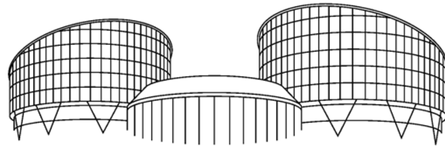

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANDONOVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 24312/10)

JUDGMENT

STRASBOURG

23 July 2015

FINAL

23/10/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

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

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

Isabelle Berro, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Ksenija Turković, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 24312/10) 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 Vladimir Andonovski (“the applicant”), on 20 April 2010.

2. The applicant was represented by Mr J. Naumov, a lawyer practising in Skopje. The Macedonian Government (“the Government”) were represented by their Agent, Mr K. Bogdanov.

3. The applicant alleged, in particular, that he had been ill-treated by police and that the investigation into his allegations of police brutality had not been effective. He complained under Articles 3 and 13 of the Convention.

4. On 10 April 2013 these complaints were communicated to the Government. It was also decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1948 and lives in Kumanovo. He was a surgeon at Kumanovo Hospital.

A. Incident of 17 September 2004

6. On 17 September 2004 the applicant parked his car in a street in Kumanovo. After he returned, he found a notice of illegal parking under the windscreen wiper. He started his car and went looking for a police officer in order to discuss the issue regarding the ticket (the applicant alleged that there had been no sign there that parking was illegal). When he saw a police car he started following it until it stopped. Two police officers, M.A. and P.J., were inside the car. P.J. was a neighbour with whom the applicant was not on good terms. The parties presented rather conflicting versions of events as to what happened on that occasion. The Government's account was based on the version of events which had been "correctly and fully established" by the national courts in the criminal proceedings against the applicant (see paragraphs 19-38 below).

B. The applicant's version of events set out in the application form

7. While following the police car, the applicant signaled to it by flashing his lights. He did not sound the car horn. When he approached the police car, he addressed M.A. However, the two police officers started insulting him. P.J. said "I've been looking forward to this ..." P.J. opened the front passenger's door "hard" and hit the applicant on the legs. Both officers left the car, grabbed the applicant by the shoulders and neck, and started punching him on the back. P.J. kicked and punched him all over the body. He was also hit on the back of the head. As a result, he slumped forward, which allowed P.J. to knee the applicant in the back, causing a fracture of two spinal vertebrae. M.A. also kicked him in the lower part of the back. He was then handcuffed, and while he was putting him into the police car P.J. kneed him in the lower back. During the incident, the applicant asked the officers to stop beating him, because he was in poor health: notably he had a weak heart and had had heart surgery. The incident was witnessed by many people. The applicant was then taken to Kumanovo police station, where the beating continued until he lost consciousness.

8. After an hour, an emergency ambulance was called, which took the applicant to Kumanovo Hospital. He was then transported to Skopje Clinic and subsequently to Skopje City Hospital, where he remained until 28 September 2004.

C. Relevant medical evidence submitted in the file

9. On 17 September 2004 Dr Z.T. from the Kumanovo Hospital examined the applicant and issued a medical report, which stated that the applicant had the following injuries: head contusion, concussion, bruises on the chest and back, and bruises on both arms. The medical report also noted

that the applicant was in post-heart-attack condition, and that he had had heart surgery.

10. On the same day, an investigating judge of the Kumanovo Court of First Instance ("the trial court") agreed to a request from the Ministry of the Interior ("the Ministry") and ordered an external examination of the applicant's body (телесен преглед). The order was issued in the context of criminal proceedings instituted against the applicant. The examination was carried out by the Forensic Institute (Институт за Судска Медицина). It took place on 18 September 2004, while the applicant was in Skopje City Hospital. As indicated in the medical report, the applicant stated that he had signaled by flashing his lights and had sounded the car horn to attract the police car's attention so that it would stop; also that the police officers had beaten him up during his arrest and while they were taking him out of the police car to take him into the police station. The applicant further stated that he had been taken to the cardiology unit at Skopje Clinic and then, in a wheelchair (because he had numbness in his legs), to the emergency unit, where an X-ray examination was carried out on his chest, head and spinal column. He was then discharged from Skopje Clinic. Not satisfied, he went to Skopje City Hospital where, on admission, he complained of headache, other pain and nausea. During the examination by experts of the Forensic Institute, the applicant complained of pain in the back, head and chest. The report noted contusions on the applicant's head, nose, chest, back, hip and both arms and legs.

11. According to a discharge notice issued by Skopje City Hospital, the applicant was hospitalised between 17 and 28 September 2004. It indicated that the applicant had sustained, inter alia, the following injuries: a compressive fracture of two vertebrae on the lower part of the spinal column as shown by the X-ray examination, concussion, head trauma and contusions on his back, right shoulder and wrist. According to the notice, the applicant had been examined in three hospitals, which had all established the same diagnosis and recommended that he be examined in that hospital. He was advised to remain in bed for four to six weeks. It was also indicated that the applicant was unfit to work.

12. On 8 February 2005 Dr Z.T. (see paragraph 9 above) issued, on the basis of available documentary medical evidence, a medical certificate indicating, inter alia, the following injuries: concussion; head trauma; fracture of two vertebrae; and contusions on the back, chest, and right wrist. In conclusion, the certificate stated:

> "I think this is a serious bodily injury under the Criminal Code, with permanent reduction of the activities of daily living, as well as consequences of a permanent nature, which would certainly affect the victim's capacity to work ..."

13. On 10 July 2006 the Forensic Institute submitted to the trial court another expert report that the investigating judge had requested in relation to the applicant's criminal complaint lodged against P.J. and M.A. (see

paragraphs 39-68 below). The Forensic Institute was required to give an opinion about the applicant's injuries and the way in which they had been inflicted. The opinion was based on extensive medical documentary evidence from the medical examinations that the applicant had undergone between 17 September 2004 (in Kumanovo Hospital, the cardiology and emergency units of Skopje Clinic, and Skopje City Hospital) and 12 October 2005. The Forensic Institute concluded that:

> "... on the basis of the medical evidence and the examination we carried out [the external examination of 18 September 2004, see above], [the applicant] sustained the following injuries in the fight with the two accused which took place on 17 September 2004: concussion, head trauma, bruises (and/ or lesions) on the nose; chest; hip; right shoulder, forearm and hand; left forearm, elbow and hand; right thigh and lower leg; left lower leg and fracture of the first vertebrae on the lumbar vertebral column ...
>
> As a result of the injuries he had sustained (the applicant) was hospitalised between 17 and 28 September 2004. During this time he received conservative treatment.
>
> The injuries that [the applicant] sustained ... to the head, body and extremities have been caused as a result of multiple dynamic impacts from a blunt object in the areas mentioned above, and these injuries represent, from the legal point of view, a bodily injury ... it can be concluded that the injuries sustained by (the applicant), notably concussion, vertebral fracture, contusions and bruises to the head, body and limbs, taken in view of their overall impact on the body of the victim, qualify as serious bodily injury that had a considerable, but not permanent, negative effect on vital parts of the body."

14. On 8 October 2008 a private health institute, M., confirmed certain degenerative changes in the applicant's spinal column, which were due to two vertebrae having been fractured.

D. Relevant documents issued by the Ministry of the Interior regarding the use of force against the applicant

15. On 19 September 2004 P.J. and M.A. submitted to the Ministry reports concerning the force used against the applicant. M.A. stated, *inter alia,*:

> "... we were provoked by (the applicant), who used offensive language and kicked the police car ... he spat at us and used offensive language. We asked him to identify himself, but he continued to insult us. We tried to put handcuffs on him, but he resisted actively. He grabbed the fingers of my left hand and bit me. My colleague pushed him away and we handcuffed him."

16. As regards the force used against the applicant, M.A. noted that "both arms were twisted and the applicant's leg was kicked."

17. P.J. stated, *inter alia,* the following: "both arms were twisted so that handcuffs could be put on, and when the colleague was bitten, (the applicant) was punched in the head".

18. On an unspecified date, the applicant informed the Department for Control and Professional Standards within the Ministry of the Interior

(DCPS) about the incident, and complained that he had been subjected to acts of police brutality. In a reply dated 17 December 2004, the DCPS informed the applicant that he had been reported as having assaulted a police officer on duty. P.J. and M.A., as well as S.H. and V.V., who had been eyewitnesses to the incident of 17 September 2004, were also interviewed. On the basis of evidence obtained from them, the DCPS established that the applicant had used offensive language against P.J. and M.A., had resisted arrest, and had bitten M.A. on the right thumb. As regards the force used against him, the report noted that this had concerned the twisting of his arms and the use of handcuffs, which, as determined by a superior in the Ministry, had been necessary and justified. Accordingly, the DCPS concluded that the police officers concerned had acted in accordance with the law and the rules of the Ministry.

E. Criminal proceedings against the applicant

19. On 18 September 2004 the Ministry lodged a criminal complaint with the Kumanovo public prosecutor, accusing the applicant of assaulting police officers in the course of their duties during the incident of 17 September 2004. The Ministry alleged that the applicant, after receiving a parking ticket, had started following the police car, sounding his horn and flashing his lights. After the police car had stopped, he had approached it and started insulting the police officers and kicking the car. The applicant did not comply with the orders of the police officers to calm down, and actively resisted when they tried to arrest him. The applicant also bit M.A. on the right thumb, which was a serious bodily injury. In respect of the thumb injury a medical report of 17 September 2004, signed by Dr M.D., was attached to the criminal complaint.

20. The complaint further stated that the applicant had been examined in Kumanovo police station by Dr Z.L., who had recommended he be sent to Kumanovo Hospital. It was further stated that the medical report of the Forensic Institute that the investigating judge had ordered on 17 September 2004 (see paragraph 10 above), medical reports issued by the cardiology and emergency units of Skopje Clinic, Skopje City Hospital, and medical reports attesting to the injury sustained by M.A., would all be submitted later. The Ministry further asked the court to hear oral evidence from S.H. and V.V.

21. Between 21 and 28 September 2004 the investigating judge heard oral evidence from the applicant, P.J, M.A., S.H., V.V., and Dr Z.T.

22. S.H. stated, *inter alia,* that:

> "I know (the applicant), [at the relevant time] he was very upset and he was shouting in a loud voice ... I didn't hear him use offensive language. The police (officers) left the car and asked (the applicant) to identify himself, but he did not produce any documents. The police officers tried to handcuff him, but he resisted ... I didn't see the

applicant bite the police officer. The police did not use force ... police officers managed to put handcuffs on the applicant, two pairs, they placed him on the rear seat and left. No force was used either by (the applicant) against the police or by the police against (the applicant). He was only resisting ... I emphasise that when I arrived, the door of the police car had been opened ... (the applicant) was not hitting the police car. Because there were a lot of people, I couldn't see, and don't know whether the applicant bit the police officer."

23. V.V. stated, *inter alia*:

"... because the police officers were inside the car, (the applicant) started shouting and hitting the car. The police officers left the car and asked him to identify himself. He said that he was not in possession of an ID, and then the police tried to handcuff him. He started shouting 'People, help me, look what the police are doing, I have heart problems'. They did not let him go, they managed to handcuff him with two pairs of handcuffs. They put him in the car and brought him to the police station ... there was no hitting on either side, just (the applicant) was shouting ... I didn't see, and I was standing close by, the applicant bite the police officer."

24. P.J. stated, *inter alia*:

"... (the applicant) was following us in his car ... he was sounding the car horn continuously and we stopped ... he was banging on the window and kicking the car ... when I opened the door, he spat at me and used offensive language ... M.A. got out of the car and asked him to identify himself. He continued shouting. Then I got out of the car. My colleague grabbed his left arm and twisted it behind his back ... then (the applicant) bit my colleague's finger ... I grabbed (the applicant) and pulled him towards me ... he continued to kick my colleague; he kicked me as well ... I hit him with my lower arm, but not hard. We managed to handcuff him, he was resisting all the time ... when we placed him on the rear seat of the car, he was kicking, jumping, and moving from one side of the car to the other, because his hands were handcuffed behind his back. He constantly used offensive language, he was very arrogant, aggressive ..."

25. M.A. stated, *inter alia*:

"... (the applicant) bit me on the left index finger (*показалец*) ... P.J. punched him on the right shoulder and the back of his head, hard, so that there was no need for me to hit him ... then (after they had handcuffed him) I hit him on the left knee and we put him in the car ...(the applicant) was alone on the back seat and he was swaying from one side to another saying that he was ill, that he had had three heart bypasses ... (the applicant) used offensive language against P.J. ... when I left the car, he kicked me on the thigh ..."

26. The applicant stated, *inter alia*:

"... I note that while driving (following the police car) I flashed my lights to get (the police car) to stop, and I sounded the car horn ... P.J. opened the door, which hit me on the knees, and when both [P.J. and M.A.] got out of the car they started hitting me on the neck and shoulder ... I was hit in the chest ... they kicked me all over my body, when they handcuffed me and wanted to push me on to the back seat of the car, one of the police officers said that he had hurt his finger - it seems that he caught his finger in the handcuffs when they tried to put them on me. I didn't bite him, and a bite cannot provoke a fracture. ... while I was inside the car, they hit me on the legs. When we got to the police station, they literally dragged me ... and started punching me on the back

and kicking me ... they put me in a room with my hands tied and they hit me. In that room, I was hit very hard, as a result of which I fell down and lost consciousness ...”

27. Dr Z.T. stated that the available medical evidence indicated that M.A. had a bite wound and a fracture of his left thumb. He further stated:

> “It is possible that the bite did not cause the fracture, because the typical cause of that type of fracture is a fall on to the finger or a blow.”

28. On the basis of the available evidence, the investigating judge opened an investigation regarding the applicant, but refused to remand him in custody, finding that the applicant could not interfere with the investigation. He noted that the applicant was in poor health, notably that he had had heart surgery, and that two doctors had indicated that the applicant had sustained concussion and a fracture of the spinal column.

29. On 9 November 2004 the public prosecutor indicted the applicant for assault on a police officer in the course of his duties. On 15 December 2004 the applicant objected to the act of indictment, denying that he had assaulted the police officers, hit the police car or used offensive language towards them. He stated that he had been severely beaten in the incident for no reason, and that he had sustained bodily injuries which were confirmed by medical evidence.

30. On 15 November 2004 the public prosecutor requested information from the DCPS as to whether there had been any internal inquiry regarding the use of force against the applicant.

31. On 14 January 2005 the DCPS replied that the force used against the applicant during the incident of 17 September 2004 consisted of twisting his arms behind his back and using handcuffs to subdue him. It also forwarded a copy of the report in which the use of force had been regarded as justified by a superior within the Ministry. Copies of written statements by S.H. and V.V., made to the police on 17 September 2004, were also attached.

32. At a hearing held on 1 June 2005 before the trial court, the applicant stated, *inter alia*:

> “... when the police officers handcuffed me, I did not resist ... after they took me into the police station ... P.J. punched me on the back of the head, which had also been done in front of the police station. I was also hit in the eye ... when I approached the police car at the critical moment I noticed that P.J. was sitting in the driving seat. When he opened the window I addressed the other police officer ... [when the trial judge brought the applicant’s attention to his statement given before the investigating judge as to which police officer he had addressed on that occasion, the applicant stated] what I’m saying today is true. The investigating judge probably did not understand what I had said and my health was poor and I was in a difficult psychological state ... During the incident, I neither saw that M.A. was injured nor did I hear him say that he had been injured. I did not take any physical action against him, nor did I assault him.”

33. On that occasion M.A. confirmed that he had been bitten on the left thumb, as he had stated before the investigating judge (see paragraph 24 above). He did not know why the record of his questioning before the

investigating judge indicated differently. The applicant objected to M.A.'s statement.

34. During a hearing on 19 October 2005, the trial court rejected the applicant's request for oral evidence to be taken from Dr M.D. (see paragraph 18 above) as to whether M.A. had sustained an injury to the left or the right hand. The trial court found that an examination of Dr M.D. would not contribute to the establishment of the truth, given that both the hospital records and the medical certificate recorded an identical diagnosis.

35. Following the hearing of 19 October 2005, the trial court found the applicant guilty of assaulting a police officer in the course of his duties, and sentenced him to five months' imprisonment, suspended for two years. The court established that the applicant had used offensive language against P.J. and M.A. during the incident of 17 September 2004, and had kicked the police car. When P.J. had opened the door of the car, the applicant had spat at him. M.A. had asked the applicant to produce an identity card, which the latter had refused to do. Then M.A. had twisted the applicant's arm to get him into the car. The applicant had bitten M.A. on the left thumb. P.J. had punched the applicant on the right shoulder and the back of the head, which had caused the applicant to release the thumb. The applicant had then been handcuffed with two pairs of handcuffs. The court also established that the applicant had continued to resist in the police car during his transfer to the police station, by kicking the interior of the car.

36. The applicant appealed, arguing that the evidence regarding the alleged injury sustained by M.A. was inconsistent; that the medical evidence attesting to the alleged thumb injury had been issued in respect of another person with a similar name to M.A., and that the expert evidence regarding M.A.'s alleged injury had been produced on the basis of photographs of the victim's thumb, without M.A. being examined in person. Lastly, the applicant complained that the trial court had disregarded the medical evidence supporting the injuries that he had sustained in the incident.

37. On 24 March 2006 the Skopje Court of Appeal upheld the trial court's judgment and confirmed the applicant's conviction, finding no grounds to depart from the established facts and reasoning given by the trial court.

38. By decisions of 16 March and 5 May 2009 respectively, the trial court and the Skopje Court of Appeal dismissed the applicant's request for reopening of the proceedings.

F. Criminal proceedings against P.J. and M.A.

39. On 3 February 2005 the applicant lodged a criminal complaint with the State Prosecutor, charging P.J. and M.A. with several offences: physical assault, serious bodily harm, abuse of office, false testimony, and degrading

treatment. On 8 February 2005 the complaint was transmitted to the Kumanovo prosecutor's office for consideration.

40. On 16 February 2005 the applicant lodged a criminal complaint seeking an indictment of P.J. and M.A. by the Kumanovo public prosecutor for assault and serious bodily harm, as well as for abuse of office. He submitted that during the incident of 17 September 2004 he "had been brutally attacked, insulted and brutally beaten by P.J. and M.A. in the presence of hundreds of people on the street, as well as in front of and inside Kumanovo police station". He also requested that evidence be obtained from S.H. and V.V. In support, the applicant submitted the medical certificate issued by Dr Z.T. on 8 February 2005 (see paragraph 12 above).

41. On 3 March 2005 the applicant asked the public prosecutor to examine the criminal complaint as soon as possible, together with all evidence that had become available during the investigation of the case. He further enquired why the public prosecutor had not initiated proceedings to have the police officers concerned suspended or fined.

42. On 11 March 2005 the public prosecutor contacted the emergency unit at Skopje Clinic to obtain information as to whether the applicant had undergone an X-ray examination, and if so whether the examination had revealed a spinal fracture. On 6 April 2005 the emergency unit replied that the X-ray examination report had been handed over to the applicant.

43. On 7 April 2005 the public prosecutor informed the applicant that the appropriate authorities had been consulted with a view to obtaining relevant information about the case.

44. The applicant further addressed the public prosecutor on three occasions, alleging obstruction and seeking to have appropriate measures taken.

45. On 20 May 2005 the public prosecutor contacted the director of the emergency unit of Skopje Clinic, asking for an official note to be drawn up by the doctor who had carried out the X-ray examination of the applicant as to whether that examination had revealed a double fracture of the spinal column and whether the applicant had sustained concussion or it had just been a subjective feeling of which he had complained. The letter further requested that the emergency unit submit copies of all relevant medical reports to the public prosecutor. The Government did not indicate whether the emergency unit of Skopje Clinic had complied with this request.

46. On 25 May 2005 the Kumanovo public prosecutor rejected the criminal complaint, finding no grounds that the accused had committed the alleged offences, namely aggravated bodily harm and abuse of office. In the decision, the public prosecutor relied on the statements of S.H. and V.V. given in the criminal proceedings against the applicant and the report of the DCPS of 14 January 2005 (see paragraph 31 above). This decision was served on the applicant on 30 May 2005.

47. In the meantime, without knowing about the rejection of his complaint, on 26 May 2005 the applicant informed the Kumanovo public prosecutor that all relevant evidence, including the discharge notice from Skopje City Hospital, the medical report of his outpatient examination carried out by the Forensic Institute on 18 September 2004, as well as the statements of the accused, the witnesses and the applicant, had already been brought to the attention of the public prosecutor.

48. On 7 June 2005 the applicant, represented by R.C., a lawyer practising in Kumanovo, informed the trial court that he would take over the prosecution as a subsidiary prosecutor, and applied to the investigating judge for an investigation against P.J. and M.A. The applicant described the incident of 17 September 2004 as follows:

> "... when (the applicant) approached (the police car) ... P.J., who was in the driving seat, pushed the door open hard and hit (the applicant) in the lower part of both legs, then both accused left the car in order to arrest (the applicant). P.J. started punching and kicking (the applicant) all over his body, inflicting numerous injuries, the hardest blow being the one to the back of his head, which caused (the applicant) to lose consciousness and slump down. He was thus in a position that enabled P.J. to knee him in the back, as a result of which he sustained compressive fractures of (two vertebrae), while M.A. kicked him in the lower back. Then they handcuffed his hands behind his back and took him into Kumanovo police station, where they continued to beat him, as a result of which (the applicant) lost consciousness. Medical assistance was required, and (the applicant) was transported to Kumanovo Hospital, from where he was transferred to Skopje Clinic, where he remained for eleven days, following which he was a patient at home and was on sick leave for over five months."

49. In support of the criminal complaint, the applicant submitted, *inter alia,* copies of the discharge notice from Skopje City Hospital and of the Forensic Institute report dated 18 September 2004, as well as of "other medical material". He further requested the court to hear evidence from the accused, S.H., V.V., his wife and son.

50. On 11 July 2005 the trial court forwarded the criminal complaint and supporting documents to the public prosecutor for further consideration, given that the charges concerned serious injury, a crime which was subject to State prosecution. By letter on 14 September 2005 the public prosecutor informed the trial court that the Kumanovo prosecutor's office had already examined and rejected the applicant's criminal complaint against the accused, for lack of suspicion that they had committed the alleged offence. Similar information was forwarded on 14 October 2005 to the State prosecutor's office.

51. In the meantime, on 12 September 2005, the investigating judge, after hearing oral evidence from the applicant, his wife and son and the accused, opened an investigation against P.J. and M.A. on account of reasonable suspicion that they had caused serious bodily injury punishable under the Criminal Code. On 29 September and 13 October 2005 the trial court dismissed appeals by the accused.

52. On 29 September 2006 the applicant, through his lawyer, submitted to the trial court a subsidiary indictment (*супсидијарен обвинителен акт*) accusing P.J. and M.A. of inflicting grievous bodily harm on him; this was supported by the Forensic Institute medical report of 10 July 2006 (see paragraph 13 above). In the indictment, the applicant reiterated that he had been beaten up by the accused when he had approached their car to discuss the issue of the parking ticket, and that the assault had continued inside the police station.

53. During a hearing held on 22 October 2007, Mr Z.J., a lawyer practising in Kumanovo, whom the applicant had meanwhile appointed to represent him in the case, stated that the applicant's allegations of police brutality were supported by the medical report of the Forensics Institute, which designated the applicant's injuries as serious. Since charges of serious bodily injury were subject to State prosecution, he asked for the case file to be transmitted to the public prosecutor for the latter to take over the prosecution. On the same date, the trial court contacted the public prosecutor's office with a view whether it would take over the prosecution, which that office, by letter of 29 November 2007, refused to do.

54. On 31 January 2008 the trial court heard oral evidence from the accused and the applicant.

55. P.J. stated, *inter alia*:

> "... we noticed that (the applicant) was flashing his lights ... and then he started sounding the horn ... the applicant started banging on the window of (the car) and kicking it ... he spat at me ... continued to use offensive language ... we asked him to produce his identity card ... (the applicant) started kicking me and M.A. ... there were people who obviously knew (the applicant), they approached him asking him to calm down, but he pushed them away, as he was not paying attention to them, his behaviour was ferocious ... at one moment (the applicant) pressed M.A. hard against the rear door [of the car] with his body ... and M.A. screamed loudly. I thought it was due to the pressure, but then I saw that M.A.'s thumb was in (the applicant's) mouth ... I pulled (the applicant) hard towards me to get him away from M.A., and I tried to hit him with my right arm on the back of the head, but (the applicant) slumped forward and my fist and elbow slipped next to his head, which I cannot consider as a blow, but we specified it in our official records as such ... we handcuffed him with two pairs of handcuffs behind his back ...(the applicant) did not stop resisting and assaulting us, kicking us. Handcuffed behind his back, he leaned on (the car) again as before, throwing himself [at the car] and leaning on the car, he was kicking us, we managed to put him in the car with his back on the rear seat of the car. Then he started kicking out hard at the door of the car, and we couldn't close the door. Then, he lay on the rear seat and hit his head against the other door. He did that intentionally ... the interior of the car was badly damaged. While he was hitting his head against the right rear door and kicking the left door ... [which] we managed to close, he continued kicking the front seats and intentionally banged his head against the front seats and ... the rear seats. When we were trying to arrest him we were aware of his age and tried not [to allow] him to hurt us or himself; we refrained from using more drastic means of coercion, despite the fact that we had batons and we were trained in restraint techniques .... Then we brought him to Kumanovo police station ... and during the whole time he was furiously agitated in the rear seat. Although he was handcuffed, he

> was banging his head and other parts of his body against the interior of the car ... I did not punch, kick or use any other force [against the applicant] except as I have described in my statement ... My colleague M.A. did not hurt (the applicant), he was just holding him by the arm."

56. M.A. stated, *inter alia*:

> "... My colleague P. and I got out of the car and I asked (the applicant) to produce a driving licence, an ID card or any other document bearing his photo. He continued using offensive language against us and kicked the car. At that moment I took out the handcuffs ... (the applicant) resisted, kicked the car ... jumped up at the car and us, he was acting, so to say, like a lunatic. At that time, my colleague and I did not use any other force apart from twisting his arms and using the handcuffs ... [while they tried to handcuff the applicant], he was moving constantly left and right and throwing himself against the car ... he was kicking the car and hitting his head against the roof of the car, we could hardly manage to put him on to the back seat of the car and close the door. From that moment and until we brought him into the police station ... (the applicant) was throwing himself to left and right inside the car ..."

57. In his statement, the applicant alleged that he had been beaten by P.J. and that M.A. had beaten him during his arrest and immediately before and after they had brought him into the police station. He further stated, *inter alia*:

> "... (P.J. and M.A.) stopped the car ... until then, there was no ... communication with the police car, nor were any signals used... [after he was brought into the police station] it took about forty-five minutes before the ambulance arrived ... Then, they immediately transferred me to Kumanovo Hospital ... Then, from Kumanovo Hospital I was taken by ambulance to the cardiology clinic in Skopje ... a doctor instructed that I should be transferred to the surgical clinic in Skopje, because she had noticed bruises on my body ... then I was taken to the emergency unit ... they instructed that I should be taken to Skopje City Hospital. Police officers and inspectors accompanied me at all times ..."

58. On 19 February 2008 the State prosecutor inquired as to why the Kumanovo prosecutor's office had refused to prosecute, given that the applicant's injuries were designated as serious by the Forensics Institute. By letter of 7 April 2008 the Kumanovo prosecutor replied that the medical report of the Forensics Institute dated 18 September 2004 (see paragraph 10 above) had not designated the applicant's injuries as serious. The medical certificate of 8 February 2005 by Dr Z.T. (see paragraph 12 above) had been drawn up much later than 17 September 2004, the date of the incident.

59. At a hearing on 12 November 2008 the applicant's representative sought a definitive answer from the public prosecutor as to whether he would take over the prosecution. In that connection he stated that it was not an option but a duty of the prosecutor to step into the proceedings, given the fact that the alleged offence was subject to State prosecution. On 18 November 2008 the public prosecutor informed the court that for the same reasons as outlined in its letter of 7 April 2008 (see paragraph 58 above), it would not take over the prosecution against P.J. and M.A.

60. On 24 March 2009 the trial court held a hearing in the presence of the applicant, his representative, the accused and their lawyers. According to the court record of that date, signed by the trial judge and the clerk, the applicant stated:

> "... I withdraw the subsidiary indictment of 20 September 2006 against the accused (Го повлекувам супсидијарниот обвинителен акт од 20 септември 2006 година провив обвинетите ...) ..."

61. On the same day the trial court stayed (*запира*) the proceedings, since the applicant had stated, in the presence of his legal representative, that he withdrew the subsidiary indictment.

62. The following day, on 25 March 2009, the applicant objected to the trial court's decision to withdraw the indictment, and stated:

> "... I, as a lay person (*неука странка*), did not understand what the judge asked me, so I said that I withdrew the indictment, since I considered that the prosecution should be taken over by the public prosecutor. I wanted to maintain that right, namely *ex officio* prosecution through the public prosecutor, given the fact that the case concerns serious bodily injury, an offence punishable under Article 131 (1) of the Criminal Code, which is prosecutable *ex officio* by the public prosecutor. I therefore ask the court to reinstate the proceedings and to decide on my subsidiary indictment."

63. In submissions of 26 March 2009 before the trial court, the applicant contested the validity of the statement for withdrawal of the indictment. He stated, *inter alia*:

> "... I underline that as a subsidiary complainant, I do not withdraw the subsidiary indictment of 20 September 2006 against the accused...
>
> I believe that the prosecution should be taken over by the public prosecutor, I maintain the right [to seek] that the prosecution be taken *ex officio* because it concerns an offence of causing serious bodily injury ... because the perpetrators of the crime are officials who overstepped their duties.
>
> For these reasons, I ask the court to reinstate the proceedings to their previous state and to continue to examine the subsidiary indictment."

64. On 27 March 2009 the applicant complained to the Macedonian Bar about inactivity on the part of Mr Z.J., his legal representative, at the hearing of 24 March 2009, and asked the Bar to respond so that his case could be reinstated. He further stated:

> "While I was explaining, specifically while I was complaining about the way in which the trial was being conducted, the trial judge wrote in the court record that I was withdrawing the subsidiary indictment. At that time, I emphasised that I disagreed with that decision noted in the court record. My representative, Mr Z.J., did not react at all to the decision noted in the record [although] I'm a lay person (*неук во правото и законите*)."

65. Submissions with similar contents were sent on 27 March 2009 to the State Judicial Council (*Судски Совет*).

66. On 11 May 2009 the applicant, who was no longer represented, appealed against the trial court's decision, arguing that he had never

withdrawn the indictment against the accused. He reiterated that his statement concerned, in substance, his determination that the prosecution should be taken over by the public prosecutor. He further argued that he had complained aloud to the trial judge about the contents of the minutes, but to no avail. He stated that “I am shocked by the flagrantly incorrect interpretation of my statement”.

67. On 24 September 2009 the Skopje Court of Appeal dismissed the applicant’s appeal as unsubstantiated, and upheld the trial court’s decision. Relying on the court record of 24 March 2009, the court concluded that the applicant, in the presence of his legal representative, had withdrawn the indictment against the accused. In such circumstances, the trial court had correctly decided to stay the proceedings. This decision was served on the applicant on 20 October 2009. The proceedings were accordingly finally concluded. On 29 June 2010 the Supreme Court rejected as inadmissible the applicant’s request for extraordinary review of the decision.

68. By a decision of 15 October 2009 the trial court ordered the applicant to pay the equivalent of 1,400 euros (EUR) for the legal representation of the accused and travel costs. The applicant did not appeal against that decision.

II. RELEVANT DOMESTIC LAW

A. Criminal Code (Кривичен законик)

69. Section 131 of the Criminal Code concerns the criminal offence of aggravated bodily harm, and provides for a prison sentence in the range of six months to five years. According to subsection 2 of this provision, who so ever inflicts serious bodily harm or health damage on another person and puts his or her life in danger or causes destruction or permanent serious impairment of an organ or part of the body, permanent loss of the ability to work, permanent or serious damage to his health, or disfigurement, shall be sentenced to imprisonment of between one and ten years.

B. Criminal Proceedings Act (consolidated version of 2005)

70. Section 16 provided that criminal proceedings must be instituted at the request of an authorised prosecutor. In cases involving offences subject to prosecution by the State or on application by the injured party, the authorised prosecutor was the public prosecutor, whereas in cases involving offences subject to merely private charges, the authorised prosecutor was the private prosecutor. If the public prosecutor found no grounds for the institution or continuation of criminal proceedings, his role may be assumed

by the injured party, acting as a subsidiary prosecutor under the conditions specified in the Act.

71. Section 17 set forth the duty of the public prosecutor to proceed with a criminal prosecution if there was sufficient evidence that a crime subject to State prosecution had been committed.

72. In accordance with section 42, in discharging this statutory right and duty the public prosecutor was empowered to take measures to detect crimes, to identify their perpetrators, and to coordinate preliminary criminal inquiries; to request the opening of an investigation; to file and to defend an indictment or application for prosecution before the competent court; to lodge appeals against decisions which have not become final; and to make use of extraordinary judicial remedies against final court decisions.

73. Under section 142(2) of the Act, everyone was obliged to report a criminal offence subject to State prosecution.

74. Section 143 provided that the criminal complaint should be lodged with the competent public prosecutor. If the complaint was submitted to a court, the Ministry of the Interior or an unauthorised public prosecutor, it was to be forwarded to the competent public prosecutor.

75. Section 152(2) provided that if the public prosecutor was unable to establish from the criminal complaint whether or not the allegations set out in the complaint were credible, or if the information given in it was insufficient for him to take a decision on whether to request the opening of an investigation, or if he had merely learned of rumours that a crime had been committed, particularly where the perpetrator was unknown, he should, if he could not do this alone or through other authorities, request the Ministry of the Interior to gather the necessary information and to take other measures to investigate the offence and identify the offender.

76. Section 152(4) provided that the public prosecutor could summon the complainant, the accused and any other person who it was considered could contribute to establishing the veracity of the allegations in the complaint.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

77. The applicant complained that he had been ill-treated by the police, and that the State had failed to investigate his allegations of police brutality. In this context, he complained that the criminal proceedings against the police officers had been protracted, unlike the proceedings against him, which had been completed rapidly. That signified bias on the part of the

judges. Furthermore, in the criminal proceedings against the police officers, the public prosecutor had relied solely on the evidence produced by the DCPS. Being the master of the characterisation to be given in law to the facts of a case (see *Dolenec v. Croatia,* no. 25282/06, § 127, 26 November 2009), the Court finds it appropriate to examine these complaints under 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

78. The Government objected that the applicant had not exhausted all effective remedies in view of his statement, which he had given in the presence of a lawyer of his own choosing, withdrawing the subsidiary indictment against P.J. and M.A. They argued that the applicant, in his submissions of 25 March 2009, had not contested the veracity of the court record of 24 March 2009. The domestic courts should not be overburdened with the task of interpreting the applicant's statement, which in the Government's view was clear and unambiguous.

79. Furthermore, the Government maintained that the applicant's injuries did not reach the minimum threshold required under Article 3 of the Convention. In this connection they referred to the opinion of the Forensic Institute of 10 July 2006 (see paragraph 13 above) according to which the applicant's injuries "had ... not [had] a permanent negative effect on a vital part of the [applicant's] body." They also submitted that there was no medical evidence that the applicant had sustained concussion.

80. The applicant contested the Government's objections.

2. The Court's assessment

81. The Court considers that the Government's objection of non-exhaustion regarding the applicant's statement recorded in the transcript of the court hearing of 24 March 2009 is closely linked to the merits of his complaint under Article 3 of the Convention. Consequently, the examination of this issue should be joined to the assessment of the merits of that complaint.

82. As regards the issue of the severity of the applicant's injuries, and consequently the applicability of Article 3 of the Convention to the present case, the Court finds it incontrovertible that the applicant sustained numerous bodily injuries, including concussion, specified in several medical reports, in particular the medical certificate issued by Dr Z.T. immediately after the applicant's arrest, the discharge notice from Skopje City Hospital, and the opinion of the Forensic Institute dated 10 July 2006 (see

paragraphs 9, 11, 12, 13 and 28). As regards the latter, the Court notes that it was commissioned by the investigating judge who examined the applicant's criminal complaint. This report, as was the case with the medical certificate issued by Dr Z.T. on 8 February 2005, was drawn up on the basis of the available medical evidence. They both specified that the applicant's injuries, given their nature and effect on the applicant, qualified as serious. The Court does not find any ground to hold otherwise. Accordingly, it considers that there is sufficient medical evidence, whose credibility has not been contested, that the applicant's injuries reached the minimum level of severity required under Article 3 of the Convention. It follows that this Article is applicable to the present case.

83. The Court concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established. They must therefore be declared admissible.

B. Merits

1. The alleged lack of an effective investigation

(a) The parties' submissions

84. According to the Government, the facts that the public prosecutor had rejected the applicant's criminal complaint and had refused to take over the prosecution did not mean that the respondent State had violated its procedural obligation under Article 3 of the Convention. In this connection they argued that the authorities had taken many actions in order to establish the facts as to the force used against the applicant. In the course of the criminal proceedings against the applicant, the public prosecutor had obtained information regarding the internal inquiry of the Ministry of the Interior; the trial court had heard oral evidence from the applicant, M.A. and P.J., two witnesses and Dr Z.T., and the Forensics Institute had carried out an external examination of the applicant's body. Similarly, in the criminal proceedings brought by the applicant, the authorities had examined him, his wife and son, as well as the police officers accused. Furthermore, the Forensics Institute had given an expert opinion on the applicant's injuries. Accordingly, the authorities had taken necessary actions and had considered the applicant's allegations of police brutality with due attention. Finally, the applicant's clear and unequivocal statement withdrawing the subsidiary indictment could not be considered to be to the detriment of the effectiveness of the proceedings.

85. The applicant contested the Government's arguments.

(b) The Court's assessment

86. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police in breach of Article 3, 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, Reports of Judgments and Decisions 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; and *Veznedaroğlu v. Turkey*, no. 32357/96, § 32, 11 April 2000). The minimum standards of effectiveness defined by the Court's case-law include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Aleksandr Nikonenko v. Ukraine*, no. 54755/08, § 44, 14 November 2013; *Velev v. Bulgaria*, no. 43531/08, § 49, 16 April 2013; and *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III). The investigation should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

87. In addition, a prompt response by the authorities in investigating allegations of ill-treatment is essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts), and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 305, ECHR 2011 (extracts)).

88. Turning to the present case, the Court considers that the applicant's complaints of 3 and 16 February 2005 and the medical evidence available at that time raised an arguable claim that the applicant's injuries could have been caused by excessive use of force. As such, his complaints constituted an arguable claim, and the authorities were thus under an obligation to conduct an official effective investigation.

89. The Court notes that under the domestic law the public prosecutor who received the applicant's criminal complaint was responsible for initiating a criminal prosecution and requesting investigating measures if reasonable suspicion existed that the applicant had been seriously injured by the police officers (see paragraphs 50 and 71-76 above). Despite the serious nature of the applicant's allegations and the medical reports confirming his injuries, which were brought to the attention of the public prosecutor, the latter does not appear to have taken any serious steps to secure the evidence after the incident. Besides seeking information from the Skopje Clinic regarding some of the applicant's injuries (see paragraphs 42 and 45 above), he did not summon the applicant and the accused, or any other third person

who could have provided relevant information regarding the case, notwithstanding that he had explicit authority in this respect (see paragraph 76 above). The public prosecutor rejected the applicant's criminal complaint for lack of evidence that the accused had committed the imputed crimes. This decision was based to a decisive extent, on the evidence provided by the police, namely the DCPS's evaluation report of the force used against the applicant (see paragraph 46 above).

90. The Court further notes that a judicial investigation was carried out during the subsequent criminal proceedings pursued by the applicant (see paragraph 51 above). During that investigation and the ensuing trial, the accused officers, the applicant, his wife and son were examined, and an independent medical expert examination was ordered. In this respect, the Court is satisfied with the diligence displayed by the investigating judge. However, it cannot lose sight of the fact that these proceedings were a result of the applicant's determination to pursue the charges against the officers. Although the applicant was in a position to take over the prosecution of the officers during the criminal proceedings, the public prosecutor remained passive. The Court observes that during the proceedings the trial court invited the public prosecutor on three occasions to take over the prosecution, given that the charges concerned aggravated bodily harm, which was subject to State prosecution (see paragraphs 50, 53 and 59 above). On each occasion the public prosecutor refused explicitly to take over the prosecution. In this connection the Court would emphasise that victims of alleged violations are not required to pursue the prosecution of State agents on their own. This is a duty of the public prosecutor, who is better placed in that respect (see *Kitanovski v. the former Yugoslav Republic of Macedonia*, no. 15191/12, § 90, 22 January 2015). The judicial investigation initiated upon the applicant's complaint cannot justify the public prosecutor's lack of action (see, *mutatis mutandis*, *Butolen v. Slovenia*, no. 41356/08, § 77, 26 April 2012).

91. Lastly, the Court observes that the applicant's criminal complaint was not heard on the merits, because the criminal proceedings were stayed and finally concluded. That decision was delivered over four years after the applicant had instituted the proceedings. It was based on a statement in which, as noted in the court record of 24 March 2009 (see paragraph 60 above), the applicant withdrew the charges against the police officers accused. However, the Court notes that with separate submissions of 25 and 26 March 2009, the applicant contested before the trial court the assertion that he had withdrawn the indictment, and argued that he had requested instead that the prosecution should be taken over by the public prosecutor. Given the applicant's earlier requests in this respect (see paragraphs 50, 53 and 59 above), such an interpretation does not appear unreasonable. He also sought the reinstatement of the proceedings and for the trial court to continue examining his case. Similarly, in the appeal against the trial court's

decision the applicant argued that the trial judge had misinterpreted his statement, and sought a remedy from the higher court for this alleged error. In such circumstances, the Court cannot agree with the Government that the applicant's statement noted in the court record of 24 March 2009 contained an explicit and unqualified declaration by which he had withdrawn the indictment (see paragraph 83 above). The actions that the applicant took immediately after the trial court had stayed the proceedings clearly demonstrated his intention to continue with the proceedings (see, by converse implication, *Dončev and Burgov v. the former Yugoslav Republic of Macedonia*, no. 30265/09, § 57, 12 June 2014). That the proceedings were stayed under somewhat unclear circumstances, coupled with the unreasonable time that elapsed in the proceedings before the trial court (unlike the proceedings against the applicant, see paragraphs 19 and 34 above), suggest that the authorities did not submit the applicant's case to the careful scrutiny required by Article 3 of the Convention (see *Ali and Ayşe Duran v. Turkey*, no. 42942/02, § 62, 8 April 2008).

92. In view of the above, the Court rejects the Government's objection of non-exhaustion and finds that the authorities, whose obligation was to ensure that an effective investigation and any appropriate proceedings were pursued against the officers accused of ill-treatment, failed to comply with their procedural obligation arising from Article 3 of the Convention. There has accordingly been a violation of this provision.

2. The alleged ill-treatment of the applicant

(a) The parties' submissions

93. The applicant reiterated that he had been subject to police brutality in violation of Article 3 of the Convention.

94. The Government submitted that the applicant's description of events given before the domestic authorities on different occasions had been inconsistent as to whether he had used visual and/or audio signals (car lights and/or horn) while he was following the police car, as well as to the locations where he had allegedly been beaten up by the police officers (on the street, in the police car during his transfer to the police station, in front of or inside the police station). They further argued that the force used against the applicant had been justified, in view of his aggressive behaviour. In the domestic proceedings the police officers concerned had confirmed that they had used legitimate force, which had been necessary to subdue the applicant's resistance. Their statements had been consistent with the statements of the eyewitnesses (S.H. and V.V.) according to whom the police officers had not used any force against the applicant. On the other hand, these witnesses had confirmed that the applicant had hit the police car. In such circumstances, there was no evidence that the applicant's injuries had been inflicted with an intention to harm him or that the force used

against him had been excessive. The Government further argued that the applicant had been injured in the incident that had happened and developed unexpectedly, and that the police officers had been called to react without any prior preparation. In the proceedings against the applicant, the courts had established that he had been hit on the shoulder and the back of the head. However, that force had been applied to make the applicant release the thumb of one the police officers. They added that the applicant, given his behaviour and resistance, which was confirmed by both the police officers and eyewitnesses, had inflicted at least some of the injuries on himself.

(b) The Court's assessment

95. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 26894/05, § 67, 19 April 2012). Where allegations are made under Article 3 of the Convention the Court must apply a "particularly thorough scrutiny" (see, *mutatis mutandis, Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010), even if certain domestic proceedings and investigations have already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

96. 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 *Corsacov v. Moldova*, no. 18944/02, § 55, 4 April 2006, and *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11; *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; and *Ribitsch*, cited above, § 34). In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002).

97. The Court has already found that the applicant sustained numerous bodily injuries, which the independent court-appointed experts designated as serious (see paragraph 13 above). The Government did not dispute that those injuries had been inflicted in the incident of 17 September 2004. Accordingly, the Court must determine whether the treatment to which the applicant was subjected was compatible with this Article, namely whether the recourse to physical force was strictly necessary and proportionate (see *Subaşi and Çoban v. Turkey*, no. 20129/07, § 36, 9 July 2013). In this connection the Court does not consider it necessary to establish whether the

injuries were inflicted only in the course of the applicant's arrest or also after he was brought into custody, as claimed by the applicant.

98. According to the medical evidence, the applicant sustained the following injuries: spinal fracture, concussion, head trauma, bruises on the face, chest, hip, back, right shoulder, forearm and hand, left forearm, elbow and hand, right thigh and right and left lower legs. The medical experts appointed in the criminal proceedings concluded that the applicant had sustained these injuries "as a result of multiple acts of dynamic blunt pressure" (see paragraph 13 above).

99. The internal police inquiry concluded that the arresting officers P.J. and M.A. had used permissible force to overcome the applicant's resistance, namely they had twisted the applicant's arms behind his back and used handcuffs. The DCPS report did not indicate that the applicant had received any blow, notwithstanding that the P.J. and M.A. had reported that they had hit the applicant on the head and leg (see paragraphs 16-18 above). The DCPS finding was based on the witness statements by the arresting officers, as well as by S.H. and V.V., who were eyewitnesses to the incident. According to these latter witnesses, the applicant had been anxious and shouting at the police officers when he had approached their car. They both confirmed that the applicant had resisted arrest and denied that the police officers and the applicant had used any force (see paragraphs 22 and 23 above). None of them said they had seen the applicant biting M.A.'s thumb.

100. In the criminal proceedings against the applicant the courts found that, besides twisting the applicant's arms and the use of handcuffs, the applicant had received blows to the right shoulder and the back of the head (see paragraph 35 above). They accepted that this force had been lawfully employed to make the applicant release M.A.'s thumb from his mouth. No reference was made to M.A.'s statement in which he reiterated that he had hit the applicant on the leg (see paragraph 25 above).

101. In such circumstances, although with certain reservations based on the fact that the officers were highly trained (see paragraph 55 above), and that the applicant was of advanced age and in poor health (see paragraph 9 above), the Court will proceed on the assumption that these measures were strictly necessary to restrain the applicant. Having said that, the Court notes that they could explain only the injuries to the applicant's right shoulder and head. The remaining injuries could not be explained only by the aforementioned use of force.

102. In this connection the Court notes that in the proceedings against the applicant, the courts further held that the applicant had kicked the police car from the outside, as well as from the inside during his transfer to the police station (see paragraph 35 above). That the applicant had kicked the car before the police officers got out and asked him to identify himself was confirmed by V.V. (see paragraph 23 above). However, the finding that the applicant had been kicking the inside of the car was established solely on

the basis of the statements of the arresting officers P.J. and M.A., who had been direct participants in the events complained of (see paragraphs 24 and 25 above). The Court has not been presented with any other evidence in support of that finding. In any event, it does not consider that the applicant's behaviour during his transfer to the police station, as established by the criminal courts, could explain the numerous contusions on the applicant's face and body, as well as the fracture of the spinal vertebrae.

103. In such circumstances, the Court considers that the Government have not furnished convincing or credible arguments which would provide a basis to justify or explain all the injuries the applicant had actually received at the hands of the police. Accordingly, it concludes that the force used was excessive and unjustified in the circumstances. There has therefore been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant was subjected during the police procedure.

II. ALLEGED VIOLATION OF ARTICLE 13, TAKEN IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

104. The applicant complained of a lack of an effective remedy in respect of the inactivity of the public prosecutor and the delays to the proceedings, in violation of Article 13 of the Convention, which 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."

105. The Government invited the Court to find that there is no need for a separate examination of this complaint. In any event, they denied that there had been a violation of this Article.

106. The applicant reiterated that there had a violation under this head.

107. Having regard to the grounds on which it has found a violation of the procedural aspect of Article 3, the Court declares the complaint under this head admissible and finds that no separate issue arises under Article 13 of the Convention (see *Kitanovski v. the former Yugoslav Republic of Macedonia*, no. 15191/12, § 92, 22 January 2015; *Jašar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 62, 15 February 2007; *Sulejmanov v. the former Yugoslav Republic of Macedonia*, no. 69875/01, § 55, 24 April 2008; and *Dželadinov and Others v. the former Yugoslav Republic of Macedonia,* no. 13252/02, § 77, 10 April 2008).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. In his application, the applicant sought that the respondent State paid him "full compensation" under Article 41 of the Convention but did not formulate any specific claim for just satisfaction.

110. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violations found. Given the specific circumstances of the case, it awards him, on equitable basis, EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's objection as to the exhaustion of domestic remedies and *rejects* it;

2. *Declares* the application admissible;

3. *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 of police brutality;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of inhuman and degrading treatment by the police during the incident of 17 September 2004;

5. *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.

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into national currency of the respondent State at the rate applicable on the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 23 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President