



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

FORMER FIFTH SECTION

**CASE OF GORGIEV v. THE FORMER YUGOSLAV REPUBLIC OF
MACEDONIA**

(Application no. 26984/05)

JUDGMENT

STRASBOURG

19 April 2012

FINAL

19/07/2012

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

In the case of Gorgiev v. the former Yugoslav Republic of Macedonia,
The European Court of Human Rights (Former Fifth Section), sitting as a
Chamber composed of:

Peer Lorenzen, *President*,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska,
Julia Laffranque, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 26984/05) 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 Gorgi Gorgiev (“the applicant”), on 18 July 2005.

2. The applicant was represented by Mr P. Paparov, a lawyer practising in Štip. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged that the State had not discharged its obligations, both substantive and procedural, under Article 3 of the Convention in relation to injuries inflicted on him by a bull while in prison.

4. On 25 August 2009 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Sveti Nikole.

A. Background of the case

6. By a court decision of 11 May 1999, the applicant was sentenced to six months' imprisonment for causing serious injury (a broken forearm) to a third person. On 2 December 1999 he started serving his sentence in Štip Prison ("the prison") where he was responsible for livestock.

7. On 24 April 2000 he was attacked by a bull, which was not castrated, as a result of which he sustained numerous bodily injuries. After the incident he was transferred by prison vehicle to Štip hospital, where he underwent surgery. The State covered the medical expenses. On 25 April 2000 the bull was put down. On 9 May 2000 the applicant was released from the hospital. The same day, Mr M.K., the prison governor, ordered him to be released early from prison on account of good behaviour.

B. Civil proceedings for compensation ("the compensation proceedings")

8. On 28 November 2000 the applicant brought a civil action against the State and the prison ("the defendants") claiming non-pecuniary damages for the injuries sustained by the bull. His claim was based, *inter alia*, on sections 173 and 174 of the then valid Obligations Act (see paragraphs 26 and 27 below). He claimed that the bull had attacked him despite the fact that the prison authorities had been alerted about the aggressiveness of the bull, by himself and a certain G. (the first name of Mr G.S., as established in the course of the compensation proceedings, later referred to as Mr G.S.).

9. At a hearing of 23 April 2001, Mr G.S. stated that he, with the applicant and Mr M.S., had been looking after eighteen animals, including the bull. He confirmed that the bull had attacked him and other prisoners, including Mr M.S. and Mr Z.S., and that Mr A.B., a prison guard on duty, had been warned on several occasions before the incident about the aggressiveness of the bull. In a certified written statement of 24 December 2001, Mr M.S., a prisoner at that time, confirmed that the bull had been aggressive and that Mr A.B. had been informed of the fact.

10. Mr A.B. stated that the applicant, in view of his previous experience in handling cattle, had asked to work on the prison farm. Due to his good behaviour, the prison authorities had granted his request despite initial concerns related to his criminal record. After a week's work-related induction course, the applicant started working on the prison farm. He remained on the farm for a month before he was allowed pasture duties. That corresponded to the practice already established in the prison. After the incident the bull was lame, which according to him, had been due to the injuries on his buttocks. He had called Mr K.M., a vet, to examine the bull. The next day, in the presence of Mr K.M., the bull had been put down. He

denied that the applicant or any other prisoner had ever alerted him that the bull was aggressive.

11. Mr I.K., a prisoner at that time who worked on the prison farm, stated that before the incident prisoners had often provoked the bull. He had not heard that any prisoner had ever mentioned, to the prison authorities or to him, that the bull was aggressive.

12. At a hearing of 23 April 2002, Mr K.M. stated that the bull had been regularly examined and treated when needed. He denied that it had been aggressive. He confirmed that immediately after the incident he had visually examined the bull and noticed injuries to the rear of its body, the buttocks and testicles, which according to him, had been inflicted by a blunt object. Those injuries were confirmed in the *post mortem* report which Mr K.M. had drawn up the same day.

13. The applicant objected to this report, arguing, *inter alia*, that (1) it was inaccurate, (2) it was biased and had been ordered by the State, as was evident from the date, 1 February 2001, which had been stamped on it and (3) it could not have been *post mortem*, since on 24 April 2000, the day it had allegedly been drawn up, the bull was still alive.

14. At a hearing on 7 October 2002 the applicant stated that owing to his forty-year experience in rearing livestock he had been assigned to work on the prison farm. Initially, the bull was not aggressive, but it had become anxious during the cows' mating season. He confirmed Mr M.S.'s statement (see paragraph 9 above) and denied that he had ever hit the bull. He maintained that he had alerted Mr A.B. about the aggressiveness of the bull, but that he had never informed, orally or in writing, Mr M.K., the prison governor.

15. On 7 October 2002 the first-instance court ruled partly in favour of the applicant, ordering the State to pay him compensation in the amount of 300,000 Macedonian denars (MKD, equivalent to approximately 4,890 euros (EUR)) for the injuries, which an expert established as serious. The court established that the State owned the bull, which was considered dangerous within the meaning of section 173 of the Obligations Act (see paragraph 26 below). Referring to the above statements, the court established that the bull had been aggressive and had attacked others. It further rejected as unsubstantiated the arguments of the State that the applicant had contributed to the incident by hitting the bull. In this connection it disregarded the expert report of Mr K.M. for the reasons advanced in the applicant's objection (see paragraph 13 above).

16. Both parties appealed.

17. On 5 September 2003 the Štip Court of Appeal remitted the case for fresh consideration so that the lower court could establish who had owned the bull.

18. In this respect, the defendants submitted in evidence extracts from the court register according to which an economic unit S. ("the economic

unit”), which operated as a separate legal entity within the prison, had been the owner of the bull. The economic unit was established on 15 April 1993 by a decision of the Government. It was run by Mr M.K.

19. In a submission of 30 January 2004, the applicant argued that the defendants had been responsible for the injuries, in particular due to the fact that they had failed, despite having been alerted about the aggressiveness of the bull, to take any measures to protect him.

20. At a hearing of 19 March 2004, Mr M.K. stated that no prisoner had ever complained about the aggressiveness of the bull, either to Mr A.B. or to him. He confirmed that the economic unit was the owner of the bull, that it was a separate legal entity and that he ran it, as provided for in section 70 of the Execution of Sanctions Act (see paragraph 34 below). He further submitted that the applicant had received a monthly work-related allowance from the economic unit.

21. The applicant reiterated that he had complained orally to Mr A.B. about the aggressiveness of the bull on several occasions, but that no complaint whatsoever had been submitted to Mr M.K.

22. On 19 April 2004 the first-instance court dismissed the applicant’s claim, as the defendants did not have the necessary capacity to act in the proceedings. Relying on the extract from the court register (see paragraph 18 above) and Mr M.K.’s statement, it found that the economic unit was the owner of the bull, and that accordingly the defendants bore no responsibility, under section 174 of the Obligations Act, for the injuries the applicant had sustained. In support was an invoice dated after the killing of the bull, according to which the prison had paid the economic unit for the meat. The applicant was ordered to pay the defendants’ costs.

23. On 15 May 2004 the applicant appealed, arguing that no consideration had been given to the State’s responsibility for prisoners’ health and physical integrity, given that he had been injured while in custody. He argued that prisoners’ rights and freedoms should be guaranteed by putting in place control and supervisory mechanisms. He further complained that the first-instance court had failed to establish whether the State, being responsible to protect him while in custody, had undertaken all necessary measures to avoid damage from occurring. In this latter respect, he complained that the prison authorities, despite having been informed that the bull was aggressive, had failed to take any measure to protect him (the applicant). Lastly, he argued that he had been ordered to look after livestock by the prison authorities.

24. On 20 January 2005 the Štip Court of Appeal dismissed the applicant’s appeal, finding no grounds to depart from the established facts and reasoning given by the lower court. The applicant received this decision on 21 February 2005.

25. On 28 February 2005 the applicant requested the public prosecutor to lodge a request for the protection of legality with the Supreme Court. On

20 April 2005 the public prosecutor informed him that there were no grounds for using that remedy.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Obligations Act of 1978

26. Section 173 of the Obligations Act, as relevant at that time, provided that damage related to a dangerous item was presumed to have been caused by that item, if not otherwise proven.

27. Under section 174, the owner of a dangerous item was responsible for any damage caused by it.

28. Under section 376, a compensation claim became time-barred three years after the victim became aware of the damage and the person responsible. The absolute time-bar for compensation was five years after the occurrence of the damage.

B. Execution of Sanctions Act of 1997

29. Section 6 of the Execution of Sanctions Act, as relevant at that time, provided for respect for the human dignity and the physical and moral integrity of persons serving a sentence.

30. Section 12 (2) and (3) provided that no one should be subjected to torture or to inhuman or degrading treatment or punishment. The right to security of person had to be ensured.

31. Under section 21 (3), convicted persons could not be required to perform activities that were dangerous and detrimental to their health.

32. Under section 67, one or more economic units for prisoners to work in could be organised within a prison.

33. Section 68 provided that the Government should set up the economic units.

34. Under section 70, the prison governor or a person authorised by the governor was to run the economic unit.

35. Section 71 provided that the economic unit was a separate legal entity liable for its debts. It was to have a separate account.

36. Section 111 provided that prisoners worked, in principle, in economic units.

37. Under section 113, prisoners were entitled to a work-related allowance. This was to be regulated by a decision of the prison governor.

38. Section 164 provided that prisoners could lodge an oral complaint with the prison governor or other person authorised by the governor about a violation of their rights or other irregularities.

39. Under section 165, prisoners could also lodge a written complaint with the prison governor within eight days of the alleged violation.

40. Under section 166, the prison governor was required to consider the allegations and to render a decision within fifteen days of receipt of the complaint. The prisoner could appeal against that decision before the Execution of Sanctions Directorate (“the Directorate”).

41. Section 167 provided that the Directorate was required to examine the arguments of the appeal and reach a decision within thirty days of receipt. That decision could be subject of judicial review. The prisoner could seek a judicial decision even if the Directorate had not decided on his or her appeal.

C. Criminal Code (*Кривичен законик*)

42. Section 142 of the Criminal Code prohibits torture and provides for imprisonment between three months and five years.

43. Section 143 of the Criminal Code 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.

44. Under section 294 of the Criminal Code, a person who failed, in the absence of any risk, to report to a competent authority or to take any measure against a fire, inundation, explosion or car accident or to remove any danger to the life or body of an individual would be fined or sentenced to a maximum of one year’s imprisonment.

D. Criminal Procedure Act

45. Section 16 of the Criminal Procedure Act provides that criminal proceedings must be instituted at the request of an authorised prosecutor. In cases involving offences subject to prosecution by the State of its own motion or on an application by the injured party, the authorised prosecutor is the public prosecutor, whereas in cases involving offences for which only private charges may be brought 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.

46. Section 56 provides, *inter alia*, that where the public prosecutor finds that there are no grounds for prosecuting an offence which may be subject to State prosecution, he shall notify the injured party of his decision within eight days. He shall also inform the injured party that he is entitled to conduct the prosecution himself. The latter may take over or continue the prosecution within eight days.

47. Under section 141, anyone can report a criminal offence subject to State prosecution. The complaint is submitted to the public prosecutor, orally or in writing.

E. Recommendation of the Committee of Ministers of the Council of Europe to member states on European Prison Rules (Rec (2006)2, adopted on 11 January 2006)

“... 26.13 Health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside.

26.14 Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by national law to workers outside ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained under Articles 3 and 5 of the Convention that the prison authorities had failed to protect his personal security, his physical and moral integrity, despite the fact that they had been alerted about the aggressiveness of the bull, and that he had no effective right of compensation for the injuries sustained. The Court considers that these complaints should be analysed only under Article 3 as a complaint that the State failed to comply, firstly with its procedural obligation to investigate the applicant’s allegations that no preventive measure had been taken despite the fact that the prison authorities had been alerted about the alleged aggressiveness of the bull, and secondly with its substantive obligation to protect the applicant from being injured’. Article 3 of the Convention reads as follows:

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

A. Admissibility

1. Six-month time-limit

49. The Government argued that the application had been submitted on 18 September 2005, namely more than six months after the applicant had

received the Court of Appeal decision on 21 February 2005 (see paragraph 24 above).

50. The applicant contested this objection.

51. The Court notes that the applicant's application form, duly completed, was sent to it on 18 July 2005, as was confirmed by the postmark on the letter sent to the Court by surface mail. The application was therefore submitted within the six-month time-limit specified in Article 35 § 1 of the Convention. The Government's objection must accordingly be rejected.

2. Non-exhaustion of domestic remedies

(a) The parties' submissions

52. The Government objected that the applicant had not exhausted effective domestic remedies. In particular, he had not requested the public prosecutor to institute criminal proceedings in which those responsible could have been identified and punished for acts punishable under sections 142 or 143 of the Criminal Code (see paragraphs 42 and 43 above). He had also deprived himself, if the public prosecutor had rejected his complaint, of the opportunity to take over the prosecution as a subsidiary prosecutor (see paragraph 44 above). Consequently, he had prevented the State from examining his complaints under Article 3 of the Convention, since the compensation proceedings had not been an adequate avenue. In addition, the applicant, who had been represented by a lawyer of his own choosing, was responsible for having sought compensation against the wrong defendants. Lastly, the applicant had failed to submit a fresh compensation claim against the economic unit, given the fact that the absolute time-bar (see paragraph 28 above) had not yet expired when he was served with the Court of Appeal's decision.

53. The applicant submitted that he had brought the incident to the attention of the public prosecutor with his request for legality review proceedings of 28 February 2005 (see paragraph 25 above). The public prosecutor had dismissed that request and had failed to initiate criminal proceedings of his own motion, despite being entitled to do so under the Criminal Proceedings Act. A fresh compensation claim against the economic unit would have lacked any prospect of success, given that the absolute time-bar for claiming non-pecuniary damages, which according to him was three years, had already expired.

(b) The Court's assessment

54. The Court considers that the question raised by the Government is closely linked to the merits of the applicant's complaint under Article 3 of

the Convention. Consequently, its examination should be joined to the assessment of the merits of that complaint.

55. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 parties' submissions

56. The applicant reiterated his arguments that the prison authorities had been alerted before the incident to the aggressiveness of the bull and that despite that fact they had failed, contrary to section 12 of the Execution of Sanctions Act (see paragraph 30 above) to take any measure to protect his physical integrity. The evidence admitted in the compensation proceedings had been in support of his arguments.

57. The Government did not dispute that the injuries sustained by the applicant reached the minimum threshold required under Article 3 of the Convention. However, they considered that no responsibility could be attributed to the State, given the fact that the prison governor, as established in the course of the compensation proceedings, had not been alerted to the alleged aggressiveness of the bull. Nor there had been any information in the records of the veterinary hospital responsible for the livestock in the prison that the bull had been aggressive. In addition, the bull's behaviour had been unpredictable and the authorities should not have the impossible burden placed upon them of preventing every claimed risk from materialising.

58. They further maintained that the first-instance court had heard considerable evidence about the alleged aggressiveness of the bull and the prior knowledge of the authorities. Consequently, the fact that the compensation proceedings ended with a final decision dismissing the applicant's claim for lack of standing of the defendants to be sued did not mean that the investigation had not been thorough and effective. Lastly, they submitted a copy of a decision rendered by Mr M.K. by which a prisoner had been fined for physically attacking livestock in breach of the prison's disciplinary rules.

2. The Court's assessment

59. The Court will first examine the applicant's complaint that there was no investigation into the allegations that the State had failed to take any preventive measures to protect him despite the fact that the authorities had been alerted about the alleged aggressiveness of the bull.

(a) Procedural aspect of Article 3 of the Convention*(i) General principles*

60. The Court reiterates that when an individual makes an arguable claim that he has suffered treatment infringing Article 3 at the hands of agents of the State, it is the duty of the national authorities to carry out “an effective official investigation” capable of establishing the facts and identifying and punishing those responsible (see *Okkaly v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)). Such a positive obligation cannot be considered in principle to be limited solely to cases of ill-treatment by State agents (see *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII).

61. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to establish the facts, hold accountable those at fault and provide appropriate redress to the victim (see *Dodov v. Bulgaria*, no. 59548/00, § 83, 17 January 2008). They should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. 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 *Assenov and Others v. Bulgaria*, 28 October 1998, § 103, *Reports of Judgments and Decisions* 1998-VIII and *Boicenco v. Moldova*, no. 41088/05, § 123, 11 July 2006).

62. This obligation does not necessarily require the provision of a criminal-law remedy in every case (see *Ciechońska v. Poland*, no. 19776/04, § 66, 14 June 2011). Compensation for the non-pecuniary damage should in principle be part of the range of available remedies if the infringement of the right to personal integrity is not caused intentionally (see, *mutatis mutandis*, *Šilih v. Slovenia* [GC], no. 71463/01, § 194, 9 April 2009) or in cases which do not concern an infliction of treatment contrary to Article 3 of the Convention, but rather a failure by the authorities to protect persons from a breach of their rights under Article 3 of the Convention (see, *mutatis mutandis*, *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V).

(ii) Application of the foregoing principle to the present case

63. The Court notes that the applicant brought a civil action against the State and the prison seeking non-pecuniary damages for the injuries suffered from the bull. This action was capable, in principle, of providing a fact-finding forum with the power to attribute responsibility for acts or omissions involving the breach of the applicant’s rights under Article 3 of the Convention. The compensation proceedings however ended with no decision on the merits, since the domestic courts found that the State and the

prison did not own the bull, and accordingly lacked the required capacity to be sued.

64. The Court further observes that, as the Government argued, the applicant did not make a criminal complaint to the public prosecutor, thereby initiating a procedure that was capable of leading to the identification and prosecution of those responsible. Such a complaint could have been lodged under section 141 of the Criminal Proceedings Act (see paragraph 45 above). However, the applicant's omission in this respect did not release the State from the duty to carry out "an official investigation", as required under Article 3 of the Convention. In this connection the Court reiterates that the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the individual either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures (see, *mutatis mutandis*, *McKerr v. the United Kingdom*, no. 28883/95, § 111, ECHR 2001-III). The duty to investigate was more apparent in view of the fact that the applicant was, at the time, a prisoner, and accordingly under the care and responsibility of the authorities (see, *mutatis mutandis*, *Pankov v. Bulgaria*, no. 12773/03, § 50, 7 October 2010). In the present case, the public prosecutor remained inactive despite the fact that alleged offence was subject to State prosecution. Furthermore, no step to uncover the truth was taken after the applicant brought the incident to the attention of the public prosecutor in his request for legality review proceedings (see paragraph 25 above). An investigation that would lead to establishing criminal liability under section 294 of the Criminal Code (see paragraph 44 above) for any omissions imputable to State officials leading up to the incident, would have had a deterrent effect on the commission of similar offences in future (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 118, ECHR 2004-XII).

65. Furthermore, no measure has been taken with a view to establishing whether any individual was disciplinarily liable in relation to the applicant's allegations (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 63, 20 December 2007). The killing of the bull the day after the incident is insufficient because it does not address the questions of responsibility for the events leading up to the accident, and the civil proceedings, which ended inconclusively, were brought at the applicant's request and cannot be considered as an alternative to an investigation in the present case.

66. In view of the foregoing, the Court dismisses the Government's preliminary objection and finds that there has been a violation of Article 3 of the Convention on account of the State's failure to carry out "an effective official investigation" into the applicant's allegations.

(b) Substantive aspect of Article 3 of the Convention*(i) General principles*

67. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment. In addition to the primary obligation of Article 3 of the Convention not to subject individuals to torture or to inhuman or degrading treatment or punishment, the obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment (see *Z and Others*, cited above, § 73).

68. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern *inter alia* the security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks (see *Öneryıldız*, cited above, § 90).

(ii) Application of the foregoing principle to the present case

69. As to the applicant's complaint that the State failed to comply with its substantive obligation to protect him from being injured, the Court considers that the situation in the instant case differs from the *Osman* (see *Osman v. the United Kingdom*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII) and *Paul and Audrey Edwards* cases (see *Paul and Audrey Edwards*, cited above) in that it does not concern the requirement of personal protection of one or more individuals identifiable in advance as the potential target of a criminal act by a third person, including co-prisoners. The present case is about determining whether there was a positive obligation on the authorities to protect the applicant, who while in prison handled livestock, from attack by the bull. In this connection the Court reiterates that persons in custody, as was the applicant, are in a vulnerable position and the authorities are under a duty to protect them (see *Paul and Audrey Edwards*, cited above, § 56). This duty was underlined in the domestic legislation, and also formed the background to the first instance decision of 7 October 2002 (see paragraphs 15 and 29-31 above).

70. In the present case, the Court notes that the applicant started serving the prison sentence on 2 December 1999. He was assigned to work on the prison farm, where at that time there were eighteen animals, including the

bull. He worked on the farm until 24 April 2000, when he was seriously injured by the bull.

71. In the course of the compensation proceedings, oral evidence was admitted as to whether the prison authorities had been alerted before the incident about the alleged aggressiveness of the bull. The applicant, Mr G.S. and Mr M.S. confirmed that the bull's aggressiveness had been orally communicated to Mr A.B., the guard on duty in the prison, on several occasions (see paragraphs 9 and 14 above). The applicant further specified that the bull had become aggressive after he had started to work on the prison farm (see paragraph 14 above).

72. On the other hand, Mr I.K., a prisoner at the time, stated that there was no suggestion that the bull had been aggressive (see paragraph 11 above). Furthermore, Mr A.B. and Mr M.K. denied that they had been alerted about the alleged aggressiveness of the bull (see paragraph 10 and 20 above). The same was confirmed by Mr K.M., the examining vet (see paragraph 12 above). The first-instance court, in its decision of 7 October 2002 (see paragraph 15 above), found that the bull had been aggressive and that the applicant had not contributed to the aggressiveness, but this decision did not become final.

73. Having regard to this inconclusive evidence, which was partly due to the lack of an effective investigation (see paragraphs 63-66 above), the Court cannot conclude "beyond reasonable doubt", the standard of proof which it applies in Article 3 cases (see, *mutatis mutandis*, *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 48, 15 February 2007), that the relevant authorities were actually aware, before the incident, that the bull presented a risk to the applicant's physical integrity. The question is therefore whether the Government complied with the obligation to protect the applicant, in the circumstances of the case and given that an uncastrated bull is an inherently dangerous animal, as the domestic courts recognised.

74. The Court notes that the applicant was assigned to work on the prison farm owing to his forty-year experience in rearing livestock (see paragraph 14 above). No evidence was presented that the applicant had been in any way opposed to this engagement (see paragraphs 10 and 14 above). Furthermore, before he had taken up that duty, he had attended a week's work-related induction course and remained on the farm for a month before he was allowed pasture duties (see paragraph 10 above). The bull had been also under constant medical supervision by the examining vet (see paragraph 12 above). Lastly, the prison had in place a disciplinary system that deterred prisoners from attacking livestock, whose aim was not only to protect the animals, but also prisoners (see paragraph 58 above). In these circumstances, there is nothing to suggest that there were any particular reasons requiring the authorities to take any special measures, over and above those discussed above, to reduce any potential risk. Consequently, no

responsibility can be attributed to the State for having permitted the applicant to handle the bull.

75. In the unusual circumstances of the present case, the Court considers that the State was not under an obligation to take more steps to protect the applicant from the bull than it did, such that there has not been a violation of the substantive aspect of Article 3 of the Convention on account of the State's positive obligation to protect the applicant from the bull.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed EUR 30,000 as just satisfaction for the effects of the incident. It appears that this figure included EUR 15,000 plus interest in respect of non-pecuniary damage for pain, fear and disfigurement. In this respect, he relied on the expert evidence regarding his injuries (see paragraph 15 above), the discharge notice from the hospital and a medical certificate of 30 May 2002.

78. The Government contested these claims as unsubstantiated and excessive.

79. The Court considers that the applicant's claim for non-pecuniary damage is sufficiently linked to the violation found. It therefore awards him EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

80. The applicant also claimed EUR 3,300 for the costs and expenses related to the domestic proceedings, of which EUR 800 referred to the costs and expenses incurred by the defendants which the applicant, as an unsuccessful party, was ordered to reimburse (see paragraph 22 above). He produced a list of costs for the remainder. Lastly, he claimed EUR 500 for the costs and expenses incurred before the Court. No supporting document was submitted in respect of this later claim.

81. The Government contested these claims as unsubstantiated and excessive.

82. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,400, plus any tax that may be chargeable to the applicant, for the costs and expenses incurred in the domestic proceedings. On the other hand, in the absence of any supporting document, the Court rejects the applicant's claim for the costs and expenses incurred in the proceedings before it (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 72, 7 February 2008).

C. Default interest

83. 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. *Joins to the merits* the Government's objection on non-exhaustion of domestic remedies and dismisses it;
2. *Declares* the application admissible;
3. *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;
4. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged failure of the authorities to protect the applicant;
5. *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, the following amounts, to be converted into the national currency of the respondent State, at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,400 (one thousand and four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 19 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President