



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

1959 · 50 · 2009

THIRD SECTION

CASE OF STOJNŠEK v. SLOVENIA

(Application no. 1926/03)

JUDGMENT

STRASBOURG

23 June 2009

FINAL

23/09/2009

This judgment may be subject to editorial revision.

In the case of Stojnšek v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 1926/03) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Mr Franc Stojnšek (“the applicant”), on 24 December 2002.

2. The applicant, who had been granted legal aid, was represented by Mr Boštjan Verstovšek, a lawyer practising in Celje. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged in particular that he had been ill-treated by the police on 14 June 2001 and that there had been no effective investigation into his allegations of ill-treatment (Article 3 of the Convention).

4. On 28 September 2006 the President of the Chamber to which the case has been allocated decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Rogatec.

A. The criminal proceedings against the applicant

6. On 25 February 1998 the applicant was charged with a criminal offence of “threatening security” (*ogrožanje varnosti*). He was represented by a lawyer in the ensuing proceedings.

7. On 3 February, 6 April, 6 June and 4 July 2000 hearings were held before the Šmarje pri Jelšah Local Court (*Okrajno sodišče v Šmarju pri Jelšah*) by a judge, T.G. In the course of the proceedings, the applicant, the aggrieved parties, four witnesses including two defence witnesses, and a psychiatrist were heard.

8. During the proceedings the aggrieved party lodged a compensation claim (*premoženjsko-pravni zahtev*).

9. On 4 July 2000 the Šmarje pri Jelšah Local Court, further to the hearing at which the applicant was present, convicted the applicant. The Court found that in the evening of 3 December 1997 the applicant had called A.V., a police officer at the Rogaska Slatina Police Station, his wife and his children at least five times, and had threatened that he would kill them that night. The court sentenced him to three months’ imprisonment, but advised the injured parties to institute separate civil proceedings for damages. Since the applicant was unavailable at his address, the written judgment was ultimately served on his wife on 15 September 2000.

10. On 22 November 2000 the Celje Higher Court (*Višje sodišče v Celju*) rejected an appeal by the applicant’s representative on 4 September 2000 and upheld the first-instance court’s judgement. The server tried to serve the written judgment on the applicant on 10 January 2001. His wife refused to accept the mail and informed the server that the applicant was abroad. A notice was left in the mailbox. On 11 January 2001 the applicant’s wife returned the notice to the court and asked that the mail be served on the applicant once he returned, which was on 25 January 2001. On 26 January 2001 the court sent the applicant a letter informing him that the judgment did not necessarily have to be served on him but, in the case of the absence of the addressee, had to be accepted by an adult family member. On the same day the server again unsuccessfully tried to serve the mail on the applicant. On 10 February 2001 the applicant’s wife accepted the mail containing the written judgment of the Celje Higher Court.

11. On 21 February 2001 the applicant’s representative lodged a request for protection of legality (*zahteva za varstvo zakonitosti*) with the Supreme Court and requested the Šmarje pri Jelšah Local Court to adjourn the applicant’s sentence until the delivery of the Supreme Court’s decision. The Šmarje pri Jelšah Local Court rejected a request for adjournment of the sentence on 28 March 2001. The decision was served on the applicant’s wife on 23 April 2001, but the next day she returned the sealed mail to the court, stating that the applicant had left for a work-related trip.

12. On 10 April 2002 the Supreme Court rejected the applicant's request for protection of legality. The applicant allegedly saw this judgment only in July 2002.

13. A request for a more lenient sentence lodged by the applicant's representative on 15 February 2001 was rejected by the Supreme Court on 22 June 2001.

B. Summons to prison and warrant for the applicant's arrest

14. On 20 April 2001 the Celje District Court summoned the applicant to report to the Maribor prison to serve the prison sentence. The applicant was advised that if he did not report to the prison on 9 May 2001 an arrest warrant would be issued against him. He was also advised that he could ask for adjournment of the sentence provided that there were justified reasons. On 28 April 2001 the summons was served on the applicant's wife.

15. On 9 May 2001 the applicant's representative requested the President of the Celje District Court to adjourn the sentence until the request for protection of legality had been decided by the Supreme Court (see paragraph 11 above) and on the grounds that the applicant was unfit for prison.

16. On 21 May 2001 the President of the Celje District Court rejected the applicant's request for adjournment as unfounded. The decision was served on the applicant's representative on 22 May 2001. A consequent appeal was likewise dismissed by the President of the Celje Higher Court on 28 May 2001.

17. On 31 May 2001 the applicant's representative was served with the court's letter, with which the decision of 28 May 2001 was enclosed, informing the applicant that he should report to the prison the next working day.

18. On 1 June 2001 the applicant's representative informed the court that she was not aware of the applicant's whereabouts.

19. On 12 June 2001 the Celje District Court inquired with the Maribor prison as to whether the applicant had started to serve his sentence. On the same day the court issued a warrant for the applicant to be brought to the prison by the Rogaška Slatina Border Police Station ("the RSBPS"). The RSBPS received the order on 13 June 2001.

C. The applicant's arrest

20. In the evening of 14 June 2001, the applicant and his wife were travelling in a car. At 9.45 p.m., on a road near Žahenberc, G. G. and B.P., two police officers from the RSBPS who were patrolling the road, stopped their car. G.G. recognised the applicant as he had seen him in connection with another traffic offence case. According to the Government, the officers

had an arrest warrant to bring the applicant to the Maribor prison and were aware of the applicant's continuing evasion of the pending imprisonment. G.G. knew that the applicant was a "problematic" person and was advised by B.P. to request the applicant to show that he had the required equipment for the car (*obvezna oprema*) in order to get him out of the vehicle. G.G. then first asked the applicant to show his identification documents and then to show the car equipment. The applicant stepped out of the car and opened the boot. In the meantime B.P. went to the police car to get a police baton since they were expecting the applicant to resist arrest.

21. When the applicant was standing in front of the car, G.G. told him that he would be arrested on the basis of the warrant issued against him due to his pending sentence and that he should comply with the procedure. The Government and the applicant disputed the subsequent events concerning the applicant's arrest.

22. According to the applicant, the police had not shown him an arrest warrant and he thus refused to be arrested. According to the statements the applicant made in the domestic proceedings, one of the officers then punched him in the face and the applicant started to run. The officer caught him and knocked him down. The officer jumped on the applicant and strangled him using an unidentified object. In his observations to the Court, the applicant maintained that after handcuffing him the officers had beaten him up while he was lying on the ground, despite the presence of his wife and neighbours. The applicant was then left on the ground until his wife helped him to stand up. The applicant was weak and asked for water. The police refused to give him water. They also refused to give him water when asked for it by the applicant at the police station.

23. According to the Government, after being informed of the arrest warrant, the applicant replied to the officers that it was invalid as he had appealed against the conviction. In an attempt to conduct a search of the applicant (*varnostni pregled*), G.G. ordered him to put his hands on the car. The applicant refused. After being warned twice to comply with the order, the applicant said "no, that is not going to happen" and started to run. G.G., followed by B.P. and the applicant's wife, ran after the applicant. The latter stopped after approximately 100 metres. At that point the applicant turned towards G.G. and appeared to attempt to hit the officer. G.G. blocked the blow with his left hand and at the same time threw the applicant on to the ground using his left leg. Both officers then tried to handcuff the applicant, who was lying face down on the ground. Due to the applicant's resistance B.P. used the technique of "strangling from behind" in order to release his grip. G.G. then managed to handcuff the applicant, tying the applicant's hands behind his back. The applicant continued to try to resist arrest by kicking. B.P. then went to the police car to call a police van. During that time, which was a minute or two, the applicant remained lying on the ground. Once B.P. returned, the officers lifted the applicant up and waited

for the arrival of the police van. During that period, the applicant's wife drove away and returned with several people from the neighbouring area. After the situation had been explained to them these persons did not interfere with the procedure.

24. It was undisputed that when the police van arrived the applicant was taken first to the Rogaška Slatina Police Station and then, at 10.30 p.m., to the Maribor prison.

25. According to the Government, the applicant was shown the arrest warrant at the police station, where none of the officers noticed that the applicant was injured, except for a bruise on his nose. The applicant also did not complain of pain, except for discomfort caused by the handcuffs. Later, at the Maribor prison the applicant complained that he had injuries due to handcuffs, which had been removed, but there was nothing that would require medical care.

26. A written confirmation of the applicant's arrival to the prison issued on 14 June 2001 by the Maribor prison authority stated that the applicant had no apparent injuries or symptoms of any diseases.

27. The next day, on 15 June 2001, at around 2 p.m., the applicant was examined by a doctor in the Maribor General Hospital, who drew up a report. In the report it was stated that the applicant had alleged that he had been beaten up by the police. An X-ray of his right hand, left hemi-thorax and spine was also taken. Nothing was observed on the X-ray. According to the medical report, the applicant had a reddish bruise around his right eye (*areal pordelosti*) and his right wrist was slightly swollen. The applicant had no signs of injury, haematoma or bruising to his thorax. The doctor noted that the applicant complained of pain between the seventh and tenth ribs, that direct pressure on that area was painful while indirect pressure caused no pain. The kidney area was without any signs of injury, but was slightly painful. The neck was also without any sign of injury.

28. On 18 June 2001 the applicant had a follow-up examination in the Maribor General Hospital as he was complaining of pain in his chest. Further to the examination, the doctor noted that there were no injuries to that area. He was prescribed pain-killers and advised on breathing exercises.

D. The proceedings against the police officers

29. On 18 June 2001 the applicant's wife reported the incident to the office for complaints at the General Police Administration Unit (*Urad za pritožbe pri Generalni policijski upravi*).

30. On 21 June 2001 the applicant's wife's legal representative lodged a criminal complaint against the police officers involved in the applicant's arrest. The criminal complaint, to which a note written by the applicant's wife was attached, states, *inter alia*:

“on 14 June 2006 , at 9:45 p.m.,... in the presence of his wife... (they) severely beat and tortured him, threw him on to the ground, pushed his head into the soil ..., and at the same time suppressed his breathing by squeezing his neck, trod on him while he was lying on the ground, stepped on his neck, and then, wearing torn and dirty clothes and barefoot ..., he was arrested and taken to the prison in Maribor.”

31. The applicant’s wife mentioned in her note also that the officers had refused to give water to the applicant, refused to provide him with medical aid and had not given him an arrest warrant. In addition, she asked that the inquiry be conducted by the Ljubljana Police Unit instead of Rogaška Slatina or Celje Police Unit, which she did not trust.

32. On 3 July 2001 the Celje Police Unit received the above-mentioned documents, together with a note prepared by the officer from the General Police Administration Unit. On 20 August 2001, further to an interview with the two officers involved in the arrest, three official notes were prepared by an officer of the RSBPS, S.K.

33. In one of the notes, S.K. stated that he had been informed about the applicant’s arrest as it happened. When he had arrived at the RSBPS the applicant, who was handcuffed, was sitting in the waiting room. According to the note, S.K. saw only a bruise on the applicant’s face and the applicant only complained of pain from the handcuffs. Soon afterwards the applicant was taken to the police van where the handcuffs were taken off.

34. The other two notes recorded what would appear to be separate interviews with the officers G.G. and B.P. However, the text of the two notes is for the most part identical and appears to be copied and pasted. The officers’ testimonies are in line with the version of events submitted by the Government.

35. On 31 August 2001 the Celje Police Unit sent a report to the Celje District Prosecutor’s Office (*Okrožno državno tožilstvo v Celju*) informing them of the findings of the above inquiry and stating their opinion that the applicant’s wife’s allegations were unsubstantiated.

36. On 27 October 2001 the applicant’s wife submitted a medical certificate (see paragraph 27 above) to the Celje District Prosecutor’s Office.

37. The Celje District Public Prosecutor subsequently requested the Celje Police Unit to interview the applicant. They conducted an interview on 23 November 2001. According to the records of the interview, the applicant stated that after being stopped he was asked to follow the officers to the prison. After he had refused to go to the prison on the grounds that he had not received any warrant to that effect, one of the officers allegedly punched him on the right side of his face and he then started to run. After being tackled by one of the officers the applicant lay on the ground without resisting. Both officers knelt on him and one of them started to strangle him with an unknown object and shouted “the pig should die”. When the applicant’s wife arrived the officers desisted but after the wife left to find

help the officers resumed strangling him. The two officers were kneeling on his back the whole time. He was subsequently lifted up by his wife.

38. According to the above-mentioned records, the applicant also stated that he believed that officer A. V. (see paragraph 9 above) had been informed about the arrest and had asked the arresting officers to beat him.

39. On 28 December 2001, on the reasonable suspicion that a criminal offence of “Violation of Human Dignity by Abuse of Office or Official Duties” (*Kršitev človeškega dostojanstva z zlorabo uradnega položaja ali uradnih pravic*) had been committed, the Celje District Public Prosecutor requested that the hearing (*zaslišanje*) of the two officers, the applicant and his wife be carried out before the judge of the Šmarje pri Jelšah Local Court and that the latter ensure that all the circumstances of the case were established.

40. The officers G.G. and B.P. were examined separately by judge B.Z. on 25 February 2002 in the presence of their lawyers. G.G.’s statement of what happened during the arrest corresponds to the Government’s version of events (see paragraph 23 above). According to the records of the hearing, G.G. also made the following statement:

“When he was brought to the police station, we noticed that he had a bruise (*praska*) on his nose, but I do not know where he got it, maybe in the police van, but that was a small bruise, which did not bleed, it looked more like a rash (*odrgnina*). In any case, when he was brought to the Maribor prison, it was established that he had no injuries.

...”

41. Further to a question by the judge, G.G. stated that the “osotogari” throw, which was used against the applicant, was a self-defence technique and that the strangling was a fighting technique in jiu-jitsu and judo, which the officers had learned at police school and more recently at a self-defence class. These two techniques were among the least severe. If these two techniques had not worked the officers would have needed to use professional blows, which were more likely to cause injuries.

42. Likewise, the statement given by officer B.P. corresponds to the above described version of events relied on by the Government (see paragraph 23 above). As regards the applicant’s alleged injuries, B.P. stated that he had noticed at the police station that the applicant had had a superficial bruise on his nose. He assumed that the bruise had been incurred while the applicant was lying face down on the ground and trying to stand up.

43. Due to the unavailability of the applicant, B.P.’s lawyer and the applicant’s wife during different periods of time, the next hearing was not held until 24 May 2002. On that day, the applicant and his wife were examined by judge B.Z.

44. The applicant testified, *inter alia*, as follows:

“On the road to Žahenberc I was stopped at the junction by a police officer. A car with the other police officer was hidden in the bushes. (...). After I stopped the car, a police officer asked me to show the car’s documents, which were all in order; after he had checked everything he asked me to open the boot, now I do not know why, but I got out of the car and opened the boot. Next, I closed the boot and the officer told me that I was under arrest. I asked ‘why’ and told him that I did not have a warrant, which I really did not have. He told me to follow him, but I told him that I was not going anywhere as there was no warrant. Then, the officer hit me on the right side of my forehead. Right now, I do not know what he hit me with, perhaps with a racket or with his hand. I had a red spot there afterwards. As I was hit I started to run in the direction of the hunters’ house, through a field. ... One officer ran after me while the other stayed in the car. While he was running the officer hit me on the right leg, so that I fell face down and stayed in that position. The officer jumped on me and started treading on me. Then the officer lay on top of me and started strangling me with a rubber or metallic object. He continued until the second officer came. Then they handcuffed me. Subsequently, while I was lying face down, the officer who had thrown me to the ground and hit me started kicking me in the back and kidney area until my wife arrived and then he stopped. When my wife ran to the hunters’ house the [same] officer started strangling me again (...) by pushing my head into the grass. (...) It took about 30 minutes from the time the officers stopped my car until I was taken away in the police van. While the officer was strangling me he was shouting “‘the pig should die’” and other ugly words (...) until the neighbours came.(...) I was lifted up by my wife. When the police van arrived, I was taken to the police station. I was dirty, barefoot and muddy (...) I asked for water, which they refused to give me. (...) When I arrived at the Maribor Prison, they said they had never seen anything like it and gave me water.”

45. In reply to B.P.’s representative’s questions, the applicant stated, *inter alia*:

“During my arrest the police officers called somebody by phone, I suspect that was A.V. I heard that this person told the officers to beat me up and arrest me.

(...)

After I had closed the boot, the officer and I stood facing each other and he hit me. [According to the records, the applicant showed the area above the right eyebrow as the place where the officer had allegedly hit him].

(...)

The officer threw me to the ground and kicked me about ten times in the back and kidney area. Then he put the handcuffs on so tightly that the circulation was stopped. (...) The officer trod on my back and on the handcuffs (...). I have had a quarrel with officer A.V. for about twenty years. At the police station they did not show me the warrant.

(...)”

46. In reply to a question from G.G.’s representative, the applicant stated that he had been continuously beaten by the same officer. He further stated that when his wife and the neighbours arrived he was released, and had started vomiting while he was still lying face down on the ground. Replying

to the judge's question, he said that he was barefoot when lying on the ground but that he did not know at what point the officers had taken his shoes off him.

47. The applicant's wife described the events following the applicant's notification of the arrest warrant by the police as follows:

"My husband was extremely terrified and was in shock. At that point, after the officer had jumped (*planil*) on him, my husband started to run. The officers ran after him and as I was also terrified I started to run too. The other policemen also ran after them. Once I arrived at the spot I was shocked to see my husband handcuffed and lying face down on the ground, with an officer holding him by the neck and pushing his head into the ground. I have to stress that the other officer was not violent. (...) As I got no reply to my question [concerning the reasons for the applicant's arrest] I ran to the neighbours. [After she and the neighbours came to the scene], my husband was still on the ground totally dizzy (*omamljen*). Both officers were standing next to him [further to request for clarification by B.P.'s representative she said that they, the officers, were doing nothing at that point]. My husband asked to be lifted up and said "please lift me up and give me some water" but nobody wanted to help him, so I lifted him up.

(...)

As regards the summons to the prison, we had not received it at home.

(...)"

48. Further to the B.P.'s representative's request, she gave a further statement on the events immediately following the applicant's notification of the arrest warrant:

"My husband was very scared, but I do not remember why (...). The officer jumped on my husband, who was standing very close to him. (As regards the exact manner of the officer's reaction) I do not remember as I was in shock. (...) I did not observe the officer touching my husband physically or hitting him. (...) I cannot tell or show the way the officer jumped on my husband as I do not remember."

49. In reply to a question put by the judge, the applicant's wife stated:

"When I came to the scene where my husband was lying on the ground, I saw that he was barefoot, but I do not know where he lost his shoes (...)."

50. On the conclusion of the above hearings the case file, together with the records of the hearings, was sent to the Celje District Public Prosecutor's Office on 29 May 2002.

51. On 18 July 2002 the Celje District Public Prosecutor issued a decision dismissing the criminal complaint on the grounds of insufficient evidence. The prosecutor found that the statements made by the applicant and his wife were inconsistent and contradictory. The prosecutor noted in particular, that while the applicant had stated that he was hit in the face after being told he was under arrest, his wife had not observed the applicant being hit by the officer. In addition, the applicant testified that he had been beaten up by the officer up to his wife's arrival. She, on the other hand, stated that

she saw the applicant having his head pushed into the ground, but not being beaten. Moreover, the public prosecutor found that the medical evidence obtained on 15 June 2001 did not support the applicant's allegations. Had the officers employed the force alleged by the applicant, the latter would have undoubtedly sustained different injuries. The prosecutor, who noted that he could not find the applicant's version credible, concluded on the basis of the evidence gathered in the investigation that:

“... the applicant resisted the officers, started to run away and by doing so prevented them from carrying out their official duty. Due to his resistance, the officers, in accordance with Section 51 of the Police Act, employed force leading to the least severe consequences, which is demonstrated by the fact that the applicant did not sustain bodily injuries (*poškodbe*).”

52. The Celje District Public Prosecutor's decision of 18 July 2002 was served on the applicant on 30 September 2002. It drew the applicant's attention to his right to initiate a criminal prosecution as a subsidiary prosecutor (*subsidiarni tožilec*), that is an injured party acting as a prosecutor, by lodging a bill of indictment (*obtožni predlog*) within eight days. He did not avail himself of this opportunity.

E. The civil proceedings against the applicant

53. As instructed by the first-instance court (see paragraph 9 above), police officer A. V. and his wife and children instituted civil proceedings against the applicant at the Šmarje pri Jelšah Local Court on 31 July 2001. On 1 October 2003 the court held a hearing. By a judgment issued on the same day, it partly granted the police officer's claim for compensation for non-pecuniary damage. The applicant lodged an appeal on 23 October 2003. There is no information in the case file as to the state or the outcome of these proceedings.

II. RELEVANT DOMESTIC LAW

A. The Constitution

54. Article 18 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) reads as follows:

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

B. Proceedings in the Administrative Court

55. Further to section 1 of the Administrative Disputes Act 1997 (*Zakon*

o upravnem sporu, Official Gazette no. 50/97), when no other judicial protection is available the Administrative Court has jurisdiction to consider the lawfulness of decisions and actions which interfere with constitutional rights. Under section 62 it is possible to seek a declaration that there has been a violation of a right guaranteed by the Constitution and compensation for any loss. The Administrative Court's decision can be challenged before the Supreme Court and ultimately before the Constitutional Court.

C. Penal Code

56. Section 270, headed "Violation of Human Dignity by Abuse of Office or Official Duties", of the Penal Code (*Kazenski zakonik*, Official Gazette no. 63/94) provides as follows:

"An official exercising his office who, by abuse of his office or official duties, treats another person badly, insults him, inflicts minor bodily harm upon him or otherwise treats him in such a way as to affect his human dignity, shall be sentenced to imprisonment for not more than three years."

D. The Criminal Procedure Act

57. In Slovenia, public prosecution is mandatory when reasonable suspicion (*utemeljeni sum*) exists that a criminal offence subject to mandatory prosecution has been committed. Public prosecutions are conducted by the public prosecutor's office, an autonomous body within the justice system (Article 135 of the Constitution, and sections 3 and 5 of the State Prosecutor Act, *Zakon o državnem tožilstvu*, Official Gazette no. 63/94).

58. If the public prosecutor dismisses the criminal complaint or drops the prosecution at any time during the course of the proceedings, the aggrieved party has the right to take over the conduct of the proceedings in the capacity of a subsidiary prosecutor (*subsidiarni tožilec*), that is, as an aggrieved party acting as a prosecutor (section 19(3) of the Criminal Procedure Act, *Zakon o kazenskem postopku*, Official Gazette no. 63/94; - "CPA"). A subsidiary prosecutor has, in principle, the same procedural rights as the public prosecutor, except those that are vested in the public prosecutor as an official authority (CPA, section 63(1)). If the subsidiary prosecutor takes over the conduct of the proceedings, the public prosecutor is entitled at any time pending the conclusion of the main hearing to resume the conduct of the prosecution (CPA, section 63(2)).

59. The aggrieved party, who may be represented in the proceedings by a lawyer, may during the investigation call attention to all facts and propose evidence relevant to establishing the commission of a criminal offence, the perpetrator thereof and damages incurred as a result of the offence (CPA,

sections 59 (1) and 65 (1)). This should apply analogously (CPA, section 429) to the investigative measures taken in the summary proceedings (see paragraph 61 below).

60. Slovenian criminal proceedings are divided into three stages – preliminary proceedings (*predkazenski postopek*), conducted by the police and the public prosecutor; criminal investigation (*preiskava*), conducted by the investigating judge of the district court, and trial (*glavna obravnava*), conducted before mixed panels of professional judges and lay judges at district court level or a single professional judge of the local court. Proceedings falling under the jurisdiction of local courts (offences punishable by a fine or imprisonment of not more than three years) are summary proceedings (*skrajšani postopek*), which do not include the criminal investigation stage.

61. In summary proceedings before a local court, the criminal proceedings may start with a bill of indictment (*obtožni predlog*, CPA, section 430) submitted by the public or subsidiary prosecutor. Before lodging the bill of indictment, the public prosecutor or subsidiary prosecutor can request the judge to perform individual investigative measures (CPA, section 431). If such measures have been carried out, the court, further to the submission of the bill of indictment, may dismiss the latter as not allowed if it considers that there is no reasonable suspicion that the accused has committed the alleged criminal offence (CPA, section 437, read together with section 277).

62. For a more detailed presentation of the legislation concerning the criminal proceedings in Slovenia see *Matko v. Slovenia*, no. 43393/98, §§ 54-62, 2 November 2006.

E. Enforcement of penal sanctions

63. According to section 120 of the CPA, the judgment imposing imprisonment should be served on the accused in person as well as on his or her representative. However, if the convicted person is not found at his address, the server should leave a note informing him or her of a new date on which he or she is to be served with the mail. If the accused person is not found at his or her address on that date, the server shall serve the mail on, *inter alia*, an adult family member, who is required to accept that mail. The mail is thereby considered to have been effectively served on the addressee. (sections 118 and 119 of the CPA).

64. Once the judgment becomes enforceable, that is when no ordinary appeal lies against it (for example, a higher court judgment upholding the first-instance court's judgment) and has been effectively served (section 129 of the CPA), the convicted person is summoned to report to prison by the district court which has jurisdiction over the place of his or her residence

(section 25 of the Enforcement of Penal Sentences Act, *Zakon o izvrševanju kazenskih sankcij*, Official Gazette no. 22/2000, - “EPSA”).

65. It would appear to suffice that the summons to the persons which are represented by a lawyer be served on the latter (section 8 of the EPSA and section 88 of the General Administrative Procedure Act, *Zakon o splošnem upravnem postopku*, Official Gazette no. 80/1999).

66. If the request for an adjournment of the sentence, which in principle can be lodged with the president of the district court within three days of the receipt of the summons (see paragraph 64 above), is rejected, that decision can be challenged before the president of the higher court. If an appeal is dismissed, the convicted person must start serving his sentence the day after the service of the decision. If the convicted person is legally represented, the decisions concerning the request for adjournment shall be served on his or her representative only (sections 25 and 26 of the EPSA).

67. If the convicted person fails to report to prison despite being summoned, the court shall issue an arrest warrant against him or her after establishing that the summons has been served effectively or that the circumstances indicate that he or she has been evading the service of summons (section 20 of the EPSA).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained that the police had ill-treated him during the arrest and that they had failed to effectively investigate his allegations, in violation of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. *The parties’ submissions*

69. The Government pleaded non-exhaustion of domestic remedies. They referred essentially to three legal avenues, which in their opinion the applicant should have used before applying to the Court.

70. Firstly, the Government submitted that, unlike in *Matko v. Slovenia* (cited above), there was an effective investigation capable of leading to the identification and punishment of those responsible in the present case. The

public prosecutor dismissed the criminal complaint in a well-reasoned decision. Had the applicant been dissatisfied with that decision, he could have continued the prosecution as a subsidiary prosecutor, which represents a measure corrective of a possibly wrong decision of the public prosecutor. Bearing in mind that the Court's case-law does not require an investigation necessarily to lead to conviction, the subsidiary prosecution should be regarded as an effective remedy in respect of the applicant's complaint. In support of the latter argument, the Government submitted statistics which show that at least 405 criminal charges of various kinds were brought by subsidiary prosecutors in different periods between 2001 and 2006 in four major Slovenian local courts. Thirty-seven of these cases ended with a judgment, six of which were convictions. All the remaining cases are either still pending or were discontinued, almost half of them because the charges were dismissed as inadmissible at the pre-trial stage (*sklep o zavrženju obtožbe*). As regards the Šmarje pri Jelšah Local Court, there were twelve charges brought by subsidiary prosecutors between 2002 and 2006; none of them has ended in a judgment so far.

71. Secondly, the applicant could have lodged a claim with the Administrative Court. If that had been unsuccessful he could have appealed to the Supreme Court and ultimately lodged a constitutional appeal with the Constitutional Court.

72. Lastly, the Government argued that the applicant could have sought compensation for damages allegedly incurred in the incident by lodging a claim in contentious civil proceedings.

73. The applicant argued that if he had decided to continue the proceedings as a subsidiary prosecutor he would have had to lodge a bill of indictment with the Šmarje pri Jelšah Local Court – the same court that was involved in other sets of proceedings to which the applicant was a party, including the proceedings ending with the dismissal of his criminal complaint.

74. In addition, had the applicant taken over the proceedings as a subsidiary prosecutor, he would have needed information which was in the possession of the police. Besides, he would have had to take over the financial burden of the proceedings, including the costs of the defence if the charges were dismissed.

75. As regards the possibility of instituting proceedings in the Administrative Court, the applicant submitted that there was no decision against which the applicant could have lodged a claim in the Administrative Court. The latter is, in any event, not an effective remedy in Slovenia. In support of that argument, the applicant referred to two cases in which the parties unsuccessfully sought redress for unreasonable length of proceedings. Likewise, the applicant submitted that a constitutional appeal was an ineffective remedy.

2. *The Court's assessment*

76. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII). The obligation to exhaust domestic remedies requires an applicant to make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of remedying directly the impugned state of affairs (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

77. The Court further reiterates that in cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails on the part of the State a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V). The Court has held on many occasions that this requirement cannot be satisfied solely by instituting civil proceedings (see, among others, *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004).

78. In the instant case, the applicant's wife lodged a criminal complaint against the arresting officers. The criminal complaint triggered a preliminary investigation but was ultimately dismissed by the public prosecutor due to lack of evidence that the officers had committed the alleged criminal offence.

79. It is true, as the Government argued, that the applicant could have lodged a bill of indictment against the officers and attempted to pursue criminal proceedings against them as a subsidiary prosecutor. However, as the Court found in the *Matko* case, having been informed of the criminal complaint the public prosecutor was under a duty to ensure that the preliminary investigation was carried out, that the evidence was obtained and that, if evidence against alleged perpetrators was sufficient, criminal proceedings were pursued against them (*ibid.*, § 90). The Court therefore sees no reason to require the applicant to pursue the prosecution of the accused officers on his own by lodging a bill of indictment, this being a responsibility of the public prosecutor who is certainly better, if not exclusively, equipped in that respect. It therefore concludes that by lodging a criminal complaint the applicant afforded the State an opportunity to put matters right by an institution of an effective official investigation (*ibid.*, § 90, and *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001). The Court will assess on the merits of the case whether such investigation was in fact carried out.

80. In view of the above, the Court rejects the Government's objection based on the grounds that the applicant should have instituted criminal

proceedings as a subsidiary prosecutor. Nor does it accept the objection that the applicant should have lodged a claim with the Administrative Court (see also *Lukenda v. Slovenia*, no. 23032/02, §§ 47-53, ECHR 2005-X) or a civil claim for compensation. It notes in this respect that the Government submitted no convincing arguments as to the effectiveness of these remedies in respect of the applicant's complaint under Article 3.

81. The Court finds that there are no other reasons to reject this complaint as inadmissible and it must therefore be declared admissible.

B. Merits

1. The alleged ill-treatment by police

(a) The parties' submissions

82. The applicant alleged that he had been ill-treated by the police. The injuries sustained by the applicant could not have been caused by lawful use of force. The injury to the area around his eye could have only been sustained as a result of a direct blow to the face. The injuries both to the kidney area and the chest could not have occurred due to the applicant's fall to the ground.

83. The applicant submitted that police officer A.V. had been behind his arrest and had told the police officers to maltreat him. He argued that the arrest was meant to humiliate him.

84. The Government asserted that the applicant had resisted arrest. His allegations that one of the officers had initially hit him in the face, that the officer had then trodden on him and kicked him several times in the back and kidney area while he was handcuffed were not supported by medical evidence nor by his wife's testimony. The applicant's exact description before the domestic courts of what happened was also inconsistent with his statement made to the police.

85. The Government also submitted that the facts of the case showed that the applicant had done everything possible to avoid serving his sentence, including avoiding service of the decisions and summons and resisting arrest.

86. The Government argued that the police officers' description of the arrest was consistent. It was supported by the medical evidence, the report drawn up by the officer S.K. and the report of the prison authorities.

87. The Government further maintained that the treatment of the applicant did not reach a minimum level of severity required by Article 3; that the applicant had incurred only a minor injury which had been a result of the lawful use of force that was strictly necessary to overcome the applicant's resistance and to enable his arrest. They further submitted that

the use of force by the officers was not intended to humiliate or degrade the applicant and could therefore not be considered to constitute inhumane or degrading treatment.

(b) The Court's assessment

88. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 38).

89. Allegations of ill-treatment must be supported by appropriate evidence. 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 *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). The Court has held on many occasions that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see, among many other authorities, *Corsacov v. Moldova*, no. 18944/02, § 55, 4 April 2006). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87, and *Ribitsch*, cited above, § 34).

90. In the instant case, the ill-treatment complained of by the applicant consisted of being beaten up by the police officers, which resulted in certain minor injuries.

91. The parties have not disputed that the injuries shown by the medical reports were caused by the police officers' use of force against the applicant. However, it has been disputed whether the force used by the officers was made necessary by the applicant's own conduct or was a result of ill-treatment.

92. In this connection and irrespective of the issue of whether the applicant was hit in his face by the officers, which will be addressed later, the Court notes that the applicant, as well as his wife, has admitted that he resisted arrest. The Court cannot accept the applicant's argument that he was not shown an arrest warrant and that it was therefore understandable for him to resist arrest. It finds that the applicant, who appeared to be avoiding official notification of the judgments and summons (see paragraphs 9, 10, 14, 16 and 17 above), was or ought to have been aware of his obligation to serve the sentence, which had become enforceable as early as 10 February 2001 (see paragraphs 10 and 64, above). The fact that the

applicant nevertheless refused to be arrested therefore counts heavily against him.

93. As regards the degree of force used against the applicant, the Court notes that the medical report, whose credibility was not called into question, showed that the applicant had no injuries on his body except for a bruise around his right eye and a swollen right wrist.

94. It further notes that the police officers admitted that they had used certain techniques in order to overcome the applicant's resistance, such as the "osotogari" throw and the strangling (see paragraph 41 above). The Court is not convinced that the police used these techniques with the aim of humiliating him as the applicant alleged. Nor does it find them excessive in the circumstances.

95. As regards the applicant's allegations that he was hit in the face and subsequently kicked by the officer several times while lying handcuffed, the Court notes that the applicant's wife, who first reported the incident, and the applicant, who gave his statements to the authorities later in the proceedings, described the conduct of the officers differently (see paragraphs 22, 30, 37 and 44-49 above). In particular, the wife's testimony before the judge did not support the applicant's allegation that he had been hit in the face before he had started to run or kicked by the officers when lying handcuffed. Her statements (see paragraphs 47-49. above) were more in line with the Police and Government's description of the incident, which could be considered to explain the injuries the applicant sustained during the arrest.

96. Accordingly, having regard to all documents in its possession, the Court cannot reach a different conclusion than the one reached by the domestic authorities, and finds that the applicant has not been subject to treatment in breach of Article 3 of the Convention.

2. Alleged inadequacy of the investigation

(a) The parties' submissions

97. The applicant argued that the public prosecutor had rejected his complaint and disregarded the medical report. His criminal complaint was dealt with by the Celje Prosecutor's Office and police, the same authority which had maltreated him. They were biased and inactive in his case. Eyewitnesses to the incident, doctors and forensic experts were not examined. The investigation therefore did not produce any results and the applicant was not given an opportunity to be involved in it.

98. The Government disputed that argument. They submitted that the applicant had not been faced with inaction on the part of the authorities, quite the opposite, the investigation into his allegations had been prompt and effective. The officers and the applicant had been interviewed by the police. Subsequently, the accused officers, the applicant and his wife had

been examined by the judge. On the basis of all the evidence gathered in the investigation, which had been conducted promptly, including the medical reports, the public prosecutor had concluded that the force used by the officers had been justified and dismissed the criminal complaint by a reasoned decision.

(b) The Court's assessment

99. The Court reiterates 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 [its] 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. It must also be effective in the sense that it is capable of leading to a determination of whether the force used by the police was or was not justified in the circumstances (see *Matko*, cited above, §§ 84 and 85, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgements and Decisions* 1998-VIII, § 102).

100. In *Matko*, where the applicant was ill-treated during the arrest involving about fifteen police officers, the Court found a violation of Article 3 on the ground that the investigation into police ill-treatment had been ineffective. The Court noted in this respect that the investigation had been carried out solely by the police, that the public prosecutor had based her decision to dismiss the criminal complaint exclusively on the police reports, which lacked information as to the investigative measures taken, and that the officers involved in ill-treatment were not identified (cited above).

101. By contrast, in the present case, the public prosecutor requested, on receipt of the police report, that the applicant be interviewed by the Celje Police Unit. Subsequently, on the reasonable suspicion that a criminal offence had been committed against the applicant, the public prosecutor requested a court to hear the officers, whose identity had not been in question, the applicant and his wife. The latter were examined by a judge. The public prosecutor also obtained the medical report, whose trustworthiness has not been disputed by the applicant, and ultimately dismissed the criminal complaint by a well-reasoned decision. Against this background and having regard to the circumstances of the case, the Court finds that, although the examination of the neighbours would have perhaps reinforced the credibility of the investigation, the public prosecutor did take the necessary steps to find out what happened during the applicant's arrest.

102. As regards the applicant's argument concerning lack of impartiality of the public prosecutor, the Court notes that the public prosecutor is a body

independent of the police (paragraph 57 above) and that there is no evidence to suggest that he lacked the required independence in the present case. The impartiality of the investigation was further strengthened by the involvement of the judge in the hearing of the officers, the applicant and his wife.

103. Furthermore, the Court notes that in the instant case the applicant was heard on two occasions, once by the police and subsequently by the judge, was able to make his submissions to the public prosecutor and the court and was informed of the decision taken by the public prosecutor as well as of the possibility to continue the prosecution of the officers by lodging of a bill of indictment. It therefore finds that the applicant was involved in the proceedings to a sufficient degree (see, by contrast, *Sadık Önder v. Turkey*, no. 28520/95, § 44, 8 January 2004).

104. The Court finally notes that apart from general dissatisfaction with the outcome of the investigation, the applicant did not point to any concrete acts or omissions which would indicate a breach of the procedural obligation of Article 3 in this case.

105. In view of the foregoing, the Court finds that in the circumstances of this case the investigation into the applicant's allegations satisfied the requirements of Article 3 and that there has been no violation of that provision in its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

106. The applicant complained that his arrest had been unlawful. He alleged that he had not been properly served with the summons to report to the prison and had not been shown an arrest warrant at the time of his arrest. This complaint falls to be examined under 5 § 1 (a) of the Convention, which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

...”

107. The Government contested the applicant's argument.

108. The Court notes that the applicant was sentenced to three months' imprisonment by the judgment of the Šmarje pri Jelšah Local Court. With the judgment of the Celje Higher Court of 22 November 2000, upholding the first-instance ruling, and its service on the applicant's wife on 10 February 2001, the sentence became enforceable (see paragraph 64 above). Prior to the applicant's arrest on 14 June 2001 the court summoned

the applicant and as this was unsuccessful issued an arrest warrant against him (see paragraphs 14-19 above).

109. In so far as any issue arises separate from the complaint made under the procedural aspect of Article 3, the Court observes that the applicant was deprived of his liberty following his conviction by a competent court, within the meaning of Article 5 § 1 (a) of the Convention. The Court further notes that the applicant's sentence of imprisonment was lawful under Slovenian law and was imposed and executed in accordance with a procedure prescribed by law. It also finds in this connection that there is no indication of arbitrariness on the part of the authorities' conduct. In short, the applicant's deprivation of liberty did not contravene Article 5 § 1 of the Convention (*Engel and Others v. the Netherlands*, 8 June 1976, § 68, Series A no. 22, and *T. v. the United Kingdom* [GC], no. 24724/94, § 103, 16 December 1999). This part of the application is therefore manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

110. The applicant complained under Article 6 of the Convention that he had been deprived of the right to a fair trial in the criminal and civil proceedings, stating that the domestic courts had erred in their assessment of the evidence and had refused to examine further evidence in his favour. He also complained that the courts, as well as the public prosecutor, were biased. In his observations of 19 July 2007, the applicant also complained that the courts in the criminal proceedings did not respect the presumption of innocence and failed to exclude at the pre-trial stage the statements given to the police.

The relevant part of Article 6 reads as follow:

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

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

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

111. The Government did not comment on these complaints.

112. The Court notes that the criminal proceedings against the applicant ended with the Supreme Court's decision of 10 April 2002. The applicant could have lodged a constitutional appeal, in which he could have relied on all the alleged violations of the fair trial guarantees in the criminal proceedings. He failed to avail himself of this remedy, however, and the applicant's complaints under Article 6 relating to the criminal proceedings against him should thus be declared inadmissible for failure to exhaust domestic remedies and rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

113. As regards the complaint that the civil proceedings were unfair and that the civil court was biased, there is no indication in the case file as to whether these proceedings are still pending or have perhaps already terminated. In any event, this part of the application does not disclose any appearance of a violation of the Convention and should thus be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning Article 3 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention in its substantive limb;
3. *Holds* that there has been no violation of Article 3 of the Convention in its procedural limb.

Done in English, and notified in writing on 23 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President