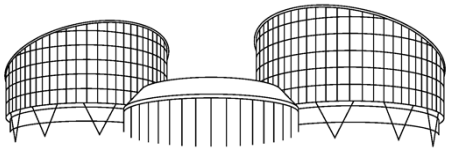

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF STANEVI v. BULGARIA

(Application no. 56352/14)

JUDGMENT

Art 2 (procedural) • Positive obligations • Applicants' inability to obtain non-pecuniary compensation for the death of a close relative in a car crash caused by a mentally ill driver • Failure to put in place an effective legal system, in case of unintentional infliction of death, allowing for appropriate civil redress

STRASBOURG

30 May 2023

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 Stanevi v. Bulgaria,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Yonko Grozev,
Jolien Schukking,
Peeter Roosma,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 56352/14) 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, Ms Maria Hristova Staneva ("the first applicant") and Ms Darina Veselinova Staneva ("the second applicant", together "the applicants"), on 1 August 2014;

the decision to give notice to the Bulgarian Government ("the Government") of the complaints under Article 2 of the Convention and Article 1 of Protocol No. 1 to the Convention concerning the impossibility for the applicants to obtain compensation for the death of their close relative in a road traffic accident, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 11 April 2023,

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

INTRODUCTION

1. The case concerns the impossibility for the applicants to obtain an award in respect of non-pecuniary damage flowing from the death of a close relative of theirs, who was killed in a car crash caused by a mentally ill person.

THE FACTS

2. The applicants were born in 1963 and 1991 respectively and live in Karnobat. They were represented by Ms S. Razboynikova, a lawyer practising in Sofia.

3. The Government were represented by their Agent, Ms S. Sobadzhieva of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. DEATH OF THE APPLICANTS' RELATIVE

5. Mr Veselin Stanev – husband of the first applicant and father of the second applicant – died as a result of injuries sustained on 21 August 2010 in a car crash. The first applicant, who was with her husband in the car, was seriously injured.

II. CRIMINAL PROCEEDINGS

6. Criminal proceedings were opened in relation to the accident. It was established that it had been caused by H.T. The investigation also showed that H.T. suffered from a bipolar affective disorder and had at the time of the crash been experiencing a manic episode and psychotic symptoms.

7. H.T.'s illness had been diagnosed in 1999. In the following years one depressive and one manic episode had been registered, but no others after he had been put on medication. He had thus managed to graduate from university and pursue a career. However, in July 2010 his state of health deteriorated – he was overly excited, smoked a lot and drank coffee often, could not stay calm and drove recklessly. He consulted a psychiatrist and was prescribed additional medication. In August 2010 he went on holiday to the seaside where, once again, he was overly excited, did not eat or sleep much, drank a lot of alcohol and coffee, refused to communicate with his girlfriend and threw away his medication. On the way home from the seaside he stopped in the town of Karnobat to visit his grandfather. On 21 August 2010 he brutally killed his grandfather and subsequently caused the accident in which Mr Stanev died. H.T. was not drunk at the time of the accident.

8. Considering that H.T. could not be held criminally liable because his behaviour had been due to his mental illness, on 15 June 2011 a prosecutor discontinued the criminal proceedings concerning Mr Stanev's death. Separate proceedings concerning the death of H.T.'s grandfather were discontinued on the same ground.

9. The applicants, informed of the decision to discontinue the criminal proceedings concerning Mr Stanev, did not appeal against it.

10. In April 2011 H.T. was ordered to undergo compulsory medical treatment, which he did until December 2014.

III. TORT PROCEEDINGS CONCERNING MR STANEV'S DEATH

11. Since H.T. had civil liability insurance, on 26 June 2011 the applicants brought proceedings against his insurance company. Each of them claimed 150,000 Bulgarian levs (BGN), equivalent to about 77,000 euros (EUR), in respect of non-pecuniary damage flowing from their relative's death.

12. The Sofia City Court commissioned an expert report, which was drawn up on the basis of materials gathered in the criminal proceedings. The expert described H.T.'s illness and his inappropriate behaviour in the days before the accident. She pointed out that H.T.'s behavioural deficiencies had escalated on 21 August 2010 and that there was no doubt that at that time he had been in a state of psychosis: his judgement and actions, including his reckless driving, had been "dominated" by his delusions and hallucinations.

13. In their written submissions the applicants argued that the presumption of fault contained in section 45 of the Obligations and Contracts Act (see paragraph 23 below) did apply. H.T. had been found not to be criminally liable, but this did not mean that his insurer was not liable to pay compensation.

14. In a judgment of 23 July 2012 the Sofia City Court awarded each of the applicants BGN 90,000 (EUR 46,000). It noted that at the time of the accident H.T. had been incapable of understanding the consequences and the meaning of his actions, which meant that he himself could not be held criminally or civilly liable for them. However, his insurer was liable on the strength of section 47(2) of the Obligations and Contracts Act (see paragraph 24 below), which was applicable by means of analogy.

15. The insurance company lodged an appeal. The Sofia Court of Appeal heard an additional witness, H.T.'s mother, who stated that she had noticed the deterioration in the state of her son's mental health in the summer of 2010, but that when she had seen him on the morning of 21 August 2010, he had appeared "normal". When she had seen him 2-3 days later in detention, he had once again been "stabilised". H.T.'s doctor was also heard, and he said that his patient had never previously had such a grave psychotic episode.

16. In a judgment of 14 March 2013 the Sofia Court of Appeal quashed the lower court's judgment and dismissed the applicants' claims. It found it undisputed that H.T. had been validly insured and that he had caused the accident in which the applicants' relative had been killed. It also affirmed that at the time of the accident H.T. had been of unsound mind, which meant that the damage caused to the applicants had not been through his fault. That meant that the presumption of fault contained in section 45 of the Obligations and Contracts Act (see paragraph 23 below) did not apply, and that he could not be held civilly liable. That also meant that his insurer, whose own liability as defined in Article 226 § 1 of the Insurance Code 2005 (see paragraph 25 below) was "functional", was not liable either. The insurer's liability was

> "... conditional on the liability of the insured person, and in cases where the latter [was] not liable for any damage caused to the victims, the insurer [did] not owe the payment of damages either."

17. The applicants lodged an appeal on points of law to the Supreme Court of Cassation (hereinafter "the Supreme Court") which, in a final decision of 10 March 2014, refused to grant leave to appeal. It noted in particular that the Sofia Court of Appeal's findings on the insurer's "functional" liability were correct.

IV. TORT PROCEEDINGS CONCERNING THE FIRST APPLICANT'S INJURIES

18. Parallel to the above proceedings, the first applicant also brought an action against H.T.'s insurer seeking damages for her own injuries (see paragraph 5 above). The Sofia City Court awarded her damages in that connection. However, the insurance company appealed against that decision and the Sofia Court of Appeal dismissed the first applicant's claims.

19. The first applicant then lodged an appeal on points of law to the Supreme Court, which accepted it for examination.

20. In a judgment on the merits dated 15 October 2015, it first addressed the main question which had been raised before it, namely concerning the liability of an insurance company for damage caused on the road by a person considered "incapable" within the meaning of section 47(1) of the Obligations and Contracts Act (see paragraph 24 below). It held that the insurer was not liable, unless it could be established that the tortfeasor had caused the "incapability" through his or her own fault, or where another person exercising control could be held liable under section 47(2) (ibid.).

21. The Supreme Court held also, by way of *obiter dictum*, that in cases where the insurer was not liable due to the incapacity of the tortfeasor, the Guarantee Fund set up under the Insurance Code 2005 (see paragraph 26 below) was not liable to pay compensation either, and recommended that the legislature provide for such liability.

22. On the specific facts of the case, it found on the basis of the evidence collected that the presumption of fault on the part of H.T. had not been rebutted, as it had not been shown that at the time of the traffic accident H.T. had indeed been incapable within the meaning of section 47(1) of the Obligations and Contracts Act. The insurer was therefore to be held liable and was ordered to pay BGN 80,000 (EUR 41,000) to the first applicant in damages.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The Obligations and Contracts Act

23. The general rules of the law of tort are set out in the Obligations and Contracts Act of 1950. Section 45(1) of the Act provides that everyone is obliged to make good the damage which they have, through their fault, caused to another. Under section 45(2), fault is presumed until proven otherwise.

24. An exception is provided for in section 47 of the Act. The tortfeasor is not liable where he or she was "incapable of controlling or understanding his or her actions". This rule is not however applicable where such incapability was caused through the tortfeasor's own fault. By section 47(2), a person or persons tasked with supervising the incapable tortfeasor are themselves liable, except where they were unable to prevent the damage.

B. The Insurance Code

25. Civil liability insurance was regulated under the Insurance Code of 2005, in force at the relevant time. Article 226 of the Code provided in particular that the person having sustained damage through the fault of the insured could claim compensation for that damage directly from the insurer.

26. Civil liability insurance is obligatory for drivers. A Guarantee Fund, at the time provided for under Article 287 of the Insurance Code and created with financial contributions from all licensed insurers, is tasked with paying compensation in specific situations not covered by an insurance contract – such as where the person who caused an accident was unknown, or had not been insured, or did not have a valid driving licence, or where the vehicle implicated in the accident had been stolen. The situation in the present case was not, however, among those enumerated in Article 288 of the Code.

II. PRACTICE OF THE DOMESTIC COURTS

27. The following domestic judgments given in relation to circumstances similar to those of the applicants were submitted by the respondent Government.

28. In tort proceedings concerning a death caused by a man suffering from schizophrenia (not a traffic accident), the Supreme Court awarded damages to the relatives of the victim, finding, in the light of the evidence presented, that the presumption of fault under section 45 of the Obligations and Contracts Act (see paragraph 23 above) had not been rebutted. It pointed out that even though the defendant had been found not to be criminally liable, that did not preclude his tort liability in civil law, which was not dependant

on his criminal liability (*Решение № 119 от 23.02.2010 г. на ВКС по гр. д. № 4702/2008 г., III г. о.*).

29. In other proceedings against the Guarantee Fund (in a judgment which became final after the Supreme Court did not accept it for review on points of law) the Sofia Court of Appeal awarded damages to the relatives of a person killed in a traffic accident in 2004, which had been caused by a person suffering from schizophrenia. According to the domestic court, a mental illness did not automatically mean that the tortfeasor had been incapable of controlling and understanding his actions within the meaning of section 47(1) of the Obligations and Contracts Act. In any event, even if the tortfeasor had not been able to control his actions, this had been due to his own behaviour, since he had consumed alcohol before the accident. Because the tortfeasor's driving licence had been suspended at the time, the situation fell within the ambit of Article 288 of the Insurance Code of 2005 (see paragraph 26 above), and the Guarantee Fund was liable to pay (*Решение № 712 от 28.07.2010 г. на САС по гр. д. № 2267/2009 г.*).

30. The Sofia City Court, acting as a court of last instance, dismissed a claim against an insurance company concerning the death in a car crash of a relative of the claimants. Similarly to the case under examination, it found that the tortfeasor had been incapable within the meaning of section 47(1) of the Obligations and Contracts Act, which meant that the insurance company was not liable (*Решение № 5942 от 14.07.2016 г. на СГС по гр. д. № 8177/2013 г.*).

31. Lastly, in three other cases, on which no information is available as to whether the judgments have become final, first-instance courts awarded compensation to cover damage caused in traffic accidents by mentally ill persons, some of whom had earlier been found not to be criminally liable. In all cases it was noted that the presumption of fault had not been rebutted. In one of the cases the tortfeasor's insurer was ordered to pay damages to the victim, and in the others the tortfeasors had to repay compensation already paid by an insurance company and by the Guarantee Fund (*Решение № 1011 от 31.07.2013 г. на РС-Стара Загора по гр. д. № 1648/2013 г.*; *Решение № 309 от 7.10.2013 г. на РС-Нови пазар по гр. д. № 1005/2012 г.*; *Решение № 260219 от 21.03.2022 г. на РС-Пловдив по гр. д. № 15078/2019 г*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

32. The applicants complained, relying on Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, that they had been unable to obtain an award in respect of non-pecuniary damage flowing from their relative's death.

33. Being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court is of the view that the complaint falls to be examined under Article 2 of the Convention (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017). That provision, in so far as relevant, reads:

> "1. Everyone's right to life shall be protected by law."

A. Admissibility

1. Applicability of Article 2

34. The Government argued that Article 2 of the Convention was inapplicable to the case at hand. That was so because the death of the applicants' relative had been caused by a private person, in circumstances excluding his fault, and the applicants had pursued proceedings against another party, namely the insurance company.

35. The applicants contended that Article 2 was applicable, even if the case was considered to concern an accident and not a negligent act. They relied on the case of *Vanyo Todorov v. Bulgaria* (no. 31434/15, 21 July 2020).

36. The Court recalls that Article 2 of the Convention protects the right to life, and the absence of any direct State responsibility for the death of an individual does not, in principle, exclude the applicability of this provision (see *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, § 135, 25 June 2019).

37. The Court has found Article 2 to be applicable in the context of road traffic accidents caused by private persons where the direct victim had died (see, among others, *Anna Todorova v. Bulgaria*, no. 23302/03, § 72, 24 May 2011, and *Ciobanu v. the Republic of Moldova*, no. 62578/09, § 32, 24 February 2015). It has, in addition, examined under Article 2 complaints in the case of *Vanyo Todorov* (cited above), which concerned the impossibility for the applicant to claim compensation for the death of his brother, and in *Movsesyan v. Armenia* (no. 27524/09, 16 November 2017) and *Sarishvili-Bolkvadze v. Georgia* (no. 58240/08, 19 July 2018), where the domestic legal order did not permit the applicants to claim non-pecuniary damage related to the death of their relatives as a result of medical negligence.

38. Since the present case is similar to the ones cited above, the Court finds that Article 2 of the Convention is applicable.

2. Abuse of the right of individual application

39. The Government also argued that the applicants had abused their right to individual application by failing to inform the Court of the proceedings brought against the insurer concerning the first applicant's injuries (see paragraphs 18-22 above; the relevant documents were submitted by the

Government after they had been given notice of the application). According to the Government, that amounted to a "deliberate attempt to mislead the Court". In response, the applicants pointed out that the proceedings at issue had ended after the lodging of the present application (see paragraph 20 above).

40. The Court agrees that the information about the proceedings initiated by the first applicant was pertinent, albeit not decisive for the outcome of the case. What is more important however is that the arguments to be drawn from it are in the applicants' favour, as the Court's analysis below shows (see paragraphs 58, 60 and 64 below). The Court cannot thus conclude that the applicants attempted to mislead it, or conceal from it information which could have deteriorated their position, and rejects the Government's objection.

3. Non-exhaustion of domestic remedies

41. The Government contended furthermore that the applicants had failed to exhaust the available domestic remedies. They submitted four reasons in support of that contention. First, the applicants had not contested the prosecution's decision to discontinue the criminal proceedings against H.T. (see paragraphs 8-9 above). That was despite the fact that those proceedings, in which they could have, in principle, claimed compensation, should have been their preferred means to seek redress, in particular because it was the prosecution who had been tasked with establishing the facts. Second, the applicants had not brought tort proceedings against H.T.; they could have done so even after the completion of the proceedings they had initiated against the insurer. Third, the applicants could have claimed compensation from the Guarantee Fund by applying to the national courts to find it liable to pay, notwithstanding the fact that their exact circumstances had not been covered by the relevant provisions. And fourth, the applicants had failed to raise a valid argument in the proceedings against the insurance company, namely that H.T. had himself caused his incapacity on 21 August 2010 within the meaning of section 47(1) of the Obligations and Contracts Act (see paragraph 24 above). According to the Government, the psychotic episode had been "triggered" by H.T.'s poor nutrition, alcohol misuse, insomnia, exposure to sunlight and heat, emotional stress and failure to take his medication in the preceding days (see paragraph 7 above). The applicants had therefore "left an important avenue inappropriately pursued" and had forgone a reasonable chance of winning the case.

42. The applicants disagreed with the above arguments.

43. The Court considers that the Government's objection under examination is closely linked to the substance of the case, which concerns exactly the availability of means for the applicants to obtain compensation for their relative's death. Accordingly, the objection should be joined to the merits.

4. Conclusion as to admissibility

44. Finally, the Court notes that the application is neither manifestly ill-founded, nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

(a) The applicants

45. The applicants pointed out that they had not disagreed with the conclusions of the criminal proceedings and the finding that H.T. could not be held criminally liable (see paragraph 8 above); nor did they dispute the fact that he had a mental illness. That rendered any contestation on their part of the outcome of the criminal proceedings meaningless. In addition, the applicants had made the deliberate choice to pursue a civil-law remedy instead of a criminal-law one, and had brought their action directly against the insurer, as authorised under Article 226 of the Insurance Code (see paragraph 25 above). This was the most effective remedy in their case, given that it provided the best chance of collecting any award made in their favour. The compulsory character of civil-liability insurance and the possibility for victims to address the insurer directly were among the guarantees that every instance of damage caused on the road would be compensated for.

46. The applicants argued furthermore that they had been in no position to sue the Guarantee Fund; the Government, while claiming that they could do so (see paragraph 41 above), had not presented a single judgment where the courts had applied such an interpretation of the relevant provisions of domestic law. At the same time, there was "no plausible justification" for cases such as theirs not being covered by the provisions concerning the Guarantee Fund.

47. The applicants contended also that in the domestic proceedings concerning Mr Stanev's death they had put forward all relevant arguments.

48. The applicants concluded that it had not been proven that victims of road traffic accidents, or their close relatives, had any effective means at their disposal in order to obtain compensation for damage caused by a person who was not criminally liable and whose civil liability could not be engaged.

(b) The Government

49. The Government argued that the domestic legal system, in particular the possibility of bringing a tort action, offered, in principle, effective protection. In support of this argument they submitted the case-law of the national courts summarised in paragraphs 28-31 above. In their view, the fact that the applicants' claim against the insurance company had been dismissed did not in itself cast doubt on the effectiveness "of the system as such".

50. The Government reiterated that the applicants had forgone other available and effective means allowing them to obtain redress (see paragraph 41 above).

2. The Court's assessment

51. In the event of death or life-threatening physical injury, the State's positive duty under Article 2 of the Convention to safeguard the right to life must be considered to also involve having in place an effective independent judicial system capable of promptly establishing the facts, holding accountable those at fault and providing appropriate redress to the victim. In cases concerning unintentional infliction of death, this requirement will be satisfied if the legal system affords victims (or their next-of-kin) a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling any responsibility to be established and any appropriate civil redress to be obtained (see *Nicolae Virgiliu Tănase*, cited above, § 157-59).

52. In the present case, the prosecution authorities opened criminal proceedings following the death of Mr Stanev in a road traffic accident. Those proceedings were discontinued after it was established that H.T., the person who had caused the accident, could not be held criminally liable (see paragraph 8 above). While there is no doubt that the proceedings at issue led to the establishment of the facts, they did not lead to the provision of any redress to the applicants, as the closest relatives of the victim. The applicants did not complain with regard to these proceedings.

53. The applicants' complaints focussed on one of the aspects of the State's positive procedural obligation under Article 2 of the Convention, namely the duty to put in place an effective system allowing, in case of unintentional infliction of death, the provision of appropriate civil redress.

54. The applicants did not receive any compensation for the death of their relative. The Government did not argue that in a case such as theirs the failure to provide compensation was justified on any ground, or that the domestic legal system was expressly intended to deny compensation in similar situations. It is in fact evident that the domestic system in place, namely obligatory civil-liability insurance for drivers, complemented by the provisions on the Guarantee Fund intended to cover cases where insurers would not be liable (see paragraph 26 above), aims to guarantee compensation for any death on the road caused by another person.

55. Rather, the Government's overall position was that compensation was in principle available in a situation such as that of the applicants, that the system in place was effective, and that it was the applicants' failure to duly pursue the relevant procedures that had led to the outcome complained of, namely the lack of any compensation for Mr Stanev's death (see paragraphs 49-50 above).

56. Turning to what the Government considered to be appropriate avenues to obtain compensation (see paragraph 41 above), the Court takes note, first, of the applicants' statement that they had no grounds on which to contest the discontinuance of the criminal proceedings, and that they did not dispute that H.T. had not been criminally liable due to his mental illness (see paragraph 45 above). In such a case it agrees that there was no point in their pursuing this procedural avenue.

57. As to the possibility for the applicants to sue H.T. directly, the Court observes that the applicants took the most obvious and logical step, namely that of suing the insurance company directly. There is no doubt, as they pointed out (see paragraph 45 above), that it would have been much easier to collect any award made against such a company than one made against a private individual; the insurer's liability in lieu of that of the individual tortfeasor is, after all, the basic principle behind civil-liability insurance of drivers. Accordingly, the Court does not consider that, after having unsuccessfully sued the insurance company, the applicants should have been required to bring proceedings against H.T.

58. In the next place, as regards any liability of the Guarantee Fund, the Government have not shown that legal action against it would have had a reasonable prospect of success, and have presented no relevant case-law to that effect. The Court refers additionally to the statement of the Supreme Court in the proceedings brought by the first applicant that, in a case such as the present one, the Fund would not be liable to pay compensation, and that it was up to the legislature to regulate the matter (see paragraph 21 above).

59. The Government contended lastly that in the proceedings against the insurance company the applicants had failed to raise a specific argument, namely that H.T. had himself caused his incapacity on 21 August 2010 to control or understand his actions (see paragraph 41 above). As this would have meant that he was liable for the damage caused to the applicants, on the strength of section 47(1) of the Obligations and Contracts Act (see paragraph 24 above), the Government considered that the applicants had forgone a reasonable chance of winning their case.

60. The Court observes however that the position above was never mentioned or discussed at the domestic level, neither in the proceedings concerning Mr Stanev's death, nor in those concerning the first applicant's injuries. No similar allegation was made in the medical expert's report examined by the national courts, which seemed to attribute H.T.'s agitation, stress, drinking, not eating and lack of sleep in the days preceding the traffic accident to his mental illness (see paragraph 12 above). It is true that in one of the domestic judgments submitted by the Government the consumption of alcohol, in combination with mental illness, was considered by the Sofia Court of Appeal to have rendered the tortfeasor – through his own fault – incapable of controlling his actions while driving (see paragraph 29 above). Thus, the line of argument suggested from the Government could, in

principle, have merit in accordance with the domestic case law. However, the Court finds pertinent two elements in the present case. First, the lack of any evidence in the earlier stages of the proceedings pointing to H.T. having caused himself his incapacity and, second, the fact that the claim of the first applicant as a direct victim was allowed without any reliance on this argument (see paragraphs 20-22 above). As a result, the Court sees no reason to blame the applicants for not raising such an argument in the domestic proceedings.

61. The remedy actually pursued by the applicants was a civil claim against H.T.'s insurer. As noted, and for the reasons already given (see paragraph 57 above), in the circumstances this was the most reasonable and efficient remedy available, and was capable of leading to adequate redress.

62. However, the action at issue was dismissed because it was found that, since H.T. could not be held civilly liable, his insurer was not liable either (see paragraphs 16-17 above). In reaching this conclusion, the Sofia Court of Appeal reasoned that the liability of the insurer under national law was "functional", namely it depended entirely on that of the tortfeasor (see paragraph 16 above). While at that time national law on this particular point might not have been entirely settled, no further justification for rejecting the applicants' claim was provided, and no alignment was put forward with the reasoning adopted with the Supreme Court when allowing the first applicant's claim on the basis of the same facts and the same arguments (see paragraphs 20-22 above).

63. The Court does not consider that the applicants' stance in the proceedings concerning Mr Stanev's death was inadequate, or that any lack of diligence on their part was the reason for the dismissal of their action. The applicants' main arguments, namely that the fact of H.T. not being criminally liable did not automatically exclude the insurer's liability, and that the presumption of fault had not been rebutted (see paragraph 13 above), were reasonable and appropriate.

64. The Court concludes, on the basis of the above, that the applicants pursued diligently the remedy chosen by them and raised relevant arguments. The outcome of the proceedings concerning the first applicant's injuries, which was positive for her (see paragraphs 18-22 above), reinforces this conclusion: it has not been shown that the first applicant adopted any different line of argument in the parallel proceedings pursued by her.

65. In addition, there is no doubt that the domestic-law provisions concerning the Guarantee Fund (see paragraph 26 above) did not cover a situation such as the one which was the subject of the case, namely damage caused by a person who was not criminally and civilly liable, but who had valid civil-liability insurance.

66. In the light of the above considerations, the Court concludes that the lack of any compensation for the non-pecuniary damage suffered by the applicants on account of their relative's death was neither the result of the application of a general policy on a justified ground, nor the result of a failure

by the applicants to use properly the existing domestic procedures. This means that in the particular circumstances of the present case the respondent State has failed to provide for a system allowing appropriate redress, as required under Article 2 of the Convention.

67. There has accordingly been a violation of the positive procedural obligation of the State under that provision.

68. In the light of the foregoing, the Court dismisses the Government's objection of non-exhaustion of domestic remedies, which it previously joined to the merits (see paragraph 43 above).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. In respect of pecuniary damage, the applicants claimed 2,470 Bulgarian levs (BGN), equivalent to about 1,260 euros (EUR), the sum paid by them for Mr Stanev's funeral and for the dismantling and removal of his car after the crash. They presented the relevant invoices.

71. As to non-pecuniary damage, the applicants claimed the same amount as in the domestic proceedings, that is BGN 150,000 (EUR 77,000) for each of them (see paragraph 11 above).

72. The Government contested the claims. They argued that there was no causal link between the violation alleged in the case and the pecuniary damage claimed. As to non-pecuniary damage, they urged the Court to award compensation to cover only the consequences of the violation found.

73. The Court, like the Government, does not discern any causal link between the violation found and the pecuniary damage alleged (see *Movsesyan*, cited above, § 81); it therefore rejects this claim.

74. As to non-pecuniary damage, the Court observes that it has found a violation of the procedural limb of Article 2 of the Convention and will make an award in that regard (see *Mehmood v. Greece*, no. 77238/16, §§ 89-90, 25 March 2021). Adjudicating on an equitable basis, it awards each of the applicants EUR 12,000 under the present head, plus any tax that may be chargeable.

B. Costs and expenses

75. The applicants also claimed BGN 21,875, the equivalent of EUR 11,190, for costs and expenses incurred before the domestic courts, namely the costs awarded against them. The applicants stated that they had paid this sum, but "did not keep any records of the payment".

76. The applicants claimed an additional EUR 3,300 for the cost of their legal representation before the Court after the communication of the application to the respondent Government. In support of this request they submitted a contract for legal representation and a time-sheet. They requested that any award made under this head be paid directly to their legal representative, Ms S. Razboynikova.

77. The Government pointed out that the applicants had not proved that they had actually paid any of the costs awarded against them in the domestic proceedings. They had in particular not shown that the insurance company had applied for a writ of execution and sought enforcement. At the same time, the amount due was such that the applicants would have been required by law to make a bank transfer, which meant that records of any payment were bound to remain. As to the claim for costs and expenses in the proceedings before the Court, the Government considered the applicants' claim excessive.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings, noting that the applicants have not shown actual payment. The Court considers it reasonable, on the other hand, to award the sum of EUR 2,000 in respect of the proceedings before it. As requested by the applicants, the entirety of the award is to be paid directly to their legal representative. Lastly, to that sum is to be added any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT

1. *Joins* to the merits, unanimously, the Government's objection of non-exhaustion of domestic remedies, and *dismisses* it;

2. *Declares,* unanimously, the application admissible;

3. *Holds*, unanimously, that there has been a procedural violation of Article 2 of the Convention;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay, 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 12,000 (twelve thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros) jointly to the two applicants, plus any tax that may be chargeable to them, in respect of costs and expenses, to be transferred directly to their legal representative;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses,* by six votes to one, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 30 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

P.P.V.
M.B.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicants' complaint concerns the impossibility for them under the domestic-law provisions to obtain compensation for the death of a close relative of theirs, who was killed in a car crash caused by a mentally ill person.

2. I voted in favour of points 1-4 of the operative provisions of the judgment but against point 5. The latter point dismisses the remainder of the applicants' claim for just satisfaction and concerns the claim for pecuniary damage mentioned in paragraph 70 of the judgment, in particular, the amount of about 1,260 euros (EUR) paid by the applicants for Mr Stanev's funeral and the dismantling and removal of his car after the crash. The dissenting aspect of my opinion focuses on this point.

3. Moreover, in concurring with the finding of a positive procedural violation by the State under Article 2, I take the view that it should not only relate to the failure of domestic-law provisions to provide for any compensation in respect of non-pecuniary damage, as the Court confines itself to saying in paragraph 66 of the judgment, but also to the failure of domestic-law provisions to provide for any compensation in respect of pecuniary damage. With all due respect, paragraphs 1 and 32 of the judgment are somewhat misleading and erroneous, as they confine the applicants' claim along with the subsequent discussion and the finding of the Court only to "moral" compensation, i.e. non-pecuniary damage, but not also to pecuniary damage.

4. The judgment, in paragraphs 70, 72 and 73, acknowledges that there is a claim by the applicants in respect of pecuniary damage, then discusses it, and decides on it; hence, there is an apparent contradiction since there is no justification at all in paragraphs 1 and 32 for limiting the applicants' complaint only to non-pecuniary damage. In fact, a claim for pecuniary damage is clearly made and substantiated in the applicants' observations. Also, at the end of the annex (on additional allegations on the alleged violations) to their application filed on 27 September 2012 in the old application form provided for by Rule 47 of the Rules of Court, the applicants concluded that there had been a violation of Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, because they had been deprived of any opportunity to obtain redress, though it is undisputed that they suffered serious non-pecuniary damage. It is apparent from this conclusion that their claim relates to their deprivation of any opportunity to obtain redress, including, of course, redress for both pecuniary and non-pecuniary damage regarding which they make no differentiation in the rest of their said pleading.

5. The fact that the applicants emphasised in the conclusion of the above-mentioned annex that the non-pecuniary damage caused to them was serious and undisputed does not negate what they had just said in the previous part of their concluding sentence, which covers both non-pecuniary and pecuniary damage. It is understandable why they laid express emphasis on their claim for non-pecuniary damage, since that claim was for EUR 70,000 while their claim for pecuniary damage was only for about EUR 1,260, but this is not a reason to ignore the latter complaint under the Law part of the judgment and in particular when discussing and deciding on the alleged violation under Article 2 of the Convention.

6. Paragraph 65 of the judgment states that there is no doubt that the domestic-law provisions do not cover damage caused by a person who was not criminally and civilly liable, albeit with valid civil-lability insurance. Though it is apparent from this paragraph that the lack of domestic-law provisions to cover damage applies to both non-pecuniary and pecuniary damage, the next paragraph, namely paragraph 66, concludes that this lack of compensation relates to non-pecuniary damage without also mentioning pecuniary damage. However, paragraph 67 of the judgment as well as point 3 of its operative provisions rightly formulate the violation in a more general manner, namely, a violation of the positive procedural obligation of the State under Article 2, without, at the same time, making any distinction between pecuniary and non-pecuniary damage or confining the violation only to non-pecuniary damage.

7. Regarding the applicants' claim for pecuniary damage mentioned in paragraph 70 of the judgment, it is stated in paragraph 73 that "the Court, like the Government, does not discern any causal link between the violation found and the pecuniary damage alleged", and that "it therefore rejects this claim". Reference is made in paragraph 73, within brackets, to paragraph 81 of the judgment in *Movsesyan v. Armenia* (no. 27524/09, 16 November 2017).

8. There is a difference, however, between the present case and *Movsesyan*, cited above. In the latter case, the amount claimed in respect of pecuniary damage, including expenses for funeral services and the erection of a gravestone, was not supported by any evidence (see paragraph 80 of that judgment where that is what the Government argued and the Court seemed to have accepted). On the other hand, it is clear from paragraph 70 of the present judgment that the applicants have indeed presented invoices in respect of the sum paid by them for Mr Stanev's funeral and for the dismantling and removal of his car after the crash. In their observations, the applicants alleged that they had paid these invoices. Therefore the present case can be distinguished from the *Movsesyan* case.

9. I am unable to agree with the majority's finding in paragraph 73 of the present judgment, namely that there is no causal link between the violation found and the pecuniary damage claimed. Neither the Court in *Movsesyan* nor the Court in the present case explains why it discerns no such causal link.

As is clear from paragraphs 65-67 of the present judgment, and point 3 of its operative operations, the violation found in the present judgment is a violation of the positive procedural obligation of the respondent State under Article 2 of the Convention, and, in particular, the failure of the respondent State to provide for a system allowing appropriate redress, as required under this Convention provision. Consequently, there is a causal link between the procedural violation found by the judgment and the pecuniary damage claimed.

10. Furthermore, the actual complaint of the applicants relies on Articles 13 and 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, in that they had been unable to obtain compensation as indirect victims for their relative's death and the Court, being master of the characterisation to be given in law to the facts of the case, rightly decided to examine the complaint under Article 2 of the Convention (see paragraph 33 of the judgment). Thus one must not lose sight of the fact that the actual claim, as I have explained above, concerned the applicants' inability to obtain compensation for both pecuniary and non-pecuniary damage. Although the judgment examines the applicants' complaint under a different provision from those on which they based their application, i.e. Article 2, and finds a procedural violation, when it comes to the issue of pecuniary damage, however, it regrettably discerns no causal link between the violation found and the actual claim for pecuniary damage. In their observations, the respondent Government alleged that the pecuniary damage the applicants claimed to have sustained was rather the "generally direct and immediate consequence from [*sic*] the tort". This argument is not discussed by the Court in its judgment and the Court does not even make mention of it. In my view, the tort, the death of the applicants' relative and the procedural violation are links in the same chain of events and the last link in this chain is the procedural violation with which the pecuniary damage claimed has a direct causal link.

11. If the Court were to find that the positive procedural obligation related not only to the non-pecuniary damage but also to the pecuniary damage, as I do, the causal link between the violation found and the pecuniary damage alleged would be even stronger.

12. Article 41 of the Convention, providing for "just satisfaction", applies in relation to "a violation of the Convention or the Protocols thereto", and it does not distinguish between a (positive) substantive violation and a (positive) procedural violation; therefore, it applies in relation to both. As with a violation of the positive substantive obligation of the State, a violation of a positive procedural obligation of the State under the Convention can justify granting an award by the Court not only for non-pecuniary damage but also for pecuniary damage.

13. With the utmost respect to the majority, the fact of not awarding the applicants the pecuniary damage claimed as stated in paragraph 70 of the judgment, has the effect, in my view, of rendering the applicants' right under Article 2 of the Convention, regarding this aspect of its protection, not practical and effective but theoretical and illusory, contrary to the overarching and fundamental principle of the Convention, the principle of the effective protection of human rights, well known as the principle of effectiveness.

14. In conclusion, it cannot be fair to the applicants within the meaning of Article 41 of the Convention not to afford them "just satisfaction" regarding the pecuniary damage which they have demonstrably sustained as a result of their relative's death.

15. In view of the above, I would make an award to the applicants for the pecuniary damage claimed and also proved to have been sustained by them.