the applicant on 2 June and 23 and 26 July 1999 revealed, in spite of some discrepancies, a number of injuries to his head, legs, arms, wrists, fingers and finger-nails (see paragraphs 20, 23 and 24 above). Those injuries are without doubt serious enough to trigger the application of Article 3 of the Convention.

112. The Court observes that it is faced with different versions as to the circumstances in which the applicant sustained those injuries. However, it starts by noting that there is no indication – and the Government have not sought to argue – that the applicant had any injuries before being taken into custody. It appears – in particular from the findings of the Military Court of Appeal – that some of the applicant's injuries might have been caused during his arrest, through efforts to make him get into the police minivan, and others later (see paragraph 63 *in fine* above). However, it cannot be overlooked that the military courts did not try in their judgments to account for all injuries found on the applicant (see paragraphs 56 and 63 above). Even if the applicant was hurt in the process of being put into the minivan, this could not provide a complete explanation of all of his numerous injuries – in particular those to his head and to his fingers and finger-nails. It should moreover be emphasised that a State's responsibility under the Convention is not to be confused with individual criminal responsibility

(see, among other authorities, *Avşar v. Turkey*, no. 25657/94, § 284, ECHR 2001-VII (extracts), and *Imakayeva v. Russia*, no. 7615/02, § 116, ECHR 2006-XIII (extracts)). The corollary of that is that acquittal by a domestic criminal court bound by the presumption of innocence and having regard to the high criminal standard of proof does not absolve the respondent State of its responsibility under the Convention (see *Ribitsch v. Austria*, 4 December 1995, §§ 32-34, Series A no. 336). The Court's approach to issues of proof differs from that of the domestic criminal courts. For instance, the distribution of the burden of proof in the proceedings before the Court is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII). The Court has thus held that where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Toteva v. Bulgaria*, no. 42027/98, § 50, 19 May 2004; and *Vladimir Georgiev v. Bulgaria*, no. 61275/00, § 36, 16 October 2008).

113. Even assuming that some of the applicant's injuries were caused at the time of his arrest, the Court must determine whether they were the result of force strictly necessary to subdue him (see *Georgi Dimitrov v. Bulgaria*, no. 31365/02, §§ 56-57, 15 January 2009, with further references). The burden to show that this was the case is on the Government (see *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001, and *Rashid v. Bulgaria*, no. 47905/99, § 46, 18 January 2007). On this point, the Court observes that the applicant's injuries were numerous and widespread. While some of them – for instance, some of those to his arms, wrists and lower legs – may have been the inevitable result of the arresting officers' efforts to make him get into the police minivan and handcuff him, others – for instance, that to his head – appear to be the result of a blow with a blunt object. The Court is not persuaded that even the injuries allegedly caused when the officers were trying to put the applicant into the minivan could be regarded as necessary, for two reasons. Firstly, they were quite severe and widespread. Secondly, the operation for the applicant's arrest was planned in advance and was carried out by special forces of the police; they could have therefore taken measures to minimise any attendant injury (see *Rashid*, § 51, and *Georgi Dimitrov*, § 58, both cited above).

114. The Court must also determine whether the Government have provided a plausible explanation for the other injuries sustained by the applicant, in particular those to his fingers and finger-nails. It was not contested that these injuries were sustained while the applicant was at the hands of the police. In these circumstances, the Government are under an obligation to provide a plausible explanation of how those injuries were

caused (see *Ribitsch*, cited above, § 34). However, neither their observations, nor the findings made during the domestic proceedings contain an explanation of the origin of those injuries. The Court notes in this connection that when referring the case back for additional investigation, the Sofia Military Prosecutor's Office observed that no information had been gathered about the officers in charge of the applicant between his arrival in Koprivshtitsa and his return to Sofia the next day (see paragraph 49 above). It later went on to note that the charges against the officers did not specify which of them had administered which blows to which parts of the applicant's body (see paragraphs 51 and 52 above). In spite of the referrals, it does not seem that these points were subsequently elucidated. In their judgments acquitting the officers, the Sofia Military Court and the Military Court of Appeal did not seek to explain the origin of each of the many injuries found on the applicant, accepting instead, without any detailed analysis of the manner in which each of them had been caused, that all had been inflicted when the officers had tried to put the applicant into the minivan and handcuff him (see paragraphs 56 and 63 above). The Military Court of Appeal went on to observe that not all of the injuries found on the applicant had been caused by the three accused officers. However, as already noted, it does not appear that the authorities tried to make any findings in that respect. In view of those considerations, the Court concludes that the Government have not provided a plausible explanation of how those injuries were caused.

115. It remains to be determined whether those injuries are to be characterised as inhuman or degrading treatment or torture. On this point, the Court observes that, when seen in their context, the injuries to the applicant's fingers and finger-nails bear the hallmarks of bodily harm inflicted intentionally for the purpose of obtaining a confession. It cannot be overlooked in this connection that the criminal charges against the applicant and his two co-accused – who were also ill-treated, albeit to a lesser degree – rested to a large extent on the confessions obtained from them while they were detained. When examining those criminal charges, the Sofia Court of Appeal, whose ruling was fully upheld by the Supreme Court of Cassation, said that it could not have regard to those confessions because they had been obtained as a result of serious physical violence – especially in relation to the applicant – whose effects had not subsided for several months (see paragraphs 40 and 43 above).

116. The Court must also have regard to an additional element – the fact that, from the moment of his arrest to the moment when he was taken to the house in Koprivshtitsa, the applicant was hooded (see paragraphs 9 *in fine* above). The Court has already had occasion to observe that artificially depriving detainees of their sight by blindfolding them for lengthy periods may, when combined with other ill-treatment, subject them to strong psychological and physical pressure (see *Öcalan v. Turkey* [GC],

no. 46221/99, § 183, ECHR 2005-IV). Indeed, blindfolding may in some circumstances amount in itself to treatment proscribed under Article 3 (see *Martinez Sala and Others v. Spain*, no. 58438/00, §§ 123 and 125, 2 November 2004, and *Petyo Petkov v. Bulgaria*, no. 32130/03, §§ 39-40, 7 January 2010). In the instant case, there is no indication that the applicant was hooded with a view to preserving his anonymity (contrast *Petyo Petkov*, cited above, § 43) or the anonymity of the officers who arrested him (contrast *Öcalan*, cited above, § 184). It should be noted in this connection that at the relevant time Bulgarian law did not contain any provisions allowing the hooding of detainees (see *Petyo Petkov*, cited above, § 42). This illegal measure rather appears to have been designed to disorient the applicant – according to the findings of the Sofia Military Court, its purpose was to prevent him from knowing where he was being taken (see paragraph 9 *in fine* above). The Court also takes note of the manner in which the applicant was placed under arrest, the fact that he was taken to a "secret base" used by the police instead of a regular place of detention, and the fact that he was interrogated there for a long time during the night (see paragraph 15 above).

117. In those circumstances, and bearing also in mind the words spoken to the applicant by colonel B.B. in the house in Koprivshtitsa (see paragraph 16 above), the Court has little doubt that the ill-treatment which caused the injuries to the applicant's fingers and finger-nails was inflicted for the purpose of breaking his physical and moral resistance and causing him to confess, which in the event he did (see paragraph 17 above). It must therefore be regarded as torture within the meaning of Article 3 of the Convention (see Article 1 § 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, quoted in *Selmouni v. France* [GC], no. 25803/94, § 97, ECHR 1999-V, as well as *Mikheyev v. Russia*, no. 77617/01, § 135, 26 January 2006; *Menesheva v. Russia*, no. 59261/00, §§ 60-62, ECHR 2006-III; *Ölmez v. Turkey*, no. 39464/98, § 60, 20 February 2007; *Erdal Aslan v. Turkey*, nos. 25060/02 and 1705/03, § 73, 2 December 2008; *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 157 *in fine*, 21 April 2011; *Savin v. Ukraine*, no. 34725/08, § 62, 16 February 2012; and *Kaverzin v. Ukraine*, no. 23893/03, §§ 123-24, 15 May 2012).

118. There has therefore been a breach of this provision.

(b) The effectiveness of the investigation

119. Where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... the Convention", requires by implication that there should be an effective

official investigation. Such an investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, cited above, § 102).

120. In the instant case, the authorities did carry out such an investigation and went on to prosecute three officers alleged to have ill-treated the applicant. However, in the Court's view those proceedings cannot be regarded as effective for the purposes of Article 3 of the Convention, for the following reasons.

121. First, although the applicant was examined on 2 June 1999 by a medical doctor who noted some of his injuries, he was not subjected to a medical examination consisting of a comprehensive recording of his injuries or an attempt to determine their cause using forensic methods until 23 and 26 July 1999, fifty-three and fifty-six days respectively after his alleged ill-treatment had taken place (see paragraphs 20, 23 and 24 above and see, *mutatis mutandis*, *Poltoratskiy v. Ukraine*, no. 38812/97, §§ 126-27, ECHR 2003-V). It is significant in this connection that the Sofia Court of Appeal found evidence of an attempt to delay the proper medical examination of the applicant (see paragraph 41 above). Indeed, later this caused the medical experts difficulties in their efforts to establish the exact origin and time of the applicant's various injuries (see paragraphs 45 and 48 above). The Court has had occasion to emphasise the importance of proper medical examinations, carried out by a properly qualified doctor, as an essential safeguard against ill-treatment of persons in custody (see, as a recent authority, *Erişen and Others v. Turkey*, no. 7067/06, § 45, 3 April 2012). It has also explained that prompt forensic examination is crucial as signs of injury may often disappear quickly and certain injuries may heal within weeks or even a few days (see *Rizvanov v. Azerbaijan*, no. 31805/06, § 47, 17 April 2012). Chiefly for this reason, a failure to secure the forensic evidence in a timely manner is one of the most important factors in assessing the overall effectiveness of an investigation into allegations of ill-treatment (ibid., § 59, citing *Mammadov v. Azerbaijan*, no. 34445/04, § 74, 11 January 2007). The Court would add that in cases where there exist legitimate doubts as to the impartiality and independence of the health-care staff of a detention facility and the completeness of their forensic findings, the persons concerned should be allowed timely access to outside experts.

122. Secondly, as already noted in paragraph 114 above, the investigation did not account for the origin of all injuries found on the applicant, most notably those to his fingers and finger-nails.

123. Thirdly – and that point is closely connected with the previous two – although the military prosecuting and investigating authorities were confronted with ample information suggesting that at least part of the applicant's ill-treatment had been carried out in order to cause him to confess, they did not seek to make any findings in respect of the motivation behind the ill-treatment or to bring charges under Article 287 of the

Criminal Code, which makes it an offence punishable by up to ten years' imprisonment for an official to force an accused to confess through coercion or other unlawful means (see paragraph 77 above), and is thus designed to protect the privilege against self-incrimination against unlawful encroachments on the part of law enforcement officials. It must have been obvious to those authorities that at least some of the applicant's injuries were indicative of deliberate ill-treatment, which, coupled with the manner in which the applicant had been arrested, interrogated and subjected to covert surveillance – which appear to have been all tainted by illegality –, should have at least prompted them to inquire into that possibility and try to determine whether police officers bore direct or indirect responsibility for that and, if so, which ones. The need for such inquiries must have become even more glaring later, in 2006 and 2007, when the Sofia Court of Appeal and the Supreme Court of Cassation specifically found that the applicant had been seriously ill-treated in order to confess, that his confession should not therefore be taken into account, and that the remaining evidence was not sufficient to prove the charges against the applicant to the requisite standard (see paragraphs 40 and 43 above). Those rulings were public and were moreover admitted in evidence by the Military Court of Appeal (see paragraph 61 above). However, the military prosecuting and investigating authorities apparently chose to ignore them, with the result that only some of the officers involved in the initial arrest operation against the applicant were investigated (see paragraph 63 *in fine* above).

124. Another issue are the numerous delays besetting the pre-trial investigation. That investigation lasted in total about six years, with a number of unexplained gaps, such as that between 2003 and 2005 (see paragraph 53 above), and no less than three referrals for additional investigation on the part of the Sofia Military Prosecutor's Office and two such referrals on the part of the Sofia Military Court (see paragraphs 49, 51, 52 and 53 above). The resulting delay eventually led to the expiry of the relevant limitation period, and the proceedings were able to continue only because the accused officers waived the statute of limitations (see paragraphs 58, 61 and 78 above). According to the Court's case-law, where a State agent has been charged with offences involving torture or ill-treatment, it is of the utmost importance that criminal proceedings against him or her and sentencing do not become time-barred on account of inordinate delay (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004; *Türkmen v. Turkey*, no. 43124/98, § 53, 19 December 2006; *Hüseyin Şimşek v. Turkey*, no. 68881/01, § 67, 20 May 2008; *Dağdelen and Others v. Turkey*, nos. 1767/03, 14246/04 and 16584/04, § 96, 25 November 2008; *Erdal Aslan*, cited above, § 74).

125. In sum, the Court finds that in the result the criminal proceedings brought against some of the officers taking part in the operation against the applicant justified the use of force, allegedly deployed solely at the time of

the applicant's arrest for the purpose of overcoming his resistance, while failing to shed any light on the gist of the applicant's allegations – fully borne out by the findings of the courts dealing with the criminal case against him – that he had been intentionally ill-treated for the purpose of making a confession. Those proceedings cannot therefore be regarded as serving the objects of the State's procedural obligation under Article 3 of the Convention – as far as possible, to establish the facts, lead to the identification of all persons responsible for the alleged ill-treatment, and unmask their motives, if any, with a view to, *inter alia*, ensuring public confidence in the authorities' maintenance of the rule of law, preventing any appearance of collusion in or tolerance of unlawful acts, and ensuring the accountability of State agents for deaths occurring under their responsibility (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 57 (d), 20 December 2007).

126. Lastly, there is no indication that any of the officers alleged to have ill-treated the applicant were suspended pending the determination of the criminal charges against them. The Court has consistently held that where State agents have been charged with offences involving ill-treatment, it is important that they should be suspended from duty while being investigated or tried and should be dismissed if convicted (see *Gäfgen*, cited above, § 125, with further references).

127. In view of those deficiencies, the investigation of the applicant's ill-treatment cannot be regarded as effective for the purposes of Article 3 of the Convention. There has therefore been a breach of this provision on that account as well.

(c) Complaint under Article 13 of the Convention

128. Article 13 of the Convention guarantees the existence of a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief. Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. The scope of that obligation varies depending on the nature of the applicant's complaint under the Convention. In relation to arguable claims that a person has been ill-treated in breach of Article 3, the notion of an effective remedy entails, *inter alia*, the payment of compensation where appropriate (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V). The Court has also held, more generally, that, as regards arguable complaints under Article 3, compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of redress (see, ibid., as well as *McGlinchey and Others v. the United Kingdom*, no. 50390/99, §§ 62-63, ECHR 2003-V, and *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 217-18, ECHR 2012-...). The Court has previously emphasised the importance of the fact-finding functions of a thorough and effective investigation so as to

enable the victims of ill-treatment in custody to seek redress (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, § 97, *Reports* 1996-VI).

129. With reference to the present case, the Court observes that persons ill-treated by police officers in Bulgaria or their relatives have indeed been able to obtain compensation by way of claims under section 1 of the 1988 Act (see, for instance, *Krastanov v. Bulgaria*, no. 50222/99, §§ 25, 37 and 45-46, 30 September 2004) or under section 49 of the Contracts and Obligations Act 1951 (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 30-35 and 44, 20 December 2007). However, in those cases there had either been no criminal proceedings against the officers concerned (see *Krastanov*, cited above, § 41) or the officers had been finally convicted in connection with the ill-treatment in issue (see *Nikolova and Velichkova*, cited above, §§ 24, 26 and 28). Here, by contrast, the officers charged with ill-treating the applicant were finally acquitted and the civil claims against them were rejected on the basis that the force that they had used against the applicant had been lawful (see paragraphs 56 and 63 above). The Court notes in this connection that under the Bulgarian rules of civil procedure, the final judgment of a criminal court is binding on the civil court which examines the civil consequences of the criminal act in relation to the points whether the act was perpetrated and whether it was unlawful (see paragraphs 91 and 92 above), whereas claims under section 1 of the 1988 Act or section 49 of the 1951 Act can be entertained only if the conduct to which they relate was unlawful (see paragraphs 84 and 90 above). The Court is not aware of any judicial precedents in which victims of police violence have been able to prosecute successfully claims under those provisions even though – as in the case at hand – the officers alleged to have ill-treated them had been finally acquitted and exonerated of liability for their actions. The Government have not provided any examples showing otherwise. The case on which they rely (see paragraphs 66-69 above) is not such an example because the claim brought by the applicant's co-accused was rejected and because there is no indication that the officers who had ill-treated him were tried and finally acquitted.

130. It is also true that, as pointed out by the Government in their comments on the applicant's claim for just satisfaction (see paragraph 176 below), when awarding compensation under section 2(1) of the 1988 Act to persons who, like the applicant, have been finally acquitted of the criminal charges against them, the Bulgarian courts do sometimes take into account the hardship suffered by those persons as a result of their pre-trial detention (see paragraph 89 above). However, the Court has not been presented with any examples in which the courts have awarded compensation under that provision in relation to specific incidents of deliberate ill-treatment suffered in detention. Moreover, such claims cannot be regarded as an effective remedy in that respect because the cause of action which underlies them is

not a breach of the right not to be subjected to ill-treatment, but the fact that the proceedings have resulted in an acquittal and that the charges are retrospectively considered to have been "unlawful" (see paragraph 88 above). They are therefore not an avenue whereby those who have been ill-treated by the authorities can vindicate, as such, their rights under Article 3 of the Convention (see, *mutatis mutandis*, *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09, § 97, 10 May 2011).

131. The Court is of the view that the deficient investigation and the resulting conclusions of lawful use of force – in marked contrast to the finding of the courts dealing with the criminal charges against the applicant that his confession had been obtained under ill-treatment – *de facto* served to bar the applicant's possibility of obtaining compensation in respect of that ill-treatment in civil proceedings.

132. There has therefore been a violation of Article 13 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 8 AND 13 OF THE CONVENTION

133. The applicant complained that his questioning in the house in Koprivshtitsa on 2 June 1999 had been recorded unlawfully and that he did not have effective remedies in this respect. He also complained that as a result of defects in the relevant Bulgarian law and practice he could be subjected to secret surveillance at any time without sufficient safeguards against arbitrariness. He relied on Articles 8 and 13 of the Convention.

134. Article 8 of the Convention provides, in so far as relevant:

> "1. Everyone has the right to respect for his private ... life ... and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

135. The text of Article 13 of the Convention has been set out in paragraph 94 above.

A. Admissibility

136. The Government submitted that the complaint in respect of the secret taping of the applicant's interrogation was inadmissible for failure to comply with the six-month time-limit under Article 35 § 1 of the Convention. They pointed out that at the time when that secret taping had taken place, Bulgarian law did not provide any remedies in respect of secret surveillance; that had been established by the Court in *Association for*

European Integration and Human Rights and Ekimdzhiev (cited above). Such a remedy had been put in place later, in 2008-09. The applicant had clearly learned about the taping as early as 11 March 2003, when the court trying the criminal charges against him had, in his presence, turned down the prosecution's request to admit the recordings in evidence. In the absence of remedies, the applicant should have complained to the Court in respect of that less than six months after that date instead of doing so more than five years later. Alternatively, he should have brought a claim against the State under section 45 of the Obligations and Contracts Act 1951 or section 1 of the 1988 Act.

137. The applicant conceded that he had learned about the taping on 11 March 2003, but pointed out that he had been unable to have cognisance of the content of the recordings, which under Bulgarian law was classified information, until much later. He could not mount a proper challenge in relation to that without knowledge of the recordings' content. Moreover, it had to be borne in mind that at that time he had been in a very difficult situation, facing criminal charges which could result in life imprisonment. He could not have been certain that those recordings, which contained his confession, would not be used against him. Therefore, he had not been in a position to complain in respect of that prior to the conclusion of the criminal proceedings against him.

138. The Court observes that in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above, § 102) it found that until 2007 there did not exist in Bulgaria any avenues allowing persons subjected or suspecting of being subjected to secret surveillance to vindicate their rights. The Court reiterated this finding in *Goranova-Karaeneva v. Bulgaria* (no. 12739/05, §§ 60-63, 8 March 2011), and went on to hold that the remedy under section 2(1)(7) of the 1988 Act, which was put in place in March 2009 (see paragraph 86 above), could not be regarded as effective in respect of surveillance carried out before its introduction. In the absence of effective domestic remedies, the applicant should have raised his complaint about the secret taping of his interrogation – a specific event that occurred on an identifiable date – not more than six months after he learned about it on 11 March 2003 (see paragraphs 26 and 29 above, and, *mutatis mutandis*, *Petkov and Others v. Bulgaria* (dec.), nos. 77568/01, 178/02 and 505/02, 4 December 2007). However, he did so more than six months later, on 12 September 2007. The fact that he did not have knowledge of the exact content of the recording is immaterial because the lack of such knowledge could not prevent him from formulating a complaint under Article 8 of the Convention in relation to the secret taping of his interrogation. Nor can the Court accept that the criminal proceedings against the applicant constituted an obstacle to his raising grievances in this respect. It follows that the complaints concerning the secret taping of the applicant's interrogation have

been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

139. By contrast, the concomitant complaints concerning the mere existence in Bulgaria of laws and practices which have established a system for secret surveillance relate to a continuing situation – in as much as the applicant may at any time be placed under such surveillance without his being aware of it. It follows that his complaints in that respect cannot be regarded as having been raised out of time. The Court further finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

140. The Government pointed out that the secret taping had taken place at a time when the applicant had already been in custody and under direct personal observation during his interrogation. The taping had been just an auxiliary means of gathering evidence, and had for this reason been excluded by the Sofia City Court from the evidence against the applicant. The Government went on to acknowledge that until 2007 there had not been an effective remedy in respect of secret surveillance, but added that such a remedy had been put in place in 2008-09, when Parliament had enacted amendments to the Special Surveillance Means Act 1997, Parliament's standing rules and section 2(1) of the 1988 Act.

141. The applicant submitted, in relation to his complaint about the very existence of a system of secret surveillance, that in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above) the Court had already found Bulgarian law deficient. It was true that the relevant legislation had been amended, but that had happened after the application had been lodged. Moreover, the amendments had been merely cosmetic and had not provided real safeguards against abusive surveillance, or the possibility for those concerned to learn about such surveillance and seek redress in respect of it. Although in 2008 Parliament had created a National Bureau for Control of Special Means of Surveillance, in 2009 that Bureau had been abolished and replaced by a Parliamentary sub-commission, which lacked the necessary personnel or budget to be able to discharge its tasks effectively. That sub-commission could not be expected to monitor the many thousands of instances of covert surveillance which took place annually. Moreover, the sub-commission did not have to examine requests for information made by individuals. It had the duty to inform of its own motion persons who have been unlawfully subjected to

secret surveillance, but not persons subjected to lawful but unnecessary surveillance.

142. The applicant went on to submit that until 2009, when the 1988 Act had been amended, he had not had at his disposal any remedy in respect of the alleged breach of his rights under Article 8 of the Convention. The existence of such a remedy was not certain even after that amendment, because there was no reliable mechanism allowing those concerned to learn whether they had been subjected to secret surveillance.

2. The Court's assessment

(a) Complaint under Article 8 of the Convention

(i) Scope of the Court's examination of this complaint

143. The Court starts by observing that, although the parties referred in their observations to the 2008-09 changes in the law governing secret surveillance (see paragraphs 80-82 above) – which came as a result of the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above) – the applicant's complaint, raised in September 2007, concerns the period predating those developments. The Court must therefore examine the case by reference to the legal framework in force at the time when the applicant lodged his application (see *Dumitru Popescu v. Romania (no. 2)*, no. 71525/01, § 84 *in limine*, 26 April 2007, and *Calmanovici v. Romania*, no. 42250/02, § 125 *in fine*, 1 July 2008). There is a further reason why it is not appropriate to examine in this case the compatibility of the 2008-09 legal developments with the Convention: those developments are still under review by the Committee of Ministers in the exercise of its duty under Article 46 § 2 of the Convention to supervise the execution of the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev*, and the Committee has yet to make a pronouncement on them (see paragraph 93 above and contrast *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 67, ECHR 2009-...).

(ii) Existence of an interference

144. Having regard to its established case-law in the matter (see *Klass and Others v. Germany*, 6 September 1978, § 41, Series A no. 28; *Malone v. the United Kingdom*, 2 August 1984, § 64, Series A no. 82; *Weber and Saravia v. Germany*, (dec.), no. 54934/00, §§ 77-79, ECHR 2006-XI; *Association for European Integration and Human Rights and Ekimdzhiev*, cited above, § 69; *Liberty and Others v. the United Kingdom*, no. 58243/00, § 57, 1 July 2008; and *Iordachi and Others v. Moldova*, no. 25198/02, § 34, 10 February 2009), the Court accepts that the mere

existence of legislation allowing secret surveillance amounted to an interference with the applicant's rights under Article 8 of the Convention.

145. It is therefore necessary to examine whether that interference was justified under the terms of paragraph 2 of that Article: whether it was "in accordance with the law" and "necessary in a democratic society" for one of the purposes enumerated in that paragraph.

(iii) Justification for the interference

146. In *Association for European Integration and Human Rights and Ekimdzhiev* (cited above, §§ 79-84) the Court held that the Bulgarian law governing secret surveillance, as in force until 2007, partly met and partly failed to meet Article 8's requirement that an interference be "in accordance with the law". The Court found that the statutory procedure for authorising secret surveillance, if strictly adhered to, offered sufficient protection against arbitrary or indiscriminate surveillance. However, it went on to find problems with (a) the lack of review by an independent body of the implementation of surveillance measures or of whether the material obtained through such measures would be destroyed within the statutory time-limit if the surveillance had proved fruitless; (b) the lack of sufficient safeguards in respect of surveillance carried out on national security grounds and not in the context of criminal proceedings; (c) the lack of regulations specifying with an appropriate degree of precision the manner of screening of such material, or the procedures for preserving its integrity and confidentiality and the procedures for its destruction; (d) the lack of an independent body overseeing and reporting on the functioning of the system of secret surveillance; (e) the lack of independent control over the use of material falling outside the scope of the original application for the use of surveillance measures; and (f) the lack of notification of the persons concerned, even where such notification could be made without jeopardising the purpose of the surveillance (ibid., §§ 85-91). On that basis, the Court concluded that Bulgarian law did not provide sufficient guarantees against the risk of abuse inherent in any system of secret surveillance (ibid., § 93).

147. The legal framework applicable at the time when the applicant lodged his application being the same, the Court sees no reason to hold otherwise in the present case. It accordingly finds that the interference with the Article 8 rights of the applicant was not "in accordance with the law" within the meaning of paragraph 2 of that provision. This conclusion obviates the need for the Court to determine whether the interference was "necessary in a democratic society" for one of the aims enumerated therein (see *Association for European Integration and Human Rights and Ekimdzhiev*, cited above, § 93).

148. There has therefore been a breach of Article 8 of the Convention.

(b) Complaint under Article 13 of the Convention

149. The Court already found that until 2007 there were no avenues allowing those subjected or suspecting of being subjected to secret surveillance to vindicate their rights (see *Association for European Integration and Human Rights and Ekimdzhiev*, cited above, § 102).

150. In the present case, the only avenue suggested by the Government was a claim for damages under the new point 7 of section 2(1) of the 1988 Act, added in March 2009 (see paragraph 86 above). The Court was faced with the same argument in the case of *Goranova-Karaeneva* (cited above, § 61). It observed that that provision had come into force long after the applicant had lodged her application, whereas the assessment whether effective domestic remedies existed was normally to be carried out with reference to the date on which the application had been lodged with the Court. The Court went on to say that even if it were to make an exception from that rule, it was not persuaded that the new point 7 could provide an effective remedy to the applicant, chiefly because the Bulgarian courts appeared consistently to construe amendments to the liability provisions of the 1988 Act as conferring substantive rights and not having retrospective effect (see also paragraph 87 above). It was therefore highly unlikely that those courts would allow a claim in respect of events which predated the coming into force of point 7 by several years. The Court observed that the Government had not cited any examples to show otherwise, and concluded that in the circumstances of the case the possibility of bringing a claim under the new point 7 was not an effective remedy. The Court also noted that the Government had not referred to another remedy, and that it was not aware of any (see *Goranova-Karaeneva*, cited above, §§ 62-64).

151. The Court sees no reason to hold otherwise in the present case. There is still no reported case-law under the new point 7 of section 2(1) of the 1988 Act (see paragraph 86 *in fine* above). The Government have not provided any examples of awards of damages under that provision in relation to secret surveillance predating its coming into force – or, indeed, any secret surveillance; on the contrary, as recently as June 2012 they acknowledged that they were not aware of case-law under that provision (see paragraph 93 above).

152. The Court would also reiterate its finding in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above, § 101) that at the relevant time in Bulgaria, unless charged with a criminal offence on the basis of material obtained through secret surveillance or profiting from a leak of information, those concerned could never learn whether they had been placed under such surveillance, with the result that they were unable to seek any redress in that respect. It is true that under the new section 34h of the Special Surveillance Means Act 1997, as amended, a special parliamentary commission has to notify those unlawfully subjected to secret surveillance, if this can be done without harming certain

countervailing interests (see paragraph 82 above). However, that cannot be taken into account, because that opportunity arose long after the lodging of the application, and because it is unclear whether it applies to past instances of secret surveillance.

153. There has therefore been a breach of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged violation of Article 5 § 1 of the Convention

154. The applicant complained under Article 5 § 1 of the Convention that his arrest and detention on 1 and 2 June 1999 had been unlawful.

155. There is no indication that the applicant has tried to seek judicial review of his police detention, as is possible under Bulgarian law (see *Kandzhov v. Bulgaria*, no. 68294/01, § 45, 6 November 2008). Assuming that the remedy in question was not effective, he introduced his complaint in relation to his detention more than six months after his release (see, *mutatis mutandis*, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 20, ECHR 2002-VIII).

156. It follows that this complaint is inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Alleged violation of Article 6 § 2 of the Convention

157. The applicant complained under Article 6 § 2 of the Convention of the public statements made in relation to him by the police in 1999, by the Minister of Internal Affairs in May 2000, and by colonel B.B. in May 2007, as well as of the manner in which the investigating and the prosecuting authorities had acted in the criminal proceedings against him.

158. In as much as the applicant complained of the actions of the investigating and the prosecuting authorities in the criminal proceedings against him, the Court observes that those proceedings ended with his final acquittal, and that the Supreme Court of Cassation refused to disturb that acquittal by way of reopening in spite of the prosecution's request (see paragraphs 39, 43 and 65 above). The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see, among many other authorities, *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35, and *Salabiaku v. France*, 7 October 1988, § 25, Series A no. 141-A). According to the Court's and the former Commission's settled case-law, a person may not claim to be a victim of a breach of his or her right to a fair trial that allegedly took place in the course of proceedings in which he or she was acquitted or which were discontinued (see, among other authorities,

X v. Austria, no. 5575/72, Commission decision of 8 July 1975, Decisions and Reports (DR) 1, p. 44; *X v. the United Kingdom*, no. 8083/77, Commission decision of 13 March 1980, DR 19, p. 223; *Eğinlioğlu v. Turkey*, no. 31312/96, Commission decision of 21 October 1998, unreported; *Correia de Matos v. Portugal* (dec.), no. 48188/99, 15 November 2001, ECHR 2001-XII; *Osmanov and Yuseinov v. Bulgaria* (dec.), no. 54178/00, 4 September 2003; *I.I. v. Bulgaria* (dec.), no. 44082/98, 25 March 2004; *Oleksy v. Poland* (dec.), no. 1379/06, 16 June 2009; *G.Ł. v. Poland* (dec.), no. 36714/09, 16 November 2010). This is equally true in respect of alleged breaches of Article 6 § 2 (see *Witkowski v. Poland* (dec.), no. 53804/00, 3 February 2003). The applicant can therefore no longer claim to be a victim of a breach of his rights under Article 6 § 2 in relation to the criminal proceedings against him.

159. This reasoning cannot, however, be applied to the allegedly prejudicial public statements that the police, the Minister of Internal Affairs and colonel B.B. made in relation to the applicant in contexts independent of the criminal proceedings again him (see paragraphs 30, 31 and 60 above).

160. The 1999 statements of the police and the 2000 statement of the Minister were made at a time when the applicant was charged with a criminal offence. Article 6 § 2 was therefore engaged (see *Allenet de Ribemont v. France*, 10 February 1995, §§ 35-37, Series A no. 308). However, the Court observes that the applicant has not tried to bring any domestic proceedings, such as a defamation claim, in respect of those statements. Assuming, as the applicant implied, that no remedy of that nature was available to him, the six-month time-limit laid down by Article 35 § 1 of the Convention ran in the instant case from the date on which the facts giving rise to the alleged violation occurred, namely the dates on which the statements were made, whereas the applicant introduced his complaint in respect of them more than six months after those dates (see, *mutatis mutandis*, *Mifsud*, cited above, § 20).

161. As for the statement made by colonel B.B. in May 2007, it came after the applicant's final acquittal, and at a time when no other proceedings attracting the applicability of Article 6 § 2 in relation to the applicant were pending (for examples of such proceedings, see *Puig Panella v. Spain*, no. 1483/02, § 51, 25 April 2006). The complaint in respect of that statement is therefore incompatible *ratione materiae* with the provisions of the Convention (see, *mutatis mutandis*, *Zollmann v. the United Kingdom* (dec.), no. 62902/00, ECHR 2003-XII). In any event, it does not appear that colonel B.B. made the statement in an official capacity.

162. It follows that this complaint is inadmissible and must be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

C. Alleged violations of Articles 34 and 38 § 1 (a) of the Convention

163. The applicant alleged that the authorities had not provided him in a timely fashion with the documents in the criminal case against him and the criminal case against the three officers. He said that he had been given access to the latter as late as 11 January 2011, and not by the registries of the military courts or the military prosecuting authorities, but by the president of the Sofia Court of Appeal.

164. The applicant also alleged that the Government had not provided the Court with all relevant documents from the files of the criminal courts and the military courts, as requested of them when they had been given notice of the application. In particular, they had not provided copies of the notes of the applicant's medical examinations on 23 and 26 July 1999 – the latter of which had been accompanied by colour photographs of his injuries – or any other medical evidence, which was key for the examination of the case. The applicant had been able to make only black and white copies of the photographs in issue.

165. The Court considers that the applicant's complaints must be examined jointly under Articles 34 and 38 § 1 (a) of the Convention (see, *mutatis mutandis*, *Bekirski v. Bulgaria*, no. 71420/01, § 113, 2 September 2010). It reiterates that it is of utmost importance for the effective operation of the system of individual petition instituted by Article 34 that States should furnish all necessary facilities to make possible a proper and effective examination of applications. It is inherent in proceedings relating to cases of this nature, where an individual applicant accuses State agents of violating his rights under the Convention, that in certain instances solely the respondent Government have access to information capable of corroborating or refuting these allegations. A failure on a Government's part to submit such information which is in their hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicants' allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention. The same applies to delays by the State in submitting information which prejudices the establishment of facts in a case (ibid., § 114, with further references).

166. In the instant case, the applicant was able to support his initial application with enough documents – relating to his medical examination on 2 June 1999 and the criminal proceedings against the officers who had allegedly ill-treated him – to prompt the Court to give the Government notice of his complaints under Article 3 of the Convention (see paragraph 4 above).

167. It is true that after they were given notice of the application the Government did not provide all medical documents relating to the applicant's injuries. However, they did provide copies of the minutes of all

hearings before the Sofia Military Court and the Military Court of Appeal, as well as copies of the judgments of those courts, and the applicant was able to obtain copies – albeit black and white ones – of the relevant medical documents and enclose them with his observations in reply (see paragraph 5 above). As a result, the Court was not prevented from examining the case. In those circumstances, it concludes that the respondent State has not failed to fulfil its obligations under Article 38 § 1 (a) of the Convention or hindered the effective exercise of the applicant's right to individual application under Article 34 (see, *mutatis mutandis*, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 343-44, 24 March 2011, and contrast *Zdravko Petrov v. Bulgaria*, no. 20024/04, § 62, 23 June 2011).

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

168. 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."

169. Article 46 § 1 of the Convention provides:

> "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."

A. General measures requested by the applicant

170. The applicant asked the Court to indicate to the respondent State that it should take general measures to prevent breaches of Article 3 of the Convention by the police in connection with arrest operations. Those measures should consist of changes in the law, in particular the putting in place of detailed regulations on the use of force and auxiliary means on the part of law enforcement personnel, so that such force be proportionate and resorted to only when absolutely necessary.

171. The applicant also asked the Court to indicate to the respondent State that it should take general measures consisting of changes in the law that would strengthen the control over the use of secret surveillance, and in particular put in place an independent and adequately functioning supervisory body and genuine safeguards against abuse.

172. The Government did not comment on the applicant's requests.

173. The Court observes that it is open to question whether the substantive breach of Article 3 of the Convention in the present case resulted from the manner in which Bulgarian law regulated the use of force by the police at the relevant time. Be that as it may, it cannot be overlooked that several months ago, in May 2012, the Bulgarian Parliament enacted

amendments to sections 72 and 73 the Ministry of Internal Affairs Act 2006, which came into force on 1 July 2012 and appear – especially in the light of the explanatory notes to the amendment bill – to deal with the points raised by the applicant (see paragraph 74 above). The Court therefore does not consider it necessary to indicate any general measures at national level that could be called for in the execution of this judgment (see, *mutatis mutandis*, *Sejdovic v. Italy* [GC], no. 56581/00, §§ 121-24, ECHR 2006-II).

174. As for the breach of Article 8 of the Convention and the related breach of Article 13, the Court observes that the scope of its ruling under these provisions does not extend to the legislative changes in 2008-09 (see paragraphs 143, 151 and 152 above). There is therefore no basis to indicate general measures at national level that could be called for in the execution of the present judgment. In any event, it cannot be overlooked that following the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev* (cited above), Bulgaria has taken certain general steps to remedy the problems highlighted in that case: its Parliament enacted changes to the Special Surveillance Means Act 1997, the 1988 Act, and its standing rules, and set up a special parliamentary commission whose task is to oversee the use of special means of surveillance and the storing and destruction of material obtained through such means and to protect individuals against the unlawful use of such means (see paragraphs 80-83 above, and contrast *Greens and M.T. v. the United Kingdom*, nos. 60041/08 and 60054/08, §§ 110-15, ECHR 2010-... (extracts)). As already noted, those developments are still under review by the Committee of Ministers in the exercise of its duty under Article 46 § 2 of the Convention to supervise the execution of the Court's judgment in *Association for European Integration and Human Rights and Ekimdzhiev*, and the Committee has yet to make a pronouncement on them (see paragraph 93 above, and *Greens and M.T.*, cited above, § 114). It may fall to the Court at some future point, in the exercise of its supervisory role and in the context of a new application under Article 34 of the Convention, to assess the compatibility of the new regime with the requirements of the Convention (ibid.). However, it does not consider that it is appropriate for it to give instructions in that respect in the present case.

B. Damage

175. The applicant claimed 100,000 euros (EUR) in respect of the non-pecuniary damage flowing from alleged breaches of the substantive and procedural limbs of Article 3 of the Convention, the alleged breach of Article 13 of the Convention in conjunction with Article 3, the alleged breach of Article 6 § 2 of the Convention, the alleged breach of Article 8 of the Convention and the alleged breach of Article 13 of the Convention in conjunction with Article 8. He pointed out that he had been arrested at

night, without being told for what reason, had been hooded, had been subjected to serious deliberate violence causing him intense pain in the police minivan on the way to Koprivshtitsa, and had been taken not to a regular place of detention but to a house where he had been tortured, and then again hooded on the way back to Sofia, which had caused to feel terror and apprehension as to what awaited him next. After that he had not been given timely medical attention, had been refused contact with a lawyer of his own choosing, and only allowed to contact his wife to tell her that he was in custody but not where. He had suffered additional frustration and feelings of injustice from the slow and ineffective investigation of his ill-treatment and from the lack of any redress in respect of it. He had also, in breach of the presumption of innocence, been stigmatised by high-ranking officials as a participant in Mr Lukanov's assassination, although he had been cleared of that charge in the criminal proceedings against him. That stigma, taken up by the media, would continue to haunt him for the rest of his life. Lastly, he had suffered damage as a result of the lack of sufficient safeguards against and effective remedies in respect of unlawful secret surveillance, which was particularly damaging in his situation.

176. The Government submitted that following his acquittal the applicant could have obtained compensation for all damage suffered by him by bringing a claim under the 1988 Act. In the alternative, they argued that the applicant's claim was exorbitant, and suggested that any award made by the Court under this head should not go beyond the awards made in similar cases. They also argued that they should not be made to bear liability for publications in the media in respect of which the applicant could seek compensation before the competent courts.

177. The Court observes at the outset that in the present case an award of just satisfaction can be based only on the breaches of Articles 3, 8 and 13 of the Convention.

178. In as much as the Government referred to the possibility for the applicant to claim compensation under the 1988 Act following his final acquittal, the Court observes that it has already dealt with that issue in paragraph 130 above. Moreover, in *De Wilde, Ooms and Versyp v. Belgium* ((Article 50), 10 March 1972, § 16, Series A no. 14, cited in *Anguelova v. Bulgaria*, no. 38361/97, § 172, ECHR 2002-IV), it held that Article 41 (former Article 50) of the Convention does not require applicants to exhaust domestic remedies a second time before submitting their just satisfaction claims, and that the wording of that provision – where it refers to the possibility of reparation under domestic law – lays down a rule going to the merits of the just satisfaction issue. In more recent cases the Court did not distinguish between admissibility and merits in this context, preferring to emphasise that if a person, after exhausting the domestic remedies in vain before complaining to the Court, were obliged to do so a second time before being able to claim just satisfaction from the Court, the total length of the

procedure under the Convention would scarcely be in keeping with the idea of the effective protection of human rights (see *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, § 17, Series A no. 285-C; *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 40, Series A no. 330-B; *Oğur v. Turkey* [GC], no. 21594/93, § 98, ECHR 1999-III; *Doğan and Others v. Turkey* (just satisfaction), nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 50, 13 July 2006; *Jalloh v. Germany* [GC], no. 54810/00, § 129, ECHR 2006-IX; and *Liivik v. Estonia*, no. 12157/05, § 109, 25 June 2009). The Court sees no reason to hold otherwise in the present case.

179. Having regard in particular to the extreme seriousness of the substantive breach of Article 3 of the Convention of which the applicant was victim, the Court considers that he should be awarded EUR 27,000, plus any tax that may be chargeable, in respect of the non-pecuniary damage suffered by him on account of that breach and the related breaches of the procedural limb of Article 3 and of Article 13 of the Convention.

180. By contrast, the Court considers that, in the circumstances of this case, the finding of a breach of Article 8 and the related finding of a breach of Article 13 constitute sufficient just satisfaction for any non-pecuniary damage suffered by the applicant on that account (see, as a recent authority, *Liberty and Others v. the United Kingdom*, no. 58243/00, § 77, 1 July 2008).

C. Costs and expenses

181. The applicant claimed EUR 4,560 in lawyer's fees for fifty-seven fours of work by his legal representative, at EUR 80 per hour. He submitted a contract for legal services and a time-sheet, and requested that any amount awarded under this head be made directly payable to his legal representative, the Bulgarian Helsinki Committee.

182. The Government submitted that the hourly rate charged by the applicant's legal representative was exorbitant. They also disputed the amount of hours billed.

183. According to the Court's case-law, costs and expenses claimed under Article 41 of the Convention must have been actually and necessarily incurred and reasonable as to quantum. Having regard to the materials in its possession, and noting that part of the application was declared inadmissible, the Court finds it reasonable to award the applicant the sum of EUR 4,000, plus any tax that may be chargeable to him. This sum is to be paid directly to the applicant's legal representative, the Bulgarian Helsinki Committee.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning (a) the alleged ill-treatment of the applicant, the alleged lack of an effective investigation into that and of effective remedies in that respect, as well as (b) the alleged interference with the applicant's right to respect for his private life and his correspondence by reason of the existence in Bulgaria of legislation allowing secret surveillance, and the alleged lack of effective remedies in that respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in that the applicant was subjected to torture during his detention;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into that;

4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy in that respect;

5. *Holds* that there has been a violation of Article 8 of the Convention in relation to the potential placing of the applicant under secret surveillance;

6. *Holds* that there has been a violation of Article 13 of the Convention in relation to the lack of effective remedies in respect of secret surveillance;

7. *Holds* that the respondent State has not failed to fulfil its obligations under Article 38 § 1 (a) of the Convention or hindered the effective exercise of the applicant's right to individual application under Article 34;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,, the following amounts, to be

converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 27,000 (twenty-seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to the applicant's 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;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President