



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

FIFTH SECTION

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

(Application no. 69875/01)

JUDGMENT

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

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

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

Peer Lorenzen, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 September 2006 and on 25 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 69875/01) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Macedonian national, Mr Demir Sulejmanov (“the applicant”), on 11 May 2001. He died on 6 December 2001. On 18 September 2006, the Court granted the request of the applicant’s sisters, Ms Demiran Sulimanova and Ms Remzie Durmiseva, to pursue the application after his death.

2. The applicant was represented by the European Roma Rights Centre (“the ERRC”), based in Budapest, Hungary and Mr J. Madjunarov, a lawyer practising in Štip. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged, in particular, that he had been ill-treated by the police and that no investigation had been carried out by the prosecuting authorities. In that respect, he relied on Articles 3 and 13 of the Convention.

4. On 18 September 2006, the Court declared the applicant’s complaints under Articles 3 and 13 admissible and the Article 14 complaint inadmissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. The incident

(a) The applicant's version of events

6. On 13 March 1998, the applicant and his friend S. D., both of Roma ethnic origin, were stopped by two police officers near the village of Balvan on suspicion of having stolen two sheep. The police officers, without asking any questions, immediately started to beat him and his friend on their heads and bodies with their truncheons, which caused bleeding from the applicant's mouth and nose. They were then put into the police car and driven to the village of Tarinci, where the theft had allegedly occurred. One of the police officers called over the owner of the sheep in order to confront him with the applicant. The police officer started to swear at him and said: "All gypsies will remember me forever. I can sacrifice you all." The applicant was handcuffed and beaten by police officers with truncheons and by the owner of the sheep, who was using the branch of a tree.

7. Around 9 p.m. the applicant and his friend were taken to the police station, where they were made to lie on the ground in front of the door and beaten by five police officers. Once inside the police station, they were tied to a bench in the hall and beaten up again. As the applicant was terribly thirsty, he asked for some water, but the reply was "there is no water for gypsies!" They remained tied to a bench all night; they were released in the morning.

8. After his release on 14 March 1998, the applicant went the same date to the Emergency Aid Unit of Štip Hospital (the "hospital"), where a plaster cast was put on his broken left arm. As he had no money to pay for the medical assistance, he used his cousin's medical identity card and therefore his name, instead of the applicant's name, appeared in the hospital's register. In the hospital's register, the injuries were described as "*fracturae*".

(b) The Government's version of events

9. On 11 March 1998, after 9 p.m., the applicant and his two friends, S. D. and D. R., hired a taxi in Štip and went to the village of Tarinci with the intention of stealing sheep from K. P. They told the taxi driver that they were going to collect two sheep from a relative and sell them in Vinica.

10. On arrival in the village, the applicant and his friends broke into the cellar of K. P.'s house, stole two sheep, put them in the taxi and then headed for Vinica. In Vinica, they went to the Roma quarter and tried to sell the

sheep for 8,000 denars. They refused an offer of 6,000 denars and headed back towards Štip with the sheep in the taxi.

11. At about 11 p.m. the police stopped the taxi in the vicinity of the village of Dolni Balvan in a routine check. Their suspicions were aroused by contradictory explanations given by the occupants of the car about the sheep. The police requested information on the radio as to any reported theft.

12. At about 10.50 p.m. K. P. had reported the theft of his two sheep. A police van arrived and the taxi driver was instructed to follow it to Tarinci. At about 11.30 p.m., they arrived in Tarinci. The applicant and his friends were instructed to unload the sheep. K. P. arrived at the scene and began to swear; he hit the applicant with a stick several times on the upper body and claimed that the applicant had stolen livestock and property from him before. The police ordered K. P. to stand back and prevented any further blows to the applicant.

13. At 11.45 p.m. the police took the applicant and his friends back in the police van to Štip. The applicant, his friends and the taxi driver were interviewed. The applicant complained of pain in his arm and stated that K. P. had hit him with a stick. This was allegedly corroborated by the taxi driver.

14. At 2 a.m. on 12 March 1998 the applicant and the others were released. The same day, K. P. lodged a criminal complaint with the police.

2. Documents concerning the incident and the criminal proceedings against the applicant

(a) Police records of 12 March 1998 concerning the incident

15. The taxi driver confirmed that it had been on 11 March 1998 that three persons of Roma origin, including the applicant, had loaded the sheep into his car in the village of Tarinci and taken them to Vinica. After being stopped by the police, he had been instructed to follow the police van to the village of Tarinci, where the sheep had been returned to K. P. No mention was made that K. P. had hit the applicant.

16. The applicant, D. R. and S. D. described the circumstances concerning the sheep theft which had happened on 11 March 1998. None of them indicated that the applicant had been hit by K. P.

(b) Criminal proceedings against the applicant concerning the incident

17. On 8 April 1998 the police lodged criminal charges of aggravated theft with the public prosecutor against the applicant and his two friends. It was noted that the incident had occurred on 11 March 1998. No mention was made of any injuries having been sustained by the applicant.

18. On 20 January 1999 the applicant was convicted by the Štip Court of First Instance on six counts of theft (verdict K. No. 237/98) including the one relevant to the present case. According to the judgment, the offence had been committed on 11 March 1998. The applicant was sentenced to one year and one month's imprisonment. On 30 March 1999 the Štip Court of Appeal upheld the trial court's decision and confirmed the sentence.

3. *The civil proceedings*

19. On or about 21 October 1998, Mr Madjunarov, as the applicant's representative, brought a civil action before the Štip Court of First Instance (*Основен суд Штип*) against the respondent State and the Ministry of the Interior for compensation for non-pecuniary damage sustained as a result of police brutality inflicted on him.

20. On 5 March 2001 the Štip Court of First Instance dismissed the applicant's claim as ill-founded. It found insufficient evidence to establish that the applicant had been injured by the police officers on duty. It accepted the testimony given by the police officers, who said that the applicant had been hit with a stick by K. P., the owner of the sheep. It found that the applicant had not been beaten by the police officers and that no force had been inflicted on him while he was detained in the police station. The court established 13 March 1998 as the date of the incident. It stated, *inter alia*,

“... when K. P. [the owner of the sheep] saw the persons who had stolen the sheep, he started to hit [the applicant] with a stick, as he had stolen sheep from him before. The officers on duty intervened to protect the complainant (the applicant) from K. P. without hitting him ... During the arrest, they (the applicant and his friend) did not resist and the police officers did not use any force ... the court established that the complainant had been beaten by K. P. when the sheep were returned to him ... these witnesses (the police officers who were on duty on 13 March 1998 in the police station when the applicant was taken into police custody) stated that they had questioned him and had not used force against him, as he had not resisted ... during the questioning, he had not complained that he was injured or felt any pain. He only complained that he had been taken to K. P., who had hit him. They (the police officers on duty on the decisive date) stated that they had not noticed any injuries on [the applicant's] body.”

21. The applicant asked the court to hear S. D., as an eyewitness to the incident, the cousin who had lent him his medical card and the doctor who had examined him. The court did not hear S. D. or the applicant's cousin, as they had been imprisoned in Idrizovo and were therefore considered “unreachable” by the court. It ruled that their examination would be irrelevant, as other evidence did not show that he had had any injuries during the police investigation. It accepted as possible that the applicant had visited a doctor with another person's medical identity card, but that it had not been in relation to injuries inflicted by police officers.

22. On 17 September 2001 the Štip Court of Appeal dismissed an appeal by the applicant and upheld the lower court's decision. The court found that

the lower court had reasonably established that K. P., the owner of the sheep, had inflicted the injuries on the applicant by hitting him with a stick. The police officers had intervened to protect the applicant from further attacks. It endorsed the lower court's reasoning that the applicant had not been beaten in the police station while in custody. It established that even if the lower court had heard the witnesses proposed by the applicant, they would not have altered its findings, as it had found that the police officers who had arrested him had not used any force and had not inflicted any injuries on him.

23. On or about 29 October 2001 the applicant requested the public prosecutor to lodge with the Supreme Court an application for protection of legality (*барање за заштита на законитоста*). Referring to the outcome of the civil proceedings, he did not provide the public prosecutor with the identity of the police officers concerned.

24. On 13 December 2001, the public prosecutor notified the applicant that there were no grounds for lodging that remedy with the Supreme Court.

4. The criminal investigation

25. On 3 November 1998, Mr Madjunarov, as the applicant's representative, lodged a criminal complaint (*кривична пријава*) with the Štip Public Prosecutor's Office (*Основно Јавно Обвинителство Штип*) against an unidentified police officer. In the complaint, the applicant set out an account of the incident which had allegedly occurred on 13 March 1998. As evidence, the applicant offered his own testimony, that of his friend S. D. and that of the doctor who had examined him and put a plaster cast on his hand, and proposed consulting the hospital's register. He stated, *inter alia*,

“... around 8 a.m. a police officer, who I don't know, hit me with a truncheon, breaking my left arm. The police took me to the Štip Medical Centre where a plaster cast was put on, which I kept on for two months ... “

26. On 28 May 1999, the applicant's legal representative wrote a letter to the public prosecutor, stating that a criminal complaint had been lodged about seven months before and that since then he had received no information as to whether any steps had been taken to identify the offenders and initiate a formal investigation.

27. As there was again no reply, on 25 October 1999 the applicant's lawyer sent another letter to the public prosecutor, requesting to be provided with information about any action taken concerning the applicant's complaint and about the identity of the offender(s).

28. In a letter addressed to the applicant on 11 November 1999, the public prosecutor responded that his office had acted with regard to the criminal complaint at issue by officially requesting additional inquiries from

the Ministry of the Interior (“the Ministry”). However, as of that date his office had received no information from the said ministry.

29. On 13 February 2006 the public prosecutor issued a “written conclusion” (*писмена констатација*) concerning the applicant’s criminal complaint. It was based on a statement by the taxi driver given on 10 February 2006 and on the criminal case file against the applicant. As stated therein, the taxi driver attested that K. P. had hit the applicant and S. D. with a stick and that the police officers involved had not had recourse to any physical force when arresting them. There were, accordingly, no grounds for the public prosecutor’s intervention. That decision was served on the applicant’s representative on 10 October 2006, after the Court’s admissibility decision given in the present case.

II. RELEVANT DOMESTIC LAW

30. The statutory provisions relevant for the present case were 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

31. The applicant complained under Article 3 of the Convention that he had been subjected to acts of police brutality inflicting on him great physical and mental suffering which amounted to torture or inhuman and/or degrading treatment. Furthermore, he alleged that he was a victim of a procedural violation of the above Article since the prosecuting authorities had failed to proceed with an effective official investigation capable of leading to the identification and punishment of the police officers responsible. Article 3 reads as follows:

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

1. The parties’ submissions

1. The Government

32. The Government submitted that the applicant’s allegations were not credible or substantiated. The statements taken by the police and the official records contradicted the applicant’s version of events, including the date of

the incident. Nor were his claims found to be substantiated by the courts. They argued that he had not had a proper medical certificate indicating the alleged injuries, but just an excerpt from the hospital's register, which had been made three days after the event complained of. Moreover, that entry had been made in the name of another person. His allegations of an all-night beating would in any event have left more extensive injuries than the allegedly broken arm, which could not be considered a severe injury. They also pointed out that he had not been a decent citizen persecuted by the police, as alleged, but in fact an offender with an extensive criminal record. As regards the investigation into his allegations, they submitted that he himself had rendered it ineffective by lodging his criminal complaint some eight months after the events. If he had used the opportunities available to him in a timely fashion, there would have been some possibility of a productive investigation. The investigation was still pending, as the public prosecutor had not taken a decision to dismiss the criminal charges brought by the applicant.

33. In their additional observations, the Government stated that besides the excerpt from the hospital's register, there had been no other documentation about the applicant's alleged injury. They further submitted that their efforts to hear a statement from the doctor who had examined the applicant had been unsuccessful because he had left the hospital in 2002. Referring to the public prosecutor's "written conclusion" of February 2006, they concluded that no charges for the injuries inflicted on the applicant could be brought against K. P., who had died in June 2000.

2. The applicant

34. The applicant submitted that he had been a victim of police brutality inflicting on him severe physical and mental suffering amounting to torture or to inhuman and degrading treatment or punishment. As he had suffered physical abuse while in police custody, it was for the Government to show that their officials were not responsible for his injuries. They had not done so and had failed to do anything to provide the applicant with redress. They had not interviewed S. D., who was the only independent eyewitness to the incident, the cousin who had lent the applicant his medical card or the doctor who had examined him. His accounts of ill-treatment had been consistent throughout and the police assertion that any injury had been caused by the owner of the sheep was implausible. The applicant always asserted that he had suffered extensive injuries, his broken arm only being the most severe. The courts, when considering the applicant's claims simply ignored the evidence proposed by him and relied solely on police evidence and reports, which were clearly cursory, inconsistent and in contradiction with one another.

35. The applicant also referred to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of

Punishment (CPT/Inf (2003)3), which indicated that physical ill-treatment of persons in police custody was a serious problem and expressed doubt that judges or prosecutors conducted effective investigations where such ill-treatment came to their attention. This indicated a deep-rooted and widespread practice of abuse in police custody and impunity with regard to officers who perpetrated such acts. It was for the Government to show what they had done in response to the scale and seriousness of the problem at issue. In the present case, they had clearly done nothing.

36. In his additional observations, he also referred to the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT/Inf (2004)29) and (CPT/Inf (2006)36), which indicated similar problems related to allegations of police brutality. He further relied on reports of other international organisations and bodies concerning the treatment of Roma in the former Yugoslav Republic of Macedonia and the lack of an effective investigation into allegations of ill-treatment.

37. He maintained that the exact date of the incident was irrelevant to the case, since the Government did not dispute the fact that he had been detained by the police nor they had contested the civil courts' findings about the date of the incident. He further expressed doubts about the credibility of the taxi driver's testimony of 10 February 2006, that he had been hit by K. P., as it contradicted the latter's prior statement, as noted in the official police records made after the incident. He contested the Government's assertion that he had been injured by K. P., arguing that the burden of proof had shifted to them, since the police had failed to arrange for a medical examination before taking him into custody. In that respect, he referred to the Court's jurisprudence under which "where an individual is taken into custody in good health but is found to be injured at the time of release, the Government must provide a plausible explanation of how those injuries were caused".

38. He also stated that his allegations of ill-treatment by the police had been arguable and that as a result, the prosecuting authorities should have carried out a timely, independent, comprehensive and effective criminal investigation into the facts of his case. Instead, they had done virtually nothing, and the public prosecutor's "written conclusion" of 13 February 2006 had been issued some eight years after he had brought the criminal action. It was not evident what investigative measures had preceded that "decision" apart from the testimony of the taxi driver and the police records, evidence which should have been made available immediately after the incident. No attempt had been made, either, to hear evidence from S. D., the cousin who had had lent the applicant his medical card or the doctor who had examined him.

2. The Court's assessment

1. Concerning the alleged ill-treatment

(i) General principles

39. The general principles emerging from the Court's jurisprudence, relevant for the present case, were set out in the *Jasar* judgment (see *Jasar* judgment, cited above, §§ 46-49). In addition, although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006).

(ii) Application of these principles in the present case

40. Turning to the present case, the Court at the outset notes that the applicant and the Government provided conflicting accounts of the events.

41. First, the parties disagreed as to the date of the incident. The Government maintained that the decisive events complained of had occurred on 11 March 1998. That version coincided with the official police records of the event and the final judgment in the criminal proceedings in which the applicant had been found guilty (see paragraphs 15-17 above). On the other hand, the applicant's version, that the incident had occurred on 13 March 1998, was corroborated by the civil courts' decisions rejecting his compensation claim related to it (see paragraph 20 above). The Court observes that the date set out in the hospital's register (14 March 1998) is not of assistance as there is no certainty as to the time which elapsed between the incident and the entry.

42. Secondly, the parties provided two divergent accounts of how the alleged injuries had been caused. The Government maintained that the police officers on duty and those who had questioned the applicant while he was in police custody had not had recourse to any physical force and that therefore no injury had been inflicted on him. They further submitted that the injury, if any, was caused by K. P., who had hit the applicant with a stick. This version was confirmed by the civil courts' findings, and partly by the applicant's statement (see paragraph 6 above) that he had received blows from K. P. when he had returned the sheep. The applicant for his part argued that the injuries had been caused by the police at the scene and while in police custody. He so contended in the criminal complaint before the public prosecutor and also in his application before the Court. A further inconsistency lies in the parties' accounts of those present at the incidents, with the applicant claiming that he was accompanied by one friend when stopped by police officers, and the Government referring to two friends of the applicant's (paragraphs 6 and 9 above).

43. The Court further observes that the applicant himself provided contradictory statements concerning the way he had reached the hospital. Thus in the criminal complaint lodged with the public prosecutor, he stated that the police had taken him to the hospital. In his application to the Court, the applicant stated that he had gone to the hospital, apparently by himself, as his arm had been intensely painful (see paragraphs 8 and 25 above).

44. Finally, there is uncertainty as to the medical evidence. The Government denied that the excerpt from the hospital's register constituted evidence attesting the applicant's alleged injury, whilst the applicant pleaded it in support, claiming that the discrepancy in the names had arisen because he had not had money to pay for medical assistance, and had borrowed his cousin's medical identity card. The Court notes that no medical certificate was issued, and that the only document submitted – the copy of the medical register dated 14 March 1998 – is not in the applicant's name, and gives very little detail.

45. Due to the inconsistencies noted above, the Court considers that no cogent elements have been adduced in the course of the proceedings before it which could call into question the findings of the national authorities and support the applicant's allegations. It is therefore not able to establish which version of events is the more credible.

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

2. Concerning the alleged lack of an effective investigation

(i) General principles

47. The Court points out that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such 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.

48. The investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Jasar*, cited above, §§ 55-57, and the references cited therein).

(ii) Application of these principles in the present case

49. The Court notes that the applicant lodged a criminal complaint with the public prosecutor and lodged a compensation claim more than seven months after the decisive event (see paragraphs 19 and 25 above). The applicant gave no explanation for that delay. The Court further accepts that at that time of the incident, in March 1998, the applicant did not know the identity of the police officers involved. It cannot however find a convincing explanation for the applicant's failure to inform the public prosecutor of the identity of the police officers concerned, after it had been determined in the course of the civil proceedings.

50. However, notwithstanding this failure, the Court considers that, taken together, the applicant's criminal complaint to the public prosecutor and the civil claim for compensation, that he had sustained injuries at the hands of the police, amounted to a credible assertion that the alleged 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. In support of his assertion of having been ill-treated by the police, the applicant offered his own testimony, that of his friend S. D. and that of the doctor who had examined him and put a plaster cast on his hand, and proposed consulting the hospital's register (see paragraph 25 above). That evidence, as proposed, entailed his assertion of police brutality to be regarded, at that time, as having been credible.

51. The public prosecutor was under the duty to investigate whether an offence had been committed. However, he did not take any investigative measures after receiving the criminal complaint, apart from requesting additional inquiries from the Ministry (see paragraph 28 above). The public prosecutor's "written conclusion" about the incident cannot alter the Court's conclusion that the investigation did not satisfy the requirements of Article 3 of the Convention for the following reasons. First, it was given nearly eight years after the criminal complaint had been lodged and after the case was communicated to the respondent Government. Secondly, it was given on the basis of the criminal case file against the applicant and the taxi driver's statement given in February 2006. The Court considers that that evidence was available after the incident and the Government did not present any convincing explanation as to why it had not been adduced at an earlier stage. Thirdly, that "decision", as was the case with the findings of the civil courts, was given mainly on the basis of evidence provided by the

police – no serious attempt was made to secure the evidence proposed by the applicant: to hear S. D., as an eyewitness to the incident, the cousin who had lent him his medical card or the doctor who had examined him. Finally, it took eight months for the public prosecutor to communicate it to the applicant.

52. Against this background, the Court concludes that there was no thorough or effective investigation of the applicant's claim that he had sustained the alleged injuries at the hands of the police. Thus, the Court finds that there has been a violation of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

53. The applicant complained that he had no effective remedy against the failure of the national authorities to investigate effectively his allegations of ill-treatment in contravention of Article 13 of the Convention. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

54. The applicant submitted that the respondent State had not provided an effective remedy in relation to his arguable claim of having been subjected to acts of police brutality. He further argued that Macedonian legislation did not provide a time-limit within which the public prosecutor should consider a criminal complaint. He stated that the public prosecutor's “letter” of 10 October 2006 did not constitute a formal decision which would enable him to take over the prosecution as a subsidiary complainant. He was therefore prevented from having access to court proceedings in order to obtain redress for the violation of his rights under Article 3 of the Convention.

55. Having regard to the grounds on which it has found a violation of the procedural aspect of Article 3, the Court considers that no separate issue arises under Article 13 of the Convention (see *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 62, 15 February 2007).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage for the pain, physical injuries, frustration, anguish and helplessness which he had suffered as a result of the ill-treatment inflicted by the police officers while being in a very vulnerable position, in fact at their mercy. He also referred to the flaws in the ensuing investigation by the national authorities. The applicant further referred to his Roma origin, maintaining that his case was not unique in the former Yugoslav Republic of Macedonia. Finally, they asked the Court to take the alleged systemic nature of the harm into account when making its assessment of the non-pecuniary damage and stated that awarding a higher sum would influence the respondent Government to take a stronger stand against police ill-treatment targeting Roma in future.

58. The Government contested the applicant’s claims as unsubstantiated. They referred to the findings of the prosecuting authorities that the applicant had not been subjected to ill-treatment by the police and stated that no award should be made in the absence of firm evidence of any ill-treatment. Although the subsequent investigation had been stayed for a long time, the public prosecutor’s decision of 13 February 2006 had ended the criminal proceedings before the domestic authorities. In that later context, the Government invited the Court to consider that the eventual finding of a violation constituted in itself sufficient compensation for any damage in the present case. They also stated that no award should be given to the deceased applicant’s sisters since the alleged injury and any suffering related to it had been of a purely personal nature. The cause of justice would not be advanced by awarding a sum of money to them in compensation for any pain that the applicant himself might have suffered as a result of violation of his rights under the Convention.

59. The Court observes that it has found the authorities of the respondent State to be in breach of Article 3 on account of their failure to investigate the applicant’s allegations of police brutality. It has reached no conclusion on the substance of that complaint. Making an assessment on an equitable basis, it awards the applicant the sum of EUR 3,000, plus any tax that may be chargeable. In this later respect, it is to be noted that the award is made for the applicant, while it is payable to his sisters who were allowed, by the

Court's admissibility decision of 18 September 2006 given in this case, to pursue the application which the applicant had brought himself.

B. Costs and expenses

60. The applicant claimed EUR 3,145 for the costs and expenses incurred by the ERRC in the proceedings before the Court. These included the fees for a lawyer engaged on the case for 38.5 hours of legal work and administration. A schedule of fees was produced for the activities of the ERRC between 2 November 2006 and 20 November 2006. Invoices were provided for the travel arrangements of one person to Štip and her accommodation between 3 and 6 November 2006; and for the mailing and translating of the public prosecutor's "decision" of 13 February 2006. No claim was made and no documents were provided concerning any costs and expenses that Mr Madjunarov might have incurred in the domestic proceedings.

61. The ERRC has requested that the fees be paid directly to them, as the applicant did not incur any financial costs during the proceedings. They did not provide their bank account details.

62. The Government stated that the amounts claimed by the ERRC had been excessive and not properly substantiated by any details or supporting documents.

63. 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, and noting that the applicants have been successful in only part of their application the Court awards the sum of EUR 1,000 to cover its costs and expenses. These amounts are to be paid into the bank account of the ERRC, exclusive of any tax that may be chargeable. Since no claim has been made in respect of any costs and expenses incurred in the domestic proceedings, the Court does not make any award under that head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged ill-treatment;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated at the hands of the police;
3. *Holds* that it is not necessary to consider the applicant's complaint about the lack of an effective remedy under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay to Ms Demiran Sulimanova and Ms Remzie Durmiseva, on behalf of 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 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand euros) in respect of cost and expenses, payable into a bank account of the ERRC, the applicant's representative;
 - (iii) any tax that may be chargeable to the applicant 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President