CONSEIL DE L'EUROPE

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

FIRST SECTION

CASE OF TOTEVA v. BULGARIA

(Application no. 42027/98)

JUDGMENT

STRASBOURG

19 May 2004

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 Toteva v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs F. TULKENS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 29 April 2004,

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

PROCEDURE

1. The case originated in an application (no. 42027/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mrs Girgina Dimova Toteva, a Bulgarian national who was born in 1928 and lived in Sevlievo ("the applicant"), on 17 June 1998.

2. The applicant was represented before the Court by Ms Y. Vandova and Mr V. Vasilev, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that on 5 April 1995 she had been ill-treated by police officers and that the prosecution authorities had not carried out an effective investigation into her ensuing allegations of ill-treatment by the police.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 3 April 2003 the Court declared the application partly admissible.

7. The applicant died on 30 August 2003. On 3 October 2003 her daughter, Ms Svetla Todorova Martinova, expressed the wish to continue the proceedings before the Court on the applicant's behalf.

8. The parties did not file observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1928 and lived in Sevlievo.

A. The arrest and the alleged beating of the applicant

10. On 5 April 1995, at 8 a.m., the applicant, at that time 67 years old, was taken by three police officers, lieutenant R., chief-sergeant D., and a driver, to the District Police Department in the town of Sevlievo. The arrest took place in connection with a complaint filed the previous evening by one of the applicant's neighbours, Mrs T., in which she had alleged that the applicant had beaten her with a stick.

11. Once on the premises of the District Police Department, the applicant was placed in a detention room, where she spent some time. Then she was brought into the office of lieutenant R. Present in the room were also Mrs T., Mr T. (her husband) and chief-sergeant D. The applicant was confronted with Mrs T. in order to establish whether the facts alleged in the complaint were true. The applicant denied the allegation and an argument erupted between her and Mrs T. Lieutenant R. left the room to take some documents from another office. As the argument between the applicant and Mrs T. continued, chief-sergeant D. led the applicant out of lieutenant R.'s office, into the corridor.

12. According to testimony given later by chief-sergeant D. and another police officer, sergeant U., after being led out of the office and into the corridor, the applicant, who was irritated, called chief-sergeant D. a "brat", a "piss-pants" and a "sniveler", and slapped him on the face. He then grabbed her hands and pushed her back but she kicked him in the ankle. Then sergeant U. intervened to help chief-sergeant D., and the two forced the applicant into a detention room, from where she continued screaming insults at them. Then both officers left the detention room. Both officers denied having hit the applicant or having pushed her to the floor.

13. The applicant's version of the facts significantly differed. She denied having insulted or hit chief-sergeant D. She submitted that after taking her out of lieutenant R.'s office, chief-sergeant D. and sergeant U. had guided her to a detention room, where they had started beating her in order to extract a confession. The applicant stated that sergeant U. had been holding her while chief-sergeant D. had been hitting her face and temple and kicking

her torso. Her nose had started bleeding and sergeant U. had taken her to the toilet to wash the blood. He had also made the applicant wash the basin and had brought her back to the detention room, where the two had continued beating her. Chief-sergeant D. had kicked her and, while falling on the floor, the applicant had bumped her head against the edge of a table. She had lost consciousness for some time. After that she had spent an unspecified amount of time lying in the detention room.

14. In his testimony given at the applicant's trial lieutenant R. relayed that around 12 noon he had come to the detention room and had found the applicant squatting on the floor. The applicant had told him that she "[had been] killed, [that] her waist [had been] broken ... that she [had been] beaten". He had not seen any blood or visible traces of injury on the applicant but she had told him that her nose and mouth had been injured. The lieutenant had helped her sit on a chair. He had presented her a *procès-verbal* establishing the fact that the previous evening the applicant had beaten Mrs T. and had asked her to sign it. The applicant had written "I am not guilty" and had signed. Lieutenant R. had led the applicant to the hallway of the police station and had left her there. She had told him that she could not walk.

15. After being left by lieutenant R. at the hallway, the applicant asked several police officers to call an ambulance or a taxi to take her to hospital, but apparently no one responded to her request. Then the applicant crawled out of the police station on her hands and knees. She was seen crawling by a boy, G.A., whom she asked to help her reach the nearest payphone by letting her lean against his bicycle. Shortly thereafter a driver, Mr Y., came across them with his car and took the applicant to the surgical ward of the local hospital. Mr Y. later testified that he had not seen visible traces of injury on the applicant but that she had been crying and had said that she had been beaten at the police.

B. Medical evidence relating to the condition of the applicant. Treatment and subsequent hospitalisation

16. The on-duty surgeon, Dr S., arrived at the hospital at around 4 p.m. and examined the applicant. For the investigation Dr S. stated that at the time of the examination he had not observed visible traces of injury, but at the applicant's trial he testified that she had come to him with traumas on her head and back. The one on the head had been a dull trauma in the left temporal zone, without skin rupturing. The one on the back had been also a dull trauma under the right scapula, with a visible sub-cutaneous haematoma. In his view, the injuries in question could have been caused by a blow with or against a blunt object.

17. Dr S. directed the applicant to a consultation with a neurologist from the local emergency ward. The neurologist examined her at 6.15 p.m. and

noted that the applicant had "[*c*]*ontusio capitis*. ... [*c*]*ommotio cerebri*". His opinion was that she had to be hospitalised and treated.

18. In the evening the applicant went back to her house and spent the night there.

19. The following morning, on 6 April 1995, the applicant was admitted to the surgical ward of the District Hospital in Sevlievo. The doctors found:

> "Head – painfulness upon palpation in the left temporal zone; behind and above the left ear – sub-cutaneous haematoma ... Thorax – sub-cutaneous blue-yellowish haematoma, measuring 5 to 4 centimetres in the right thoracic half, in the lower end of the right scapula."

20. The applicant stayed in hospital until 14 April 1995. She was treated with analgesics and neuroleptics. The doctors also prescribed rest and calm.

On 8 May 1995 the applicant went to the hospital for an examination. The report drawn by the examining doctor stated that at that time the applicant was complaining of "strong vertigo, headache, nausea and vomiting". The diagnosis again was "[*c*]*ontusio capitis* ... [*c*]*ommotio cerebri.*"

21. On 16 June 1995 the applicant was admitted to the neurological ward of the District Hospital in Sevlievo. It appears that at that time the applicant was treated mainly for high blood pressure. She remained in hospital until 17 July 1995.

C. Complaints and proceedings after the events of 5 April 1995

1. Criminal investigation against the applicant

22. On the day of incident, 5 April 1995, chief-sergeant D., the police officer who had allegedly beaten the applicant, submitted a report to the head of the District Police Department in Sevlievo. He alleged that the applicant had hit him and had used abusive language against him and asserted that he had put her in the detention room to prevent her from carrying on.

23. On the basis of this report the District Police Department initiated an inquiry and charged lieutenant R., one of the officers who had arrested the applicant, to conduct it. The lieutenant finished the inquiry in one day and on 7 April 1995 submitted a report concluding that the facts warranted the opening of a criminal investigation against the applicant.

24. On 13 April 1995 an investigator from the District Investigation Service in Sevlievo opened a criminal investigation against the applicant for having caused a light bodily injury to an official and for having insulted him during the performance of his duties, offences under Articles 131 § 1 (1) and 148 § 1 (3) of the Criminal Code ("CC"). The injury in question was the result of the applicant having allegedly slapped chief-sergeant D. on the face

and kicked him in the ankle. No medical evidence was presented. On the same day the investigator heard chief-sergeant D., lieutenant R., sergeant U., Mr T. and Mrs T. A week later, on 20 April 1995, the investigator sent the material to the Sevlievo District Prosecutor's Office with a recommendation that the applicant be indicted. The case was assigned to prosecutor G. who filed a bill of indictment with the Sevlievo District Court.

25. When the applicant's trial opened her counsel requested a medical expert report in order to determine whether the injuries sustained by the applicant could have been the result of beating by the police officer accusing her of violence against him. The District Court did not appoint an expert but instead remitted the case to the prosecution with instructions to carry out the steps requested by the applicant's defence. However, no report was made, as the prosecutor in charge of the case held that the mechanism of the injuries had already been ascertained by the doctors who had examined the applicant upon her admitting to hospital.

26. When the trial resumed on 4 and 17 April 1996, counsel for the applicant renewed her request for an expert report but it was denied by the court, which held that the facts of the case had already been established on the basis of the available evidence.

27. In the proceedings before the District Court the applicant testified that she had been beaten by chief-sergeant D.

28. In her closing argument at trial counsel for the applicant pointed out that the applicant had been beaten, had sustained injuries, had been treated for them in hospital and that a complaint had been filed with the District Prosecutor's Office.

29. On 17 April 1996 the District Court found the applicant guilty as charged and sentenced her to six months' imprisonment, suspended for three years.

On the basis of the testimony given by chief-sergeant D. and sergeant U. (the court held that Mrs T.'s and Mr T.'s testimony was not credible because their relations with the applicant had been strained) the court found that the officers had led the applicant out of lieutenant R.'s office and into the corridor. There, some verbal exchange had taken place between the applicant and chief-sergeant D., while sergeant U. had stepped aside. The applicant had then slapped chief-sergeant D. on the face, had tried to kick him and had called him a "brat" and a "sniveler". The court noted that the applicant presented a completely different version of the facts, namely that it was her who had been subjected to violence. However, it went on to hold that Dr S., the surgeon who examined the applicant on the day of the incident, had not found blood on the applicant but only a dull trauma on her right scapula. That could have been occasioned by a blow by or onto a blunt object. Thus, it was possible that the applicant had inflicted the injury on herself. Therefore her allegations of savage beating, kicks, pushing, falling

down etc. did not correspond to the testimony of the doctors who had examined her. The fact that there had been no visible traces of beating on the applicant was also established through the testimony of G.A., the boy who had helped her move out of the police station, and of Mr Y., the driver who had taken her to the hospital.

However, the court noted that the inquiry whether the applicant had been subjected to violence was not part of the subject-matter of the case before it.

30. The applicant appealed to the Gabrovo Regional Court, which upheld the conviction and sentence on 18 July 1996. The court noted, *inter alia*, that if the applicant's allegations of police ill-treatment were true, she could request the opening of criminal proceedings against the police officers involved.

31. The applicant then petitioned the Supreme Court of Cassation for review. At the hearing before that court a prosecutor of the Chief Prosecutor's Office appeared who pleaded for the dismissal of the applicant's petition. The Supreme Court of Cassation dismissed the petition in a judgment of 25 July 1997.

In its judgment the Supreme Court of Cassation held, *inter alia*:

> "Counsel for [the applicant] calls into question the testimony of [chief-sergeant D.], who, she asserts, is 'very interested in the outcome of the case', this interest being presumed from the allegations of [the applicant] that D. had 'savagely beaten her'. This argument is groundless ... The [applicant's] assertions that she had been beaten are completely unsubstantiated. In fact, the traces of the 'savage beating' were a subcutaneous haematoma above the left ear and an identical haematoma in the lower part of the right thoracic half ... That could have been caused by a blow or a self-inflicted blow with or onto a blunt object ... These injuries and the statements of [the applicant] that she fell unconscious, had vertigo, nausea and had vomited – for the ascertaining of which no objective medical criteria exist – led to her hospitalisation during which no indications of brain damage were found...
>
> Beside being unproven, the allegation of [the applicant] that ... she was the victim of an offence on the part of the police officers is also illogical. The police officers did not have any reason to be rude toward [the applicant], or, in any event, not until [she] by words and conduct demonstrated her disparagement toward [them] and their work..."

2. Attempts to initiate an investigation against the police officers

32. On 6 April 1995, after the applicant was admitted to hospital, her daughter filed a complaint with the Sevlievo District Prosecutor's Office, alleging that her mother had been beaten by chief-sergeant D. The complaint was dealt with by prosecutor G., the same prosecutor who drew up the indictment in the criminal case against the applicant. On 26 April 1995 he ordered that the complaint be sent for verification to the District Police Department. In the accompanying letter he requested that the following facts be established within fourteen days:

"Who brought [the applicant] to the Police Department[?] When and for what reasons[?] Was she hit[?] With what[?] In which part of the body[?] What injuries did she sustain[?]"

33. On 27 April 1995 the head of the District Police Department assigned the verification to lieutenant R., the officer who had arrested the applicant and who had conducted the inquiry against her.

34. On 5 May 1995 lieutenant R. concluded the verification. He sent a report to the head of the District Police Department, asserting that the applicant had not been beaten and recommending that no criminal investigation be opened. The applicant submits that the lieutenant did not independently establish the facts but instead relied on testimony given in the criminal investigation against her to corroborate his conclusion.

35. On 1 June 1995 the results from the verification were sent to the District Prosecutor's Office and given to prosecutor G. Apparently no further investigative actions were undertaken by the prosecution with regard to the complaint. No decision to open or to refuse the opening of a criminal investigation was issued.

36. In a separate effort to initiate an investigation, on 11 April 1995 the applicant's daughter filed a complaint with the Ministry of Internal Affairs in Sofia. The Ministry requested information form the District Directorate of Internal Affairs in Gabrovo, which in turn requested information from the Sevlievo District Police Department.

37. On 17 April 1995 the applicant's daughter also filed a complaint with the Directorate of the National Police in Gabrovo, which three days later ordered the District Directorate of Internal Affairs to conduct an inquiry.

38. On 11 May 1995 the District Directorate of Internal Affairs wrote to the applicant's daughter and to the Ministry, stating that it had not been established that chief-sergeant D. had engaged in any unlawful actions. The letter added that an investigation had been opened into the matter, citing the case-number of the criminal investigation against the applicant.

39. On 17 May 1995 the Ministry sent a reply to the applicant's daughter, stating that the prosecution authorities were handling the case and that the Ministry would announce its position after they prosecution had finished dealing with it.

3. Report of Amnesty International and newspaper publications

40. In June 1996 Amnesty International published a report under the heading: "Bulgaria: Shootings, deaths in custody, torture and ill-treatment" (AI Index: EUR 15/07/96), in which, on page 23, the case of the applicant was described. Upon receiving a query from Amnesty International, the Ministry of Internal Affairs sent a reply, in which it relayed that the applicant had been put in the detention room by sergeants D. and U., but

asserted that the applicant had not been beaten or ill-treated during her stay in the police station.

41. In its issue of 22-28 July 1996 a national weekly newspaper, "168 Hours", published an article describing the case of the applicant, the criminal prosecution against her and the investigation into her daughter's complaints under the heading "A granny battered a police officer on his place of work".

II. RELEVANT DOMESTIC LAW

A. Use of force by the police

42. Section 40(1) of the National Police Act, as in force at the material time, read, as relevant:

> "... police [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; ...
>
> 5. attack against citizens or police [officers]; ...

Section 41(2) provided that the use of force had to be commensurate to, *inter alia*, the specific circumstances and the personality of the offender. 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

43. Articles 128, 129 and 130 of the CC make it an offence to cause a light, intermediate or severe bodily injury to another. Article 131 § 1 (2) provides that if the injury is caused by a police officer in the course of, or in connection with, the performance of his or her duties the offence is an aggravated one. This offence is a publicly prosecuted one (Article 161 of the CC).

44. Under Bulgarian law criminal proceedings for publicly prosecuted offences can be opened only by the decision of a prosecutor or of an investigator (Article 192 of the Code of Criminal Procedure ("CCP")). The prosecutor or the investigator must open an investigation whenever he or she receives information, supported by sufficient evidence, that an offence might have been committed (Articles 187 and 190 of the CCP). During the relevant period the CCP provided that if the information to the prosecuting authorities was not supported by evidence, the prosecutor had to order a preliminary inquiry (verification) in order to determine whether the opening of a criminal investigation was warranted (Article 191 of the CCP).

THE LAW

I. PRELIMINARY OBSERVATION

45. The applicant died on 30 August 2003, while the case was pending before the Court (see paragraph 7 above). It has not been disputed that her daughter is entitled to pursue the application on her behalf and the Court sees no reason to hold otherwise (see *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 540, § 35).

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

A. The alleged ill-treatment of the applicant

46. The applicant complained under Article 3 of the Convention that on 5 April 1995 she had been ill-treated by police officers. She submitted that the actions of the police officers, who had caused her a bodily injury, had been unwarranted and not authorised under the provisions governing the use of force by the police.

Article 3 of the Convention provides:

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

1. The parties' submissions

47. The applicant submitted that she had been brought to the police station in the morning of 5 April 1995 in good health and released with traces of violence which had led to her hospitalisation. In her view, the Government had failed to advance a credible explanation of these injuries. Relying on the Court's judgments in the cases of *Assenov and Others* (judgment of 28 October 1998, *Reports* 1998-VIII), *Velikova v. Bulgaria* (no. 41488/98, ECHR 2000-VI) and *Anguelova v. Bulgaria* (no. 38361/97, ECHR 2002-IV), she argued that this gave rise to a strong presumption that the injuries were imputable to the police officers.

48. The Government submitted that the applicant had not been subjected to ill-treatment. In their view, all witnesses had unequivocally established that the applicant had exaggerated her medical complaints and that she had no injuries. She had been hospitalised in view of her contention that she had lost consciousness, which was routine practice in such cases. The medical documents did not indicate that the applicant had been ill-treated. Her subsequent stay in hospital between 16 June and 17 July 1995 had been for

ailments which were normal for her age and were unconnected to any physical violence.

49. The Government further argued that the domestic courts, which had analysed all evidence, had found that the applicant had not been beaten. On the contrary, it had been the applicant who had demonstrated a complete lack of cooperation with the police officers, going as far as committing offences against them.

2. The Court's assessment

50. The Court reiterates that "[w]here an individual, when taken in police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention" (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11 and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

51. 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).

52. In the instant case, the material in the case file indicates that the applicant was in good health when arrested and brought to the police station in the morning of 5 April 1995. When she left the police a little after noon she was injured: she was diagnosed with cerebral contusion; haematoma were found beneath her right scapula and on her left temple (see paragraphs 16 and 17 above). The Court considers that especially in view of the applicant's advanced age – 67 years at the relevant time – those injuries were serious enough to amount to ill-treatment within the meaning of Article 3 of the Convention. Therefore, the authorities had to provide a plausible explanation of how these injuries had been caused and to produce appropriate evidence that could cast doubt on the account given by the applicant.

53. The applicant stated that the injuries had two causes: blows administered by two police officers (chief-sergeant D. and sergeant U.) and a fall on the ground as a result of a kick by one of them (see paragraph 13 above). The medical doctors who later examined the applicant apparently

considered that the injuries could indeed have been caused in such a manner (see paragraph 16 above). The police officers, together with the applicant, were the only eye-witnesses of the incident and did not state that the applicant had fallen down and had hit herself, nor that she had sustained her injuries while being forced into the detention room; they merely maintained that they had pushed her into the room after she had allegedly slapped one of them and that after that they had left her alone there. They also denied having hit her. However, their statements appear inconsistent with the injuries later found on the applicant's body and head. They also appear inconsistent with the unequivocally established facts that the applicant was squatting on the floor of the room when she was later found by lieutenant R. (see paragraph 14 above) and that she had difficulty walking after she left the police station a little after noon (see paragraph 15 above). The District Court's finding that the applicant has not been subjected to violence appears questionable: the court conceded that the applicant's right scapula had been injured, but quite readily accepted that this was a self-inflicted injury, without stating any basis for such a conclusion, without delving more into her allegations, and without testing different versions about to the actual course of the events (see, for a decision to the contrary, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30).

54. It remains to be seen whether the applicant's injuries were not the result of an accidental fall when she was pushed to the detention room or whether they were inflicted through force strictly necessary to tame her. On the former point, it is highly significant that the police officers did not state having seen the applicant falling. As to the second point, even if it is accepted that initially the applicant was behaving improperly towards the officers, her injuries suggest that they might have used excessive force to tame her.

55. Even if in view of the applicant's injuries her allegations of "savage beating" appear excessive, the Court emphasises that, in respect of a person deprived of her liberty, any recourse to physical force which has not been made strictly necessary by her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 38).

56. 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.

57. It follows that there has been a violation of Article 3 of the Convention in that the applicant has been subjected to inhuman and degrading treatment.

B. The alleged ineffective investigation

58. The applicant also complained that the prosecution authorities had not carried out an effective investigation into her allegations of ill-treatment by the police. In particular, the Sevlievo District Prosecutor's Office had not undertaken any actions to verify the facts charged by the applicant, while in the same time reacting swiftly in the criminal case against her stemming from the same set of events.

1. The parties' submissions

59. The applicant submitted that she had, through her daughter, notified the competent authority, the Sevlievo District Prosecutor's Office, of the incident. It was that Office's duty to investigate it. However, it had entrusted the inquiry to lieutenant R., who had obviously been biased: he had participated in the applicant's arrest and had proposed that criminal proceedings be brought against her. He had not independently investigated the facts but had chosen to rely on material gathered in the criminal proceedings against the applicant. Moreover, no formal decision had been taken by the District Prosecutor's Office to this day.

60. The Government maintained that the applicant's daughter's complaints had been duly investigated. The courts had found that her allegations of ill-treatment did not correspond to the evidence. In the Government's view, the applicant was not dissatisfied with the lack of an investigation, but with its result.

2. The Court's assessment

61. The Court considers that the medical evidence and the applicant's complaints and testimony together raised a reasonable suspicion that her injuries could have been caused by the police.

62. Where an individual raises an arguable claim that she 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*, cited above, p. 3290, § 102 and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

63. The chronology of the events suggests that following the incident of 5 April 1995 the police and the prosecution authorities acted with considerable swiftness against the applicant. She was charged, indicted and convicted by the trial court within approximately one year after the incident (see paragraphs 22-29 above). It is noteworthy that in the same time the same prosecutor who dealt with the criminal case against the applicant (see

paragraph 32 above) did not undertake an independent verification of the her daughter's allegations. He entrusted the verification to the same police officer who had dealt with the inquiry against the applicant (see paragraph 33 above), had testified in the criminal case against her (see paragraph 24 above) and was the hierarchical superior of the officers who had allegedly beaten the applicant.

64. Another important fact is that the prosecution authorities apparently did not gather medical evidence about the applicant's injuries, even though such evidence was readily available.

65. Finally, the Court notes that apparently following the verification no further investigative steps have been carried out by the authorities to this day, more than eight years after the incident. It also notes that no formal decision has been issued pursuant to the applicant's daughter's allegations (see paragraph 35 above).

66. Against this background, in view of the lack of a thorough and effective investigation into the applicant's arguable claim that she had been ill-treated by police officers, the Court finds that there has been a violation of Article 3 of the Convention in this respect as well.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 20,000 euros ("EUR") in non-pecuniary damages for the distress she had suffered as a result of the violations of her Convention rights. She submitted that at the time when she had been ill-treated she had been 67 years of age and had endured serious pain which had continued for more than a month. She had also suffered severe emotional distress and humiliation as a result of the ill-treatment. The applicant further submitted that her emotional suffering and feeling of helplessness had been aggravated by the fact that the criminal case against her had been progressing with considerable swiftness, while her efforts to initiate an effective investigation against the police officers had been fruitless.

69. Referring to some of the Court's judgments in previous cases against Bulgaria, the Government submitted that the claim was exaggerated and excessive. They considered that, regard been had to the living standards in

Bulgaria, it would be equitable to award the applicant no more than EUR 1,000.

70. The applicant replied that the Government's suggestion that Bulgarian citizens should be awarded less compensation for breaches of their fundamental rights on account of their national origin was discriminatory and went counter to the principles of justice.

71. The Court considers that the applicant must have suffered non-pecuniary damage as a result of her ill-treatment by the police officers. The Court further finds that the applicant can reasonably be considered to have suffered non-pecuniary damage on account of the distress and frustration resulting from the inadequacy of the investigation into her complaints. Having regard to the nature of the violations found in the present case and deciding on an equitable basis, the Court awards the applicant EUR 3,500, to be paid to her daughter, Ms Svetla Todorova Martinova, who continued the proceedings in the applicant's stead.

B. Costs and expenses

72. The applicant claimed EUR 5,265 for 117 hours of legal work on the Strasbourg proceedings, at the hourly rate of EUR 45. She claimed an additional EUR 315 for translation costs, copying, mailing, and overhead expenses. The applicant submitted a fees' agreement between her and her lawyers, a time-sheet, and postal receipts and invoices for 76 pages of translation and for office supplies.

73. The Government stated that: (i) the claim for translation and other expenses was not supported by the presented documents as they were unrelated to the application; moreover, some of the documents had been drawn up in 1998, before the denomination of the Bulgarian lev, and their counter-value in euros had been incorrectly calculated; (ii) the number of hours claimed was excessive as the work done by the lawyers could have been completed in one third of the time claimed; and (iii) the hourly rate of EUR 45 was excessive, regard being had to usual lawyers' fees in Bulgaria.

74. The applicant replied that the hours claimed by her lawyers had actually been spent in work on her case. She also argued that their fees were not excessive, as evidenced by other judgments of the Court against Bulgaria, where similar amounts were claimed. She further explained in detail the manner of calculation of the expenses claimed.

75. According to the Court's case-law, costs and expenses are reimbursable only in so far as it has been shown that they have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, the Court does not consider that the hourly rate of EUR 45 is excessive (see *Anguelova*, cited above, § 176 *in fine* and *Nikolov v. Bulgaria*, no. 38884/97, § 111, 30 January 2003). However, it considers that the number of hours claimed is excessive and that a reduction is necessary on

that basis. It also considers that a reduction should be applied on account of the fact that part of the application was declared inadmissible (see paragraph 6 above). Having regard to all relevant factors, the Court awards the applicant EUR 3,000 in respect of costs and expenses, to be paid to her daughter, Ms Svetla Todorova Martinova, who continued the proceedings in the applicant's stead.

C. Default interest

76. 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 UNANIMOUSLY

1. *Holds* that the applicant's daughter has standing to continue the present proceedings in her stead;

2. *Holds* that there have been violations of Article 3 of the Convention in that the applicant has been subjected to inhuman and degrading treatment by police officers and that the investigation into her allegations of ill-treatment has been ineffective;

3. *Holds*
   (a) that the respondent State is to pay the applicant's daugther, Ms Svetla Todorova Martinova, 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 at the date of settlement:
      (i) EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 May 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President