

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

FIFTH SECTION

CASE OF MITEV v. BULGARIA

(Application no. 34197/15)

JUDGMENT

STRASBOURG

5 October 2017

This judgment is final but it may be subject to editorial revision.



In the case of Mitev v. Bulgaria,

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

Erik Møse, *President,*
Yonko Grozev,
Gabriele Kucsko-Stadlmayer, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 12 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 34197/15) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Stamen Georgiev Mitev ("the applicant"), on 8 July 2015.

2. The applicant was represented by Ms D.T. Pchelinska-Boycheva, a lawyer practising in Varna. The Bulgarian Government ("the Government") were represented by their Agent, Ms K. Radkova, of the Ministry of Justice.

3. The applicant alleged that he had been ill-treated by the police at the time of his arrest and that the authorities had not conducted an effective investigation into his complaints about the matter.

4. On 15 January 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Staro Oryahovo.

A. The incident

6. The applicant was driving his car along a road in the region of Varna on the evening of 10 March 2014. As established subsequently by the prosecution and the domestic courts in criminal proceedings opened into the incident that took place that evening, his car was weaving in an unsteady manner and he was spotted by patrolling police officers parked on the side of the road. They signalled for him to pull over, but instead of complying he

sped away. According to the applicant's own statements given in the context of those proceedings, he was afraid that the police would charge him or take his licence away as he had consumed alcohol earlier that evening. The prosecution and the courts established that the officers chased after him in their car, using flashing police lights and their siren. He only stopped when his car reached a field and could not go further. The police car stopped too.

7. The parties have presented differing accounts of the circumstances in which the applicant was arrested.

8. According to the applicant, one of the officers kicked him in the left leg and then pushed him violently to the ground as he was trying to get out of his vehicle. The applicant fell on his back and then three officers continued to kick him. The assault lasted a few minutes, after which they handcuffed him. One of the officers hit him on the head with a rubber truncheon before they drove him to the police station.

9. According to the police officers, the applicant had jumped out of his car after it had come to a halt and had started running through the field in an attempt to escape. The officers had run after him, the applicant had slipped and fallen and the police had caught up with him. As he had resisted arrest, wriggling and struggling, they had used force which had consisted in twisting his arms in order to handcuff him. Once they had managed to handcuff him, the officers had driven him to the police station.

10. According to written statements made during the criminal proceedings by several police officers present at the police station when the applicant was taken there, he told everyone present at the time that his clothes were muddy because he had tripped and fallen, which was also why he had a limp. As stated by the officers and by the applicant himself in the course of those proceedings, he made no complaints at that point in time. According to police records of the evening when the applicant was arrested, he refused to take an alcohol test or to sign the arrest report and was given a fine for refusing the alcohol test. As it emerges from the officers' statements, they discovered that he had no identity documents on him and called his brother, who brought them to the police station accompanied by a friend. The records indicate that the officers released the applicant immediately after checking his papers.

11. According to a written statement made on 11 March 2014 by the applicant's brother to the police in the context of an official follow-up conducted into the events, on leaving the station, he asked him what had happened but the applicant stated that he did not wish to speak about it and preferred to be left alone in his home. Instead, his brother drove him to the local medical centre as he had noticed that the applicant was having difficulties breathing. On examination, a doctor noted a suspected broken left ankle and told the applicant to go to hospital. No ambulance was provided and the applicant's brother drove him there. It follows from

medical documents that the doctors operated on him immediately as they had established that he had a broken rib which had pierced one of his lungs.

12. The applicant's hospital record, signed by the doctor who had treated him and the head of the unit, stated that the applicant had been in hospital between 11 and 14 March 2014 and that he had a broken rib and a broken ankle. Upon his discharge on 14 March 2014, a different doctor examined the applicant and issued him with a medical certificate which recorded that he had a broken rib, a bruise of about 8 mm on his right eyebrow, and a fracture of the fibula close to the ankle that was in a cast. It also contained the phrase that it was not excluded that the injuries had been sustained in the manner suggested by the applicant, namely as a result of being hit or kicked. The certificate stated that no other traumatic injuries were present.

B. Official follow-up to the incident

13. On 11 March 2014 the police officer in charge of radio communications between patrolling officers and who was on duty on the night of the incident produced a written report to provide information for his superior and to receive whatever orders were deemed necessary. As well as repeating the account of the two arresting officers, he stated that he personally had seen the applicant at the station and that the applicant had told him that he had fallen while running and that his back was hurting. The officer had offered to call in medical staff from the local medical centre to check the applicant on the spot, but he had refused, saying that he did not need a doctor and wished to be released instead.

14. A different police officer was sent to the local medical centre. In a written report he drew up on 11 March 2014 on his visit, he confirmed the existence of a record there that the applicant had visited it the previous evening and had been checked by a doctor who had directed him to the hospital for treatment of a suspected fractured ankle. Another officer visited the hospital the same day. In a written report he listed his findings, namely that the applicant had been admitted and treated for a broken rib and broken leg the previous night. The report indicated that in a conversation with the applicant conducted during that visit, the latter had told the officer that he could not remember the events in detail, but that he was certain that after the car chase two police officers had beaten and then handcuffed him before taking him to the police station. The applicant also gave a handwritten statement to an officer that day. In it he referred to the car chase, stated that he had wanted to escape as he had felt drunk, that when he had got out of his car the policemen had grabbed him, that one of them had pulled him to the ground and that the other one had handcuffed him. He concluded by saying that the injuries had most likely been caused during his arrest, given that immediately beforehand he had only been driving his car and did not remember breaking his leg and rib when he had brought the car to a stop.

15. On the same day the applicant's brother also gave a written statement to the police (see paragraph 11 above).

16. The two police officers involved in the car chase and the arrest also gave written statements on 11 March 2014. In addition to the description above (see paragraph 9), the officers stated that once the applicant had been handcuffed and put inside the police car, he had leaned on one of them and moaned. When asked if he had a problem and wished to be taken to a medical centre, he had refused and said, "It's nothing". At the police station the applicant had refused to be tested for alcohol or to sign the arrest report.

C. Criminal proceedings concerning the incident

17. On 13 March 2014 the Varna District Prosecutor, acting on his own initiative, opened criminal proceedings in relation to the conduct of the two officers who had arrested the applicant. The order for the opening of those proceedings indicated that it was "against the guilty official from the Ministry of the Interior who, acting in the context of his professional functions, had caused bodily harm to the applicant on 10 March 2014 in Varna". A number of investigative steps were carried out. The investigating authorities questioned several police officers as witnesses, including the two involved in the applicant's arrest and those who had been at the police station on the night of the incident. The latter all stated that they had seen the applicant at the police station on the night in question. He had been calm, had smelt of alcohol and been visibly intoxicated, his clothes had been muddy and he had limped. The applicant, his brother and the friend of the brother who had accompanied him to collect the applicant from the police station, were also interviewed. The brother and his friend stated that the applicant had not told them anything about the circumstances of his arrest and that the brother had learned that the applicant had been beaten by the police from the doctors at the hospital.

18. A forensic medical expert was appointed on 30 May 2014 to establish the nature of the injuries sustained by the applicant and the type of instrument used. The expert was given a list of specific questions that needed to be answered. The forensic medical report, containing a comprehensive and independent assessment, concluded that the three injuries recorded in the medical certificates drawn up in the immediate aftermath of the events (see paragraph 12 above) were incompatible with the applicant's allegations that the officers had hit him all over his body for a few minutes. In particular, being kicked by someone wearing boots or being hit for several minutes would have left the applicant with many more traces on different parts of his body, not just the three strictly localised injuries mentioned above. The report further indicated that the injuries could have been received as a result of falling over while moving in accelerated fashion, for example by running and falling.

19. In a decree of 31 October 2014 for terminating the criminal proceedings, the prosecution established that the version of events given by the applicant at different stages of his questioning were not consistent. In particular, he had stated initially that he had sprained his ankle after tripping and falling, but had later changed his story and said that the injury had been the result of an intentional and prolonged beating by police officers. Furthermore, when questioned on 27 March 2014, the applicant had stated that the police officers had started hitting and kicking him after he had left his car voluntarily. When interviewed again on 28 May 2014, he had asserted that the officers had brutally pulled him out of the car and had thereafter only kicked him rather than hit him. He had tried to use his arms to protect his head from the kicks. He had stated that he could not remember or recognise the police officers who had beaten him, whether in a personal confrontation or from pictures. He had also complained that three officers had beaten him, while it had been unequivocally established that there had only been two patrolling officers. In addition, when on 6 October 2014 the investigator had handed the investigation file over to the applicant, he had signed the related acknowledgement, indicating that he did not wish to acquaint himself with the evidence, read the documents in the file, which was voluminous, and that he had no requests, comments or objections to the investigation.

20. The prosecutor concluded in the decree for termination of the proceedings that the applicant's complaints were not supported by the evidence. The force used by the officers had been necessary for neutralising and detaining him in the circumstances, given that he had effectively been running away from the police and actively disobeying their orders to stop. The force had involved one officer holding the applicant on the ground, using one knee to press on his body, while the second officer had helped by handcuffing him. There was no evidence pointing to the officers having used violence or undue force when apprehending the applicant. The applicant challenged the prosecutor's decision in court.

21. The prosecutor's decision to terminate the proceedings was confirmed at two levels of jurisdiction. In particular, the first-instance court, the Varna District Court, observed in its decision of 24 November 2014 that two officers had arrested the applicant after a long car chase, when he had tried to escape despite clear orders to the contrary. The officers had worn police uniforms that had been clearly visible and identifiable and had been driving a police car with flashing police lights and a siren while chasing the applicant. He had not only refused to stop but had actively avoided being caught. As to the differing versions of the events thereafter, the court found that the applicant's submissions were inconsistent and not supported by the evidence. As a consequence, the court gave no weight to his testimony, finding that it was incompatible with the rest of the evidence.

22. The second-instance court, the Varna Regional Court, upheld those findings in a final decision on 9 January 2015.

II. RELEVANT DOMESTIC LAW

A. Use of force for restraint by police officers

23. Section 72 of the Ministry of Internal Affairs Act 2006 ("the 2006 Act"), in force at the time of the events, provided that, in the exercise of their duties, the police could use force and special auxiliary methods of restraint "only where absolutely necessary". Such instances included, *inter alia*, resistance or refusal to obey a lawful order, the arrest of an offender who had disobeyed or resisted a police officer, and attacks against citizens and police officers. Pursuant to section 73(5) of the 2006 Act, the use of force had to be discontinued as soon as it had attained its objective.

24. Article 12a of the Criminal Code provides that causing harm to a person while arresting them for an offence is not punishable where no other means of effecting the arrest exists and the force used is necessary and lawful. The force used will not be considered "necessary" where it is manifestly disproportionate to the nature of the offence committed by the person to be arrested or is in itself excessive and unnecessary.

B. Institution of criminal proceedings

25. According to Article 207 of the Code of Criminal Procedure 2006 ("the 2006 Code"), criminal proceedings (*досъдебно производство*) are instituted where there is a legitimate reason and sufficient information that a crime has been committed. Criminal proceedings for publicly prosecutable offences may be instituted only by a decision of a prosecutor (Article 212 of the 2006 Code). Written orders from a more senior prosecutor are mandatory for lower-ranking prosecutors (section 143(3) of the Judiciary System Act 2007).

C. Prosecution for ill-treatment of individuals

26. Under Articles 128, 129 and 130 of the Criminal Code, causing minor, moderate or severe bodily harm to another person is a criminal offence. Article 131 § 1 (2) provides that if the injury is caused by a police officer in the course of, or in connection with, the performance of his or her duties, the offence counts as being aggravated. Such an offence is publicly prosecutable.

THE LAW

ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

27. The applicant complained that he had been ill-treated by the police during his arrest, that the authorities had not conducted an effective investigation into the incident, and that he had not had an effective remedy in that regard. He relied on Articles 3 and 13 which read respectively as follows:

Article 3

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

Article 13

"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."

28. The Government contested those arguments.

A. Admissibility

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

30. The applicant stated that the police officers had beaten him while apprehending him. They had used excessive physical force against him, which had not been investigated effectively, in breach of the above provision of the Convention.

31. The Government stated that the police officers had applied limited, reasonable and proportionate force for a short length of time, which had been necessary to effect the applicant's arrest. No excessive force had been used against him and no beating had taken place. A timely and thorough official investigation had been conducted immediately after the events and the prosecution's conclusions had been confirmed at two levels of jurisdiction.

2. The Court's assessment

32. The Court has consistently pointed out in its case-law that, in respect of a person who is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, § 101, 28 September 2015). That said, the use of force in the context of an arrest, even if it causes injury, does not necessarily entail a breach of Article 3, particularly in circumstances resulting from the applicant's own conduct (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, §§ 64–65, 20 June 2002).

33. The general principles in respect of the subsidiary nature of the Court's role, including in the context of Article 3 complaints, and in respect of the assessment of evidence, have been set out in the case of *Gäfgen v. Germany* ([GC], no. 22978/05, §§ 92–93, ECHR 2010).

34. As to the general principles in respect of effective investigations, the Court has set them out, among many others, in the cases of *Assenov and Others v. Bulgaria* (no. 24760/94, § 102, ECHR 1998-VIII) and *Labita v. Italy* ([GC], no. 26772/95, § 131, ECHR 2000-IV).

35. In the instant case, the alleged ill-treatment consisted of the applicant being beaten over several minutes by police officers during his arrest on 10 March 2014, which resulted in several injuries (see paragraph 8 above). The parties do not contest the fact that the arrest took place, or that the injuries were sustained in that context. The Court considers that the injuries in question were sufficiently serious to reach the threshold required under Article 3 (see, *mutatis mutandis*, *Assenov and Others*, cited above, § 95). It remains to be established whether the State should be held responsible under that Convention provision in respect of those injuries.

36. The Court next notes that the applicant was arrested following a car chase, which unexpectedly drew in two officers who were on patrol on the road, as a result of his refusal to stop his car and accelerating away instead. While the two officers outnumbered the applicant, it must be taken into account that he had actively tried to escape them for a prolonged period of time and that, in the circumstances, the officers did not and could not know why he was running away or whether he was armed or dangerous (see, *mutatis mutandis*, *Berliński*, cited above, § 62, and contrast with *Rehbock v. Slovenia*, no. 29462/95, § 72, 28 November 2000, ECHR 2000-XII). The officers only managed to catch up with the applicant and handcuff him because he fell to the ground, not because he willingly submitted to their order to stop.

37. As regards the impugned injuries, the Court observes that there is no dispute over the fact that the police officers used force to arrest the applicant. However, the parties dispute the manner in which the injuries were sustained.

38. The Court notes that the applicant's allegation that he was beaten was not confirmed by the domestic investigation by the prosecution or in the subsequent judicial review, which took place at two levels of jurisdiction (see §§ 17–22 above). Of particular importance, in the Court's view, is that the forensic medical report excluded the possibility that the applicant had sustained his injuries in the manner described by him. They were strictly localised and few in number, which was incompatible with being hit or kicked in an indiscriminate matter over several minutes, as he had submitted (see paragraph 18 above). At the same time, the report concluded that it was possible that the injuries had been sustained after a fall while moving at an accelerated pace, which corresponded to the officers' submissions during the investigation. Seeing that no cogent evidence has been provided to lead the Court to depart from the domestic authorities' findings, the Court accepts the version of the events as established by the investigating authorities and confirmed by the domestic courts. In light of the above, it considers that recourse to some physical force had been made necessary by the applicant's own conduct and that the actual force used by the police could not be considered to have been disproportionate to that conduct. While the applicant undoubtedly suffered as a result of his arrest, the injuries and his associated suffering did not result from the use of excessive force against him. Accordingly, there has been no violation of Article 3 of the Convention with regard to the alleged ill-treatment by the police on 10 March 2014.

39. As to the alleged failure of the authorities to comply with their procedural obligation to effectively investigate, the Court observes that in the present case an official follow-up was conducted immediately after the events and an independent investigation was opened into the incident three days later (see paragraphs 13–17 above). Numerous witnesses were questioned, including the two police officers who had allegedly beaten the applicant, as well as the applicant himself, his brother and his brother's friend. A forensic expert examined the medical documents and the statements collected from all the individuals questioned and came to a conclusion which excluded the possibility that the applicant had sustained his injuries in the manner alleged. This fact, coupled with the inconsistencies observed in the applicant's own submissions, led the prosecution to terminate the investigation.

40. Furthermore, the applicant had the opportunity to challenge the prosecutor's findings before courts at two levels of jurisdiction. The fact that he was unsuccessful cannot be considered pertinent (see, similarly, *Józef Woś v. Poland*, no. 6058/10, § 54, 28 June 2016). It is noteworthy that no obvious omission to collect relevant evidence could be attributed to the authorities, in contrast with a number of cases where the Court found a violation of Article 3 on the grounds that the authorities had made a series of crucial omissions during investigations into applicants' complaints of

ill-treatment by police officers (see, among many others, *Anguelova v. Bulgaria*, no. 38361/97, § 142, ECHR 2002-IV; *Biser Kostov v. Bulgaria*, no. 32662/06, § 80 and §§ 83–84, 10 January 2012; *Nikolay Dimitrov v. Bulgaria*, no. 72663/01, §§ 77–78, 27 September 2007). Finally, no evidence was allowed to deteriorate in the process and, together with the judicial review at two instances, the investigation was completed within ten months (see, by contrast, *Labita*, cited above, § 133, where the only action taken for fourteen months was the taking of photographs of the alleged perpetrators).

41. Against that background, the Court concludes that the authorities carried out an effective investigation into the applicant's allegations of ill-treatment. Accordingly, there has been no breach of Article 3 of the Convention in its procedural limb.

42. Finally, as regards the applicant's submission that he did not have an effective domestic remedy in connection with his Article 3 complaints, in breach of Article 13, the Court reiterates its findings above. In particular, an investigation into the applicant's grievances of ill-treatment during his arrest was carried out and he was able to challenge its termination before two courts, which he did effectively. Consequently, it finds that there has been no violation of Article 13 in conjunction with Article 3 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 3 of the Convention, either in its material or in its procedural limb;

3. *Holds* that there has been no violation of Article 13 in conjunction with Article 3 of the Convention.

Done in English, and notified in writing on 5 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	Erik Møse
Acting Deputy Registrar	President