



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

FORMER FIFTH SECTION

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

(Application no. 49382/06)

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 Sašo 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. 49382/06) 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 Sašo Gorgiev (“the applicant”), on 27 November 2006.

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

3. The applicant alleged, in particular, that the State had been responsible under Article 2 of the Convention for a life-threatening action against him taken by R.D., a State agent.

4. On 5 October 2009 the President of the Fifth Section decided to communicate this complaint to the Government and to grant priority to the application under Rule 41 of the Rules of Court. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Skopje.

A. Background to the case

6. The applicant worked as a waiter in a bar in Skopje. At 3.50 a.m. on 6 January 2002, R.D., a police reservist, fired a shot in the bar hitting the applicant in the chest. According to a medical certificate of 12 September 2002 issued by Skopje Clinical Centre, the applicant was urgently admitted in a “serious condition” (*тешка општа состојба*). The injuries sustained were described as follows: broken right clavicle and four broken ribs, injury to the subclavian artery, internal haemorrhaging and seizure of the brachial plexus nerves. His right arm was paralysed. The conclusion was that the applicant had sustained serious bodily injury with life-threatening damage and lasting consequences (*витална загрозеност и трајни последици*). He was operated on twice, the second time in April 2002 in the Clinical Centre of Belgrade, Serbia.

B. Criminal proceedings against R.D.

7. On 27 March 2003 the Skopje Court of First Instance (“the trial court”) convicted R.D. *in absentia* of “serious crimes against public security” (*тежки дела против општата сигурност*). He was sentenced to two years’ imprisonment. After the court had heard oral evidence from R.D., the applicant and six witnesses and examined other material evidence, it found that R.D., while intoxicated, had unintentionally pulled the trigger of his service gun and shot the applicant, who had been at a distance of one metre. The applicant was advised to pursue his compensation claim by means of a separate civil action. The decision became final on 8 May 2003.

8. R.D. started serving his sentence on 6 June 2008. On 23 June 2008 the trial court reopened the proceedings, at R.D.’s request. On 12 March 2009 the trial court found R.D. guilty again and sentenced him to two years’ imprisonment, suspended for four years. No information was provided as to whether that decision was the subject of an appeal or became final.

C. Civil proceedings for damages

9. On 11 November 2002 the applicant, represented by Mr P. Šilegov, brought a civil action against the Ministry of the Interior (“the Ministry”) seeking compensation for pecuniary and non-pecuniary loss related to the injury sustained as a result of R.D.’s action. He claimed that the State should be held responsible, given that R.D., instead of being on duty in a police station, had shot him in the bar. He had used his service gun and had been in uniform. He claimed 28,000,000 Macedonian denars (MKD) in

respect of non-pecuniary damage and MKD 208,480 for pecuniary damage (expenses related to his medical treatment).¹

10. After five adjournments, the Skopje Court of First Instance dismissed the applicant's claim on 12 December 2003, finding that the Ministry lacked the requisite capacity to be sued for the damage caused by R.D., who, being a police reservist, was regarded a State official. The court established that between 7.30 p.m. on 5 January 2002 and 7.30 a.m. on 6 January 2002 R.D. had been on duty in a police station in Skopje. He had been assigned to stand guard (*службена задача – стража*) between midnight and 1 a.m. and between 6 a.m. and 7 a.m. on 6 January 2002. After 1 a.m. on 6 January 2002, instead of returning to the police station, R.D. had gone to the bar on his own initiative, without informing his superior or the latter's replacement. He had been in uniform and had been carrying his service gun. In the bar, in the presence of other customers and under the influence of alcohol, he had pulled the gun out and shot the applicant, who had been in front of him at a distance of about 1.5 metres. The court found that the applicant had suffered damage as a result of R.D.'s action. However, in order for the Ministry to be held responsible under section 157 of the Obligations Act (see paragraph 19 below), the court said that

“... certain conditions need to be met: the damage must be caused by an official (*овластено службено лице*), it must be sustained by a physical or legal person and, in particular, it has to be caused by an official in the performance of his or her duties. It also has to result from an unlawful action. The defendant (the State) will be held responsible only if the damage is caused in the course of or in connection with the performance of the official duties. An action will be regarded as carried out in the performance of a duty if it is part of the duties (*функција*) of the official. It is a harmful action taken within working hours, in the official capacity of the person concerned and as part of his official duties. Damage may be caused outside official duties, but there must be a causal link with the performance of the duty or the duty itself ... in the present case, R.D. was not in the bar in an official capacity ... so the damage was not caused in connection with the performance of the Ministry's duties, even though it was caused at a time when R.D. was supposed to be on duty. At the critical time and place R.D. was not acting in an official capacity but as a private person, despite the fact that it was within working hours; he was in uniform and used his service gun. R.D. is responsible for the action taken and damage caused. There is no causal link between his action and his duty ...

The fact that [R.D.] was in uniform and used his service gun does not mean, in itself, that he was acting in an official capacity. R.D. did not use the gun in connection with the performance of his duties, but as a customer in the bar ...

At the time when the damage occurred, R.D., as a police reservist, was an adult and trained in the use of the gun. The defendant, as the owner of the gun, is relieved, under section 163(2) of the Obligations Act, from responsibility, given that the

¹ Approximately the equivalent of EUR 455,300 and EUR 3,390.

damage occurred solely as a result of an unforeseeable action by its agent whose consequences could neither have been prevented nor removed.”

11. The court concluded that the applicant remained entitled to claim compensation from R.D. under section 141 of the Obligations Act (see paragraph 16 below).

12. On 3 March 2004 the applicant appealed, arguing that the Ministry was to be held responsible for R.D.’s actions, as he had acted while on duty, had been in uniform and had fired his service gun. In his submission, the Ministry’s responsibility derived from section 103 of the Employment Act (see paragraph 20 below) under which the Ministry could claim reimbursement from R.D. Lastly, he submitted that he had suffered irreparable damage as a result of the incident, as his right arm had become permanently paralysed.

13. On 27 April 2004 the Skopje Court of Appeal dismissed the applicant’s appeal, finding no grounds on which to depart from the lower court’s finding that R.D.’s actions in the bar were not related to his official duties as a police officer. It went on to find that when R.D. shot the applicant he had not been acting as a police officer and had not been performing official duties. There was accordingly no responsibility on the part of the Ministry. The court confirmed the applicant’s entitlement to claim compensation from R.D.

14. On 21 July 2004 the applicant lodged an appeal on points of law (*pevuzujja*) with the Supreme Court, arguing, *inter alia*, that the Court of Appeal had not addressed his arguments regarding the Ministry’s responsibility under the Employment Act.

15. On 31 May 2006 the Supreme Court dismissed the applicant’s appeal on points of law, reiterating the reasons given by the lower courts.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Obligations Act

16. Section 141 of the Obligations Act sets out the general principle governing civil compensation claims.

17. Section 157 provides that the employer is responsible for damage caused by an employee in the performance of his or her duties or in relation to these. The victim can claim compensation directly from the employee if the damage was caused intentionally. The employer can seek reimbursement of the compensation awarded to the victim from the employee if the latter caused the damage intentionally or negligently.

18. Under section 160, the owner of a dangerous item (*onaceh nредmem*) is responsible for any damage caused by it.

19. Section 163(2) provides that the owner of a dangerous item can be relieved of responsibility if it can be shown that the damage was caused exclusively by an unforeseeable action on the part of the victim or a third person whose consequences could not have been prevented or removed.

B. Employment Act of 1993

20. Under section 103 of the Employment Act of 1993, as in force at that time, an employer was responsible for any damage caused by an employee while performing his or her duties or in relation to them. The employer could seek reimbursement of the compensation from the employee if the latter had caused the damage intentionally or negligently.

C. Internal Affairs Act (Official Gazette no. 19/1995)

21. Section 24 of the Internal Affairs Act, as in force at the time, specified which agents were regarded as State officials.

22. Under section 26, State officials were required to perform their duties at all times, regardless as to whether they were on or off duty.

23. In a state of war or emergency, the Ministry could call up reservists in order to ensure public safety and prevent mass disorder (section 45(2) of the Internal Affairs Act). Reservists could be recruited for training or practice. During their period of service, reservists were regarded as State officials within the meaning of section 24 of the Act (section 46).

D. Relevant domestic case-law

24. The Government provided a copy of a first-instance court decision concerning a compensation claim submitted against the Ministry and a police officer who had negligently fired his service gun inside the Ministry building, as a result of which the claimant sustained bodily injuries. The first-instance court found the police officer directly responsible and ordered him to pay the damages. It dismissed the claim against the Ministry on grounds of lack of capacity to be sued. No information was provided as to whether this decision became final (П.6п.1274/2007 of 2 July 2008). The police officer in this case was convicted of “serious crimes against public security” and sentenced to a suspended prison term (К.6п.751/06 of 21 February 2007).

III. RELEVANT INTERNATIONAL LAW

A. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders at Havana, Cuba, 27 August to 7 September 1990 (“the Basic Principles”)

25. Article 11 of the Basic Principles provides, *inter alia*, that:

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorised to carry firearms...

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

...

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them.”

B. Recommendation (2001) 10 of the Committee of Ministers of the Council of Europe to member States on the European Code on Police Ethics (“the Code”)² and Explanatory Memorandum of the Recommendation

26. Article 37 of the Code provides that “the police may use force only when strictly necessary and only to the extent required to obtain a legitimate objective”.

27. The commentary to Article 37 of the Code reads, *inter alia*, as follows:

“...The importance of recruitment of suitable personnel to the police, as well as their training cannot be underestimated ...”

² Adopted on 19 September 2001 at the 765th meeting of the Ministers’ Deputies.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

28. The applicant complained under Article 2 of the Convention that he had been the victim of a life-threatening action taken by R.D., a State official. He also complained under Article 6 that the domestic courts had failed to recognise the State's responsibility. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), considers that the applicant's submissions under this head raise an issue only under Article 2 of the Convention, which reads as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

1. Applicability of Article 2 of the Convention

29. The Court notes at the outset that the force used against the applicant was not in the event lethal. This does not exclude an examination of the applicant's complaints under Article 2 of the Convention. In fact, the Court has already examined complaints under this provision where the alleged victim had not died as a result of the impugned conduct (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 49-55, ECHR 2004-XI; *Osman v. the United Kingdom*, 28 October 1998, §§ 115-22, *Reports of Judgments and Decisions* 1998-VIII; and *Yaşa v. Turkey*, 2 September 1998, §§ 92-108, *Reports* 1998-VI).

2. Non-exhaustion of domestic remedies

30. The Government objected that the applicant, who was legally represented, had not exhausted all effective remedies. In particular, he had not claimed compensation from R.D., although he had been advised to do so by the first- and second-instance courts (see paragraphs 11 and 13 above). Furthermore, the applicant had claimed damages only in relation to the injuries sustained, and had failed to raise his Article 2 complaints that he subsequently lodged with the Court.

31. The applicant contested the Government's arguments.

3. Conclusion

32. The Court considers that the issue of applicability of Article 2 of the Convention and the objection raised by the Government are closely linked to the merits of the applicant's complaint under this head. Consequently, the examination of these issues should be joined to the assessment of the merits of that complaint.

33. It further considers that this complaint, including the question of applicability of Article 2 of the Convention and the objection of non-exhaustion, raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court therefore concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

34. The applicant reaffirmed that the State should be held responsible for the unlawful action of R.D. R.D.'s liability under the criminal law did not relieve the State of its responsibility in relation to the damage that R.D. had caused while on duty. The first-instance court's decision submitted by the Government (see paragraph 24 above) was yet stronger evidence that the relevant law had been applied wrongly by the domestic courts.

35. The Government submitted that R.D. had not intended to kill the applicant. That had been established in the course of the criminal proceedings against him (see paragraph 7 above). However, they conceded that, in view of the seriousness of the injuries sustained, the applicant had been subjected to ill-treatment capable of falling within Article 3 of the Convention, but argued that the State bore no responsibility under the substantive limb of that Article. Its responsibility ended with the criminal proceedings in the course of which R.D. had been convicted and punished. The civil courts, at three levels, had dismissed the applicant's claim, finding

that the State could not be held responsible given the absence of a causal link between R.D.'s action and his official duties. In that connection they reiterated that at the critical time R.D. had left his post during his working hours, without the consent of his superiors. The incident had happened after he had carried out his official duty, namely, to stand guard. In the bar he had not performed any official duty in the course of or in connection with his work. He had acted rather as a private person, as had been established by the domestic courts.

2. The Court's assessment

(a) Applicability of Article 2 of the Convention

36. According to the Court's case-law, it is only in exceptional circumstances that physical ill-treatment by State agents which does not result in death may disclose a violation of Article 2 of the Convention. It is correct that the criminal responsibility of those concerned in the use of the impugned force is not in issue in the proceedings brought under the Convention. Nonetheless, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case State agents' actions in inflicting injury but not death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose of that Article. In almost all cases where a person is assaulted or ill-treated by the police or soldiers their complaints will rather fall to be examined under Article 3 of the Convention (see *Makaratzis*, cited above, § 51, and *Ilhan v. Turkey* [GC], no. 22277/93, § 76, ECHR 2000-VII).

37. In the present case, from the facts established by the domestic courts, it is clear that R.D. shot the applicant in the right side of the chest. The Court accepts the Government's submission that no intention of killing the applicant was established on R.D.'s part. It observes, however, that the fact that the latter was not killed was fortuitous. In that connection the Court attaches weight to the fact that R.D. fired the shotgun at the applicant at close range (between 1 and 1.5m, see paragraphs 7 and 10 above). The applicant sustained serious life-threatening injuries. This has left him permanently disabled. He was urgently admitted to hospital and was operated on twice. The seriousness of his injuries is not in dispute between the parties.

38. In the light of the above circumstances, the Court concludes that, irrespective of whether or not R.D. actually intended to kill him, the applicant was the victim of conduct which, by its very nature, put his life at risk, even though, in the event, he survived. Article 2 is thus applicable in the instant case.

(b) The State's direct responsibility under Article 2 of the Convention*(i) General principles*

39. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances when deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention, from which no derogation is permitted (see *Velikova v. Bulgaria*, no. 41488/98, § 68, ECHR 2000-VI).

40. In keeping with the importance of Article 2 in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State who actually administered the force, but also all the surrounding circumstances (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 150, Series A no. 324).

41. Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see *Makaratzis*, cited above, § 57).

42. This positive obligation entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective prevention. This framework must include regulations geared to the special features of certain activities, particularly with regard to the level of the potential risk to human lives. The State must display the utmost diligence and define the limited circumstances in which law-enforcement officials may use firearms (see *Abdullah Yilmaz v. Turkey*, no. 21899/02, §§ 56 and 57, 17 June 2008, and *Makaratzis*, cited above, § 59).

43. For the Court, and having regard to its case-law, the State's duty to safeguard the right to life must also be considered to involve the taking of reasonable measures to ensure the safety of individuals in public places and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim (see *Ciechońska v. Poland*, no. 19776/04, § 67, 14 June 2011).

44. However, the positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources (see *Keenan v. the United Kingdom*, no. 27229/95, § 90, ECHR 2001-III, and *A. and Others v. Turkey*, no. 30015/96, §§ 44-45, 27 July 2004). In particular, the choice of means for ensuring the positive obligations under Article 2 is in principle a matter that falls within the Contracting State's

margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means (see *Ciechońska*, cited above, § 65, and *Fadeyeva v. Russia*, no. 55723/00, § 96, ECHR 2005-IV).

(ii) *Applicability of the foregoing principles in the present case*

45. The Court notes the specific circumstances in which R.D. shot the applicant. In this connection it notes that at the relevant time R.D. was a police reservist and thus a State agent. That was confirmed by the civil courts (see paragraph 10 above) and is in conformity with section 46 of the Internal Affairs Act then in force (see paragraph 23 above). At the critical time, namely, the night of 5-6 January 2002, R.D. was on duty at a police station, where he was assigned to stand guard at midnight (on 5 January) and 6 a.m. (on 6 January 2002), each turn of duty lasting one hour. At 1 a.m. on 6 January 2002, after his guard duty ended, and without informing his superiors, he left the station and went to the bar. He was in uniform and was carrying his service gun. At 3.50 a.m. that day he fired the gun and hit the applicant in the chest. R.D. was convicted, initially *in absentia*, of having negligently committed a serious crime against public security and sentenced to two years' imprisonment. After the proceedings were reopened, he was found guilty again and sentenced to a suspended prison term (see paragraphs 7 and 8 above). The applicant was advised to pursue his compensation claim by means of a separate civil action.

46. In the civil proceedings, the applicant requested the domestic courts to establish State responsibility for the damage suffered. The courts dismissed the claim on the ground that the State did not have the necessary capacity to be sued because R.D. had not been acting in an official capacity but rather as a private person, and the damage had not been caused in the course of or in connection with the performance of his duties.

47. The Court reiterates its case-law according to which a State is directly responsible for acts of violence committed by police officers in the performance of their duties (see *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004). The present case should be distinguished from the *Krastanov* case, since it concerns a harmful action taken by a State agent outside his duties.

48. In order to establish whether a State can be held responsible for the unlawful actions of its agents taken outside their official duties, the Court needs to assess the totality of the circumstances and consider the nature and circumstances of the conduct in question.

49. In this connection the Court observes that the incident occurred during R.D.'s working hours. It is not in doubt that at the relevant time R.D. was supposed to be on duty in the police station. He left his place of duty without the authorisation of his superiors and, while intoxicated, engaged in

dangerous behaviour putting the applicant's life at risk. The parties did not dispute that he had thus committed a flagrant breach of the working rules, which led to the incident in question. R.D. was in uniform when he shot the applicant. In such circumstances, it is not unreasonable that he was perceived by the public as a law-enforcement agent. Furthermore, he shot the applicant using his service gun, which had been provided to him by the authorities.

50. The Court accepts that the authorities could not objectively have foreseen the applicant's insubordinate behaviour and his subsequent action in the bar. However, it underlines that the State has to put in place and rigorously apply a system of adequate and effective safeguards designed to prevent its agents, in particular temporary mobilised reservists, from making improper use of service weapons provided to them in the context of their official duties. The Government have not informed the Court of any regulations in force in this respect. In that connection the Court refers to section 26 of the Internal Affairs Act, which required that State agents – as R.D. was – performed their duties “at all times, whether on or off duty”. Evidently, the application of this provision had obvious benefits for society, but it also involved some potential risks. The permanent engagement of State agents as police officers required that they always carry their service weapon in order to exercise their duties.

51. Furthermore, the Court reiterates that the States are expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems meet the requisite criteria (see, *mutatis mutandis*, *Abdullah Yilmaz*, cited above, §§ 56-57). In particular, when equipping police forces with firearms, not only must the necessary technical training be given, but the selection of agents allowed to carry such firearms must also be subject to particular scrutiny.

52. In the present case, the Government have not informed the Court whether any assessment was made by the national authorities as to whether R.D. was fit to be recruited and equipped with a weapon. In these circumstances the Court considers that the harmful action taken by R.D. in the bar must be imputable to the respondent State.

53. The applicant's action against the State provided an appropriate remedy by which to establish liability for R.D.'s actions resulting in a breach of the applicant's rights under Article 2 of the Convention. The fact that he did not seek compensation from R.D. is not decisive, since the object of his claim, as well as of his application before the Court, was to establish the State's responsibility as such.

54. In view of the foregoing, the Court dismisses the Government's objection of non-exhaustion and finds that there has been a violation of Article 2 of the Convention under its substantive limb.

55. In the absence of an explicit complaint by the applicant, the Court need not assess whether the State complied with the procedural obligation under Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

56. The applicant complained that the civil proceedings were unreasonably lengthy, in breach of Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

57. The Court notes that the proceedings in question started on 11 November 2002 and ended on 31 May 2006, when the Supreme Court dismissed the applicant’s claim. They therefore lasted three years, six months and twenty days at three levels of jurisdiction.

58. The Court does not consider that the case was complex.

59. Nor, having regard to the material before it, does the Court consider that the applicant contributed to the length of the proceedings.

60. As regards the conduct of the authorities, the Court considers that, apart from the two-year delay in the proceedings before the Supreme Court – which was somewhat long – there were no other delays attributable to them.

61. Having regard to the criteria laid down in its case-law for assessing the reasonable-time requirement contained in Article 6 § 1 of the Convention (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, ECHR 2000-IV; and *Philis v. Greece (no. 2)*, judgment of 27 June 1997, *Reports of Judgments and Decisions* 1997-IV, § 35), the Court considers on the whole that the proceedings in the present case were conducted within a reasonable time and that the applicant’s complaint concerning their length is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It must therefore be rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 3,390 euros (EUR) in respect of pecuniary damage. This concerned medical expenses related to his treatment. In support, he submitted copies of the relevant invoices. He also claimed EUR 455,300 in compensation for non-pecuniary damage caused by pain, fear, reduced capacity and disfigurement suffered as a result of the injuries. Both figures corresponded to the sums that the applicant claimed in the civil proceedings (see paragraph 9 above). In addition, he claimed EUR 10,000 for the alleged violation of Article 2 and EUR 10,000 for having allegedly been denied the right to a fair trial.

64. The Government contested these claims, arguing that there was no causal link between the damage and the alleged violations. As to the pecuniary damage claimed, they stated that the applicant had failed to seek reimbursement from R.D. as the perpetrator of the crime and directly responsible for the damage suffered. As to the claim for non-pecuniary damage, they maintained that it was not supported by evidence. The same concerned his claims for the alleged breach of Articles 2 and 6. Lastly, they argued that the standard of living in the former Yugoslav Republic of Macedonia should be taken into account and that the finding of a violation of the Convention would be sufficient just satisfaction.

65. The Court considers that the pecuniary damage claimed concerned the medical expenses which the applicant incurred as a direct consequence of his being injured by R.D. In view of the supporting documents and the fact that the Government did not dispute their amount, the Court awards in full the sum claimed under this head.

66. It further accepts that the applicant has suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation of Article 2 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

67. The applicant did not seek reimbursement for costs and expenses. Accordingly, the Court does not award any sum under this head.

C. Default interest

68. 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 question of applicability of Article 2 of the Convention and the Government's objection of non-exhaustion of domestic remedies;
2. *Holds* that Article 2 of the Convention is applicable to the present case;
3. *Dismisses* the Government's objection of non-exhaustion of domestic remedies;
4. *Declares admissible* the complaint under Article 2 of the Convention and the remainder of the application inadmissible;
5. *Holds* that there has been a violation of Article 2 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:
 - i) EUR 3,390 (three thousand three hundred and ninety euros), plus any tax that may be chargeable, in respect of pecuniary damage, and
 - ii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;
7. *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