



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

FIRST SECTION

**CASE OF GALOTSKIN v. GREECE**

*(Application no. 2945/07)*

JUDGMENT

STRASBOURG

14 January 2010

**FINAL**

*14/04/2010*

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



**In the case of Galotskin v. Greece,**

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

Nina Vajić, *President*,  
Christos Rozakis,  
Anatoly Kovler,  
Elisabeth Steiner,  
Khanlar Hajiyev,  
Dean Spielmann,  
Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 December 2009,

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

## PROCEDURE

1. The case originated in an application (no. 2945/07) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mr Panayotis Galotskin (“the applicant”), on 21 December 2006.

2. The applicant was represented by Greek Helsinki Monitor, a member of the International Helsinki Federation. The Greek Government (“the Government”) were represented by their Agent, Mr G. Kanellopoulos, Adviser at the State Legal Council, and Mrs S. Trekli, Legal Assistant at the State Legal Council.

3. The applicant alleged, in particular, that he had been subjected to acts of police brutality and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Article 3, Article 6 § 1 and Article 13 of the Convention.

4. On 11 September 2008 the President of the First Section decided to communicate the complaints concerning Article 3, Article 6 § 1 and Article 13 of the Convention to the Government. It was also decided that the merits of the application should be examined at the same time as its admissibility (Article 29 § 3 of the Convention).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

#### A. Outline of the events

##### *1. The applicant's version*

5. On 23 December 2001, at approximately 10.30 p.m., the applicant was a passenger in a car that was stopped for an identity check by a police patrol outside a cafeteria in the district of Ano Toumpa in Salonika. Dimitrios Zelilof, an acquaintance of the passengers who was passing by, proceeded to ask one of them, Mr Giorgos Kalaitsidis, what was going on. A police officer, who was subsequently identified as Police Sergeant Apostolos Apostolidis, flashed his torch on him and asked him to identify himself. Mr Zelilof replied that he wanted to know whether his friend had a problem. The latter was then asked by another police officer, later identified as Police Constable Zaharias Tsiorakis, to produce his identity card. Mr Zelilof replied that he did not have his identity card with him and suggested that they all go to the nearby police station for an identity check, as his identity card had been issued there. Then, allegedly, one of the police officers asked him whether he was “being the tough guy”. Seconds later, Police Officer Tsiorakis wrapped handcuffs around Dimitrios Zelilof’s fist and then punched him in the mouth. This made him feel dizzy and, as he was falling down, Police Officer Tsiorakis kicked him twice in the chest and abdomen.

6. The applicant submitted that he had witnessed the above incident and also reported hearing gunshots before he entered the cafeteria, where he headed to the toilets. Police officers went into the cafeteria and violently dragged the applicant out of the toilets into the cafeteria’s main room. They threw him against a pool table and handcuffed him, while allegedly beating him all this time, including twice with a pool cue on his back. The applicant and three other civilians were taken handcuffed to the nearby Ano Toumpa Police Station, where he was allegedly violently beaten by police officers. As a result of the beating, the applicant’s lower jaw was fractured and his gums started bleeding. Following this incident, the applicant was taken to the Aghios Dimitrios State Hospital, from where, after an X-ray to his jaw and some stitches to his head, he was taken back to the police station. After several hours of detention the applicant was charged with attacking and injuring police officers and resisting arrest.

7. On 24 December 2001, at 4 a.m., the applicant made his defence statement before the Salonika investigating judge, facing charges of releasing a prisoner, assaulting a police officer and causing grievous bodily

harm. He mentioned his ill-treatment, while also denying the charges against him. Subsequently, he was taken back to his detention cell until 10 a.m., when he was taken to another police station for fingerprints; he was subsequently referred by the prosecutor to an investigating judge. All this time the applicant allegedly remained handcuffed and, at one point during his transfers from office to office, he fainted. Around noon, he was taken to the investigating judge, who granted him a postponement until 28 December 2001 to prepare his defence statement, and then he was released. The applicant stated that neither the prosecutor nor the investigating judge had reacted to his obvious wounds and his allegations of ill-treatment.

## 2. *The Government's version*

8. The Government maintained that the identity check on the passengers of the car had been almost complete when Dimitrios Zelilof, who was passing by, had headed towards the police officers. Despite their initial warning, Mr Zelilof ignored the police officers, approached the car and started talking to the passengers. When Police Sergeant Apostolidis asked Mr Zelilof to identify himself, the latter refused to obey and shoved the police officer abruptly with his arm. Officers Hamopoulos and Tsiarakis ran to their colleague's assistance and tried to handcuff Mr Zelilof. The latter resisted strongly by punching and kicking the above-mentioned officers.

9. In the meantime Dimitrios and Lazaros Kalaitzidis had appeared from a nearby café and became involved in the argument between Dimitrios Zelilof and the three police officers. While the police officers were trying to handcuff Mr Zelilof and arrest him, Dimitrios and Lazaros Kalaitzidis violently shoved the police officers with their arms and struck them with their arms and legs. By doing so, they managed to prevent them from arresting Mr Zelilof, who fled from the scene. Officer Apostolidis fired a shot in the air in order to scare his assailants away.

10. Owing to the fact that the incident had taken place close to Toumba police station, as soon as Officer Apostolidis had fired the shot, another group of police officers ran to their assistance. A number of persons who had either actively participated in the incident, among them the applicant, or merely observed it ran away into the nearby cafeteria. Charalambos, Dimitrios and Lazaros Kalaitzidis were arrested. The applicant was found in the toilets, where he was hiding in order to avoid arrest. All the above-mentioned persons were arrested *in flagrante delicto* and driven to Toumba police station. The applicant was charged with releasing a prisoner and causing unprovoked bodily injury.

## **B. Medical reports**

11. According to hospitalisation information note no. 684/2002, issued by the Aghios Dimitrios General Hospital in Salonika on 29 January 2002, the applicant had been transferred to the hospital on 23 December 2001 at

11.50 p.m. He had a cranial injury, a wound on the scalp, a fractured premolar in the right lower jaw and two other fractured teeth. The note also mentioned “Diagnosis: beating reported” and indicated that the applicant had been discharged as soon as medical instructions were given and the wounds were stitched.

12. According to a hospitalisation note issued on 25 December 2001 by the Georgios Gennimatas State Hospital, the applicant was admitted to the hospital on 24 December 2001 and diagnosed with a fracture of the lower jaw. He had undergone reconstructive surgery whereby plates and screws had been inserted in his jaw. The applicant was discharged on 25 December 2001 with a note that his medical condition had improved.

### **C. The administrative investigation**

13. On 8 January 2002 Salonika police headquarters ordered an administrative investigation in order to ascertain the exact circumstances in which the three police officers had been injured and whether they were liable for any disciplinary offence. The administrative investigation was assigned to an officer serving at the police’s sub-directorate of administrative investigations. As part of the investigation the investigating police officer summoned as witnesses the three police officers who had been involved in the incident, the applicant, two of his acquaintances present at the scene and some other individuals accused of assaulting the police officers. The various witness statements available were studied but no further inquiry was conducted regarding the gunshots fired or the general legitimacy of the initial identity check. It was observed in the report on the administrative investigation, issued on 9 August 2002, that

“persons involved in the incident refused to comply with the police officers’ orders and, furthermore, one of them [Dimitrios Zelilof] had intended to ‘control’ the police officers who were performing the identity check, considering arbitrarily and cheekily that he had a non-existent right ... Taking into account also the unprovoked, violent and disproportionate assault by other individuals on the police officers, it is concluded that the police officers properly assessed the relevant circumstances and acted correctly. The brawl between the police officers and the individuals in question was inevitable. The police officers used necessary physical force against the civilians, mainly in order to defend their physical integrity, which was under imminent threat. There was a clear danger that the police officers’ firearms would be snatched by the individuals concerned in the context of a disproportionate assault by ten to fifteen of them on the police officers. Thus, apart from the injuries inflicted on the police officers, which could easily have been more serious, there was an imminent danger that firearms would be used by civilians in an extreme way (fatal shooting of the police officers, etc.)”

14. The report also stated:

“The shooting in the air by Police Officer Apostolidis was imperative in order to prevent any adverse situation. His act scared the assailants and allowed the police officers to regain control of the situation and proceed with the arrests of the perpetrators ... To sum up, the use of violence by the police officers was clearly

necessary. ... The simple injuries caused to all individuals and police officers that were involved in this incident were absolutely justified by the intensity of the scuffle.”

15. As regards the alleged ill-treatment on the premises of the police station, the report observed, among other things:

“the violent behaviour of the police officers was alleged in the testimonies of the persons who had caused the illegal acts. Even if these testimonies could not be rejected as such, their accuracy and objectivity could not be taken for granted. Testimonies such as those made by Kalaitsidis and Kampanakis – the cousin and friend respectively of the accused – undoubtedly concern personal opinions and assessments that will be of assistance to the accused during the trial. ... Not all the testimonies have been proven; on the contrary, the police officers (involved in the events) have denied them. The latter insisted in their testimonies that there was no violence in the police station and that all the injuries sustained by the civilians were caused before their transfer to the police station.”

It continued as follows:

“At this point reference should be made to the allegations of individuals concerning unprovoked ill-treatment by ‘mean’ police officers against those who just ‘happened’ to be there or were unrelated to the incident. These [testimonies] could not be taken seriously, nor could they be considered objective. On the contrary, they had to be regarded as defence tactics by their friends/acquaintances, who faced serious criminal charges and whose depositions aim to cast the police officers in a bad light.”

## **D. The judicial proceedings**

### *1. Criminal proceedings*

16. On 11 January 2002 charges were brought against the applicant by the public prosecutor at the Salonika Criminal Court for releasing a prisoner, assaulting police officers and causing grievous bodily harm.

17. On 22 January 2002 the applicant filed a criminal complaint with the Salonika Public Prosecutor’s Office, also applying to join the proceedings as a civil party. The complaint was lodged against Police Officers Hamopoulos, Apostolidis and Tsiorakis, as well as against other officers unknown to the applicant who had been involved in the alleged ill-treatment, both during the course of his arrest and subsequently while he was in detention on 23 December 2001. The complaint also concerned the alleged perjury by the police officers who had testified against him under oath during the summary investigation, implicating him in criminal acts which he maintained that he had not committed.

18. On 29 July 2003 the Indictment Division of the Salonika Criminal Court suspended the prosecution of the police officers until the delivery of an irrevocable decision in the trial against the applicant and other civilians involved in the 23 December 2001 incident (ruling no. 1159/2003).

19. On 14 January 2005 the applicant was acquitted of all charges against him by the Salonika Criminal Court. The court held that it had not been established through the proceedings that the applicant had injured the

police officers in any way but rather that his involvement had boiled down to a verbal dispute between him and the police officers with regard to the incident. The court also considered that the lesser offence of releasing a prisoner had not been established either (decision no. 683/2005).

20. On 13 June 2005 the applicant applied to the Salonika Criminal Court to reopen the criminal proceedings against the police officers.

21. On 15 September 2005 the Indictment Division of the Salonika Criminal Court committed Police Officer Apostolidis for trial on charges of causing severe bodily injuries to the applicant inside the police station, intentionally lodging a criminal complaint concerning facts known to be false, perjury and slander. In particular, with regard to the charge of grievous bodily harm, the Indictment Division ruled that the applicant had recognised Officer Apostolidis as the person who had caused bodily injuries to him. It stated that initially the applicant had testified that the three police officers had all used physical force against him but that subsequently, in his deposition taken under oath on 21 February 2003, he had submitted that Officer Apostolidis was the sole perpetrator of the physical violence against him. It was also stated that the applicant had not taken part in the brawl and that it was plausible that he had been injured during and after his arrest. The Indictment Division also admitted that Officer Apostolidis had testified before the Salonika Criminal Court that the applicant had been hit in the course of his arrest.

22. Moreover, Police Officer Hamopoulos was committed for trial on charges of intentionally lodging a criminal complaint concerning facts known to be false, perjury and slander. Lastly, Police Officer Tsiarakis was committed for trial on charges of perjury.

23. A hearing before the Salonika Court of Appeal took place on 25 May 2006. The applicant testified that he had been dragged out from the toilets to the cafeteria's main room by Officer Apostolidis, who, together with other police officers, had beaten him. He further contended that while he was being taken to the police station, Officer Apostolidis had again hit him in the face. H. Mousailidis, an eyewitness, testified that he had seen the applicant being thrown over a pool table and beaten by police officers. Officers Theodoros Kaloudis and Hristos Nounis testified that by the time the applicant had been brought to the police station he was already injured. Moreover, the defendant Hamopoulos stated that the applicant had been brought wounded to the police station. The defendant Apostolidis argued that he had not beaten up the applicant in the police station and that the latter had been beaten while in the cafeteria, although the perpetrator was unknown. Finally, the defendant Tsiarakis stated that the applicant had probably been beaten while he was being arrested.

24. On 26 May 2006 the Salonika Court of Appeal acquitted all three police officers on all charges. The Court of Appeal held that there were many doubts as to whether bodily injuries had been inflicted on the applicant by Officer Apostolidis inside the police station and that there were discrepancies in the applicant's testimonies as to the perpetrator of his



injuries and the place where he had been beaten. In particular, it considered that the applicant had testified at the hearing that the perpetrator of his injuries had solely been Officer Apostolidis, whereas in his criminal complaint he had claimed that the three defendants together had subjected him to ill-treatment. Moreover, the Court of Appeal observed among other things that the applicant had stated during the hearing that Officer Apostolidis had beaten him inside the police station, whereas the eyewitnesses Mr Mousailidis and Officers Kaloudis and Nounis had stated that he had already been injured by the time he was brought to the police station (judgment no. 1870/2006). The judgment was finalised on 29 June 2006.

## *2. Administrative proceedings*

25. In the meantime, on 5 March 2003, the applicant had brought an action in the Salonika Administrative Court, seeking 31,609 euros (EUR) in damages and costs on account of his alleged ill-treatment by police officers during his arrest and inside the police station. It transpires from the file that the proceedings are still pending before the Salonika Administrative Court.

## II. RELEVANT DOMESTIC LAW

26. Article 167 of the Greek Criminal Code provides, in so far as relevant:

### **Resistance**

“1. Anyone who uses or threatens to use force for the purpose of obliging an authority or a civil servant to carry out an act within their competence or to refrain from carrying out a legal act, and anyone who uses physical force against a civil servant ... shall be punished by a term of imprisonment of at least three months.

2. Where the punishable acts cited above occur as a result of using a weapon or an object that may provoke bodily injury ... or the person who is the subject of the attack is seriously endangered, the perpetrator shall be punished by a term of imprisonment of at least two years ....”

27. The Code of Police Ethics (Presidential Decree no. 254/2004) provides, in so far as relevant:

### **Article 1: General obligations**

“Police personnel:

**a.** shall serve the Greek people and perform their duties in accordance with the Constitution and laws;

**b.** are obliged to respect human dignity and protect the human rights of people both as individuals and as members of society;

c. shall always act with a view to securing public order and safety, serving the public interest and guaranteeing citizens' legitimate interests;

d. shall act, while carrying out their duties, guided by the principles of legitimacy, proportionality, leniency, good public governance, non-discrimination and respect for people's diversity;

..."

### **Article 3: Guidelines during arrest and detention by the police**

"Police personnel:

a. shall arrest persons as provided for by the Constitution and law. The arrest shall be conducted in a cautious and consistent way; the police personnel must behave correctly and not commit any action that may insult the honour and pride of the arrested person and in general offend human dignity. Police must use force only when absolutely necessary and shall restrain the arrested person only when the latter reacts violently or is likely to escape;

...

g. shall secure detention conditions that guarantee the safety, health and protection of the personality of the detainee and shall ensure that other detainees are not put together with criminal detainees, men with women, minors with adults, while special care shall be provided to vulnerable persons;

h. shall take care of the protection of the detainees' health, securing direct medical care if necessary and the possibility of an examination by a doctor of the detainee's choice;

i. shall prevent and immediately report any act of torture or other form of inhuman, cruel or degrading treatment or punishment, any form of violence or threat of violence, as well as any form of unfavourable or discriminatory treatment against the detainee;

..."

## **THE LAW**

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

28. The applicant complained that during his arrest and subsequent detention 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 or punishment, in breach of Article 3 of the Convention. He also complained that the investigative and prosecuting

authorities had failed to conduct a prompt and effective official investigation into the incident capable of leading to the identification and punishment of the police officers responsible. The applicant therefore claimed that, contrary to Article 3, taken together with Article 13 of the Convention, he had had no effective domestic remedy for the harm suffered while in police custody.

Article 3 of the Convention provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 13 of the Convention 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.”

### **A. Admissibility**

29. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

#### *1. The submissions of the parties*

30. The applicant submitted that his serious injuries were the result of the unnecessary and disproportionate use of force by the police officers involved in the incident. He also complained that the investigating and prosecuting authorities had failed to conduct a prompt, thorough and effective administrative and judicial investigation of his complaints.

31. The Government pointed out that the police officers had been trying to effect a lawful arrest and had been prevented from doing so by the resistance displayed by Dimitrios Zelilof and by the actions of a group of other young men who had been eager to assist him in his attempt to run away and avoid arrest. They submitted that the injuries to some parts of the applicant's body had been the result of wrestling with Police Officers Apostolidis, Tsiarakis and Hamopoulos while he was being arrested. In the Government's submission, the police officers had acted in self-defence when faced with an unfair and unprovoked attack. The Government also contended that the applicant had not sustained any kind of ill-treatment while he remained in the police station. As regards the effectiveness of the investigation and the judicial proceedings, the Government argued that the investigation into the incident had been prompt, independent and thorough and that twenty-eight witnesses had testified. Criminal charges had also

been brought against the police officers involved in the incident. The fact that the applicant's criminal complaint had ultimately been rejected as unfounded had no bearing on the effectiveness of the investigation. In particular, the Government contended that the reasoning of judgment no. 1870/2006 of the Salonika Court of Appeal was thorough, specific and sufficient, without any contradiction in respect of the facts of the case and the witnesses' testimonies. In sum, the Government asserted that the competent authorities had conducted an in-depth twofold administrative and criminal investigation, supported by all available evidence. The applicant's allegations had all been verified and rejected as ill-founded.

## 2. *The Court's assessment*

### (a) **Concerning the alleged ill-treatment**

#### (i) *General principles*

32. 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, irrespective of the victim's conduct (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 126, ECHR 2009-...). Furthermore, the Court reiterates that in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Vladimir Romanov v. Russia*, no. 41461/02, § 57, 24 July 2008).

33. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 46, ECHR 2005-XIII). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

34. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko*

*v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Articles 2 and 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

(ii) *Application of those principles to the present case*

35. It is undisputed that the applicant's injuries, as shown by the medical reports, were caused while he remained in the police's charge. In fact, it transpires from the file that the applicant had not been injured before the incident that took place on 23 December 2001 in the district of Ano Toumpa in Salonika. Moreover, the Court observes that the parties have not contended that the injuries sustained by the applicant could have been a result of the conduct of civilians. Against this background, given the serious nature of the applicant's injuries, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive.

36. From the outset, the Court reiterates that the applicant was injured in the course of a random operation which gave rise to unexpected developments. Thus, the police officers were called upon to react without prior preparation (contrast *Matko*, cited above, § 102, and *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible burden on the authorities (see *Zelilof v. Greece*, no. 17060/03, § 48, 24 May 2007).

37. Furthermore, the Court observes that the parties have given differing accounts of the incident, especially as regards how the applicant sustained his injuries. For this reason, the Court will set out the factual circumstances of the incident as they are related in judgment no. 683/2005 of the Salonika Criminal Court of 14 January 2005 (see paragraph 19 above). In that connection the Court notes that the Criminal Court held that the applicant was not guilty of the offences of releasing a prisoner, assaulting police officers and causing grievous bodily harm. In particular, it concluded that it had not been established in the proceedings that the applicant had injured the police officers in any way but rather that his involvement amounted to a verbal dispute between him and them with regard to the incident that was taking place outside the cafeteria.

38. It can be seen from the above facts thus established that the applicant's involvement in the event was limited to an argument with the police officers during his arrest. From the outset, the Court acknowledges that the three police officers must have felt insecure and vulnerable as they had already been assaulted verbally and physically by a group of persons outside the cafeteria where the applicant was hiding. However, the Court considers that a verbal dispute between the applicant and the police officers

could not, in any case, justify the infliction of serious injuries on him, seeing that, as judgment no. 683/2005 stated, he had never threatened their physical integrity. In this connection, the Court considers that, when maintaining and enforcing the law, it is the duty of police officers to act with professionalism and due respect to the dignity of the person in their charge. Arrests should always be conducted in a cautious and consistent way and the use of force may be justified only in the event of forcible resistance to submit to the officers' orders. Nonetheless, even in this case, the use of force must always respect the principles of adequacy and proportionality (see also in this connection, the Code of Greek Police Ethics, cited in paragraph 27 above).

39. Consequently, regard being had to the applicant's allegations, which were corroborated by medical reports, to the aforementioned principles and the circumstances in which the applicant sustained the injuries, the Court considers that the Government have not furnished convincing or credible arguments providing a basis to explain or justify the degree of force used against the applicant at the time of his arrest and, subsequently, while he was in detention in the police station.

40. The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected while in the police's charge and that there has been a violation of this provision.

**(b) Concerning the adequacy of the investigation**

*(i) General principles*

41. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of 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 *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

42. 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 (see *Chember v. Russia*, no. 7188/03, § 61, 3 July 2008, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

43. An 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 for their decisions (see *Assenov*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006). 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.

*(ii) Application of those principles to the present case*

44. The Court considers at the outset that the medical evidence and the applicant's complaints, which were both submitted to the competent domestic authorities, created at least a reasonable suspicion that his injuries might have been caused by excessive use of force. As such, his complaints constituted an arguable claim in respect of which the Greek authorities were under an obligation to conduct an effective investigation.

45. As regards the present case, the Court observes that both an administrative inquiry and judicial proceedings were launched after the impugned events. As far as the administrative investigation is concerned, the Court notes, firstly, that it was entrusted to the special agency of the police dealing with disciplinary investigations and not assigned to a police officer serving in the same police station as the persons subjected to the disciplinary investigation. The Court acknowledges that this is an element that reinforces the independence of the inquiry, as the agent conducting it was, in principle, independent of those involved in the events.

46. However, with regard to the thoroughness of the investigation, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authority. In particular, the Court points out that the Government claimed that twenty-eight witnesses were examined during the investigation. Nonetheless, the Court observes that the administrative inquiry included excerpts from the testimonies given mainly by the applicant, two of his acquaintances present at the scene and some other individuals accused of assaulting the police officers. It is also apparent from the relevant report that the agent based his conclusions mainly on the testimonies given by the police officers involved in the incident. He thus observed, initially, that the violent behaviour of the police officers transpired from the testimonies of the persons who had caused the illegal acts. However, he did not consider these testimonies to be credible for two reasons: firstly, because they undoubtedly reflected personal

opinions and assessments that would be of assistance to the accused during the trial; and secondly, because they could be regarded as constituting defence tactics by the applicant's acquaintances, who were already facing grave criminal charges and whose depositions aimed to damage the credibility of the police officers (see *Zelilof*, cited above, § 60).

47. Nonetheless, the administrative inquiry did accept as such the credibility of the police officers' testimonies by considering that "not all the testimonies have been proved; on the contrary, the police officers (involved in the events) have denied them. The latter insisted in their testimonies that there had been no violence in the police station and that all the injuries sustained by the civilians had been caused before their transfer to the police station." In the Court's view, the administrative inquiry applied different standards when assessing the testimonies, since those given by the civilians involved in the events were recognised as subjective but not those given by the police officers. However, the credibility of the latter testimonies should also have been questioned as the administrative proceedings had also sought to establish whether they were liable on disciplinary grounds (see *Zelilof*, *loc. cit.*, and *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

48. Furthermore, as regards the judicial proceedings instituted against the police officers, the Court observes, firstly, that the judicial investigation was not launched by the competent authorities of their own motion but only after the applicant had lodged a criminal complaint. Secondly, the Court points out that on 15 September 2005 the Indictment Division of the Salonika Criminal Court committed Officer Apostolidis for trial on charges, among others, of causing severe bodily injuries to the applicant only in respect of the time during which he was detained in the police station. However, the Indictment Division accepted in the same decision that the applicant had plausibly been injured during and after his arrest. It also accepted that Officer Apostolidis had testified before the Criminal Court that the applicant had been hit in the course of his arrest. Under these circumstances, the Court considers that the committal for trial of the defendant police officer solely for the events that had taken place after the applicant had been taken to the police station deprived the Salonika Court of Appeal of the possibility of exploring the issue of criminal responsibility for the bodily injuries allegedly inflicted at the time of the applicant's arrest. The Indictment Division's standpoint is all the more difficult to comprehend as it did not elaborate on the particular grounds on which the defendant's criminal liability was excluded in respect of the time frame prior to the applicant's detention in the police station, taking into account the fact that the same authority had explicitly accepted in the body of the same decision that the latter had been injured during his arrest.

49. Moreover, by distinguishing between the impugned acts that had taken place during and after the applicant's arrest, the reasoning of the Salonika Court of Appeal was characterised by a certain inconsistency with regard to the State's procedural obligations under Article 3. In particular, a



certain number of witnesses, among them police officers, stated, directly or implicitly, that the applicant had already been injured by the time he had been brought to the police station. Subsequently, the Court of Appeal acquitted Officer Apostolidis on the charge of grievous bodily harm by identifying some discrepancies in the applicant's testimonies as to the person responsible for his injuries and the place where he had been beaten. It was specifically concluded that the applicant had stated before the court that his injuries had been caused by Officer Apostolidis, who had ill-treated him inside the police station, whereas the eyewitness Mr Mousailidis and Officers Kaloudis and Nounis had stated that he had already been injured by the time he had been brought to the police station. Apart from the fact that the applicant in reality argued before the Salonika Court of Appeal that his injuries were the result of ill-treatment inflicted before and after his transfer to the police station, the fact remains that the Court of Appeal based its reasoning on testimonies establishing that he had indeed been injured during his arrest. In the Court's view, the use of evidence capable of demonstrating the criminal responsibility of the defendant police officer at an early stage of the events as a means of sparing him from charges with regard to his subsequent conduct amounts to a logical contradiction that falls foul of the procedural obligation on the domestic authorities to make a serious attempt to find out what happened in the course of the impugned events taken as a whole.

50. In the light of the above-mentioned shortcomings in the administrative and judicial investigation, the Court concludes that they were not sufficiently effective. The Court accordingly holds that there has been a violation of Article 3 of the Convention under its procedural limb in that both the administrative and criminal investigations into the alleged ill-treatment were ineffective.

51. Lastly, the Court considers that, in view of the grounds on which it has found a violation of Article 3 in relation to its procedural aspect, there is no need to examine separately the complaint under Article 13 of the Convention.

## II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

52. The applicant complained about the length of the criminal proceedings instituted against the police officers and the administrative proceedings which were still pending in the present case. He also complained that judgment no. 1870/2006 was flawed and lacked sufficient reasoning and that, in general, he had been denied a fair trial. In particular, he asserted that the participation of two investigating officers in the criminal proceedings as witnesses infringed the principle of independence and impartiality. He argued that there had been a breach of Article 6 § 1 of the Convention. Moreover, the applicant complained under Article 6 § 2 of the Convention that his presumption of innocence had been violated because of

the reasoning of judgment no. 1870/2006, in which the police officers had been acquitted. The relevant parts of the aforementioned Article provide as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

### **A. As to the length of the criminal and administrative proceedings**

#### *1. Admissibility*

53. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

#### *2. Merits*

54. The applicant alleged that the length of the proceedings before both the criminal and administrative courts had entailed a breach of the “reasonable time” principle enshrined in Article 6 § 1 of the Convention.

55. The Government contended, for their part, that the judicial authorities hearing the cases had given their rulings within a reasonable time.

56. With regard to the criminal proceedings, the Court notes that the period to be taken into consideration began on 22 January 2002, when the applicant lodged his civil-party application, and ended on 26 May 2006, when his claims were ruled upon. It thus lasted for four years and approximately four months for one level of jurisdiction.

57. As regards the administrative proceedings, the period to be taken into consideration began on 5 March 2003, when the applicant brought an action for damages. It transpires from the file that the case is still pending before the administrative courts.

58. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria enshrined in its case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake in the dispute for the interested parties (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

59. The Court has dealt, on many occasions, with cases raising questions similar to those of the present instance and has found violations of Article 6 § 1 of the Convention (*ibid.*).

60. Having examined all the evidence before it, the Court considers that the Government have not adduced any fact or argument that could lead to a different conclusion in the present case. In the light of its case-law in such matters, the Court considers that in the present case the length of the criminal and administrative proceedings complained of was excessive and failed to satisfy the “reasonable time” requirement.

There has accordingly been a violation of Article 6 § 1 in this respect.

## **B. As to the fairness of the criminal proceedings and the presumption of innocence**

### *1. Admissibility*

61. With regard to the alleged participation of two investigating officers in the criminal proceedings as witnesses, the Court notes that no information exists in the case file that the applicant raised this complaint before the Salonika Court of Appeal in order to have their testimonies excluded.

It follows that this complaint is inadmissible under Article 35 § 1 for non-exhaustion of domestic remedies.

62. As regards the complaint under Article 6 § 2 of the Convention, the Court considers that, even assuming its compatibility *ratione materiae* with the Convention and the exhaustion of domestic remedies in this respect, this complaint does not disclose any appearance of a violation of the principle of presumption of innocence.

Accordingly, it follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

63. Finally, the Court notes that the complaint in respect of the alleged denial of a fair trial before the Salonika Court of Appeal and the lack of sufficient reasoning in judgment no. 1870/2006 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### *2. Merits*

64. The Court considers that, in view of the grounds on which it has found a violation of Article 3 in relation to its procedural aspect, there is no need to examine separately the complaint under Article 6 § 1 of the Convention in so far as it concerns the alleged denial of a fair trial before the Salonika Court of Appeal and the lack of sufficient reasoning in judgment no. 1870/2006.

### III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

65. The applicant complained that the allegedly defamatory sworn statements of the police officers that led to the imposition of restrictive measures against him and to a public trial were an attack on his reputation and hence on his private and family life. He argued that there had been a breach of Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

#### *Admissibility*

66. Having considered the applicant’s submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

Accordingly, it follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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**

68. The applicant claimed EUR 30,000 in respect of the fear, pain and injury he had suffered.

69. The Government argued that the applicant’s claim was arbitrary but left the question of compensation for non-pecuniary damage to the Court’s discretion.

70. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage which cannot be compensated solely by the findings of violations. Having regard to the specific circumstances of the case and ruling on an equitable basis, the Court awards the applicant EUR 17,000, plus any tax that may be chargeable on that amount.

## B. Costs and expenses

71. The applicant claimed EUR 1,500 for the costs and expenses incurred by him for his representation by the Greek Helsinki Monitor before the Court. In respect of this sum a bill of costs was produced. He also asked that the award be paid directly to his representatives, into a separate account.

72. The Government stated that costs and expenses claimed before the Court should have been actually incurred and must be reasonable to quantum.

73. According to the Court's settled case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum (see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII).

74. In the present case, having regard to the above criteria, to the number and complexity of issues dealt with and the substantial input of Greek Helsinki Monitor, the Court awards the amount claimed, that is, EUR 1,500, to be paid into a bank account indicated by the applicant's representative (see *Stoica v. Romania*, no. 42722/02, § 142, 4 March 2008).

## C. Default interest

75. 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 concerning Article 3, Article 6 § 1, as regards the length of the impugned proceedings, the alleged unfair trial and the lack of sufficient reasoning in the Salonika Court of Appeal's judgment no. 1870/2006, and Article 13 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the treatment suffered by the applicant at the hands of the police;
3. *Holds* that there has been a violation of Article 3 of the Convention in that the authorities failed to conduct an effective administrative and judicial investigation into the incident;

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the criminal and the administrative proceedings;
6. *Holds* that there is no need to examine separately the complaints under Article 6 § 1, in respect of the alleged unfair trial and lack of sufficient reasoning in the Salonika Court of Appeal's judgment no. 1870/2006;
7. *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 17,000 (seventeen thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
  - (b) 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 1,500 (one thousand five hundred euros) in respect of costs and expenses to be paid into a bank account indicated by the applicant's representative;
  - (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.

Done in English, and notified in writing on 14 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Nina Vajić  
President