



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

FIFTH SECTION

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

(Application no. 13191/02)

JUDGMENT

STRASBOURG

7 February 2008

FINAL

07/07/2008

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

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger, *judges*,

and Claudia Westerdiek, *Section Registrar*.

Having deliberated in private on 15 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 13191/02) 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 six Macedonian nationals, Mr Cvetan Trajkoski and Mr Nikola Trajkoski, Mrs Snezana Trajkoska, Mr Igorce Simonoski, Mr Cvetan Simonoski and Mrs Ratka Simonoska, on 26 September 2001.

2. All applicants were represented by Mr D. Miloskeski, a lawyer practising in Prilep. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The application concerned complaints under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1. In a letter received by the Court on 28 January 2002, Mr Cvetan Trajkoski also complained that he had been ill-treated by the police.

4. On 1 December 2005 the Court decided to communicate to the Government the complaint raised by Mr Cvetan Trajkoski (“the applicant”) under Article 3 of the Convention and declared the remainder of the application inadmissible. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of that complaint at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Prilep.

6. In a number of administrative proceedings, the applicant challenged the lawfulness of administrative decisions related to the construction and operation of a petrol station that was located a few metres from his home. He also brought criminal charges against the state officials who took the relevant decisions and against the manager of the petrol station.

1. The incident

(a) The applicant's version of events

7. On 30 January 2001 at 8.20 p.m. the applicant, accompanied by his wife and Mr P.N., went to the Prilep police station to report the possibility of a fire and explosion at the petrol station as a result of alleged improper handling of petrol stocks at the time. Upon their arrival, they had parked their car in front of an access ramp on the street in front of the police station. At the warden's request, the applicant had moved his car to a car park situated behind the "Lipa" hotel. After the applicant had entered the police station, the same officer had pushed him backwards. In his initial submission, the applicant stated that a gun had also been pointed at his head. Seven or eight police officers had arrived at the scene and had assaulted him, grabbing him by his arms, legs and hair and throwing him against the stairway. They had continued hitting and beating him all over his body. During the beating, the police officers had used offensive language.

(b) The Government's version of events

8. The Government submitted that the applicant had parked his car in front of the entrance of the Prilep police station on a street on which no traffic and parking had been allowed. They further maintained that he had failed to move his car despite having been ordered to do so by the police officers on duty. The applicant had then entered the police station without identifying himself. He had ignored the officers' verbal order that he leave the building. He had actively resisted when police officers took him out of the station.

2. Subsequent events

9. A medical certificate ("the first certificate") issued on 30 January 2001 at 9.15 p.m. indicated that the applicant had sustained several bodily injuries which did not qualify as grievous. A tranquilliser was prescribed. That

certificate did not specify the possible origin of the injuries, their timing or the way in which they had been inflicted.

10. After communication of the case, the applicant obtained another medical certificate issued on 11 May 2006 by the Prilep Hospital which described the applicant's injuries, noted on the first certificate, in the following terms: slight redness on the right temple, a scratch on the right ankle and a toe. In addition, it was noted that his right elbow and the left side of his hip were tender.

11. After communication, the applicant also obtained a forensic expert report of 23 May 2006 concerning his post-incident trauma. That report, which was based on the medical records and the applicant's statement, indicated that, after the incident, the applicant had a bruise on his left elbow, a scratch on his left shinbone and bruises on his face below his left eye and on his left hip.

12. No court decision about the incident at issue has been given against the applicant.

3. Application before the Sector for Internal Control within the Ministry of the Interior ("the Sector")

13. On 30 January 2001 the applicant asked the Sector to investigate the incident. On 23 August 2001 the Sector drew up a report giving a factual account of the incident. It established that the applicant had been taken out of the building after he had ignored the officers' verbal order to that effect. He had actively resisted the police officers and he had behaved in an arrogant manner. It found that there had been no abuse of power by the police in their attempts to subdue the applicant. It further stated that on 6 February 2001 an application for misdemeanour proceedings had been submitted against the applicant under the Act on minor offences against public order. That application indicated, *inter alia*, that policemen had grabbed the applicant by his arms and taken him outside the police premises.

3. The criminal investigation

14. On an unspecified date, the applicant brought before the public prosecutor criminal charges against Mr P.R., a police officer who had allegedly participated in the incident, for having ill-treated him while on duty. It cannot be established whether the applicant complained about other policemen as well.

15. The Government stated that on 9 March 2001 the public prosecutor requested that additional inquiries be made by the Ministry of the Interior ("the Ministry"). The latter submitted an official report about the incident in reply. No evidence was submitted in support of that assertion.

16. On 15 May 2001 the public prosecutor rejected the applicant's complaint, arguing that the alleged offence was not considered to be a crime that could be prosecuted upon his motion. It was established that on 30 January 2001 the applicant had parked his car in front of the entrance of the Prilep police station, blocking the police cars' way. He had shouted at police officers and threatened to set the petrol station on fire. Mr P.R. and Mr K.N., another police officer, had ordered the applicant to move his car. After having questioned Mr P.R. and other police officers, including Mr P.N., who had been present at the scene at the time, the public prosecutor established that Mr P.R. had not ill-treated the applicant, nor had the latter been subjected to inhuman and degrading treatment. No gun had been pointed at him by Mr P.R. or by any other police officer. It was finally concluded that Mr P.R. had not committed the offence complained of or any other prosecutable act.

17. On 22 May 2001 the applicant lodged a subsidiary criminal complaint against Mr P.R. and four other unidentified police officers with the Prilep Court of First Instance ("the trial court"). He complained that he had been shouted at, insulted, beaten and dragged across the floor and that as a result he had sustained light bodily injuries and bruises. He requested that the trial court hear statements from him, his wife and Mr P.N., who had been an eyewitness to the incident, as well as from Mr K.N.

18. On 20 June 2001 the trial court requested that the applicant make his complaint more specific by providing the names of the unidentified police officers.

19. On 26 June 2001 the applicant informed the trial court that he was unable to discover the identities of the remaining police officers. He pointed out that one of them had been a warden and the other a guard at the time of the events. He further maintained that the trial court could officially request information about their identities and that he would easily be able to confirm it afterwards.

20. On 2 July 2001 the trial court rejected the applicant's subsidiary complaint as incomplete, namely because he had not identified the remaining four police officers. No comment was made as to the charges against Mr P.R.

21. On 1 August 2001 the applicant appealed against that ruling, arguing that the trial court had failed to investigate his allegations, and that he had no effective way of discovering the identities of the police officers concerned but that he would be able to identify them in a line-up.

22. On 7 November 2001 the Bitola Court of Appeal upheld the trial court's ruling.

23. On 25 December 2001 the public prosecutor informed the applicant that there were no grounds for lodging a request for the protection of legality with the Supreme Court.

II. RELEVANT DOMESTIC LAW

24. Section 254 § 1 (1) of the Criminal Proceedings Act (“the Act”) provides that an indictment should contain, *inter alia*, personal information about the person accused.

25. In accordance with section 255 § 2 of the Act, the president of the adjudicating panel examines whether the indictment has been duly completed, and if it has not, he/she shall return it to the claimant, who shall to rectify it within three days. If an injured party does not comply with that time-limit, the prosecution shall be considered as having been withdrawn and the proceedings shall be suspended accordingly.

26. Other statutory provisions relevant to the present case are described in the *Jasar* case (see *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, §§ 31-40, 15 February 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained under Article 3 of the Convention that he had been subjected to acts of police brutality on the occasion of his visit to the police station to discuss the issue of the petrol station. Article 3 reads as follows:

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

A. Admissibility

1. *The parties’ submissions*

28. The Government submitted that the applicant had not exhausted all domestic remedies in respect of his complaints of ill-treatment since he had not claimed compensation or brought the alleged police brutality to the attention of the Ombudsman, who was empowered to recommend the initiation of disciplinary proceedings and to bring criminal complaints before the public prosecutor.

29. As to the criminal complaint, the Government maintained that the public prosecutor had undertaken the required investigative measures (see paragraph 15 above). After he had rejected the applicant’s allegations, the latter had taken over the prosecution. By failing to identify the remaining

four police officers, apart from Mr P.R., the applicant had deprived himself of the possibility to have his contentions considered by the domestic courts.

30. The applicant submitted that he had made a criminal complaint to the public prosecutor, thus initiating a procedure capable of leading to the identification and prosecution of the alleged perpetrators of the assault. After his complaint had been rejected, he had taken over the prosecution, but to no avail. As to the Ombudsman, the applicant stated that he could not be regarded as an effective remedy since he had no judicial powers. He further argued that in his case, a civil compensation claim would be devoid of any prospect of success given the fact that no guilt had been established in the course of the criminal proceedings.

2. The Court's assessment

31. The Court notes that the applicant brought his allegations about ill-treatment by the police to the attention of the authorities, namely the Sector and the public prosecutor, placing them under a duty to carry out an appropriate investigation. He further instituted a court procedure able to establish the facts and attribute responsibility. For the reasons detailed in the *Jasar* case (see *Jasar v. the former Yugoslav Republic of Macedonia* (dec.), no. 69908/01, 19 January and 11 April 2006) which likewise apply to this case, the Court considers that the applicant's complaint cannot be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 of the Convention. The Government's objection must accordingly be rejected. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

32. The Government submitted that the police had not had recourse to any coercive measure, nor had the applicant been subjected to inhuman and degrading treatment. Relying on the Court's jurisprudence, they further argued that neither the applicant's injuries nor the conduct of the policemen could qualify him as having been tortured. The use of physical force had clearly been regulated by the national legislation, under which any recourse to force must be strictly necessary and proportionate.

33. Having regard to the facts of the case, in particular the Sector's report (see paragraph 13 above) and the measures taken by the public prosecutor (see paragraph 15 above), the Government argued that an effective investigation into the applicant's allegations had been carried out. They submitted that all the relevant facts had been established in a timely fashion, despite the applicant's failure to provide information about the

identity of the police officers concerned, a fact that hampered the investigation.

34. The applicant maintained his allegations that he had been ill-treated by policemen during his visit to the Prilep police station to discuss issues related to the petrol station. He further submitted that the Government's arguments were contradictory. The public prosecutor had not taken any effective measure to discover who the perpetrators were, although, as was evident from the Sector's records, the Ministry had been aware of their identity. No statement had been taken from the eyewitnesses put forward. No effective investigation had been carried out with respect to Mr P.R., whose identity was known to the trial court.

2. The Court's assessment

(a) Substantive limb: alleged inhuman and degrading treatment

(i) General principles

35. The Court recalls that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. 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. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them.

36. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, §§ 119-120, ECHR 2000-IV). Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30).

37. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt”, but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see the *Jasar* judgment, cited above, § 48).

(ii) Application of these principles in the present case

38. The Court notes at the outset as undisputed that during the incident of 30 January 2001, the police took the applicant out of the Prilep police station by force. The Sector confirmed this in its fact-finding report and it was not denied by either of the parties.

39. The Court finds that during his visit to the Prilep police station, the applicant distinguished certain injuries. This was corroborated by the medical certificates (see paragraphs 9 and 10 above). The injuries did not require any medical or drug treatment - only a tranquilliser was prescribed. The Government also did not contest the injuries.

40. The Court, however, observes that the description of the injuries noted on those certificates contradict that given in the forensic expert report (see paragraph 11 above) submitted before it by the applicant himself. This inconsistency concerns not only the side of the applicant’s body which was injured, but also the nature of the injuries.

41. Furthermore, the Court notes that the applicant and the Government provided two conflicting accounts of events as of how the injuries had been sustained. The Court considers that at least partly the injuries might have been brought by the applicant’s own provocative behaviour and the need to remove him from the police premises by force. In that respect, the Court finds that the applicant did not provide sufficient evidence to support his version of events. The inconsistency concerning the medical certificates noted in the preceding paragraph corroborates that conclusion. That being so, the evidence before it does not enable the Court to find beyond reasonable doubt that during his visit to the police station the applicant was subjected to inhuman or degrading treatment within the meaning of Article 3 of the Convention.

42. Accordingly, it concludes that there has been no violation of the substantive limb of Article 3 of the Convention.

(b) Procedural limb: alleged lack of an effective investigation

(i) General principles

43. The Court recalls that where an individual makes an arguable assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention

to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Corsacov v. Moldova*, no. 18944/02, § 68, 4 April 2006; *Labita*, cited above, § 131, ECHR 2000-IV; *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, p. 49, § 161; *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86; *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 98).

44. Finally, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation was at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see, among others, *Labita*, cited above, § 133).

(ii) *Application of these principles in the present case*

45. The Court considers that, taken together, the applicant’s complaints to the public prosecutor’s office and the Sector, that he had sustained injuries at the hands of the police, raised a reasonable suspicion that the said injuries could have been caused by the police as indicated by the applicant, which warranted an investigation by the authorities in conformity with the requirements of Article 3 of the Convention.

46. The Court observes that the Sector’s report was drawn up nearly seven months after the applicant had made his complaint. The Government gave no explanation for that delay. In addition, the Court cannot establish whether that report was communicated to the applicant.

47. The public prosecutor, after having examined the applicant’s allegations on the merits, rejected them finding no evidence of an offence. His conclusions were based solely on the statements of the police officers involved.

48. In the subsidiary criminal proceedings the applicant reiterated his allegations of having been beaten by the police. He provided the identity of one of the police officers involved and left it to the court to identify the remaining four. The Court accepts that the identities of all the perpetrators could have been unknown to him. It further considers the trial court’s insistence that the applicant discover the identity of the other accused himself to be an excessive formalism. Their identity could easily have been discovered, as argued by the applicant, from the official police records. Instead, the trial court rejected the applicant’s complaint as incomplete

without taking any further action. Moreover, this is no explanation why the trial court did not continue the proceedings at least against Mr P.R. However, it took no steps to hear witnesses, although put forward by the applicant, including the doctor who had examined him. The applicant's complaints remained therefore without a judicial consideration on the merits.

49. Against this background, the Court concludes that the investigation into the applicant's claim that he had sustained injuries at the hands of the police was not thorough and effective. Thus, the Court finds that there has been a violation of the procedural limb of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 500, 000 euros (EUR) in respect of non-pecuniary damage. The forensic expert report of 23 May 2006 concerning his post-incident trauma (see paragraph 11 above) was produced to that effect.

52. The Government did not comment on the applicant's claims in respect of non-pecuniary damage.

53. The Court observes that it has found the authorities of the respondent State to be in breach of Article 3 on account of their failure to investigate the applicant's allegations of police brutality. It found no violation on the substance of that complaint. In its view, the applicant must be taken to have suffered some degree of frustration and anguish as a result of the lack of concern displayed by the authorities with respect to his complaint. Making an assessment on an equitable basis, it awards the applicant the sum of EUR 1, 000 in respect of non-pecuniary damage.

B. Costs and expenses

54. The applicant also claimed EUR 2, 590 for the costs and expenses incurred before the Court. These included EUR 35 for the medical certificate of 11 May 2006 and EUR 200 for the forensic expert report referred to above. The remainder concerned the fees of the lawyer who represented the applicant in the proceedings after his complaint had been

communicated to the respondent Government, namely EUR 420 for letters of authority issued to twelve individuals who had allegedly initially complained before the Court and EUR 1, 935 for three submissions lodged with the Court. He did not specify what those submissions were, nor did he attach a fee note.

55. The Government did not comment on the applicant's claims for costs and expenses.

56. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and 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 information in its possession and the above criteria, the Court finds the amount claimed for lawyer's fees to be excessive and awards instead the sum of EUR 600 in that respect. It further considers that the costs related to the forensic expert report were not necessarily incurred and, accordingly, rejects the claim in that part. On the other hand, it awards the whole sum claimed for the remaining costs. The total award under this head therefore is EUR 635.

C. Default interest

57. 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 applicant's complaint under Article 3 admissible;
2. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, 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 1,000 (one thousand euros) in respect of non-pecuniary damage;
- (ii) EUR 635 (six hundred and thirty-five euros) in respect of costs and expenses; and
- (iii) any tax that may be chargeable on the above amounts;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 7 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President