FIFTH SECTION

CASE OF STEFAN ILIEV v. BULGARIA

(Application no. 53121/99)

JUDGMENT

STRASBOURG

10 May 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stefan Iliev v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 53121/99) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Stefan Milanov Iliev who was born in 1924 and lives in Sofia ("the applicant"), on 12 May 1999.

2. The applicant was represented by Mr I. Gruikin, a lawyer practising in Sofia.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

4. The applicant alleged that he had been subjected to inhuman or degrading treatment at the hands of the police and that there had been a lack of an effective investigation in response to his complaints.

5. By a decision of 2 February 2006 the Court declared the application partly admissible.

6. The parties did not submit further written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's detention

7. The applicant was seventy-two years old at the time of the events and had previously suffered from tuberculosis on at least three occasions.

8. On 19 December 1996 the applicant visited a café-bar where he drank and became intoxicated. On his way home, at around 6 p.m., he passed by the building of the Bulgarian national television ("BNT"), in front of which there was a demonstration. The applicant was carrying a beer bottle, which he either dropped or threw against the building of the BNT. He then went to a nearby café.

9. Two police officers, who were providing security in front of the BNT, approached the applicant in the café. When they saw that he was intoxicated they led him off to the security guards' duty room in the BNT.

10. In response to the applicant's request to be informed why he was being detained he was told that it was for disturbing the peace and for throwing objects at the building of the BNT in an attempt to break its windows.

11. The applicant was kept in the security guards' duty room of the BNT until 8 p.m. He was then taken to the First District Police Station (Първо районно управление на МВР) for questioning, but, in view of his intoxicated state, was transferred to the Sobering-up Centre of the Sofia Police. The applicant arrived there at around 9 p.m. and remained overnight.

12. The applicant was discharged at around 9 a.m. on the next day, 20 December 1996, into the custody of the police and was taken to the Investigative Division of the First District Police Station for questioning.

13. At 11:15 a.m. on 20 December 1996 the applicant was given a written reprimand by the police to refrain from disturbing the peace, to drink with caution and not to resist inspections by the police. The applicant refused to be served with the written reprimand.

14. The applicant contended, which the Government did not challenge, that he was released from the police station sometime in the afternoon on 20 December 1996.

B. The events upon the applicant's arrest

15. The applicant submitted that when he was detained by the two police officers in front of the building of the BNT he may have showed some

resistance as he believed he was being wrongly detained. He contended, however, which the Government did not challenge, that while he was being led to the security guards' duty room of the BNT the police officers repeatedly hit him with a truncheon on his hands, kicked him in his ankles and punched him in the back and in the area of his kidneys. The applicant maintained that his injuries were not treated nor tended to by a doctor while he was in detention.

16. In their subsequent statements before the Prosecutor's Office, the police officers stated that the applicant was somewhat aggressive when they tried to detain him, but that they did not use any special measures to subdue him.

17. After being released on 20 December 1996 the applicant was examined by a doctor and a special medical report for use in legal proceedings was prepared, the relevant part of which stated the following.

> "Preliminary data: The [patient] indicates that on 19.12.1996 at approximately 6 p.m. he was beaten by uniformed police officers.
>
> The examination established: On the back of the right hand in the area of the [bracelet] joint it is visible that a linear contusion of the skin exists of reddish-dark colour with a size of 5 cm by 2 cm. On the back of the wrist of the right hand another contusion can be seen with a size of 4 cm by 2 cm. On the back of the left hand in the area of the palm bone of the thumb there is a contusion and abrasion resulting from almost parallel scratches of reddish-dark colour protruding above the skin around them with a size of 3 cm by 2 cm.
>
> CONCLUSION
>
> The examination of [the patient] established: contusions and abrasions on the skin of both hands.
>
> These injuries resulted from blows by or against solid blunt objects or blunt-cornered objects, as well as from the tangential affects of such objects and [considering] their morphological characteristics [they] reasonably correspond and could have been sustained in the manner and at the time indicated by [the patient].
>
> They caused him pain and suffering."

18. In 1998 the applicant received treatment to ailments in his ankles and wrists.

C. The applicant's complaints to the authorities

19. On 13 January 1997 the applicant complained to the Chief Prosecutor's Office regarding the beating by the police officers on 19 December 1996 and of being detained. On an unspecified date, he was informed that his complaint was being forwarded to the Sofia's Regional Military Prosecutor's Office.

20. On 21 March 1997 the Sofia Regional Military Prosecutor's Office refused to open a preliminary investigation because of lack of evidence of an offence. It based its decision on the applicant's complaint to the authorities and on statements from the police officers who arrested him and the officer on duty at the sobering-up centre. The Prosecutor's Office considered the applicant's assertions to be unfounded and unsupported by any facts other than his complaints. The applicant appealed against the decision of the Prosecutor's Office on an unspecified date.

21. By decision of 17 December 1997 the Armed Forces Prosecutor's Office upheld the decision of the Sofia Regional Military Prosecutor's Office. It found that the facts of the case did not warrant the opening of a preliminary investigation. The decision of 17 December 1997 stated, *inter alia*, the following:

> "From the materials [contained] in the file it [can be] ascertained that [the complaint] relates to the forced detention in a sobering-up centre of the applicant [following] a disturbance of public order [while] in an intoxicated state. The inquiries performed do not indicate that any unlawful actions [were performed] by the police. The collected data show that there was in fact a disturbance of public order – breaking of bottles, throwing objects at the building of the [Bulgarian national] television, etc. In such case quite rightly [the Sofia Regional Military Prosecutor's Office] refused to open a preliminary investigation."

22. It is unclear whether a copy of the decision of the Armed Forces Prosecutor's Office was ever sent to the applicant.

23. On 30 December 1997 the applicant filed a complaint with the Chief Prosecutor's Office claiming that he had not received a response to his previous complaints.

24. On an undetermined date a prosecutor from the Armed Forces Prosecutor's Office responded, in the form of a resolution, which stated, *inter alia*, the following:

> "On 30 December 1997 a complaint was filed by [the applicant], who was not satisfied with the decision of the prosecutors from the Armed Forces Prosecutor's Office and the Sofia Regional Military Prosecutor's Office.
>
> I reject the complaint of [the applicant] because the Armed Forces Prosecutor's Office has already ruled on the matter and there is no necessity for it to change its position [expressed] in the decision of 17 December 1997."

25. The Government contended that a copy of the above resolution was sent to the applicant on 14 January 1998. The applicant maintained, however, that he never received it and that he only became aware of the decisions of the Prosecutor's Office not to open a preliminary investigation on 21 November 1998. A note to that effect was inscribed in the applicant's handwriting on the copies of the decisions he provided to the Court.

II. RELEVANT DOMESTIC LAW

A. Use of force by the police

26. Section 40 (1) of the National Police Act, as in force at the relevant time, provided, as relevant:

> "... [P]olice [officers] may use ... force ... when performing their duties only if they [have no alternative course of action] in cases of:
>
> 1. resistance or refusal [by a person] to obey a lawful order;
>
> 2. arrest of an offender who does not obey or resists a police [officer];
>
> ...
>
> 5. attack against citizens or police [officers]; ..."

27. Section 41 (2) provided that the use of force had to be proportionate to, in particular, the specific circumstances and the personality of the offender.

28. Section 41(3) imposed upon police officers the duty to "protect, if possible, the health ... of persons against whom [force was being used]".

B. Duty to investigate ill-treatment by the police

29. Articles 128, 129 and 130 of the Criminal Code make it an offence to cause a light, intermediate or severe bodily injury to another individual.

30. Article 131 § 1 (2) of the Criminal Code provides that if the injury is caused by a police officer in the course of or in connection with the performance of his or her duties, the offence is an aggravated one. This offence is a publicly prosecutable one (Article 161 of the Criminal Code).

31. Under the Code of Criminal Procedure (1974), as in force at the relevant time, preliminary investigations for publicly prosecutable offences could be opened only by a decision of a prosecutor or an investigator (Article 192).

32. The prosecutor or the investigator must open a preliminary investigation whenever he or she receives information, supported by sufficient evidence, that an offence might have been committed (Articles 187 and 190 of the Code of Criminal Procedure).

33. During the relevant period, the Code of Criminal Procedure provided that if the information provided to the authorities was not sufficiently supported by evidence, the latter had to conduct a preliminary inquiry (verification) in order to determine whether the opening of a preliminary investigation was warranted (Article 191).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained, relying on numerous articles of the Convention, that he was beaten by the police officers when he was detained on 19 December 1996 and that there was a lack of an effective investigation by the authorities relating to the aforementioned. The Court finds that, considering the specific circumstances of the present case, these complaints fall to be examined under Article 3 of the Convention, which provides the following:

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

35. At the admissibility stage of the proceedings the Government did not submit observations on the merits of the applicant's complaints but only raised an objection that they had been submitted out of time. In his observations in reply, the applicant restricted himself to responding to the Government's objection of inadmissibility. The Government's objection was dismissed by the Court (see *Iliev v. Bulgaria* (dec.), no. 53121/99, 2 February 2006).

36. The parties did not submit further written observations (see paragraph 6 above).

A. Substantive limb: alleged inhuman and degrading treatment

1. General principles

37. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to

be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, §§ 119-120, ECHR 2000-IV).

38. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

39. The Court recalls in particular 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 *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, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V and *Alsayed Allaham v. Greece*, no. 25771/03, § 27, 18 January 2007).

2. Application of those principles to the present case

40. In the present case, the applicant claimed that the ill-treatment that resulted in injury took place after he was detained by the police officers in front of the BNT and while he was being led to the security guards' duty room (see paragraph 15 above). The Courts observes, in this respect, that the police officers alleged that at the time of the arrest they had not used any special measures to subdue the applicant (see paragraph 16 above).

41. In any event, the Court notes that the Government did not challenge the applicant's version of the events and they did not advance any other explanation as to the origin of his injuries (see, by contrast, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, §§ 29-30). Thus, the Court concludes that the Government have not established that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while he was

under the control of the police officers (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 34 and *Alsayed Allaham*, cited above, § 30).

42. In particular, the ill-treatment complained of by the applicant consisted of being repeatedly beaten over the hands by the police officers who detained him on 19 December 1996 using blunt objects, such as truncheons or other similar shaped objects. As a result, he sustained a number of injuries to his hands, as evidenced by the medical report of 20 December 1996, and underwent medical treatment (see paragraphs 17-18 above). In the light of the above and in the absence of a satisfactory and convincing explanation by the Government, the Court considers that the injuries found on the applicant were the result of treatment for which the Government bore responsibility (see, *mutatis mutandis*, *Toteva v. Bulgaria*, no. 42027/98, § 56, 19 May 2004).

43. However, the Court notes that the applicant was intoxicated at the time of the events and showed some form of resistance to the police officers who detained him (see paragraphs 9, 15 and 16 above). Thus, it could be considered reasonable for the police officers to use a certain degree of physical force in order to effect the detention and to subdue him. The Court notes furthermore that no medical evidence supported the applicant's allegations insofar as the kicks in the ankles and the punches in the back in the area of his kidneys are concerned (see paragraphs 15 and 17 above).

44. In any event, the Court observes that the injuries suffered by the applicant were restricted to the area of his hands and that the degree of bruising established during the medical examination of 20 December 1996 was not particularly excessive or severe in nature. Thus, the Court does not consider, having regard to all the circumstances of the case, that the injuries were sufficiently serious to amount to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

45. Accordingly, it concludes that that there has been no violation of the substantive limb of Article 3 of the Convention.

B. Procedural limb: alleged lack of an effective investigation

46. 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. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3290, § 102 and *Labita* [GC], cited above, § 131).

47. The Court considers that, taken together, the applicant's complaints to the Prosecutor's Office, the medical evidence of his injuries and the lack of any alternative explanation for them, other than that they were sustained on 19 December 1996 at the hands of the police, raised a reasonable suspicion that the said injuries could have been caused by the police which warranted an investigation by the authorities in conformity with the requirements of Article 3 of the Convention.

48. In the present case, however, the authorities refused to open a preliminary investigation. They considered that there was a lack of evidence of an offence in spite of the medical examination of 20 December 1996 attesting to the applicant's injuries to his hands. In fact, the Prosecutor's Office in its decisions failed entirely to address the medical evidence and reached conclusions which were predominantly based on the statements of the police officers involved, without at all considering what possible justification there might have been for any of them to hit the applicant's hands with a truncheon, or other similar shaped objects, at the time of the latter's arrest (see paragraphs 20, 21 and 24 above).

49. For these reasons, no effective criminal investigation can be considered to have been conducted in response to the applicant's arguable claim that he had sustained injuries at the hands of the police. Thus, the Court finds that there has been a violation of the procedural limb of Article 3 of the Convention (see, *mutatis mutandis*, *Osman v. Bulgaria*, no. 43233/98, §§ 72-79, 16 February 2006 and *Tzekov v. Bulgaria*, no. 45500/99, §§ 69-73, 23 February 2006).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage for the physical and emotional pain and suffering caused by the violations of his rights under the Convention. He claimed that as a result, he had been disgraced before his family and the community, and that he been under considerable stress for a long time.

52. The Government did not submit comments on the applicant's claims in respect of non-pecuniary damage.

53. The Court finds it reasonable that the applicant suffered non-pecuniary damage on account of the distress and frustration resulting from the inadequacy of the investigation into his complaints. Accordingly, deciding on an equitable basis, the Court awards the sum of EUR 750.

B. Costs and expenses

54. The applicant claimed EUR 1,840 for 23 hours of legal work by his lawyer before the Court, at an hourly rate of EUR 80. He submitted a legal fees agreement with his lawyer and a timesheet for the work performed.

55. The Government did not submit comments on the applicant's claims for costs and expenses.

56. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his or her costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Noting all the relevant factors, the Court considers it reasonable to award the sum of EUR 500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds* by four votes to three that there has been no substantive violation of Article 3 of the Convention;

2. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's complaints that he had sustained injuries at the hands of the police;

3. *Holds* unanimously
   (a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 750 (seven hundred and fifty euros) in respect of non-pecuniary damage;

(ii) EUR 500 (five hundred euros) in respect of costs and expenses;
(iii) any tax that may be chargeable on the above amounts;

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

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

Done in English, and notified in writing on 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Mr Lorenzen, Mr Jungwiert and Mr Maruste is annexed to this judgment.

P.L.
C.W.

JOINT PARTLY DISSENTING OPINION OF JUDGES LORENZEN, JUNGWIERT AND MARUSTE

We agree with the majority that the procedural requirements of Article 3 of the Convention were violated, but are for the following reasons unable to share the majority's conclusion that there has been no substantive violation of that article.

In the present case the Government did not challenge the applicant's version of the events and did not advance any other explanation as to the origin of his injuries. Accordingly the Court has found it established that the applicant had been repeatedly beaten over the hands by the police officers who detained him using blunt instruments such as truncheons or other similar shaped objects. As a result he sustained a number of injuries to his hands and underwent medical treatment, cf. § 41 of the judgment.

The Court has constantly held in its case-law that in respect of a person deprived of his liberty recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3, cf. among many authorities *Assenov and Others v. Bulgaria* (judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 94) and most recently *Barta v. Hungary* (no. 26137/04, § 62, 10 April 2007).

The injuries the applicant sustained are described in detail in the medical report issued the day after his arrest, and the doctor concluded, *inter alia,* that they caused him pain and suffering. Taking into account the degree of bruising established and considering also the manner in which the injuries were inflicted and the applicant's advanced age, it is our opinion that the injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3 of the Convention.

The question remains whether recourse to physical force in the form of repeated beating over the hands with truncheons or similar blunt instruments was strictly necessary in the circumstances of the case. It is true that the applicant was intoxicated at the time of the events and probably showed some form of resistance to the police officers who detained him. However, considering that there were at least two police officers at the scene and noting the age and behaviour of the applicant we find it unproven that it was absolutely necessary to use such physical force against him in order to effect the detention or subsequent to it. Moreover, the injuries to his hands do not suggest to have been sustained in the course of a possible struggle with the police officers in order to subdue him.

It follows that in our opinion there has been a violation of the substantive limb of the said Article in that the applicant was subjected to inhuman and degrading treatment.