CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION[1]

CASE OF JASAR v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 69908/01)

JUDGMENT

STRASBOURG

15 February 2007

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

[1] In its composition before 1 April 2006.

In the case of Jasar v. the former Yugoslav Republic of Macedonia,

The European Court of Human Rights (Third Section[1]), sitting as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs R. JAEGER,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 19 January 2006 and 25 January 2007,

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

PROCEDURE

1. The case originated in an application (no. 69908/01) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Macedonian national, Mr Pejrusan Jasar ("the applicant"), on 1 February 2001.

2. The applicant was represented by Ms A. Danka from the European Roma Rights Centre ("the ERRC") and Mr J. Madzunarov ("the Macedonian lawyer"), lawyers practising in Budapest and Stip, respectively. The Macedonian Government ("the Government") were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged that he was ill-treated by police, that no effective investigation had been carried out and that he had no effective remedy against the public prosecutor's inactivity.

4. By a decision of 11 April 2006, the Court declared the application admissible.

5. The parties replied in writing to each other's observations.

6. A hearing took place in public in the Human Rights Building, Strasbourg, on 19 January 2006 (Rule 59 § 3).

[1] In its composition before 1 April 2006.

There appeared before the Court:

(a) *for the Government*
Mrs R. LAZARESKA GEROVSKA, *Agent*,
Mr T. STOJANOVSKI, *Expert;*

(b) *for the applicant*
Mrs D. POST, *Counsel*,
Mrs A. DANKA, *Staff Attorney*,
Mr J. MADZUNAROV, *the Macedonian lawyer*.

7. The Court heard addresses by Mrs Lazareska Gerovska and Mrs Post and their answers to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1965 and lives in Štip, in the former Yugoslav Republic of Macedonia.

1. The incident

(a) The applicant's version of events

9. On 16 April 1998, at around 9 p.m., the applicant and his friend F.D., both citizens of the former Yugoslav Republic of Macedonia of Roma ethnic origin, were having a drink in a downtown bar in Štip. On the other side of the bar, two men were gambling. The man who lost pulled out a gun, fired several shots into the air and one into the ground, and asked for his money back. All those in the bar, including the applicant and his friend, tried to leave, but were ultimately unable to do so because of the crowd that had already blocked the exit.

10. In the meantime, five police officers arrived at the scene of the incident and turned to the applicant and his friend. One of the police officers caught the applicant by his hair and pushed him against the police car, while another officer grabbed his friend's arm and twisted it behind his back. Shortly afterwards, the police took them to the local police station, where they were locked up in two separate cells.

11. The applicant maintains that around midnight one of the police officers concerned came to the cell where he was being held and told him to

bend over. The applicant alleges that the police officer kicked him in his head, which caused bleeding from his mouth. As he fell down on the floor, the police officer grabbed him by his hair and allegedly started hitting him savagely with his fists and a truncheon. The applicant further maintains that another police officer, who was allegedly beating his friend in the other cell, came to his cell later and continued to batter him until 5 a.m. They were then taken to an office, where they were questioned about the incident. After drawing up a report, the police released the applicant and his friend at around 11 a.m. the next day.

12. Following his release, the applicant went to the Emergency Aid Unit at Štip Hospital and asked for medical assistance. A medical certificate issued on 17 April 1998 by the doctor who had examined him indicated that the applicant had sustained several bodily injuries which were described as slight. In addition, the certificate stated that the applicant had declared that he had been beaten at the police station with a truncheon and kicked all over his body. The medical certificate did not specify the possible origin of the injuries, their timing or the way in which they had been inflicted.

13. The applicant submitted an excerpt from a newspaper together with his statement concerning the incident in which he had made no allegations of being beaten at the scene in the bar. A photograph of him having a swollen right eye also appeared in the newspaper.

14. The applicant and his friend have never been charged with any offence in relation to the incident at issue.

(b) The Government's version of events

15. On 16 April 1998, between 9 and 10 p.m., the applicant and F.D. arrived at the café bar Lotus. They joined a group watching people gambling with dice. At around 2 a.m. on 17 April one of the losing gamblers claimed that the dice had been fixed and demanded his money back. An argument started in which the applicant and F.D. participated. When a certain J.N. took out a pistol and fired, F.D. tackled him and the gun fell on the floor. At about 2.30 a.m. the police came to the scene after the shooting incident had been reported to them. Meanwhile, there was a certain disruption inside the bar, after which some people went outside. The police's inspection of the scene lasted until 4.30 a.m.

16. The police sought to take M.S., an individual reported to them, into custody. The applicant and F.D., who had taken the side of M.S. in the dispute, obstructed the police's efforts, allowing M.S. to escape. F.D. also assaulted another person on the scene. The police then decided to take all those present, including the applicant, to the police station.

17. At 5 a.m. the applicant and F.D. were interviewed by the police. They were released at 7.30 a.m. No force was used against the applicant during the questioning, nor did he make any complaint at the police station

concerning any abuse by the police or any injury he had sustained. No charges were subsequently brought against him.

2. The criminal investigation

18. On 25 May 1998 the applicant, through his legal representative, filed a criminal complaint (*кривична пријава*) with the Štip Basic Public Prosecutor's Office (*Основно Јавно Обвинителство Штип*) against an unidentified police officer under section 143 of the Criminal Code (see "Relevant domestic law"). In the complaint, the applicant set out a factual account of the incident and alleged that the officer concerned had ill-treated him while he was in police custody. He requested the public prosecutor's office to initiate proceedings as provided for by law. The medical certificate of 17 April 1998 was produced in support of his complaint.

19. On 28 May 1999 the applicant's legal representative wrote a letter to the Štip public prosecutor, stressing that his criminal complaint had been filed more than a year previously and that since then he had received no information and had no knowledge as to whether any steps had been taken by the public prosecutor's office to identify the offenders and to initiate a formal investigation.

20. As there was again no reply, on 25 October 1999 the applicant's lawyer sent another letter to the public prosecutor, requesting information about any action undertaken concerning the applicant's case. He made no reference to the civil proceedings that had already finished and did not inform the public prosecutor of the identity of the police officers concerned, which had been determined in the course of the civil proceedings.

21. In a letter dated 11 November 1999 the Štip public prosecutor replied that his office had responded to the criminal complaint at issue by officially requesting additional inquiries from the Ministry of the Interior ("the Ministry"). However, to date his office had received no information from the Ministry.

22. As the applicant has not received any fresh information since then as to any action taken by the relevant prosecuting authorities, the proceedings concerning his criminal complaint are still pending.

3. The civil proceedings

23. On 25 May 1998 the applicant submitted a compensation claim against the respondent State and the Ministry for the non-pecuniary damage he had suffered as a result of the violence to which he had been subjected while in police custody. He made the same statements as in the criminal complaint, namely that after the police officers had arrived at the bar, one of them had grabbed him by his hair and pushed him against the police car; that at the police station he had been told to do push-ups and had been

subsequently kicked in the head, which had caused his mouth to bleed; and that he had been punched and beaten with a truncheon all over his body.

24. The Government stated that in December 1998, following the bringing of the civil action, the Solicitor General's Office had requested information from the Ministry concerning the incident. In January 1999 the Štip police submitted a report based on the official notes and records, stressing that the police had not used force at the station and had intervened and placed the applicant in the police van when he and his friend had resisted them at the scene and his friend had attacked another person. They added that no force had been used against the applicant, nor had he submitted any complaint concerning the injuries allegedly sustained during the police intervention at the bar. Among the documents accompanying this report, the Ministry provided the official police record of the statements given by the applicant while being questioned. No complaints of alleged abuse or injuries had been noted in that record.

25. On 22 March 1999 the Štip Court of First Instance dismissed the applicant's claims as ill-founded. The court heard evidence from F.D. and several police officers who had participated in the police raid on the night of the incident. It also heard evidence from a specialist doctor, who provided his expert opinion about the applicant's injuries indicated in the medical certificate. As stated by him, the following injuries had been observed: a blow on the back of the head; contusion of the left eye; swollen and bruised left cheek; bruise on the lower part of the chest and punch on the right hand. He stated that the injuries had been probably inflicted by a blunt object such as a hand or a tool and that no special treatment had been necessary for the applicant's recovery. The court also admitted as evidence the medical certificate of 17 April 1998 and the photographs showing the applicant's condition after the incident.

26. The court found it undisputed that the applicant had been injured, but stated that there was no evidence that the injuries had been inflicted as a result of police brutality. It established that the applicant had sustained certain injuries, but concluded that it could not be inferred under what circumstances they had been inflicted, or by whom or when. On the basis of the police officers' statements, the court further established that the applicant had sustained some injuries to his head and eye before he had been taken to the police station. It found that the injuries had either been sustained during the fight in the bar (while the applicant was assisting the escape of a person who had fired a gun and caused a disturbance) or had resulted from the legitimate action of police officers in trying to restrain the applicant who had resisted arrest. It went on to conclude that, having regard to the statements of the police officers who had participated in the police raid and to the police report on the incident, even if the police officers had used some force in the bar, thus causing the injuries, the applicant could not have been awarded damages as he had resisted arrest and the circumstances

of the case had necessitated the use of force. The court rebuffed as ill-founded the applicant's argument that he had not been able to undergo a medical examination immediately after being released from custody owing to his lack of financial means, since this was contradicted by the medical certificate dated 17 April 1998.

27. On 29 April 1999 the applicant appealed.

28. On 5 October 1999 the Štip Court of Appeal dismissed the applicant's appeal as ill-founded. It stated that the lower court had indisputably found that the applicant had sustained certain injuries before he had been taken into police custody and that the police officers had not inflicted them. It concluded that the lower court had reasonably found that the State could not be held liable and had dismissed the applicant's claim for damages.

29. On 4 February 2000 the applicant requested the public prosecutor to lodge with the Supreme Court an application for the protection of legality (*барање за заштита на законитоста)*. Referring to the outcome of the civil proceedings, he did not provide the public prosecutor with the identity of the police officers who had allegedly beaten him and who had given evidence in the course of those proceedings.

30. On 1 March 2000 the public prosecutor rejected the applicant's request.

II. RELEVANT DOMESTIC LAW

31. Section 143 of the Criminal Code (*Кривичен законик*) provides that a person who, in the performance of his duties, mistreats, intimidates, insults or generally treats another in such a manner that his human dignity or personality is humiliated is to be punished by a term of imprisonment of six months to five years.

32. The relevant provisions of the Criminal Proceedings Act ("the Act") (*Закон за кривичната постапка*) may be summarised as follows:

33. Section 16 provides that criminal proceedings must be instituted at the request of an authorised prosecutor. In cases involving offences subject to *ex officio* prosecution by the State or on an application by the injured party, the authorised prosecutor is the public prosecutor, whereas in cases involving offences subject to merely private charges, the authorised prosecutor is the private prosecutor. If the public prosecutor finds no grounds for the institution or continuation of criminal proceedings, his role may be assumed by the injured party, acting as a subsidiary prosecutor under the conditions specified in the Act.

34. Section 17 sets forth the duty of the public prosecutor to proceed with a criminal prosecution if there is sufficient evidence that a crime subject to *ex officio* prosecution has been committed (the principle of legality).

35. In accordance with section 42, in discharging this statutory right and duty, the public prosecutor is empowered to take measures to detect crimes,

to identify their perpetrators and to coordinate preliminary criminal inquiries; to request the opening of an investigation; to file and to defend an indictment or application for prosecution before the competent court; to lodge appeals against decisions which have not become final; and to make use of extraordinary judicial remedies against final court decisions.

36. Section 56 provides, *inter alia*, that where the public prosecutor finds that there are no grounds for prosecuting an offence subject to *ex officio* prosecution, he shall notify the injured party of his decision within eight days. He shall also inform the injured party that that party may conduct the prosecution himself.

37. Section 144(1) provides that the public prosecutor is to dismiss the criminal complaint if it transpires that the act reported is not a criminal offence subject to *ex officio* prosecution; that the statute of limitations has expired; that the offence has been amnestied or pardoned or that other circumstances exist which preclude prosecution; or that there is no reasonable suspicion that the person in question committed the offence. The public prosecutor shall notify the injured party of the dismissal of the complaint and of the grounds for the dismissal within eight days (section 56) and, if the complaint was filed by the Ministry, he shall notify the latter accordingly.

38. Section 144(2) provides that if the public prosecutor is unable to establish, from the criminal complaint, whether or not the allegations set out in the complaint are credible, or if the information given in it is insufficient for him to take a decision on whether to request the opening of an investigation, or if he has merely learned of rumours that a crime has been committed, particularly where the perpetrator is unknown, he shall, if he cannot do this alone or through other authorities, request the Ministry to gather the necessary information and to take other measures to investigate the offence and identify the offender. The public prosecutor may at any time require the Ministry to inform him about the measures taken.

39. Section 148 provides, *inter alia*, that when the perpetrator of a crime is unknown, the public prosecutor may request that the Ministry take certain investigative measures if, in view of the circumstances of the case, it would be advisable to take such measures even before the investigation has been formally opened.

40. Section 150 provides that an investigation is to be opened in respect of a particular person where a reasonable suspicion exists that he has committed an offence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained under Article 3 of the Convention that he had been subjected to acts of police brutality, which had caused him great physical and mental suffering amounting to torture, inhuman and/or degrading treatment. Furthermore, he alleged that he had been the victim of a procedural violation of the above Article since the prosecuting authorities had failed to carry out an effective or, indeed, any official investigation capable of leading to the identification and punishment of the police officers responsible for the treatment. Article 3 reads as follows:

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

A. The submissions of the parties

1. The Government

42. The Government submitted that the applicant's allegations were not credible or substantiated. The statements taken by the police and the official records contradicted the applicant's version of events, including the timing of the incident, his role in it and the minor injuries recorded after an alleged night of being beaten. The applicant and his friend had not been neutral bystanders, but active participants in the quarrel and had obstructed the police in their attempt to take a gambler into custody. The police had been obliged to use permissible force to prevent further disruption and to restore order. The minor physical injuries recorded by a doctor were most probably the result of the scuffling between the participants in the bar brawl before the police's arrival or the result of the necessary intervention of the police. There was no evidence of the alleged use of force at the police station.

43. The Government also pointed out that the applicant was not a respectable citizen being persecuted by the police on account of his Roma identity, but in fact an offender with an extensive criminal record. Between 1985 and 1998, 11 criminal charges had been brought against him, eight of which concerned property offences, two assaults and one a public-order offence. The applicant had received four prison sentences, of which one was suspended, and in 2002 further criminal charges for serious bodily harm had been brought. As regards the investigation into his allegations, they submitted that he himself had rendered it ineffective by not using the appropriate remedies and by not providing concrete evidence or facts

relating to the alleged violation. If he had used the possibilities open to him in a timely fashion, there would have been some prospect of an effective investigation. They maintained that the applicant had neither raised the issue of being beaten during the questioning at the police station nor reported the alleged ill-treatment in the days that followed. The investigation was still pending, as the public prosecutor had not yet taken a decision to dismiss the complaints.

2. The applicant

44. The applicant submitted that he had been subjected to acts of police brutality that had caused him severe physical and mental suffering amounting to torture or to inhuman and degrading treatment or punishment. As he had suffered physical abuse while in police custody, it was for the Government to show that their officials were not responsible for his injuries. They had not done so. Their version of events was contradicted by the statement given by F.D., the only independent witness, and the medical certificate issued by the hospital, which had found numerous serious injuries to the applicant's head, hands and back. There was nothing to suggest that the applicant had taken part in any physical confrontation or had physically resisted the police. The internal police memos were biased and had no probative value. The courts, when considering the applicant's claims, had simply ignored the evidence and relied on police evidence and reports which were clearly cursory, inconsistent and in contradiction with one another.

45. The applicant also referred to the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the former Yugoslav Republic of Macedonia from 15 to 19 July 2002 (CPT/Inf(2003), which indicated that physical ill-treatment of persons in police custody was a serious problem and expressed doubt that judges or prosecutors conducted effective investigations where such ill-treatment came to their attention. This indicated a deep-rooted and widespread practice of abuse in police custody and impunity with regard to officers who perpetrated such acts. It was for the Government to show what they had done in response to the scale and seriousness of the problem at issue. In the present case, they had clearly done nothing. Finally, the applicant disputed that any remedies existed to provide redress for the authorities' blatant inaction.

B. The Court's assessment

1. Concerning the alleged ill-treatment

(i) General principles

46. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Boicenco v. Moldova*, no. 41088/05, § 102, 11 July 2006; *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93; *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, § 79).

47. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see *V. v. the United Kingdom* [GC], no. 24888/94, § 70, ECHR 1999-IX; *Raninen v. Finland*, judgment of 16 December 1997, *Reports* 1997-VIII, § 55; *Labita*, judgment, cited above, § 120; *Tekin v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1517, § § 52 and 53; *Assenov and Others*, cited above, p. 3288, § 94; *İlhan v. Turkey* [GC], no. 22277/93, § 84, ECHR 2000-VII).

48. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30). 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 *Labita*, cited above, § 121; *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161).

49. It is further recalled that it is not normally within the province of the Court to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them (see *Klaas*, cited above, § 29).

(ii) Application of these principles in the present case

50. Turning to the present case, the Court at the outset notes as undisputed that a quarrel erupted in the bar in which several gunshots were fired. It was the disruption inside the bar and the shooting incident that called for the police intervention. The civil courts confirmed this in their findings of fact. It was not denied by either of the parties.

51. The Court also finds it incontrovertible that the applicant sustained certain injuries. This was corroborated by the medical certificate and the findings of the civil courts. The national courts, however, rejected the applicant's allegations of how the injuries were caused. In reaching the conclusion that he might well have sustained the injuries in the bar, either as a result of the brawl or while resisting arrest and that the arresting officers had not used excessive force, the trial court, in particular, had the benefit of seeing the various witnesses give their evidence and of evaluating their credibility. It also heard evidence from a specialist doctor concerning the applicant's injuries as indicated in the medical certificate which had merely specified the source of the injuries - a blunt object, i.e. a hand or a tool. As to the medical certificate, the Court notes that it was brief and failed to state any opinion as to the cause of the injuries. It further observes that the doctor's findings given at the trial contradict the picture of the applicant's facial injuries submitted before it (see paragraph 13 above).

52. Contrary to the Government's version of events, which coincided with the civil courts' findings, the applicant argued that the injuries were caused by the treatment he had undergone while in police custody. He did so on two occasions, in the application and in the reply to the Government's observations. It was at the public hearing of 19 January 2006 that the applicant underlined that he had been beaten by the police in the bar before he was taken into custody. He further relied on that version in his submissions of 7 June 2006 concerning the just satisfaction claims. In this respect, even assuming that he complained about being beaten at the scene in the bar, the Court considers that he failed to raise that matter either before the civil courts or before the public prosecutor. Furthermore, it was noted in the medical certificate that the applicant had declared that he had sustained the injuries while in police custody.

53. The Court, however, observes that no cogent elements have been adduced in the course of the proceedings before it which could call into question the findings of the national courts and support the applicant's allegations. The inconsistency about his injuries and the circumstance under which he sustained them corroborate that conclusion. It further notes that eight years after these events, and owing primarily to the national authorities' inactivity and reluctance to carry out an effective investigation into the applicant's allegations, the Court is not able to establish which version of events is the more credible (see, *mutatis mutandis*, *Veznedaroğlu*

v. Turkey, no. 32357/96, § 31, 11 April 2000; *Assenov and Others*, cited above, § 92).

54. In conclusion, since the evidence before it does not enable the Court to find beyond all reasonable doubt that the applicant was subjected to physical and mental ill-treatment while in police custody, the Court considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 of the Convention on account of the alleged ill-treatment.

2. Concerning the alleged lack of an effective investigation

(i) General principles

55. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Corsacov v. Moldova*, no. 18944/02, § 68, 4 April 2006; *Labita*, cited above, § 131, ECHR 2000-IV; *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161; *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 98).

56. The investigation into serious allegations of ill-treatment must be thorough. 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 (see *Assenov and Others*, cited above, § 103). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Boicenco*, cited above, § 123).

57. Finally, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official

investigation was at issue, the Court had often assessed whether the authorities reacted promptly to the complaints at the relevant time (see, among others, *Labita*, cited above, § 133).

(ii) Application of these principles in the present case

58. The Court considers noteworthy that the applicant filed the criminal complaint with the public prosecutor and lodged his compensation claim more than a month after the decisive event (see paragraphs 17 and 22 above). The applicant gave no explanation for that delay. The Court, further, accepts that at that time the identity of the perpetrators was unknown to him. It however, cannot find a convincing explanation for the applicant's failure to inform the public prosecutor of the identity of the police officers who had apprehended him in the bar, which had been determined in the course of the civil proceedings. The applicant failed to provide this information on two occasions: in his letter of 25 October 1999 and in the request for the protection of legality of 4 February 2000 (see paragraphs 19 and 28 above). However, notwithstanding this failure, the Court stresses that the applicant's lawyer lodged a criminal complaint about the alleged police brutality together with the medical certificate. In these circumstances the matter was sufficiently brought to the attention of the relevant domestic authority, and the Court is satisfied that it raised at least a reasonable suspicion that the applicant's injuries could have been caused by the treatment he had undergone while in the police custody. As such, the public prosecutor was under the duty to investigate whether an offence had been committed. In this respect, it is particularly striking that the public prosecutor did not undertake any investigative measures after receiving the criminal complaint from the applicant's lawyer. The Court notes that the national authorities took no steps to identify who was present when the applicant was apprehended or when his injuries were received, nor is there any indication that any witnesses, police officers concerned or the doctor, who had examined the applicant, were questioned about the applicant's injuries. Furthermore, the public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicant as to the alleged ill-treatment. Indeed, the only investigative measure undertaken by the prosecutor was his request for additional information submitted to the Ministry. This inquiry was made more than a year and a half after the criminal complaint had been lodged.

59. In addition, the inactivity of the public prosecutor prevented the applicant from taking over the investigation as a subsidiary complainant and denied him access to the subsequent proceedings before the court of competent jurisdiction (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, § 98). The applicant is still barred from taking over the investigation as the public prosecutor has not yet taken a decision to dismiss the complaint.

60. In these circumstances, having regard to the lack of any investigation into the allegations made by the applicant that he had been ill-treated by the police while in custody, the Court holds that there has been a violation of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

61. The applicant further complained that he had had no effective remedy in respect of the national authorities' failure effectively to investigate his allegations of ill-treatment, contrary to Article 13 of the Convention, read in conjunction with Article 3. Article 13 reads as follows:

> "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."

62. Having regard to the grounds on which it has found a violation of the procedural aspect of Article 3, the Court, considers that no separate issue arises under Article 13 of the Convention. (see *Kazakova v. Bulgaria*, no. 55061/00, § 70, 22 June 2006; *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 57, ECHR 2005)

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed EUR 35,000 in respect of non-pecuniary damage for the pain, physical injuries, frustration, anguish and helplessness which he had suffered as a result of the ill-treatment inflicted by the police officers while being in a very vulnerable position, i.e. at the police officers' mercy. He also referred to the flaws of the ensuing investigation taken by the national authorities. As no legal action was taken eight years after he had introduced the criminal complaint, he had continued to perceive that police officers were above the law and that the justice would be unattainable. The applicant further referred to his Roma origin, maintaining that his case was not unique in the former Yugoslav Republic of Macedonia.

65. The Government contested the applicant's claims as excessive. They referred to the decisions of the national courts in which it had been

established that he had been injured in the bar prior to the police intervention. The medical certificate indicated that the injuries had been of a minor nature. Although the subsequent investigation had been stayed for a long time and provided no results, the Government invited the Court to consider that the eventual finding of a violation constituted in itself sufficient compensation for any damage in the present case.

66. The Court observes that it has found the authorities of the respondent State to be in breach of Article 3 on account of their failure to investigate the applicant's allegations of police brutality. It has reached no conclusion on the substance of that complaint. The Court considers that a finding of a breach of Article 3 under its procedural head cannot be said in the circumstances to constitute in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. In its view, the applicant must be taken to have suffered some degree of frustration and anguish in regard to the lack of concern displayed by the authorities with respect to his complaint. Making an assessment on an equitable basis, it awards the applicant the sum of EUR 3,000, plus any tax that may be chargeable.

B. Costs and expenses

67. The applicant claimed EUR 16,605 for the costs and expenses incurred by the ERRC in the proceedings before the Court. These included the fees for two lawyers engaged on the case for 214 hours of legal work and administration. A fee note was produced for the activities of the ERRC taken between 14 November 2005 and 7 June 2006 and for the travel arrangements related to the oral hearing.

68. The applicant further claimed EUR 4,148 for the costs and expenses incurred by the Macedonian lawyer in the domestic proceedings and those before the Court. These included the lawyer's fees for 92 hours of legal work according to the rate scale of the Macedonian Bar and the travelling and accommodation expenses concerning the oral hearing. An itemized list was attached thereto.

69. The applicant's representatives have requested that the fees be paid directly to them, as the applicant did not support any financial charge during the proceedings. They did not provide their bank accounts.

70. The Government stated that the amounts claimed by the ERRC for the activities taken in the period mentioned above had been exorbitant if compared with the economic situation in the former Yugoslav Republic of Macedonia. Further to their complaint for the engagement of two lawyers by the ERRC, they invited the Court to decide the costs and expenses on an equitable basis. As to the costs and expenses claimed by the Macedonian lawyer, the Government considered their amount as reasonable, as incurred during an eight-year period.

71. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the information in its possession and the above criteria, the Court finds the amount claimed by the ERRC to be excessive in view of the period covered and awards instead the sum of EUR 5,000 to cover its costs and expenses. As the Government did not contest the costs claimed by the Macedonian lawyer, it awards in full the sum claimed by him. These amounts are to be paid into the bank accounts of the applicant's representatives, exclusive of any tax that may be chargeable**.**

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged ill-treatment;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated by the police;

3. *Holds* that it is not necessary to consider the applicant's complaint about the lack of an effective remedy under Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that the respondent State is to pay the applicant's representatives, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros) in respect of the costs and expenses incurred by the ERRC;

(ii) EUR 4,148 (four thousand one hundred and forty-eight euros) in respect of costs and expenses of the Macedonian lawyer;

(iii) any tax that may be chargeable on the above amounts;

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

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

Done in English, and notified in writing on 15 February 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President