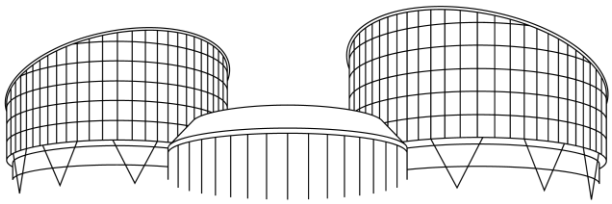

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF HRISTOVI v. BULGARIA

(Application no. 42697/05)

JUDGMENT

STRASBOURG

11 October 2011

FINAL

11/01/2012

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

In the case of Hristovi v. Bulgaria**,**

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

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 20 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 42697/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Bulgarian nationals, Mr Aleksandar Hristov Hristov ("the first applicant"), Mrs Zhivka Dobreva Hristova ("the second applicant") and Ms Victoria Aleksandrova Hristova ("the third applicant"), on 28 November 2005. The first and second applicants are husband and wife and the third applicant is their daughter.

2. The applicants were represented by Mr M. Ekimdjiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Mrs N. Nikolova and Mr V. Obretenov, of the Ministry of Justice.

3. The applicants complained under Articles 3 and 13 of the Convention that on 17 February 2004 they had been ill-treated by police officers, that the authorities had failed to carry out an effective investigation into the matter, and that they had not had effective remedies at their disposal to protect their rights. The first applicant also raised complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 in connection with criminal proceedings against him.

4. On 4 March 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The application was subsequently assigned to the Fourth Section following the recomposition of the Court's Sections on 1 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1967, 1968 and 1998 respectively and live in Burgas.

A. The events of 17 February 2004 and the first applicant's arrest

6. Around 1 p.m. on 17 February 2004 someone rang the door bell of the applicants' apartment. At that time inside the apartment were the first, second and third applicants and the second applicant's mother, Mrs. D.Zh.

7. Mrs D.Zh. opened the door, following which a group of several masked police officers went in and arrested the first applicant.

8. Subsequently, it was established that the police officers were from the Central Service for Combating Organised Crime ("the CSCOC") of the Ministry of the Interior and were conducting an operation to investigate individuals suspected of the forging of banknotes.

9. The applicants alleged that the police officers had kicked and beaten the first applicant and threatened the second and third applicants with a gun, shouting that they would kill everybody. The Government disputed these allegations.

10. After the first applicant was arrested and handcuffed, Mrs I.K., an officer from the CSCOC, arrived at the scene.

11. At about 1.30 p.m. the applicants' lawyer, Mr D.K., and a colleague of his, Mr G. B., also went to the applicants' apartment but were apparently refused access.

12. At about 2.30 p.m. Mr M.M., an investigator from the Burgas Regional Investigation Service ("the BRIS") arrived at the scene in order to carry out a search of the applicants' apartment. The first and second applicants and two certifying witnesses (*поемни лица*) were present during the search. At about 4 p.m. a prosecutor from the appellate public prosecutor's office and the director of the BRIS also arrived.

13. The search ended around 5.30 p.m.

14. Immediately after that the police officers took the first applicant to the BRIS where he was charged with aiding and abetting the forging of banknotes and with an attempt to put forged banknotes into circulation. He was remanded in custody.

15. On 18 February 2004 the prison doctor examined the first applicant and noted in the medical register of detained persons (*амбулаторен дневник*) that the applicant was healthy. He did not make a note of any bruises or injuries on the applicant's body. The first applicant was again examined by the prison doctor on 17, 19 and 22 March and 16 April 2004 in

connection with hypertonic crisis, for which he was prescribed medication. It appears that on 22 March 2004 an unspecified part of the first applicant's body was bandaged. It is not clear why this was done.

16. On 23 April 2004 the first applicant was examined by specialists from a civilian hospital (see paragraph 18 below).

B. The applicants' complaints and the investigation of the incident

17. On 15 April 2004 the first applicant filed an application with the prison authorities stating that during his arrest on 17 February 2004 he had been beaten by police officers and had not been feeling well since then; in particular, he was suffering from headaches, dizziness and pain in the ears. He requested a medical examination by civilian doctors.

18. The request was granted, following which on 23 April 2004 the first applicant was examined in a civilian hospital. The doctors concluded that he was suffering from high blood pressure. The doctors did not note any bruises or injuries on his body.

19. Meanwhile, on 11 April 2004 the second applicant lodged a complaint about the incident with the Sliven regional military prosecutor's office. She stated that at about 1 p.m. on 17 February 2004 someone had rung the doorbell of the applicants' apartment. Mrs D.Zh., who had also been residing there, had opened the door and a group of masked police officers had rushed in. The first applicant had come out into the corridor, where he had been knocked down by the police officers. The second applicant had heard shouts and screaming. She had come out into the corridor and had seen that the first applicant was lying on the floor while the police officers were punching and kicking him. The third applicant, five years old at the time, was screaming. One of the police officers had pointed a gun at the second and third applicants and shouted: "Shut up or I will shoot you! Take this child away from here! Make her shut up!" The police officer had blue eyes and a blond moustache. Mrs D.Zh. had started screaming and a female police officer with blond hair and blue eyes had threatened to beat her up.

20. The complaint was received on 15 April 2004 and on an unspecified date thereafter an investigation was opened.

21. During the investigation Mr M.M. and officers from the detention centre were questioned, the case file of the criminal proceedings against the first applicant was examined and information about the relevant entries in the medical register of the detained persons was gathered. There is no evidence that other State officials who had been present when the incident took place were questioned. None of the police officers who had entered the applicants' apartment and effected the first applicant's arrest was ever interviewed. Neither the applicants, nor any independent witnesses appear to have been questioned.

22. In a statement given in the course of the investigation, Mr M.M., the investigator with the BRIS, stated that, following orders to carry out a search in the applicants' apartment, he had arrived there at about 2.30 p.m. The front door of the apartment had been open. Inside the apartment Mr M.M. had seen the first applicant, who was handcuffed and was being guarded by two or three police officers. Two other police officers, two certifying witnesses and the second applicant were present. Mr M.M. had not seen the second applicant's mother, or the third applicant. Nor had he seen signs of a fight or violence in the apartment or on the first applicant's face, body or clothes. The first and second applicants had not complained about any ill-treatment. At about 4 p.m. a prosecutor from the appellate public prosecutor's office and the director of the BRIS had arrived at the scene.

23. In an order of 29 November 2004 a prosecutor from the Sliven regional military prosecutor's office refused to open criminal proceedings (*предварително производство*), noting that the police officers had been carrying out a special operation for the arrest of members of an organised criminal group and that there was no evidence that the police officers had used unnecessary force and threats against the applicants.

24. The second applicant appealed, requesting, *inter alia*, the questioning of Mrs D.Zh. and a neighbour, Mrs D.N., who had allegedly witnessed the incident, the examination of the register for detained persons, where, according to her, the first applicant's bruises had been noted, and the commissioning of medical expert opinions. She submitted medical documents dated 19 March, 26 March and 13 May 2004 proving that she, her son and daughter, the third applicant, were suffering from stress disorders.

25. The prosecutor from the Sliven regional military prosecutor's office dealing with the case forwarded the appeal to the Sofia military appellate prosecutor's office and prepared a report on its merits. In this report, dated 27 December 2004 and addressed to the appellate prosecutor's office, he proposed that the appeal be dismissed and the criminal proceedings discontinued for lack of sufficient evidence.

26. In particular, he considered that the medical documents concerning the stress disorder of the second and third applicants could not be regarded as evidence of ill-treatment and did not prove that a causal link between their condition and the events of 17 February 2004 existed. He also noted that the allegations that the first applicant had been beaten had not been proved because, first, the applicants had not complained about ill-treatment before the investigators or the prosecutor present during the search and, second, on 18 February 2004 the prison doctor had noted in the medical register that the first applicant had been healthy. As to the request for the questioning of witnesses, the prosecutor considered that Mrs D.Zh.'s testimony would not contribute to the establishment of the true facts and

that there was no indication that Mrs D.N. had witnessed the events. He also considered that the applicants had not substantiated the relevance of the copy of the register of detained persons and, therefore, this request should be rejected.

27. On 5 January 2005 a prosecutor from the Sofia military appellate prosecutor's office upheld the refusal to open a preliminary investigation. He noted, without specifying any further details, that during the first applicant's arrest the police officers had used physical force and other means of restraint (*помощни средства*). Nevertheless, he found that there was insufficient evidence of an offence.

28. The second applicant appealed further.

29. On 4 April 2005 a prosecutor from the Chief Public Prosecutor's Office held that the police officers had indeed imposed some restrictions on the applicants, such as to forbid contact between them and restrict their free movement. These restrictions, however, had been necessary in order to carry out the search. The applicants had not complained about the alleged ill-treatment to the prosecutor or to the investigators who had been present at the search but had instead lodged their official complaint two months after the incident. He found that no excess of power or evidence of an offence had been established and therefore refused to open criminal proceedings. In respect of the complaints about the alleged ill-treatment of the first applicant, the prosecutor rejected the appeal without examining its merits as it had not been lodged by the first applicant himself.

30. The first and second applicants appealed to the Chief Public Prosecutor.

31. On 28 May 2005 a prosecutor from the Chief Public Prosecutor's Office refused to open criminal proceedings on account of a lack of sufficient evidence of an offence.

C. Other relevant information which came to light during the criminal proceedings against the first applicant

32. At a hearing on 14 October 2004, held in the course of the criminal proceedings against the first applicant, Mrs I.K, an officer from the CSCOC who had been present at the incident, stated that by the time she had arrived at the scene, other police officers had already arrested the first applicant, who at the moment of her arrival had been lying on the floor while being handcuffed. Thereafter, the police officers had lifted him from the floor and let him sit down. She contended that she had not seen any of the police officers hit the first applicant; nor had she noticed bruises or injuries on him. She had not been aware of the allegations that injuries on the first applicant's body had been noted in the register for detained persons. It appears that these statements were made in connection with contentions

made by the first applicant in the course of the criminal proceedings against him that he had been ill-treated during his arrest on 17 February 2004.

33. On the same day, another officer from the CSCOC, Mr K.M., testified before the trial court. His testimony did not concern the events of 17 February 2004.

D. The criminal proceedings against the first applicant

34. On 17 February 2004 the applicant was remanded in custody on suspicion of aiding and abetting the forgery of banknotes and of attempting to put forged banknotes into circulation.

35. On 20 May 2004 he was released on bail.

36. By a judgment of 30 March 2005 the Burgas Regional Curt found the first applicant guilty as charged. It sentenced him to six years' imprisonment and confiscated the mobile phone he had used for arranging meetings with accomplices and potential clients.

37. The first applicant appealed, claiming, *inter alia*, procedural breaches, including the refusal of the domestic court to provide him with a translation of a fax from the US secret services which had allegedly been admitted as evidence and mentioned in the judgment. The Burgas Court of Appeal dismissed this request at a hearing on 25 March 2005, finding that the fax had not been included as evidence in the case file.

38. On 13 February 2006 the Burgas Court of Appeal upheld the previous court's judgment, finding no procedural breaches.

39. The first applicant, who had been legally represented throughout the proceedings, appealed further.

40. By a final judgement of 29 March 2007, the Supreme Court of Cassation acquitted him on the charges of attempting to put forged banknotes into circulation and therefore did not examine his arguments in connection with these charges. It upheld the conviction on the remainder of the charges and the sentence.

41. The applicant submits that he became aware of the final judgment only on 5 April 2007, when the case file was returned to the Burgas Regional Court and placed at his disposal at the court's registry.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force by police officers

42. Section 78 of the Ministry of the Interior Act of 1997, in force until 1 May 2006, provided that police officers may use force when performing their duties only if they had no alternative course of action in cases of, *inter alia*, resistance or refusal to obey a lawful order, arrest of an offender who

did not obey or resisted a police officer, and attacks against citizens and police officers. Pursuant to section 79(2), the use of force had to be commensurate with, in particular, the specific circumstances and the personality of the offender. Section 79(3) imposed a duty on police officers to protect, wherever possible, the health of the persons against whom force was being used. Section 79(5) forbade the use of physical force against minors.

43. Article 12a of the Criminal Code provides that causing harm to a person while arresting them for an offence is not punishable where no other means of effecting the arrest exists and the force used is necessary and lawful. The force used will not be considered "necessary" where it is manifestly disproportionate to the nature of the offence committed by the person to be arrested or is in itself excessive and unnecessary.

44. Instruction no. I-167/2003 of 23 July 2003, in force between 2003 and February 2007, governed the procedures for detention in custody. Section 2 of the Instruction provided that in the performance of their duties the police organs were under an obligation to respect detainees' human rights in accordance with the Bulgarian Constitution and the Convention. Section 8 of the Instruction provided that when performing their duties police officers may use force only in accordance with the provisions of the Ministry of the Interior Act. Acts of inhuman or degrading treatment, torture or discrimination were strictly forbidden (section 9). If a police officer witnessed such an act, he or she was under an obligation to prevent its continuation and to inform his or her superior (section 10).

B. Identity of police officers taking part in certain special operations

45. Section 159(3) of the Ministry of the Interior Act of 1997 provided that the identity of members of the Specialised Anti-terrorism Squad could not be disclosed. At the material time there were no such provisions in place in respect of members of the CSCOC or other police officers.

46. The new Ministry of the Interior Act, in force from 1 May 2006, provides that the identity of police officers whose duties include taking part in operations aimed at liberating hostages and/or neutralising or arresting persons suspected of having committed particularly dangerous offences must not be revealed (section 91(3)). The Regulations for the Act's implementation provide that the identity of the members of the Specialised Anti-Terrorism Squad, whose duties include carrying out operations under section 91 of the Act, cannot be disclosed (section 136(2), later superseded by section 150 т (2)).

C. Remedies against ill-treatment by police officers

47. Pursuant to Articles 128, 129 and 130 of the Criminal Code, causing minor, moderate or severe bodily harm to another person is a criminal offence. Article 131 § 1 (2) provides that if the injury is caused by a police officer in the course of, or in connection with, the performance of his or her duties, the offence is an aggravated one. This offence is a publicly prosecutable one. With the exception of threats (Article 144 of the Criminal Code) Bulgarian law does not provide for the criminalisation as such of acts giving rise to psychological suffering.

48. Persons claiming that they have been ill-treated by police officers can seek damages under the State and Municipalities Responsibility for Damage Act ("the SMRDA") of 1988. The remedy is described in more detail in the Court's judgment in the case of *Krastanov v. Bulgaria* (no. 50222/99, §§ 45-46, 30 September 2004).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicants complained that the police officers who had arrested the first applicant on 17 February 2004 had used threats and violence which amounted to inhuman and degrading treatment. They relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Exhaustion of domestic remedies

50. The Government argued that the applicants had failed to exhaust the available domestic remedies as they had not initiated civil proceedings for compensation. Furthermore, the first applicant had not complained about the purported ill-treatment in person, the investigation into these allegations having been opened upon the second applicant's complaint.

51. The applicants contended that an action for damages could only result in compensation; it could not lead to the identification and punishment of those responsible. Furthermore, there existed no established practice for proceedings under the SMRDA and the Government had

submitted no copies of judgments proving the opposite. In any event, as the legislation forbade disclosure of the identity of the police officers concerned, it was impossible to initiate civil proceedings against them.

52. The Court reiterates that an applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried other remedies that were available but probably no more likely to be successful (see, among others, *Assenov and Others v. Bulgaria*, 28 October 1998, § 86, *Reports of Judgments and Decisions* 1998-VIII; *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III; and *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 57, 12 April 2007).

53. The Court notes that the second applicant complained about the incident to the prosecution authorities, which opened an investigation into the allegations of ill-treatment in respect of all the applicants. The first applicant complained about the events in his application of 15 April 2004 requesting a medical examination, and at the hearings during the criminal proceedings against him, and himself filed an appeal against the refusal to open criminal proceedings of 4 April 2005 (see paragraphs 17, 30 and 32 above). Moreover, the applicants appealed against that refusal to the highest level of the prosecution service (see paragraphs 28 and 30 above). Seeing that the remedies available within the criminal justice system in Bulgaria are the normal avenue of redress for alleged police ill-treatment (see, with further references *Kemerov v. Bulgaria* (dec.), no. 44041/98, 2 September 2004), and in line with its consistent case-law, the Court considers that, having used up the possibilities available to them within the criminal justice system, the applicants were not required to embark on another attempt to obtain redress by issuing separate civil proceedings (see *Assenov and Others*, § 86 and *Ivan Vasilev*, § 57, both cited above).

54. The Court therefore dismisses the Government's objection regarding non-exhaustion of domestic remedies.

2. Compliance with the six- month time-limit

55. The Government contended that the application had been lodged outside the six-month time-limit because the final refusal to open criminal proceedings was that of 4 April 2005 and the application had been lodged more than six months later, on 28 November 2005.

56. The applicants pointed out that they had appealed against the decision of 4 April 2005 and that a prosecutor from the Chief Public Prosecutor's office had examined the merits of the appeal and ruled on them in an order of 28 May 2005, which was the final domestic decision.

57. The Court agrees with the applicants that since in his order of 28 May 2005 the prosecutor from the Chief Public Prosecutor's office examined and ruled on the merits of their appeal against the order of 4 April 2005, the final domestic decision for the purposes of calculating the six-month time-limit was that of 28 May 2005. Noting that the application

was lodged with the Court on 28 November 2005, the Court concludes that it is not out of time and, therefore, dismisses the Government's objection.

3. Conclusion on admissibility

58. Having regard to the above and considering that the complaint under Article 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds, the Court finds that it must be declared admissible.

B. Merits

1. The parties' submissions

a. The applicants

59. The applicants contended that they had been subjected to inhuman and degrading treatment during the incident of 17 February 2004. Apart from offering their own account of the events, they also relied on declarations made for the purposes of the present application to the Court (see paragraphs 60-62 below) and stated, in their initial application, that the first applicant's bruises had been noted in the register for detained persons on 17 February 2004. After the communication of the application to the respondent Government, which submitted a copy of that register (see paragraph 66 below), the applicants did not comment and did not reiterate this allegation.

60. The following declarations by third persons were submitted by the applicants. In a declaration of 16 January 2006 the applicants' lawyer, Mr D.K., stated that on 17 February 2004 the second applicant had telephoned him and asked him to come immediately to the apartment as several masked and armed men dressed as police officers had rushed in and arrested her husband. At about 1.30 p.m. Mr D.K. and his colleague Mr G.B. had arrived at the applicants' apartment but had been refused access. Mr D.K. had remained in front of the open door, from where he had seen blood on the first applicant's face and bruises around his right eye.

61. In a declaration of 17 January 2006, Mr N.G., a neighbour of the applicants, stated that he had seen the incident through the staircase windows. He stated that he had seen several masked men wearing clothes marked "Police" enter the applicants' apartment and then bring the first applicant out of the door, punching and kicking him. They had pushed him to the ground where they had continued beating him.

62. In a declaration of 18 January 2006 the second applicant's mother, Mrs D.Zh., submitted that around lunch-time on 17 February 2004 the door bell had rung and she had gone to open the door. At that moment the door

had opened wide and several masked and armed men in police uniforms had rushed in. The applicants had come out into the corridor. The police officers had grabbed the first applicant, pushed him to the floor and started beating and kicking him, after which they had dragged him out onto the staircase. The second and third applicants had been screaming. One of the police officers had been pushing them out of the apartment shouting that he would kill them. At some point the neighbour, Mrs D.N., had come out of her apartment and suggested she should take the third applicant with her but the police officers had pushed her back into her apartment, continuing to shout that they would kill everyone. Thereafter, the police officers had handcuffed the first applicant, lifted him from the floor and pushed him inside the apartment. At that point Mrs D.Zh. had seen blood and bruises on his face. The police officers had continued to beat and insult the first applicant.

63. The applicants argued that the Government had not put forward any convincing arguments capable of casting doubt on the credibility of the above declarations. The delay in filing the official complaint – two months after the event – was normal considering the stressful situation in which the applicants had found themselves, and in particular the first applicant's detention and the criminal proceedings against him.

64. Furthermore, the Government's assertion that the police officers had been trained to respect the rights guaranteed by the Convention could not be taken seriously, especially in view of the numerous judgments of the Court in which violations of Article 3 had been found on account of ill-treatment by State agents and ineffective investigations.

b. The Government

65. The Government contested the applicants' account of the events of 17 February 2004, arguing that no ill-treatment had taken place. They contended that the applicants' allegations of threats and physical abuse during the arrest were untenable and were not supported by medical evidence. The declarations describing the events of 17 February 2004 submitted by the applicants had been prepared exclusively for the purpose of the present application and were therefore unreliable. The investigation of the applicants' complaints had also proved that no physical abuse or other kinds of inhuman or degrading treatment had taken place.

66. In support of their position, the Government presented, *inter alia*, a copy of the relevant pages of the register of detained persons (*дневник за постъпилите и освободените лица*) for 17 February 2004. The register contained a series of entries in respect of the detainees. The first applicant was registered under number 89. The register contained the following information: the time and date of the first applicant's detention (17 February 2004, 7.30 p.m.), his full name, personal identity number and place of birth, his address, the date of the detention order and the name of the officer who had issued it, the reasons for the detention, the number of the first

applicant's case file and the investigator working on the case. The register did not contain information about the first applicant's state of health. Nor was there any note about injuries or bruises on his body.

67. The Government also contended that the psychological trauma allegedly experienced by the second and third applicants was a normal consequence of the first applicant's arrest. Indeed, the police officers conducting the search had had to impose certain restrictions on the applicants but those restrictions had not been substantial and had lasted for only a short period. Therefore, the inconvenience sustained by the applicants had not attained the minimum level of severity. The police officers' aim had not been to ill-treat the applicants but to detain the first applicant and to maintain control during his arrest and the search of his apartment.

68. Furthermore, the applicants had not complained to the prosecutors and the investigators who had been present during the search and they had signed the search records without any objections. Their first complaints had been raised about two months after the events.

69. In addition, relying on sections 2 and 8-10 of Instruction No. I 167/2003 (see paragraph 44 above), the Government argued that they had complied with their positive obligations under Article 3 because Instruction No. I-167/2003 provided for the direct application of the Convention and forbade acts of inhuman and degrading treatment or torture, and police officers received training in that regard.

2. The Court's assessment

a. The alleged beating of the first applicant

70. In the Court's view there is little doubt that the alleged kicking and beating of the first applicant, unprovoked by his behaviour, if it happened as described by the applicants, would constitute ill-treatment in violation of Article 3 of the Convention. The salient issue is, however, whether such physical ill-treatment took place.

71. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 8 January 1978, § 161 *in fine*, Series A no. 25). Where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny (see *Ribitsch, v. Austria*, 4 December 1995, § 32, Series A no. 336). Where no independent examination has been carried out by the domestic courts, the Court has made its own assessment of the facts on the basis of the material at its

disposal and in accordance with the principles set out in its jurisprudence in this regard (see *Sashov and Others v. Bulgaria*, no. 14383/03, § 48, 7 January 2010).

72. The Court has held on many occasions that where a person was healthy before being taken into custody or otherwise coming under the control of the police and has thereafter sustained injuries, the Government are under an obligation to provide a plausible explanation as to how the injuries were caused (see *Ribitsch cited above*, § 34 and S*elmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

73. However, some proof of the existence of injuries is indispensable (see, for example, *Tomasi v. France*, 27 August 1992, Series A no. 241-A; *Indelicato v. Italy*, no. 31143/96, 18 October 2001; and *Maksimov v. Russia*, no. 43233/02, §§ 78-82, 18 March 2010).

74. The Court notes in this regard that in the domestic proceedings and in their initial submissions to the Court the applicants insisted that the first applicant's bruises had been mentioned in the relevant detained persons' register of 17 February 2004. In the proceedings before the Court the Government submitted a copy of that document, from which it can be established that there was no note therein of bruises or injuries on the first applicant's body (see paragraph 66 above). It is significant that, this document having been transmitted to the applicants, they did not make any objection or comment and did not reiterate their allegation about bruises having been recorded therein (see paragraph 59 above).

75. In addition, the first applicant has not alleged that he was denied access to medical doctors in the hours and days after his arrest or that the findings of the medical doctor who examined him on the day following the incident, 18 February 2004, and did not find any bruises, were unreliable (see paragraph 15 above).

76. Furthermore, the applicants rely exclusively on their own declarations and the declarations they obtained from a family member, a neighbour and their lawyer for the purposes of their application to the Court (see paragraphs 60-62 above). While the declarations given by Mrs D.Zh., Mr D.K. and Mr N.G. seem to be coherent and provide certain details, the Court is not prepared to attach decisive weight to them in view of the links between their authors and the applicants and the fact that these declarations were made more than two years after the events.

77. It is true that in some of the rather succinct decisions of the prosecuting authorities who investigated the applicants' complaints there is mention of lawful force having been used by the police officers during the first applicant's arrest (see paragraphs 27 and 29 above). The Court is not convinced, however, that the language used, which may be seen as standard phrasing or as a reference to force used to subdue and handcuff the first applicant, gives weight to the applicants' allegations of severe beating and kicking.

78. The above considerations, and especially the fact that the first applicant did not contest the veracity of the medical registers and did not state that he had been prevented from obtaining medical evidence in support of his allegations, are sufficient for the Court to conclude that it has not been proved beyond reasonable doubt that the first applicant was ill-treated by State agents.

79. It follows that there has been no violation of Article 3 in respect of the first applicant's alleged beating.

b. Alleged violation of Article 3 of the Convention on account of the subjection of the applicants to fear, intimidation and threats

80. The applicants also complained that they endured a terrifying experience when several heavily armed and masked police officers entered their apartment, pointed guns at them and shouted death threats. The Court considers that the psychological ordeal to which the applicants were allegedly subjected, and having regard to the presence of the infant during the arrest operation, could in principle be characterised as inhuman and degrading treatment falling within the scope of Article 3 of the Convention. Article 3 cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering (see *Gäfgen v. Germany* [GC], no. 22978/05, § 103, 1 June 2010). The Court reiterates in this connection that treatment can be qualified as degrading when it arouses in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (*Ireland v. the United Kingdom*, cited above, § 167*)*. Psychological suffering may result from a situation in which State agents deliberately instil fear in individuals by threatening to kill or ill-treat them: put differently, to threaten them with acts prohibited by Articles 2 and 3 of the Convention.

81. The Court has previously had occasion to express concern about incidents involving armed and masked police officers taking part in interventions against individuals (see, in the context of Article 8 *Kučera v.* Slovakia, no. 48666/99, §§ 122-124, 17 July 2007). In the case of *Rachwalski and Ferenc v. Poland* (no. 47709/99, 28 July 2009) a heavy-handed police intervention, involving also physical force and the presence of police dogs, had been considered by the Court to be disproportionate to the situation at issue, and such that the applicants must have experienced a profound sense of vulnerability, powerlessness and affront, thus violating Article 3 of the Convention (see paragraphs 58-63 of the judgment). More recently, the Court observed with concern when considering the applicant's Article 3 complaint in the *Miroslaw Garlicki v. Poland* judgment that the authorities had, among other things, used a dozen masked and armed officers to arrest the applicant although it appeared that he did not present any particular security risk (application no. 36921/07, § 75, 14 June 2011).

82. In the present case, the prosecutors who investigated the incident concluded that the allegations of intimidation and death threats had not been proved. The Court acknowledges that, in view of the limited number of people present at the scene and the nature of these allegations, it must have been difficult to provide persuasive proof, especially considering that during the investigation of the incident the authorities did not identify and question the police officers involved and refused to hear the witnesses whose examination was requested by the applicants (see paragraphs 19-31 above).

83. The Court for its part finds it impossible to establish on the basis of the evidence before it whether or not the applicants were subjected to intimidation and death threats as alleged by them. However, for the reasons set out below, it considers that the difficulty in determining whether there was any substance to their allegations of ill-treatment rests with the authorities' failure to investigate their complaints effectively (see *Veznedaroğlu v. Turkey*, no. 32357/96, § 31, 11 April 2000; *Petru Roşca v. Moldova*, no. 2638/05, § 42, 6 October 2009; and *Popa v. Moldova*, no. 29772/05, § 39, 21 September 2010).

84. The Court observes that the applicants requested the authorities to investigate the incident and, in particular, the behaviour of one of the heavily armed and masked police officers, who had allegedly shouted death threats while pointing his gun at them. The third applicant was a five-year old child at the time and it was alleged that she had been deeply affected by what she had experienced at the scene (see paragraphs 6-9, 19 and 60-63 above). There was no reason for the authorities to consider these allegations as frivolous. The applicants' statements in this respect contained a sufficient level of detail and were coherent. Furthermore, the second applicant sought to assist the authorities in the identification of the officer concerned, indicating the colour of his eyes, and requested evidence to be obtained, including by questioning witnesses (see paragraphs 19 and 24 above).

85. In view of the above, the Court considers that the complaints raised by the applicants about intimidation and death threats being shouted at them at gunpoint by a masked police officer were at least arguable. It follows that in the present case the authorities were under an obligation to carry out an effective investigation into this aspect of the applicants' complaints.

86. In that connection the Court reiterates that where an individual raises an arguable claim that he has been ill-treated by the police or other State agents in breach of Article 3, 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. The Court reiterates that an obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of

leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the facts or the identity of the persons responsible will risk falling foul of this standard (see, as a recent example, *Maksimov v. Russia*, § 83, cited above).

87. In the present case, the authorities opened a form of investigation and collected some evidence (see paragraphs 17-31 above).

88. The Court notes with concern, however, that, as in other cases against Bulgaria where officers of specialised units were involved (see *Krastanov*, cited above, §§ 59 and 60, and *Rashid v. Bulgaria*, no. 47905/99, §§ 63-65 and 69, 18 January 2007), in the present case the impugned police officers, who wore masks, were not identified and questioned.

89. The Court has held such a practice to be incompatible with the Convention. In *Rashid* the Court found that the failure to identify the members of the Specialised Anti-Terrorism Squad who had ill-treated the applicant amounted to immunity from prosecution and was contrary to the Convention (see paragraphs 64 and 65 of that judgment). In similar circumstances, in the case of *Vachkovi v. Bulgaria* (no. 2747/02, 8 July 2010) the Court held that the authorities' approach, which involved not identifying the officers from the Specialised Anti-Terrorism Squad who had been involved in the applicants' son's arrest and shooting betrayed "a deplorable lack of respect for the principle of accountability of the police before the law" (see paragraph 89 of the judgment).

90. In the present case it is unclear whether the failure to identify and interview the CSCOC police officers involved was the result of an extensive interpretation of Article 159(3) of the Ministry of the Interior Act of 1997 (which prohibited the identification of officers from the Specialised Anti-Terrorism Squad only and did not mention the CSCOC - see paragraph 45 above) or was caused by an omission or a practice which went beyond the letter of the law. At all events, it is significant that the new Ministry of the Interior Act of 2006, which entered into force shortly after the relevant events, preserved or even probably extended the sphere of application of the prohibition on disclosure of officers' identity (see paragraph 46 above).

91. In the Court's view, while legitimate security concerns may require confidentiality measures when special forces officers are to be interrogated or interviewed, domestic legal provisions and practice which, as here, apparently do not allow their identification, at least to those conducting the investigation, and their questioning in an appropriate form, must be seen as

incompatible with the respondent State's duties under Article 3 to investigate arguable claims of ill-treatment.

92. The Court would also add that it has serious reservations about the use of masked and armed police officers to conduct an arrest operation in a family setting where there is no risk of armed resistance on the part of the arrestee. Where the circumstances are such that the authorities are obliged to deploy masked officers to effect an arrest, the Court considers that the latter should be required to visibly display some anonymous means of identification - for example a number or letter, thus allowing for their identification and questioning in the event of challenges to the manner in which the operation was conducted.

93. In the Court's view, the deficiency it has noted above, and in other cases against Bulgaria (cited above), can fairly be described as conferring virtual impunity on a certain category of police officers. An investigation suffering from such a defect cannot be seen as effective.

94. In addition, the Court notes that none of the witnesses mentioned by the applicants was interviewed. The prosecutors' conclusions were predominantly based on the statements of Mr M.M. and Mr I.K, who had arrived at the scene after the impugned incident. Moreover, it appears that neither the applicants nor any independent witnesses were questioned. Thus, at no stage were the applicants effectively associated with the conduct of the investigation (see *Sadık Önder v. Turkey*, no. 28520/95, § 44, 8 January 2004; *Artyomov v. Russia*, no. 14146/02, § 180, 27 May 2010; and, in the context of Article 2 investigations, *Seidova and Others v. Bulgaria*, no. 310/04, §§ 60-61, 18 November 2010, and *Dimitrova and Others v. Bulgaria*, no. 44862/04, §§ 87-88, 27 January 2011).

95. At a more general level the Court wishes to draw attention to the fact that the above grave deficiencies must also be seen against the background of the treatment accorded in Bulgarian law to acts causing psychological suffering (see paragraph 47 above). The Court notes in this connection that, with the exception of a reference to "threats", the domestic criminal law is silent on the issue of psychological suffering resulting from, for example, an aggressively conducted search, seizure and arrest operation. A complainant must allege that he or she sustained physical injury at the hands of State agents, failing which the authorities cannot be required to open an investigation into the background circumstances. The Government have not disputed this. For the Court, this lacuna in the criminal law is a matter of great regret, allowing as it does those allegedly responsible for the infliction of psychological trauma, including with respect to an infant as claimed in the instant case, to escape accountability for their actions. The fact that the alleged behaviour of the State agents in the instant case could not be scrutinised must be considered to be at complete variance with the notion of an independent and effective investigation as required by Article 3, giving rise as it does to an unacceptable impunity for wrongdoers.

96. For these reasons, the Court considers that there has been no effective criminal investigation into the applicants' allegations about the psychological ordeal they had to endure by reason of the police intervention. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

97. The applicants complained under Article 13 of the Convention that they did not have at their disposal effective domestic remedies for their complaints under Article 3.

Article 13 reads:

> "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."

98. The Court considers that the applicants' complaint under Article 13 is linked to the complaint under Article 3 and must likewise be declared admissible.

99. Having regard to the findings in paragraphs 50-54 above and to the Court's conclusion that there has been a violation of Article 3 on account of the ineffectiveness of the investigation into the manner in which the operation was conducted, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 (see, among other authorities, *Diri v. Turkey*, no. 68351/01, § 57, 31 July 2007; *Vasil Petrov v. Bulgaria*, no. 57883/00, §§ 88 and 89, 31 July 2008; and *Sashov and Others v. Bulgaria*, no. 14383/03, § 72, 7 January 2010).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

100. In a letter of 4 October 2007 the first applicant, relying on Articles 6 §§ 1, 2 and 3 (e) and Article 13 of the Convention and Article 1 of Protocol No. 1, raised a number of complaints in connection with the criminal proceedings against him. In particular, he complained that the domestic courts, without giving reasons, had refused to grant his request for the translation of a document; that he had not been proved guilty beyond reasonable doubt as the conclusions of the domestic courts had been based on assumptions; that his sentence was too severe; that his mobile phone had been confiscated; and that he had not had an effective remedy at his disposal for the above complaints.

101. The Court has examined these complaints as submitted by the first applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

102. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

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

A. Damage

104. All three applicants claimed non-pecuniary damage for the alleged violations of Articles 3 and 13 of the Convention. The first applicant claimed 32,000 euros (EUR) and the second and third applicants claimed EUR 12,000 each.

105. The Government contested the claims as unfounded and excessive.

106. The Court observes that in the present case, an award of just satisfaction can be based only on the violation of Article 3 of the Convention on account of the ineffectiveness of the investigation of the manner in which the operation was conducted. It considers that the applicants must have suffered distress and frustration as a result of the violation of their rights under the above-mentioned provision. Accordingly, deciding on an equitable basis, it awards the first and second applicants EUR 4,000 each and the third applicant EUR 6,500 (EUR 14,500 in total).

B. Costs and expenses

107. The applicants also claimed EUR 3,248.25 for the costs and expenses incurred before the Court, of which EUR 3,053.25 was in respect of legal fees, EUR 29 postal expenses, EUR 34 copying and office materials and EUR 132 translations. They submitted a contract for legal services, a time-sheet for 44 hours and 40 minutes work at an hourly rate of EUR 80, and a contract for translation services. They asked for the amounts awarded under this head in excess of the EUR 500 already received by their representatives to be paid directly into the bank account of their representatives.

108. The Government contested these claims as excessive.

109. According to the Court's case-law, costs and expenses can be awarded under Article 41 only if it is established that they were actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are recoverable only in so far as they relate to the violation found (see

Šilih v. Slovenia [GC], no. 71463/01, § 226, 9 April 2009). In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 2,500, plus any tax that may be chargeable to them, for costs and expenses under all heads. Out of that amount, the sum of EUR 2,000 is to be paid into the bank account of the applicants' legal representatives.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 3 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in respect of the first applicant's alleged beating;

3. *Holds* that, as regards all three applicants, there has been a violation of Article 3 of the Convention in respect of the authorities' failure to investigate effectively their allegations that they were subjected to fear, intimidation and threats during the arrest operation;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*

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

(i) to the first applicant, Mr Aleksandar Hristov Hristov, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) to the second applicant, Mrs Zhivka Dobreva Hristova, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) to the third applicant, Ms Victoria Aleksandrova Hristova, EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iv) to all three applicants jointly, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, of which EUR 2,000 is to be paid directly into the bank account of the applicants' legal representatives;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President