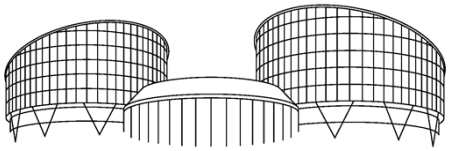

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF CHORBADZHIYSKI AND KRASTEVA v. BULGARIA

(Application no. 54991/10)

JUDGMENT

Art 6 § 1 (civil) • Access to court • Excessive amount of court fees in a successful claim for damages against the State • Applicants ordered to pay in court fees more than half of the total amount granted to them • Absence of foreseeability of the court fees • No benefit from the safeguards provided in domestic law against excessive court fees • Automatic application of the rules despite applicants' reliance on ECHR judgment • Significant difference in the court fees' amounts required for the same service between claims against the State under two domestic legislations

STRASBOURG

2 April 2020

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 Chorbadzhiyski and Krasteva v. Bulgaria,

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

Gabriele Kucsko-Stadlmayer, *President,*
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 10 March 2020,

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

PROCEDURE

1. The case originated in an application (no. 54991/10) 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 two Bulgarian nationals, Mr Krastyo Chonov Chorbadzhiyski (the first applicant) and Ms Desislava Krasteva Krasteva (the second applicant), on 3 September 2010.

2. The applicants were represented by Mr M. Ekimdzhiev and Ms S. Stefanova, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Mr V. Obretenov, of the Ministry of Justice.

3. The applicants alleged violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the excessive amount of court fees that they had been ordered to pay in relation to their claims for damages against the State. They also complained under Article 13 of the Convention of the lack of effective remedies in that respect.

4. On 27 May 2012 the first applicant died. On 30 November 2012 the second applicant, who is the first applicant's daughter and only legal heir, expressed the wish to continue the proceedings not only in her own name, but also in his stead.

5. On 26 April 2017 notice of the complaints concerning the excessive amount of the court fees was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1914 and 1972 respectively. At the time of lodging the application they lived in Plovdiv.

A. The civil proceedings brought by the applicants

7. On 29 August 1998 Ms Chorbadzhiyska, the first applicant's wife and the second applicant's mother, died as a result of a tree branch falling during a storm.

8. Several years later, on 6 August 2003 the applicants brought a civil claim under the State Liability for Damage Caused to Citizens Act 1988 ("the 1988 Act") jointly against the State, the Plovdiv Municipality and two individuals who had asked the municipal authorities to remove the tree. The applicants sought 2,000,000 Bulgarian levs (BGN – 1,022,584 euros (EUR)) in compensation for non-pecuniary damage and BGN 200,000 (EUR 102,258) in respect of pecuniary damage suffered as a result of the loss of their wife and mother. In the course of the proceedings the applicants were represented by the first applicant, who practised as a lawyer.

9. On 5 November 2004 the Plovdiv Regional Court dismissed the applicants' claims. It noted that under the 1988 Act the State did not have any standing *per se*, and could only be held liable through its agents and bodies. In the case at hand, those were the municipal authorities. It, however, concluded that the Plovdiv Municipality could not be held responsible since Ms Chorbadzhiyska's death had been accidental. It likewise dismissed the claim against the two individuals, whose actions had had no connection with the accident. It went on to say that the applicants' claims for damages were rather excessive and were not supported by evidence. Referring to section 10(2) of the 1988 Act, the court ordered the applicants to pay BGN 88,000 (EUR 44,994) in court fees, amounting to 4% of BGN 2,200,000 – the total amount claimed by them in damages.

10. The applicants appealed against that judgment. On 21 March 2006 the Plovdiv Court of Appeal partly upheld and partly quashed the lower court's judgment. It discontinued the proceedings against the State, finding that part of the claim inadmissible as a result of the State's lack of standing, and upheld the ruling dismissing the claim against the two individuals. The court went on to say that the cutting down of trees did not amount to administrative activity and that the 1988 Act was not therefore applicable. It re-characterised the claim against the Plovdiv Municipality as an action under general tort law and remitted the case to the Plovdiv Regional Court for a fresh examination. It also quashed the order for the court fees to be paid.

11. The applicants lodged an appeal on points of law. On 10 January 2007 the Supreme Court of Cassation set aside the lower court's judgment and referred the case back to the Plovdiv Court of Appeal. It found that the lower court had correctly characterised the claim against the municipality as falling under the general law of tort, but instead of referring the case back to the first-instance court, the Plovdiv Court of Appeal should have dealt with the claims itself.

12. On 24 July 2008 the Plovdiv Court of Appeal awarded each applicant BGN 50,000 (EUR 25,565) in non-pecuniary damage (BGN 100,000 (EUR 51,130) in total for the two applicants), plus interest, and dismissed the remainder of their claims. It said that they had failed to show that there had been special circumstances justifying the extremely high quantum of their claims. Noting that the statutory court fees had not been paid up front, the court ordered the applicants to jointly pay BGN 126,000 (EUR 64,423) in court fees. The amount, calculated as a *pro rata* percentage of BGN 2,100,000 – the part of their claims that had been dismissed – corresponded to a fee of 4% of the amount in question for the first-instance proceedings and 2% for the appeal proceedings.

13. The applicants lodged an appeal on points of law. They complained that the damages awarded had been too low to compensate them for the loss of their relative's life. They further said that by imposing significant court fees, the courts had in fact sanctioned them and had taken away all that had been awarded. On 5 September 2008 the Sofia Court of Appeal returned their appeal on points of law, noting that it had been submitted after the statutory time-limit.

14. The municipality appealed on points of law. It argued that Ms Chorbadzhiyska's death had been accidental. It also pointed out that the appellate court had wrongly proceeded with the examination of the claims instead of first instructing the applicants to pay the statutory court fees. On 10 March 2009 the municipality's appeal on points of law was admitted in part for examination by the Supreme Court of Cassation. It noted that the municipality had raised two legal questions – one substantive and one procedural. It decided to admit the substantive question concerning the causal link in cases of vicarious liability for examination. It, however, stated that though the procedural question in relation to the payment of the court fees was, in principle, relevant, as the appellate court's judgment on the rejected part of the applicants' claims had become final and because that court had already ordered payment of the court fees, the examination of that question would not lead to a different outcome.

15. On 10 March 2010 the Supreme Court of Cassation upheld the Plovdiv Court of Appeal's ruling. It found that the municipality's liability for the incident had been established and that the amount of the awarded compensation had been justified.

16. On 13 and 15 April 2010 respectively the applicants asked the Supreme Court of Cassation to vary its ruling in relation to the court fees on the ground of Article 248(1) of the Code of Civil Procedure 2007 ("the 2007 Code", see paragraphs 37-39 below). Relying on the Court's judgment in *Stankov v. Bulgaria* (no. 68490/01, 12 July 2007), the applicants argued that in reply to that judgment, the 1988 Act had been changed and no longer required the payment of court fees by claimants in case their claims against the State had been allowed in whole or in part by the courts (see paragraph 34 below). In the alternative, they submitted that even though their claim had been re-characterised under general tort law, in line with the applicable rules of procedure, before having examined the case on the merits, the Plovdiv Court of Appeal should have first instructed them to pay the court fees. Instead, that court had ordered the payment of the court fees, whose amount had significantly exceeded the awarded compensation, only at the close of the proceedings.

17. On 17 June 2010 a three-judge panel of the Supreme Court of Cassation turned down their request. The court noted that the Plovdiv Court of Appeal in gross violation (*в грубо нарушение*) of the rules of procedure had wrongly proceeded to examine the applicants' claims without ordering them to first pay the statutory court fees. It however pointed out that the procedure for amending a judgment in relation to the costs of proceedings under Article 248(1) of the 2007 Code was only applicable to expenses, and did not cover court fees which were fixed by virtue of the statutory provisions and could not therefore be reduced at the courts' discretion.

18. The applicants lodged a further appeal before another panel of the Supreme Court of Cassation. Again they referred to the Court's judgment in *Stankov* (cited above) and the right of access to a court under Article 6 of the Convention. They argued that the first panel had wrongly limited the subject matter of Article 248 of the 2007 Code and that the costs of proceedings also covered the court fees which a party to the proceedings had been ordered to pay. The applicants further submitted that the court fees, even though fixed by law, had to be collected upon submission of the claim and not at the close of the proceedings as it had happened in their case.

19. On 14 January 2011 a three-judge panel of the same court upheld the decision. This panel went on to say on the substance of the applicants' claim that it could not amend the appellate court's costs order under the procedure laid down in Article 248 of the 2007 Code since that judgment had become final in respect of the rejected part of the applicants' claim. It further explained that the court could not at its discretion change the amount of the court fees, which were fixed by the statutory provisions. Only in certain cases, a party to the proceedings could be exempted from the payment of the court fees. This was not the case here - the applicants' claim, although submitted under the 1988 Act, had been re-characterised as falling under the

general law of tort by the Supreme Court of Cassation in its judgment of 10 January 2007 (see paragraph 11 above). That legal characterisation was also upheld in the ensuing appellate and cassation proceedings.

B. Enforcement proceedings against the applicants

20. On 25 March 2010 the Plovdiv Regional Court issued a writ of execution against the applicants for the amount of BGN 126,000 (EUR 64,423), as ordered by the Plovdiv Court of Appeal (see paragraph 12 above).

21. On 2 March 2011 the Plovdiv Municipality paid in total BGN 267,868.86 (EUR 136,960) or to each of the applicants the amount of BGN 133,934.43 (EUR 68,480), covering the awarded compensation (see paragraph 12 above), including interest running from 29 August 1998.

22. On 11 April 2011 the second applicant transferred to a bank account of the Plovdiv Directorate of the National Revenue Agency the amount of BGN 73,292.09 (EUR 37,474) due for the court fees, including interest.

23. On 28 April 2011 the first applicant also transferred to the Plovdiv Directorate of the National Revenue Agency the amount of BGN 73,451.13 (EUR 37,555) due for the court fees, including interest.

24. After payment of their debt to the State budget, the total net amount left to the applicants as a result of the judicial proceedings was BGN 121,125.64 (EUR 61,931), in other words, each applicant received BGN 60,562.82 (EUR 30,966).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State liability for damage

25. The domestic provisions concerning State liability for damage were summarised in *Zaharieva v. Bulgaria* ((dec.), no. 6194/06, §§ 40-41, 20 November 2012).

26. In accordance with the established practice in civil proceedings in Bulgaria, the courts examine and determine the legal characterisation of claims submitted to them, without regard to the legal characterisation proposed by the claimant. The claimant must identify the disputed issue by clarifying the facts and the claim made but is under no duty to specify its characterisation in law. Even if the claimant indicates a legal characterisation of the claim, the courts are not bound by it. They must make their own independent assessment (решение № 1208 от 19.07.1998 г. по гр.д. № 915/98 г., V г.о ВКС, решение № 75 от 15.08.1988 г., по гр. д. № 26/88 г., ОСГК на ВС).

B. Compensation for non-pecuniary damage

27. The general rules of the law of tort are set out in sections 45 to 54 of the Obligations and Contracts Act 1951 ("the 1951 Act"). Section 52 of the 1951 Act provides that the amount of compensation to be awarded in respect of non-pecuniary damage is to be determined by the court in equity.

28. In applying that provision, the former Supreme Court held that the notion of "equity" is not an abstract concept but requires the assessment of a number of specific, objectively existing circumstances which have to be considered by the courts when determining the amount of compensation. Such circumstances include the age of the victim, his or her social position, and the relationship between the victim and the relative who seeks compensation for non-pecuniary damage (Постановление № 4 от 23.XII.1968 г., Пленум на ВС) as well as the specific economic situation in the country (решение № 749 от 5.12.2008 г. на ВКС по т. д. № 387/2008 г., II т. о., ТК, решение № 83 от 6.07.2009 г. на ВКС по т. д. № 795/2008 г., II т. о., ТК).

29. In accordance with the practice of the domestic courts between 2000 and 2006, the compensation for non-pecuniary damage awarded to family members in connection with the unintentional death of their relatives varied between BGN 10,000 and BGN 20,000 (see, for instance, решение № 28 от 13.05.2004 г. на ВКС по н. д. № 634/2003 г., II н. о., in which the court awarded BGN 10,000 to the victim's minor child in compensation for non-pecuniary damage and BGN 7,000 to her parents; решение № 1408 от 24.09.2004 г. на ВКС по гр. д. № 874/2003 г., IV г. о., ГК, in which the court awarded BGN 20,000 to each parent for the death of their minor child; решение № 759 от 21.12.2004 г. на ВКС по н. д. № 381/2004 г., I н.о., in which the court awarded BGN 8,000 to the victim's wife and BGN 6,000 to each of his children; решение № 965 от 6.01.2005 г. на ВКС по гр. д. № 86/2004 г., I г. о, in which the court awarded BGN 10,000 to each parent for the death of their minor child; решение № 656 от 21.06.2005 г. на ВКС по н. д. № 1124/2004 г., II н.о., in which the court awarded BGN 20,000 to the victim's wife and BGN 15,000 to each of his parents; and решение № 2876 от 20.02.2006 г. на ВКС по д. № 2240/2004 г. IV г. о., in which the court awarded BGN 40,000 to an adult child for the loss of her parents).

30. Later, the amount of compensation awarded as standard practice for non-pecuniary damage increased (see, for instance, решение № 83 от 6.07.2009 г. на ВКС по т. д. № 795/2008 г., II т. о., ТК, in which the court awarded BGN 90,000 to each of the parents for the loss of their eighteen year-old son; решение № 95 от 29.09.2009 г. на ВКС по т. д. № 355/2009 г., I т. о., ТК, in which the court awarded BGN 40,000 to the son of the victim; and решение № 205 от 26.11.2010 г. на ВКС по т. д. № 218/2010 г., II т. о., ТК, in which the court awarded BGN 60,000 to the victim's wife and BGN 35,000 to each of his adult children).

C. Court fees

31. The relevant provisions in the 1988 Act (see paragraph 8 above) concerning court fees were summarised in the case of *Stankov v. Bulgaria* (no. 68490/01, §§ 19-21, 12 July 2007) and more recently in the case of *Zaharieva* (cited above, §§ 43-48). The relevant provisions in the Code of Civil Procedure 1952 ("the 1952 Code") and the 2007 Code (see paragraph 16 above) concerning court fees were summarised in the cases of *Agromodel OOD v. Bulgaria* (no. 68334/01, §§ 22-29, 24 September 2009) and *Kirov and Others v. Bulgaria* ((dec.), no. 57214/09, §§ 21-26, 9 January 2018). In particular, the general rule in civil proceedings is that the court fee is payable by the claimant up front, upon submission of the claim. The fee in respect of money claims is 4% of the amount claimed before a first-instance court and 2% of the value of the claim when examined on appeal or in cassation. If the claim succeeds fully or partly, the defendant is ordered to reimburse the claimant's costs, including court fees, in direct proportion to the successful part of the claim.

32. Under section 10(2) of the 1988 Act, as originally enacted, in proceedings under the Act, no court fees or costs were payable by the claimant up front, upon submission of the claim. However, if the claim was eventually wholly or partly dismissed, the court was to order the claimant to pay "the court fees and costs due". The courts construed that provision as meaning that the claimant should pay fees calculated pro rata the dismissed part of the claim. As a result, where a court held that a claim for damages against the State was well-founded but excessive as to quantum, it ordered the defendant State authority to pay damages to the claimant and at the same time ordered the claimant to pay court fees to the State budget. Where the claimant indicated too high an amount in the statement of claim, the fee could exceed the sum awarded in damages, the overall financial award being in favour of the State despite the finding that the claimant had suffered damage that called for compensation under the Act (решение № 1095 от 25.07.2000 г. на ВКС по гр. д. № 139/2000 г.; решение № 805 от 1.08.2005 г. на ВКС по гр. д. № 56/2004 г.). There was no provision for judicial discretion and considerations of equity played no role in fixing the fees' amount; those fees were fixed by reference to the sums indicated in the statement of claim, even if in the course of the proceedings the claimant withdrew part of the claim (тълк. решение № 3 от 22.04.2004 г. по тълк. гр. д. № 3/2004 г., ВКС, ОСГК, точка 12).

33. Following the judgment in *Stankov*, as of 30 May 2008, the system of court fees under the 1988 Act was changed. At present, a flat fee for bringing a claim is due, which varies of either BGN 10 for individuals and non-governmental organisations or BGN 25 for other legal entities (approximately EUR 5 or EUR 13) in respect of first-instance proceedings, BGN 5 or BGN 12,5 (approximately EUR 3 and EUR 6) in respect of

appellate and cassation proceedings. Unlike the previous arrangement, the fee is payable up front.

34. Section 10(2) of the 1988 Act, as worded after 30 May 2008, provides that if the claim is rejected in full, the court must order the claimant to pay the costs of the proceedings. The claimant must also pay those costs if he or she withdraws the claim in its entirety. If a claim under the 1988 Act is allowed in whole or in part, the court is to order the defendant to pay the costs of the proceedings and to reimburse the court fee paid by the claimant. The defendant must also pay the claimant the fee of one counsel, if the claimant had retained counsel, pro rata the allowed part of the claim (section 10(3) of the 1988Act).

35. According to Article 63 § 1(b) of the 1952 Code, which was reproduced in Article 83 § 2 of the 2007 Code, individuals for whom the court established that they do not have sufficient means are exempt from the obligation to pay court fees and expenses. In establishing eligibility for this exemption, the court takes into account the person's and his or her family income, the value of the estate, family and health circumstances, age, whether the person is employed or not as well as other relevant circumstances.

D. Amendment of a judgment in relation to costs

36. Under the 1952 Code a party could challenge the costs order by lodging an appeal against the lower court's judgment. If the party does not wish to appeal against the ruling itself, the higher court would deal only with the costs order (Article 70 of the 1952 Code).

37. Article 81 of the 2007 Code provides that at each level the court has to rule on the costs claim in its decision ending the proceedings. The 2007 Code no longer provides for a possibility to challenge by way of appeal solely the costs order without challenging the judgment itself. If a party wishes to challenge the costs order only, it has to resort to the special procedure under Article 248 of the 2007 Code (see определение № 212 от 09.04.2009 по т.д. №189/2009 г., ТК на ВКС, опр. №57 от 03.02.2009 г. по т.д. № 632/2008, ТК II т.о. на ВКС; Сталев, Ж, А. Мингова, О.Стамболиев, В., Попова, Р. Иванова, *Българско гражданско процесуално право,* София, 2012 г., стр. 379).

38. Article 248 of the 2007 Code allows parties to seek an amendment of a judgment in relation to costs. The request has to be made within the time-limit for appeal or, if the judgment is not subject to appeal, within one month of its pronouncement. The court examines the costs order in camera and its decision can be appealed under the same procedure as the judgment.

39. In an interpretative decision of 2013, the plenary of the Supreme Court of Cassation's Civil and Commercial Sections held that the costs incurred by the parties in relation to proceedings include both the court fees

and the costs of the proceedings (see тълк. Решение № 6 от 6.11.2013 г. по тълк. д. № 6/2012 г., ВКС, ОСГТК). In a decision given on 16 September 2013 the Supreme Court of Cassation held that the procedure under Article 248 of the Code of Civil Procedure 2007 was likewise applicable to court fees which had been calculated wrongly by the courts (решение № 202 от 16.09.2013 г. на ВКС по гр. д. № 1456/2013 г.).

E. The statutory rate of interest and the rate of inflation

40. The provisions concerning the statutory rate of interest were summarised in *Zaharieva* (cited above, § 42).

41. After the introduction of the currency board in 1997 in response to the financial crisis of 1996-97, inflation rates in Bulgaria were relatively stable. According to data of the World Bank, in 2003 – when the applicants brought their claims – the inflation rate was 2.35%, whereas in 2010, at the close of the proceedings, it was 2.44%.

THE LAW

I. PRELIMINARY QUESTION

42. The Court notes that the first applicant died after the present application had been lodged. The second applicant, his daughter and only legal heir, expressed the wish to continue the proceedings before the Court also in his stead. The Government have not disputed that the second applicant is entitled to pursue the application on the first applicant's behalf and the Court sees no reason to hold otherwise (see, among other authorities, *Sargsyan v. Azerbaijan* (dec.) [GC], no. 40167/06, § 51, 14 December 2011, and the case-law cited therein).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. The applicants complained of the excessive amount of court fees that they had been ordered to pay in relation to their claims for damages against the State. They relied on Article 6 § 1 and Article 1 of Protocol No. 1, alone and together with Article 13.

44. In the light of its case-law, the Court considers that the complaints concerning the court fees that the applicants were ordered to pay fall to be examined solely under Article 6 § 1 of the Convention (see *Stankov v. Bulgaria*, no. 68490/01, §§ 49-67, 12 July 2007; *Zaharieva v. Bulgaria* (dec.), no. 6194/06, § 87, 20 November 2012; *Ermenkova v. Bulgaria* (dec.), no. 75873/01, 14 June 2011; and *Harrison McKee v. Hungary*, no. 22840/07, §§ 14-15, 3 June 2014), which provides, in so far as relevant:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

1. Arguments of the parties

45. The Government argued that the applicants had failed to exhaust the available domestic remedies. First, they had failed to appeal against the Plovdiv Court of Appeal's judgment of 24 July 2008 within the statutory time-limit (see paragraph 13 above), thus losing "another procedural opportunity to defend their rights". Secondly, they had not lodged an appeal against the Supreme Court of Cassation's decision of 17 June 2010 rejecting their request to have the appellate court's fees order varied (see paragraph 16 above).

46. The applicants argued that lodging an appeal on points of law against the Plovdiv Court of Appeal's judgment of 24 July 2008 would have required the payment of additional court fees, which rendered that remedy ineffective. They also submitted that by seeking to have the fees order varied, they had exhausted the most appropriate and available remedy. They argued that the national law did not clearly distinguish between fees and the costs of proceedings, and that the procedure under Article 248 of the 2007 Code was equally applicable to court fees (see paragraphs 37-39 above). They also maintained that they had unsuccessfully appealed against the Supreme Court of Cassation's decision of 17 June 2010 before another three-judge panel.

2. The Court's assessment

47. The Court reiterates that the only remedies which an applicant is required to exhaust are those that relate to the breaches alleged and which are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 75, ECHR 1999-V). Moreover, when an applicant has pursued one remedy, the use of another remedy which has essentially the same objective is not required (see also *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §177, 25 June 2019).

48. The Court has also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 76, 25 March 2014 and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 87, 9 July 2015). It has further held that non-exhaustion of domestic remedies cannot be held against the

applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the appeal (see *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008 and the cases cited therein). The same approach was followed in respect of claims worded in a very cursory fashion barely satisfying the legal requirements, where the national court has ruled on the merits of the case, albeit briefly (see also *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], no. 32772/02, § 43, ECHR 2009 and cases cited therein).

49. Turning to the Government's objection that the applicants had failed to exhaust the available domestic remedies, the Court first notes that the applicants' appeal on points of law against the Plovdiv Court of Appeal's judgment of 24 July 2008 was indeed lodged outside the statutory time-limit (see paragraph 13 above). However, the municipality appealed against this judgment and this appeal was accepted for examination concerning the substantive question of vicarious liability in the applicants' case. While the Supreme Court of Cassation ultimately upheld the Plovdiv Court of Appeal's ruling in the appealed part, the compensation the applicants would receive and the amount they would have to pay in court fees was therefore not decided with a final decision until the final judgment of the Supreme Court of Cassation of 10 March 2010 (see paragraph 15 above). Thus, the applicants were in an uncertain position until that moment as to whether their compensation claim would be allowed by the courts, and if allowed, what court fees they would have to pay as well as what the final ratio between the court fees and the damage award would be, which is the central element of their complaint before this Court (contrast *Aydarov and others v. Bulgaria* (dec.), no. 33586/15, § 66, 2 October 2018). The present case is therefore similar to those where the Court had rejected the Government's objection of non-exhaustion because the national courts had examined the substance of an applicant's complaint (see paragraph 48 above).

50. The Court observes with reference to the domestic case law (see paragraph 39 above), that it was at least arguable that in the proceedings under Article 248 of the 2007 Code the applicants could have tried to seek correction in the court fees in so far as court fees were part of the costs order. Furthermore, in those proceedings the applicants expressly relied on Article 6 of the Convention, the conclusions of the Court in the *Stankov* case (cited above) and the newly inserted amendments to the 1988 Act in reply to the Court's judgment (see paragraphs 16, 18 and 33-34 above). They have thus raised their grievance about the excessive court fees before the domestic courts. In reply, two panels of the Supreme Court of Cassation, albeit finding their request inadmissible, dealt with their complaint in substance, finding that the court fees were fixed by virtue of the law and that the courts have no power to reduce them (see paragraphs 17 and 19 above).

51. The Court further notes that from the case file it is evident that the applicants did appeal against the Supreme Court of Cassation's decision of 17 June 2010 refusing their request to have the court fees reduced (see paragraphs 18-19 above).

52. Finally, the Court points out that the Government have not called into question the effectiveness of the remedy under 248(1) of the 2007 Code used by the applicants in the instant case and that the existing domestic case-law suggests that this remedy was not obviously futile (see paragraph 39 above). The Government's objection on this point must therefore be dismissed.

53. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor it is inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

54. The Government submitted that the Bulgarian courts had acted in accordance with the domestic law. They maintained that the imposition of court fees pursued the legitimate aim of ensuring the better administration of justice and that there was a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved. They also said that the applicants' claim had been partly allowed by the courts and that they had been ordered to pay the court fees only at the end of the proceedings. The Government were also of the opinion that the quantum of the applicants' claims had been frivolous, exaggerated and not based on the established domestic case-law, which was the main reason that they had been ordered to pay such a high amount in fees. In addition, they pointed out that the applicants could have reduced the quantum of their claims before the first-instance court. That would also have reduced the amount of the applicable court fees. They thus concluded that the applicants' right of access to a court had not been unduly restricted.

55. The applicants disagreed with the Government that the legal framework on court fees afforded a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved. They argued that the existing system of court fees imposed an automatic flat rate of 4% without providing any justification in terms of the expenses incurred in examining a particular case or affording any judicial discretion. Moreover, the national law did not contain any criteria on how the courts must assess the quantum of claims for compensation in respect of non-pecuniary damage, leaving the matter entirely within the courts' discretion. In the applicants' view the quantum of their claims could not be regarded as frivolous or as an abuse of right since the damages

sought had to compensate them for the "pointless death" of their family member.

2. The Court's assessment

56. The Court notes that the requirement to pay fees to civil courts in connection with the claims they are asked to determine cannot be regarded as a restriction on the right of access to a court that is incompatible *per se* with Article 6 § 1 of the Convention (see *Stankov*, cited above, § 52). However, the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed are factors which are material in determining whether or not a person enjoyed his right of access to a court (see *Kreuz v. Poland*, no. 28249/95, § 60, ECHR 2001-VI).

57. The Court further observes that the present case concerns claims for damages against the State that the domestic courts found to be well-founded but excessive as to quantum. While the applicants received in total BGN 267,868.86 (EUR 136,960) in damages awarded by the courts, including interest (see paragraph 21 above), they were also ordered to jointly pay BGN 126,000 (EUR 64,423) in court fees, plus interest (see paragraphs 22-23 above) for the first- and second-instance proceedings (see paragraph 12 above). It is true that, as in *Stankov* (cited above), they were required to pay the fees only at the close of the proceedings. Whilst this was not in line with the applicable rules of procedure (see paragraph 31 above), it allowed them to enjoy access to all stages of the proceedings. Nevertheless, the Court has already found that the imposition of a considerable financial burden, even after the conclusion of the proceedings, could also operate as a restriction on the right to a court (see *Stankov*, cited above, § 54). In the present case, the amount of the court fees that the applicants were ordered to pay, compared with the amount of the awarded compensation, even including interest, could be seen as such a restriction.

58. Such a restriction will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aims sought to be achieved (see *Urbanek v. Austria*, no. 35123/05, § 50, 9 December 2010). Contracting States enjoy a certain margin of appreciation in that respect but the ultimate decision as to the observance of the Convention's requirements rests with the Court (see *Kreuz*, cited above, § 60). The Court must therefore examine whether this has been achieved in the present case.

59. The Court notes that in previous cases against Bulgaria it has accepted that the domestic system of court fees pursued the legitimate aim of funding the judicial system and of acting as a deterrent to frivolous claims. However, in a number of cases in which the applicants brought proceedings against State entities and were ordered to pay court fees despite

their claims being allowed by the domestic courts, the Court has concluded that the court fees ordered were excessive. The Court has further held that rules regarding legal costs must avoid placing an excessive burden on litigants where their action against the State is justified, as it is paradoxical that, by imposing various taxes, the State takes away with one hand what it has awarded with the other (see *Stankov*, cited above, § 59, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 201, ECHR 2006-V). Thus, in *Stankov* the fee payable by the applicant amounted to approximately 90% of the compensation the State was ordered to pay him (see *Stankov*, cited above, § 51), and in *Mihalkov v. Bulgaria* (no. 67719/01, §§ 60-65, 10 April 2008), the fee was higher than the award itself. In another follow-up case in which the Court likewise found a breach of Article 6 § 1, the fee amounted to 72% of the award (see *Tzvyatkov v. Bulgaria*, no. 20594/02, §§ 25-27, 12 June 2008). By contrast, in *Zaharieva* the Court dismissed a similar complaint where the court fee only amounted to about 8.3% of the awarded compensation (cited above, §§ 95-96).

60. In reaching the conclusion that there was a breach of Article 6 § 1 of the Convention, in addition to the quantum of court fees and their ratio to the claim which was allowed by the domestic courts, the Court has taken into account also other factors. It has considered the foreseeability of such fees as they were imposed at the end of the proceedings, whether the court fee system at issue afforded a sufficient degree of flexibility (see *Urbanek*, cited above, § 64) as well as whether there was a possibility to assess the proportionality of the fees by the domestic courts (see, *mutatis mutandis, Stankov*, cited above, §§ 64-67).

61. In the instant case, the Court notes that the court fees charged to the applicants (BGN 126,000, EUR 64,423) were higher than the damages awarded by the domestic courts (BGN 100,000, EUR 51,130; see paragraph 12 above). As the award included also statutory interest, the court fees, including interest (BGN 146,743.22, EUR 75,029; see paragraphs 22-23 above) amounted to around 55% of the compensation received by the applicants, including interest (BGN 267,868.86, EUR 136,960; see paragraph 21 above). While interest has substantially increased the actual compensation received by the applicants and diminished the ratio vis-à-vis the court fees, the Court cannot disregard the fact that its primary role is to compensate a creditor for the delay in payment.

62. The Court further notes that the applicants sought BGN 2,000,000 in compensation for non-pecuniary damage in connection with the death of their relative (see paragraph 8 above). The Court is conscious that this claim reflected the applicants' emotional suffering and that it is likely that they would have had difficulty in assessing the amount of non-pecuniary damage in this connection. Still, it observes that the sum claimed by them significantly exceeded the amounts awarded by the domestic courts in

similar cases at the relevant time (see paragraph 29 above). While the Court does not doubt that their claims were genuine and serious, it considers that the amount sought in damages was rather excessive as to its quantum (compare *Kupiec v. Poland*, no. 16828/02, § 49, 3 February 2009, where the Court found the applicant's claim to have been "grossly exaggerated and unrealistic", and *Kuczera v. Poland*, no. 275/02, § 46, 14 September 2010 in which the Court considered the amount of compensation claimed by the applicant to have been "exaggerated").

63. At the same time, the applicants initially brought their claims for damages under the 1988 Act which, at the material time, did not require that claimants pay court fees up front (see paragraph 32 above). Following the re-characterisation by the court of their claims under the general law of tort and the remittal of the case, the Plovdiv Court of Appeal did not instruct the applicants to pay the court fees up front, which, along with the possibility to request a fee waiver, was one of the safeguards under domestic law against excessive court fees (see paragraph 35 above). Instead, that court only briefly noted in its judgment that no fees had been collected at the beginning of the proceedings and ordered the applicants to pay them for both the first and second-instance proceedings, amounting to BGN 126,000 (EUR 64,423). In this respect the Supreme Court of Cassation found that the Plovdiv Court of Appeal had committed a gross violation of the rules of procedure (see paragraph 17 above). As a result, in not following the domestic procedure, the national courts deprived the applicants of the opportunity to give appropriate consideration to the court fees due and possibly to reassess their claim in the light of those court fees.

64. In addition to the issue of the foreseeability of the court fees, the Court notes that their calculation in the present case was based on the same inflexible rate which the Court found to be problematic in *Stankov* (cited above, §§ 64-65 and see also *Agromodel OOD v. Bulgaria*, no. 68334/01, § 47, 24 September 2009 which also concerned the system of court fees under the general tort law, in proceedings brought by the applicant company against the prosecutor's office). The Court has accepted that it falls within the State's margin of appreciation to establish its court fees system in such a way as to link court fees for pecuniary claims to the amount in dispute. The system, however, has to be sufficiently flexible to allow a party to benefit from full or partial exemption from the payment of court fees or a reduction in the court fees (see also *Urbanek*, cited above, §§ 61-65). In the instant case the applicants could not benefit from the safeguards provided in domestic law against excessive court fees (see paragraphs 35 and 63 above) and, in particular, from the "cautioning effect" which the requirement to pay the court fees up front may have on claimants and the possibility linked to it to request exemption (see, *mutatis mutandis*, *Stankov*, cited above, § 65).

65. The interpretation of the applicable domestic law given by the Supreme Court of Cassation in the proceedings for amendment of the costs

order brought by the applicants likewise pointed at the lack of flexibility in the instant case. Despite their express reliance on the Court's judgment in *Stankov* (cited above), two panels of the Supreme Court of Cassation held that the rules on court fees should be applied automatically and that there existed no room for judicial discretion (see paragraphs 16-19 above).

66. The Court further notes that following the Court's judgment in the case of *Stankov* (cited above) the court fees system under the 1988 Act was abandoned and replaced by one where a flat fee of either BGN 10 or BGN 25 (approximately EUR 5 or EUR 13) is due, and which is not dependent on the value of the claim (see paragraph 33 above).

67. Although the Court's task in cases arising from individual applications is not to review domestic law in the abstract, but to examine the manner in which that law has been applied to the applicants (see, among other authorities, *McCann and Others v. the United Kingdom*, 27 September 1995, § 153, Series A no. 324), the Court cannot but note the significant difference in the amounts of the court fees required for the same service between claims against the State under the 1988 Act, as amended in 2008 (flat fee, see paragraph 33 above) and those examined under the general law of tort set out in the Obligations and Contracts Act 1951 (4% of the amount claimed, see paragraph 31 above).

68. While the value of the applicants' claim was rather excessive, the Court considers that in the instant case by being ordered to pay in court fees more than the damages awarded by the courts (compare the amounts in paragraph 12 above) and having in fact paid in court fees more than half of the total amount granted to them, which comprised also statutory interest, the applicants, who otherwise won their case against a State entity, suffered a disproportionate restriction on their right of access to a court.

69. Therefore, there has been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. Article 41 of the Convention provides:

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

A. Damage

71. The second applicant claimed, in pecuniary damage, the sums the applicants had paid in court fees in the domestic proceedings, plus interest amounting to EUR 124,900.06. She also sought EUR 20,000 in respect of

non-pecuniary damage suffered both in her individual capacity and as the heir of the first applicant.

72. The Government contested the claims in relation to pecuniary and non-pecuniary damage. In their opinion the sums sought by the applicants were exorbitant and speculative. They submitted that any just satisfaction awarded by the Court in the present case should be comparable to the compensation awarded in similar cases concerning excessive court fees.

73. The Court considers that the applicants must have suffered distress as a result of the significant amount they had to pay to the State in court fees. It refers to the compensation awarded in similar cases in which the Court likewise found a breach of Article 6 § 1 of the Convention (see *Stankov*, cited above, § 71; *Mihalkov*, cited above, § 81; *Tzvyatkov*, cited above, § 33; and *Slavkov v. Bulgaria* (dec.), no. 47436/07, 1 July 2014). It also takes into account the amount of the court fees that the applicants had been ordered to pay and the sums which they retained after payment of all the fees along with the interest (see paragraphs 12 and 24 above). It finally refers to its finding that the value of the applicants' claims was rather excessive (see paragraph 62 above). In view of the above considerations and ruling on an equitable basis, the Court awards a total of EUR 12,500 in respect of both pecuniary and non-pecuniary damage, to be paid to the second applicant.

B. Costs and expenses

74. The second applicant sought reimbursement of EUR 5,640 incurred in lawyers' fees for forty-seven hours of work on the proceedings before the Court, at EUR 120 per hour. She said that she had already paid her legal representatives EUR 1,226. The second applicant further sought reimbursement of EUR 17.90 which her legal representatives had spent on postage, EUR 25 which they had spent on office supplies, and EUR 10 which they had spent on photocopying. Lastly, she claimed EUR 165.66 spent on the translation of the observations and claims made on their behalf into French. She requested that any award under this head, except the EUR 1,226 which she had already paid her legal representatives, be made directly payable to her legal representatives' firm, Ekimdzhiev and Partners. In support of her claim, the second applicant submitted two fee agreements with her legal representatives, which said, *inter alia*, that she had paid BGN 2,400 up front and that she remained liable for the remainder; a time-sheet; receipts showing that her legal representative had spent BGN 35.00 to post the original application; and a contract for translation services between her legal representatives and a translator.

75. The Government submitted that the claim in respect of lawyers' fees was excessive. They also disputed the number of hours spent by the

applicants' legal representatives on the case, saying that they were likewise excessive.

76. According to the Court's settled case-law, costs and expenses are recoverable under Article 41 of the Convention if it is established that they were actually and necessarily incurred and are reasonable as to quantum.

77. In the present case, the Court notes that the applicants' complaint under Article 6 § 1 of the Convention is a repetitive one. It also considers that the hourly rate charged by the applicants' legal representatives is higher than those charged in recent cases against Bulgaria of even greater complexity (see *Posevini v. Bulgaria*, no. 63638/14, § 100, 19 January 2017 and the cases cited therein). It is therefore not reasonable as to quantum. Having regard to these points and the material in its possession, the Court awards the second applicant EUR 2,000, plus any tax that may be chargeable to her, in respect of legal costs. Since the fee agreement and the time-sheet submitted specified that the second applicant had paid her legal representatives the equivalent of EUR 1,226, that sum is to be paid to the second applicant, and the remainder of the award (totalling EUR 774) to her legal representatives' firm, Ekimdzhiev and Partners. As regards the claim for other expenses, the second applicant did not submit any supporting documents other than a contract for translation services and postal receipts for documents sent to the Court. In such circumstances, the Court awards EUR 184 in respect of those expenses. This sum is likewise to be paid to her legal representatives.

C. Default interest

78. 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* that the first applicant's daughter (the second applicant) has standing to continue the present proceedings in the first applicant's stead;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention with respect to the court fees that the applicants were ordered to pay;

4. *Holds*
   (a) that the respondent State is to pay the second 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 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 2,184 (two thousand one hundred and eighty-four euros), plus any tax that may be chargeable to the second applicant, in respect of costs and expenses – EUR 1,226 (one thousand two hundred and twenty-six euros) of this sum is to be paid to the second applicant, and the remaining EUR 958 (nine hundred and fifty-eight euros) to the legal representatives' firm, Ekimdzhiev and Partners;

(a) 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;

5. *Dismisses* the remainder of the second applicant's claims for just satisfaction.

Done in English, and notified in writing on 2 April 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Gabriele Kucsko-Stadlmayer
Registrar	President