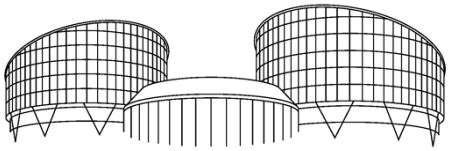

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TRENDAFILOVSKI v. NORTH MACEDONIA

(Application no. 59119/15)

JUDGMENT

STRASBOURG

17 December 2020

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

In the case of Trendafilovski v. North Macedonia,

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

Mārtiņš Mits, *President,*
Jovan Ilievski,
Ivana Jelić, *judges,*

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Stefan Trendafilovski ("the applicant"), a Macedonian/citizen of North Macedonia, on 23 November 2015;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaints concerning Article 3 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee.

Having deliberated in private on 19 November 2020,

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

INTRODUCTION

1. The case concerns the applicant's complaints under Article 3 of the Convention that he was ill-treated at the hands of the police during his arrest and the alleged lack of an effective investigation into those allegations.

THE FACTS

2. The applicant was born in 1993 and lives in Kumanovo. He was represented by Mr V. Stojanovski, a lawyer practising in Skopje.

3. The Government were represented by their Agent, Ms D. Djonova.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. INCIDENT OF 3 DECEMBER 2014

5. On 3 December 2014 the applicant attended a family party in his father's flat in Kumanovo. At about 10 p.m. three police officers arrived at the flat in response to a complaint about loud music and inappropriate behaviour and comments by guests at the party. There was an argument between the police officers and the applicant's father at the entrance to the flat. Next-door neighbours confirmed to the police officers the applicant's

statement that the party had not been noisy. The applicant reacted to the argument (with his father) and in response a police officer twisted the applicant's arm behind his back. The parties' accounts of the events at the scene differ from this point on. The Government's account was based on the version of events established by the public prosecutor (see paragraph 11 below).

6. The applicant asserted that the police officer who had twisted his arm had started insulting and hitting him on the head and body. He claimed that he had been dragged down the building's staircase while being continuously insulted and beaten by the said police officer. Barefoot and in a T-shirt, the applicant had been taken to the local police station where he had been continuously insulted. The applicant allegedly had not been provided with any medical assistance, notwithstanding his explicit request in this connection.

7. The applicant remained in police custody for four hours, where he was tested for alcohol intoxication. After being released, he visited a doctor. According to a medical certificate of 4 December 2014, he was diagnosed as suffering from post-stress trauma and a scratch on his lower back. The doctor noted that the applicant also complained of headache and backache. No other injuries or bruises were noted in the certificate.

II. PROCEEDINGS INITIATED BY THE APPLICANT

8. On an unspecified date in December 2014, the applicant complained to the Ministry of the Interior's Sector for Internal Control and Professional Standards ("the Sector") of the incident, alleging police brutality. In a letter of 16 December 2014, the Sector informed him that there was no evidence to support his allegations of police brutality. The Sector, after it had interviewed subsequently the applicant (in the interview, the applicant reiterated that, *inter alia*, he had been taken barefoot and in a T-shirt to the police station), also submitted its findings to the public prosecutor.

9. On 4 February 2015 the applicant asked the Kumanovo local police station to reveal the identity of the police officers that had been involved in his case. On 10 February 2015 the police station informed him that at the material time he had been intoxicated (2.02‰ blood alcohol level); he had reacted in an unruly fashion; he had refused to identify himself; and he had refused to turn down the music. For these reasons, misdemeanour proceedings had been initiated against him for public disorder. The identity of the police officers was not revealed.

10. On 3 March 2015 the applicant lodged a criminal complaint (*кривична пријава*) with the Kumanovo prosecution office accusing a police officer of unknown identity of unlawful deprivation of his liberty, torture and ill-treatment (no mention that he had been taken to the police station barefoot and in a T-shirt). In support he submitted a copy of the

above medical certificate (see paragraph 7 above) and proposed that the public prosecutor take evidence from four eyewitnesses (M.G., G.K., L.T. and M.T., the latter being his father). He provided their contact details.

11. In a letter of 9 June 2015 the public prosecutor informed the applicant that on the same day he had adopted a "resolution" in which the prosecutor found no evidence of an offence subject to State prosecution. As stated in the resolution, on the material date two police officers (later joined by another four officers, including I.) had arrived in the flat of the applicant's father pursuant to a noise complaint. I. had asked the applicant to identify himself and to come with them to the police station. The applicant had been intoxicated, and as he had refused to identify himself and had resisted (*пружил отпор*), I. had applied coercive measures on him and had twisted his arm behind his back. The applicant then had been brought to the Kumanovo police station. According to the resolution, the prosecutor reached these findings on the basis of reports from the Sector (see paragraph 8 above) and the Kumanovo police station, a statement from police officer I. about the use of force and a report from I.'s superior. The resolution was never served on the applicant.

III. OTHER RELEVANT INFORMATION

12. In misdemeanour proceedings the applicant was fined 100 euros (EUR) for disturbance of public order regarding the incident of 3 December 2014.

13. The applicant submitted six signed eyewitness statements to the Court about the events of 3 December 2014 from neighbours, his father and guests at the family celebration. According to D.S., a guest of the applicant, a police officer had started hitting the applicant immediately after having twisted his arm. R., a neighbour, stated (written statement dated 10 January 2015) that he had seen the applicant being dragged down the staircase and being hit by a police officer. The applicant's father, M.T., stated that a police officer had twisted his son's arm behind his back and had started hitting him on the head with his fists. Three other witnesses (D.J., B.S. and P.S.) mentioned (written statements dated 15 March and 16 October 2015 respectively) having seen the incident and the applicant being arrested, but they did not mention the applicant being hit by a police officer. D.S., P.S. and M.T. confirmed that at the time the applicant had been barefoot and in a T-shirt.

RELEVANT LEGAL FRAMEWORK

CRIMINAL PROCEEDINGS ACT (OFFICIAL GAZETTE NO. 150/2010, WITH SUBSEQUENT CHANGES)

14. Under sections 273 and 274, any person can report a crime which requires State prosecution to the public prosecution service.

15. In accordance with section 288, if the circumstances of the case warrant that action, the public prosecutor can reject (*ќе ја отфрли*) a criminal complaint by means of a decision. This decision, which must contain an instruction regarding the right of an appeal within eight days, must be served on the aggrieved party. The aggrieved party can then appeal to a higher-ranking prosecutor.

16. Pursuant to section 39 the public prosecutor must open an investigation, direct it and secure the relevant evidence in cases which are subject to State prosecution.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

17. 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 violation of Article 3 of the Convention. Article 3 of the Convention reads as follows:

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

A. Alleged lack of an effective investigation

1. Admissibility

(a) The parties' submissions

18. The Government submitted that the applicant had not fully exhausted domestic remedies. Relying on the Criminal Proceedings Act concerning the right to an appeal against a decision rejecting a criminal complaint, they argued that he had failed to appeal against the prosecutor's resolution and to request that a higher-ranking prosecutor take over the case. They put forward that these possibilities had been recently enshrined in domestic law.

19. The applicant submitted that the prosecution had failed to produce a decision rejecting his complaint, as had been their obligation pursuant to section 288 of the Criminal Proceedings Act. Given that the prosecution had decided his case by means of a "resolution", which had not even been

served on him, he had been effectively deprived of the possibility to lodge an appeal.

(b) The Court's assessment

20. The relevant Convention principles regarding non-exhaustion of domestic remedies have been summarised in the Court's judgment in the case of *Vučković and Others* (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

21. In the present case, the Court notes that the applicant's criminal complaint was resolved by means of a "resolution", which was not served on him, but he was merely notified of it by means of a letter (see paragraph 11 above). The letter delivered to the applicant did not contain any instructions as to any remedies. The Government's argument that the applicant could have challenged the resolution by means of an appeal does not find support in domestic law. Statutory provisions relied on by the Government concern remedies against a decision by the public prosecutor rejecting a criminal complaint, but not a resolution, as in the present case. The Government did not provide any example of domestic practice in support of their argument. Given that the burden of proof is on the Government to satisfy the Court that a domestic remedy was an effective one (see, for example, *Z.N.S. v. Turkey*, no. 21896/08, § 75, 19 January 2010, and *Vučković and Others*, cited above, § 77), the Court finds that the applicant exhausted the available domestic remedies in respect of the complaint submitted to the Court.

22. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

23. The applicant maintained that the public prosecutor had failed to conduct an effective investigation into his allegations of police brutality in that he had disregarded the medical evidence and the witnesses proposed by him. Furthermore, the public prosecutor had failed to decide his complaint by means of a decision as required pursuant to domestic law.

24. The Government submitted that an effective investigation had been conducted by the public prosecutor and the Sector (see paragraphs 8 and 11 above). The fact that the public prosecutor had failed to take evidence from the four witnesses proposed by the applicant was irrelevant, since the criminal complaint had been lodged long after the pertinent events. For the

same reasons, a new medical expert examination concerning the health of the applicant would have been equally superfluous.

(b) The Court's assessment

25. The obligation to carry out an effective investigation into allegations of treatment infringing Article 3 suffered at the hands of State agents is well established in the Court's case-law (see *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 116-23, 28 September 2015, and *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, § 115, 25 June 2019).

26. The Court notes that the applicant took immediate action after the incident. In December 2014 he lodged a complaint with the Sector and on 4 February 2015 he requested (from the relevant police station) the names of the police officers who had intervened on the night of the incident. On 3 March 2015, that is to say three months after the incident, and after he had not obtained the requested information, he lodged the criminal complaint with the public prosecutor against an unknown police officer. In support, he submitted a medical certificate and asked that the public prosecutor examine four eyewitnesses who, according him, could have shed light on the events in the flat. The Court considers that the medical record about the applicant's injuries (see paragraph 5 above) coupled with his allegations that in the police station he was insulted and psychologically abused constitute a sufficiently credible assertion in order to trigger the State's obligation to conduct an effective investigation (see, for example, *Đekić and Others v. Serbia*, no. 32277/07, § 32, 29 April 2014).

27. The Court observes that under domestic law the public prosecutor seized of events by the applicant was competent to investigate his allegations and undertake appropriate measures. The public prosecutor refused the applicant's complaint based on findings made solely on the basis of evidence produced by the police (statements by the police officers concerned and reports from the police itself, see paragraph 11 above). The public prosecutor took no steps to secure any other evidence, including that proposed by the applicant. Neither did he examine the applicant. That the Sector interviewed the applicant cannot be regarded as substitute to the public prosecutor's obtaining first-hand and direct information about the relevant facts (see paragraph 8 above). Lastly, he made no comment as regards the medical certificate.

28. Furthermore, the public prosecutor gave notice of that refusal by means of a "resolution", which, as noted above, was not served on the applicant, and in any event was not amenable to appeal.

29. In view of the above, the Court considers that the investigation carried out into the applicant's allegations of police brutality failed to meet the required standards of the procedural obligation on the respondent State arising from Article 3 of the Convention. There has accordingly been a violation of this provision.

B. Alleged ill-treatment

1. The parties' submissions

30. The Government submitted that the treatment complained of had failed to reach the necessary threshold of severity for Article 3 to come into play. Furthermore, they maintained that the force applied on the applicant during his arrest, namely the twisting of the applicant's arm behind his back, had been lawful, proportionate and necessary, given his intoxication and the fact that he had refused to identify himself. This included the sole injury that the applicant had sustained, that is to say a minor scratch on his lower back. The remaining allegations were unsubstantiated.

31. The applicant reiterated his allegations that he had been ill-treated by the police, making reference to the evidence that he had submitted to the public prosecutor and the witness' statements submitted to the Court (see paragraph 13 above). Furthermore, he submitted that he had been dragged to the police station barefoot and in a T-shirt in very cold weather. Lastly, he had been insulted and psychologically abused throughout the whole police intervention.

2. The Court's assessment

32. The relevant general principles with regard to complaints under the substantive head of Article 3 are summarised in the case of *Bouyid* (cited above, §§ 82, 86 and 87); *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 195-97, ECHR 2012); and *M.F. v. Hungary* (no. 45855/12, § 42-45, 31 October 2017). They were recently reiterated in the case of *Jevtović v. Serbia* (no. 29896/14, §§ 74, 75 and 77, 3 December 2019).

33. Furthermore, the Court has held on many occasions that Article 3 does not prohibit the use of force by police officers during an arrest. Nevertheless, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Bouyid*, cited above, § 100, and *Gutsanovi v. Bulgaria*, no. 34529/10, § 126, ECHR 2013 (extracts)).

34. Turning to the instant case the Court notes that the applicant alleged that he had been ill-treated by the police during his arrest, his transportation to the police station and his detention therein.

35. As to the events regarding his arrest, the Court notes, and it is uncontested by the parties, that a police officer had recourse to an immobilisation technique (twisting the applicant's arm behind his back) when the applicant was arrested in his father's flat in response to his unruly behaviour and resistance (see paragraph 9 above). As confirmed by the police officers and corroborated by other uncontested material evidence, the

applicant had been intoxicated at the time of the arrest (see paragraphs 9 and 11 above). The medical report of 4 December 2014 noted a scratch on his lower back. In the Court's opinion, it is reasonable that it was the result of the application of the said technique.

36. In support of the alleged beating when arrested and while being transported to the police station, the applicant relied on the medical report and witness statements (see paragraphs 7 and 13 above). However, the Court observes that apart from the above described scratch on the lower back, the report did not note any other injuries or bruising. The report did not provide any detail or explanation regarding the applicant's headaches and backache. Neither did the applicant seek or consult any specialist's assistance with regard to these allegations.

37. As to the witness statements submitted by the applicant to the Court – which were not submitted to the public prosecutor – the Court observes that in only three of them was it indicated that the applicant had been hit by a police officer. Of those statements, only the applicant's father indicated the manner in which the applicant had been allegedly struck, or the means allegedly used by the police officer.

38. Further to this point, the Court observes that in three other statements (B.S., P.S. and D.J.) submitted by the applicant to the Court, but not to the public prosecutor, no reference was made of the alleged beating. The applicant also does not provide any explanation as to why these statements were not submitted to the public prosecutor.

39. As to the applicant's allegation that he had been psychologically abused, the Court notes that there is no evidence to support this notion. Similarly, the Court is unable to make any conclusion to the required standard of proof regarding the allegation, which was not brought to the attention of the public prosecutor (see paragraph 10 above), that the applicant had been taken barefoot and in a T-shirt to the police station.

40. Against the above background, the Court considers that the evidence submitted is not sufficient to prove beyond reasonable doubt that the use of force against the applicant was not made strictly necessary by his conduct or that it was disproportionate (see *Sharomov v. Russia*, no. 8927/02, § 29, 15 January 2009). This conclusion also derives, at least in part, from the lack of an effective investigation into the applicant's allegations, which should have verified all available evidence (see §§ 27-29 above).

41. Accordingly, the Court rejects the applicant's complaint under the substantive limb of Article 3 of the Convention as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

44. The Government contested this amount as excessive.

45. Ruling on equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

46. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

47. 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. *Declares* the complaint concerning the procedural aspect of Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros), to be converted into the national currency of the respondent State at the rate applicable at 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;

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

Done in English, and notified in writing on 17 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Mārtiņš Mits
Deputy Registrar	President