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

FIRST SECTION

CASE OF ZELILOF v. GREECE

(Application no. 17060/03)

JUDGMENT

STRASBOURG

24 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 Zelilof v. Greece,

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

Mr L. LOUCAIDES, *President,*
Mr C.L. ROZAKIS,
Mrs N. VAJIĆ,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS,
Mr G. MALINVERNI, *judges,*
and Mr S. NIELSEN, *Section Registrar*

Having deliberated in private on 3 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 17060/03) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Greek national, Mr Dimitrios Zelilof ("the applicant"), on 20 May 2003.

2. The applicant was represented by the Greek Helsinki Monitor, a member of the International Helsinki Federation. The Greek Government ("the Government") were represented by their Agent, Mr I. Halkias, Adviser at the State Legal Council and Mr I. Bakopoulos, Legal Assistant at the State Legal Council.

3. The applicant alleged, in particular, that he had been subjected to acts of police brutality and that the authorities had failed to carry out an adequate investigation into the incident, in breach of Articles 3 and 13 of the Convention. He further alleged that the impugned events had been motivated by racial prejudice, in breach of Article 14 of the Convention.

4. On 16 September 2005 the Court decided to communicate the complaints concerning Articles 3, 13 and 14 to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant is a Greek citizen of Russian-Pontic origin who was born in 1978 and lives in Salonika.

I. THE CIRCUMSTANCES OF THE CASE

A. Outline of the events

6. On 23 December 2001, at approximately 10.15 p.m., the applicant was walking towards a cafeteria in Ano Toumba, a district of Salonika, when he saw a police patrol carrying out an identity check on the passengers of a car. The applicant, who knew the passengers, proceeded to ask one of them, Mr Giorgos Kalaitsidis, what was going on.

i. The applicant's version

7. The applicant submitted that a police officer, who was subsequently identified as Police Sergeant Apostolos Apostolidis, flashed his torch on him and asked him to identify himself. The applicant replied that he wanted to know whether his friend had a problem. The applicant was then asked by another police officer, later identified as Police Constable Zaharias Tsiorakis, to produce his identity card. The applicant replied that he did not have his identity card with him and suggested that they all go to the nearby police station for an identity check, as his identity card had been issued there. Then, allegedly, one of the police officers asked him whether he was "being the tough guy". The applicant submitted that, seconds later, Tsiorakis wrapped his handcuffs around his fist and then punched him in the mouth. The applicant alleged that this made him feel dizzy and that, as he was falling down, Tsiorakis kicked him twice in the chest and abdomen.

8. The applicant asserted that he managed to leave the scene when another acquaintance of his, Dimitrios Kalaitsidis, headed towards the police officers, asking them to stop beating the applicant on the head as the latter was suffering from a head problem. The applicant contended that by that time he had heard three to four gunshots being fired. According to the testimony of Police Officer Apostolidis, the latter fired three warning shots in the air "in a safe way" with the intention of intimidating the applicant as he was escaping from the scene. The applicant then proceeded to the nearby police station, located at a distance of approximately forty metres from where the incident had taken place. On his arrival there, he complained to two policemen about his ill-treatment. The two police officers seized him and dragged him inside the police station. They then handcuffed him and started beating and kicking him in various parts of his body. The applicant asserted that the police officers who had carried out the initial road check were among those ill-treating him. According to the applicant, this went on for approximately thirty minutes, until the officers realised that a high-ranking officer was coming. Upon hearing this, a police officer grabbed a dirty mop and wiped the blood off the floor and the applicant's face, repeatedly uttering the word "drop dead" (ψόφος).

9. The applicant passed out and was transferred by ambulance to Aghios Dimitrios Hospital in Salonika, where he remained until 28 December 2001.

10. Four other individuals of Kazakh origin, acquaintances of Mr Zelilof, who were also involved in the event, were arrested that night and taken to the police station where the applicant was detained. Among them, Dimitrios and Charalambos Kalaitsidis were charged with assaulting police officers. In their defence pleadings, dated 23 January and 2 April 2002, they stated that they had been the victims of a discriminatory attitude due to their ethnic origin. In particular, Dimitrios Kalatsidis stated that while being transferred and once inside the police station the police officers had repeatedly shouted at him "F... Russia, you are mafia, you come over here and you think you are tough, you bastards, if you don't leave town or if we see you again in the cafeteria, we will f... you, f... your Christ and Virgin Mary". Charalambos Kalaitsidis stated that police officers had shouted at him while he had been inside Toumba police station: "You dirty Russians, you will never work again in your lives, you fuckers, you bastards. I f... your mothers".

ii. The Government's version

11. The Government maintained that the identity check on the passengers of the car had been almost complete when the applicant, who was passing by, headed towards the police officers. The police officers initially warned him not to come close to the car so as to be able to complete the check unobstructed and not expose the passengers to public view.

12. Despite their initial warning the three police officers were ignored by the applicant, who approached the car and started talking to the passengers. Police Officer Apostolidis asked the applicant to identify himself. The latter refused to obey and shoved the police officer abruptly with his arm. Apostolidis fell to the ground after being hit in the face by the applicant. Officers Hamopoulos and Tsiorakis ran to their colleague's assistance and tried to handcuff the applicant. The latter resisted strongly by punching and kicking the above-mentioned officers.

13. In the meantime Dimitrios and Lazaros Kalaitsidis had appeared from a nearby café and got involved in the argument between the applicant and the three police officers. While the police officers were trying to handcuff the applicant and arrest him, Dimitrios and Lazaros Kalaitsidis violently shoved the police officers with their arms and struck them with their arms and legs. By doing so, they managed to prevent them arresting the applicant, who fled from the scene. Apostolidis fired a shot in the air in order to scare his assailants away.

14. Due to the fact that the incident had been taking place close to Toumba police station, as soon as Officer Apostolidis had fired the shot, another group of police officers ran to their assistance. A number of persons who had either actively participated in or just observed the incident ran

away into the café. Charalambos and Dimitrios Kalaitsidis and Panagiotis Galotskin were arrested and driven to Toumba police station. The applicant was arrested later the same day. He was also taken to Toumba police station, where he was charged with resisting lawful authority, releasing a prisoner and causing unprovoked bodily injury. He was kept at the police station just the time strictly necessary for the preparation of the case file and then taken to hospital. Neither he nor his acquaintances were ever abused by police officers while at the police station.

B. Medical reports

1. With regard to the applicant

15. According to the hospitalisation information note issued by the hospital on 2 January 2002, the applicant bore contusions on his thorax and breast bone and a contusion on his left cheek bone, and had an infraorbital haematoma in both eyes. The applicant also had wounds on his head and back that required stitching. He was diagnosed as suffering from "head and thorax injury, and slight brain concussion". The note also stated that the applicant was admitted to the hospital on 24 December 2002 and discharged on 28 December 2002.

16. On 29 January 2002 the applicant was summoned by the prosecutor's office to undergo a medical examination by a forensic doctor. According to the prosecutor's order, the Forensic Department was asked to send the forensic report to the prosecutor's office at the earliest opportunity.

17. According to the forensic expert's medical examination, dated 29 January 2002, the applicant bore a contusion in the chest area, a wound on the part of the head covered with hair, an intumescence and an ecchymosis on his left cheek bone. He also had an infraorbital haematoma in both eyes. The dental examination revealed that the applicant's crown on his lower left canine tooth was fractured and that part of his jaw was dislocated. The forensic expert found that "... Zelilof suffer[ed] from a medium-intensity bodily injury, caused by blunt instruments, and – barring any unforeseen complication – [would] probably recover within 18-21 [days]."

2. With regard to the police officers

18. According to the hospitalisation information note issued by the hospital on 24 December 2001, Hamopoulos was diagnosed with "a bruise on his left tibia"; Apostolidis bore "heavy bruises on the outer part of both his hands; and Tsiorakis bore "heavy bruises on the fingers of his right hand and his right wrist". The hospitalisation note stated that the police officers were admitted to the hospital on 23 December 2002 and discharged on 24 December 2002.

19. Police Officers Hamopoulos, Apostolidis and Tsiorakis were not subjected to a medical examination by a forensic doctor.

C. The administrative investigation

20. On 8 January 2002 Salonika police headquarters ordered an administrative investigation in order to ascertain the exact circumstances in which the three police officers had been injured and whether they were liable for any disciplinary offence. The administrative investigation was assigned to an officer serving at the police's sub-directorate of administrative investigations. As part of the investigation the investigating police officer summoned as witnesses the three police officers who had been involved in the incident. The various witness statements available were studied but no further inquiry was conducted regarding the gunshots fired or the general legitimacy of the initial identity check. It was observed in the report of the administrative investigation issued on 9 August 2002 that "persons involved in the incident refused to comply with the police officers' orders and, furthermore, one of them [Zelilof] had intended to "control" the police officers who were performing the identity check, considering arbitrarily and cheekily that he had an inexistent right .... Taking into account also the unprovoked, violent and disproportionate assault by other individuals on the police officers, it is concluded that the police officers properly assessed the relevant circumstances and acted correctly. The brawl between the police officers and the individuals in question was inevitable. The police officers used necessary physical force against the civilians, mainly in order to defend their physical integrity that was under imminent threat. There was a clear danger that the police officers' firearms would be snatched by the individuals concerned in the context of a disproportionate assault by ten to fifteen of them on the police officers. Thus, apart from the injuries inflicted on the police officers, which could easily have been more serious, there was an imminent danger that firearms would be used by civilians in an extreme way (fatal shooting of the police officers, etc.)".

21. As regards the alleged ill-treatment on the premises of the police station, the report observed, among other things, that "the violent behaviour of the police officers transpired from the testimonies of the persons who had provoked the illegal acts. Even if these testimonies could not be rejected as such, their accuracy and objectivity could not be taken for granted. Testimonies such as those made by Kalaitsidis and Kampanakis – cousin and friend respectively of the accused – undoubtedly concern personal opinions and assessments that will be of assistance to the accused during the trial. ... Not all the testimonies have been proven; on the contrary, the police officers (involved in the events) have denied them. The latter insisted in their testimonies that there was no violence in the police station and that all the injuries sustained by the civilians were provoked before their transfer to

the police station". It continued as follows: "At this point reference should be made to the allegations of individuals concerning unprovoked ill-treatment inflicted by 'mean' police officers against those who just 'happened' to be there or were unrelated to the incident. These [testimonies] could not be taken seriously, nor could they be considered objective. On the contrary, they had to be considered as defence tactics by their friends/acquaintances, who faced serious criminal charges and whose depositions aim to cast the police officers in a bad light".

22. Finally, the report noted that both the applicant and the police officers had failed to submit to an examination by the forensic doctor. It stated that "As they failed to undergo the forensic exam (not one of the victims went to the forensic doctor to be examined), the seriousness of the injuries inflicted on the individuals cannot be accurately assessed. This fact shows an intention to prevent the disclosure of new evidence that would have facilitated the investigation of the case. ... The same considerations could be applied to the police officers. According to the investigating police officer, this omission was due to negligence on the part of the police officers. ... The disciplinary liability that derived from that omission was obvious in the present case, but was of minor importance in the context of the case as a whole. Thus, no such intention could be attributed to the police officers".

23. The report did not make any reference to the applicant's forensic medical examination of 29 January 2002.

D. Criminal proceedings against the applicant and the police officers

1. Criminal proceedings against the applicant

24. On 24 December 2001 charges were brought against the applicant for resisting arrest, assaulting a police officer and causing grievous bodily harm. On 13 January 2004 the applicant appeared before the investigating judge in order to testify with regard to the charges against him. The applicant contended that Police Officer Apostolidis had submitted his criminal record to the investigating judge in order to establish his "criminal and socially deviant character". Apostolidis contended that the files relating to the applicant's criminal record had been compiled by the police department in which he served. The applicant contended that the information about his criminal record as submitted by Apostolidis was inaccurate and not up to date.

25. On 14 January 2004 the investigating judge granted the applicant bail for 587 euros.

26. On 14 January 2005 the Salonika Court of First Instance sentenced the applicant to fourteen months' imprisonment under Article 167 § 1 of the Greek Criminal Code for resisting lawful authority. The first-instance court

established that Police Officer Apostolidis had asked the applicant to identify himself and that the latter had refused to obey and had shoved him violently with his arm and then violently pushed Officers Hamopoulos and Tsiorakis with his arms and feet. It further considered that Police Officers Apostolidis, Hamopoulos and Tsiorakis had been assaulted by Dimitrios and Lazaros Kalaitsidis, who had appeared from a nearby café in the meantime and tried to help the applicant escape. The court accepted that the three police officers had feared for their physical integrity as a group of almost fifteen persons had hindered them, either physically or verbally, in their task of carrying out a normal police control. Finally, the court did not accept that the aggravating circumstances described in Article 167 § 2 of the Greek Criminal Code could be applied in the applicant's case (judgment no. 683/2005).

27. The case is currently pending before the domestic courts.

2. Criminal proceedings against the police officers involved in the incident

28. On 14 January 2002 the applicant lodged a criminal complaint with the Salonika Public Prosecutor's Office. The complaint was lodged against the police officers who had been involved in the incident described above and concerned the alleged ill-treatment both during the course of his arrest and during his detention on 23 December 2001. The applicant further complained that he had not been given time to apply to Salonika General Police Directorate for a copy of the police officers' criminal and disciplinary records, whereas Police Officer Apostolidis had been able to submit the applicant's criminal record to the investigating judge in order to establish his "criminal and socially deviant character".

29. On 2 July 2002 the Prosecutor at the Salonika Court of First Instance dismissed the applicant's criminal complaint as "factually unfounded". The prosecutor endorsed the conclusions reached in the administrative investigation on the basis of the depositions of the police officers. No witnesses were questioned personally by the prosecutor. Furthermore, the prosecutor contended that Police Officer Apostolidis had not acted improperly in submitting the applicant's criminal record to the investigating judge. He concluded that the investigating judge had legitimately taken those documents into account (decision no. 30/2002).

30. On 16 October 2002 the applicant lodged an appeal with the Prosecutor at the Salonika Court of Appeal. On 16 November 2002 his appeal was declared inadmissible (decision no. 240/2002).

31. On 22 November 2002 the applicant lodged a fresh appeal with the Prosecutor at the Salonika Court of Appeal. On 29 November 2002 his appeal was dismissed as "factually unfounded" again. In particular, the prosecutor confirmed the conclusions of decision no 30/2002 without personally questioning the witnesses. The applicant's allegations of ill-

treatment were considered to be false and the prosecutor concluded that there was no need to launch an in-depth judicial investigation into the incident. Lastly, the prosecutor confirmed the conclusions of the Prosecutor at the Court of First Instance as to the admissibility of the files which had been compiled by Police Officer Apostolidis from the applicant's criminal record and submitted to the investigating judge (decision no. 246/2002).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law

32. Article 167 of the Greek Criminal Code provides in so far as relevant:

"Resistance

1. Anyone who uses or threatens to use force for the purpose of obliging an authority or a civil servant to carry out an act within their competence or to refrain from carrying out a legal act, and anyone who uses physical force against a civil servant ... shall be punished by a term of imprisonment of at least three months.

2. Where the punishable acts cited above occur as a result of using a weapon or an object that may provoke bodily injury ... or the person who is the subject of the attack is seriously endangered, the perpetrator shall be punished by a term of imprisonment of at least two years ...."

B. Relevant report

33. The Greek Ombudsman issued a report on 12 October 2004 entitled "Disciplinary-administrative investigations into allegations against police officers". It stated in relation to the use of medical certificates by the police:

"This is a major issue mainly in cases that are routine and do not contain any reference to the effect that the existing medical certificates were taken into consideration when deciding on the issue of disciplinary punishment and do not provide an adequate explanation for the conclusions of the administrative investigation, especially in cases where, for example, the nature of the bodily injuries attested to by the medical certificates, would clearly warrant a more careful examination. For instance, reference is made to [a case where] the Ombudsman's Office noted that the extent of bodily injuries, as borne out by the medical certificates assessed by the police in a routine manner, indicated that either the police officers involved had exceeded the limits of self-defence or that [the police officers] had breached Article 137A of the Greek Criminal Code [Torture]. As a consequence, the Greek Police should have assessed the evidence before it in a more careful and substantiated way. Due to the merely routine assessment of evidence, the validity of any ensuing judgment of police disciplinary bodies is justifiably rendered vulnerable and susceptible to all kinds of criticism.

In cases like the one mentioned above, suspicions naturally arise as to the perfunctory assessment of the available evidence. Because of the routine assessment of evidence, the validity of every decision of the police disciplinary bodies becomes somewhat vulnerable and susceptible to all kinds of criticism if [the decision] disregards the precepts of legal science and all the methods it employs in establishing the actual facts of a case".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

34. The applicant complained that Police Officer Apostolidis had used a weapon during the course of his arrest. He also complained, under the same provision, that the investigative and prosecuting authorities had failed to launch a prompt, comprehensive and effective official investigation into the legitimacy of the use of force by Police Officer Apostolidis. He argued that there had been a breach of Article 2 of the Convention, which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Admissibility

35. The Court reiterates that use of lethal force by State agents against a person is not a *conditio sine qua non* for the application of Article 2 of the Convention. In fact, this provision also applies when the use of force by State agents is potentially lethal, that is, when the fact that the victim was not killed is fortuitous (see *Makaratzis v. Greece* [GC], no. 50385/99, §§ 52 and 54, ECHR 2004-XI).

36. In the present case it is not disputed by the parties that Police Officer Apostolidis fired three or four warning shots into the air "in a safe way" with the intention of intimidating the applicant as he was escaping from the

scene where the incident had taken place. In the light of the above, the Court observes, firstly, that the use of armed force by Police Officer Apostolidis did not result in deprivation of life, even as an unintended outcome. Furthermore, the use of armed force by the latter was not even potentially lethal as he shot in the air "in a safe way" with the sole intention of intimidating the applicant.

37. Accordingly, it follows that this complaint must be rejected as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 and 4 of the Convention.

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

38. The applicant complained that during his arrest and subsequent detention he was subjected to acts of police brutality which caused him great physical and mental suffering amounting to torture, inhuman and/or degrading treatment or punishment, in breach of Article 3 of the Convention. He also complained that the investigative and prosecuting authorities failed to proceed with a prompt and effective official investigation into the incident capable of leading to the identification and punishment of the police officers responsible. The applicant therefore claimed that, contrary to Article 3, taken together with Article 13 of the Convention, he had had no effective domestic remedy for the harm suffered while in police custody.

Article 3 of the Convention provides:

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

Article 13 of the Convention 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."

A. Admissibility

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

B. Merits

1. The submissions of the parties

40. The applicant submitted that his serious injuries were the result of the unnecessary and disproportionate use of force by the police officers involved in the incident. He also complained about the failure of investigating and prosecuting authorities to proceed with a prompt, comprehensive and effective official investigation capable of leading to the identification and punishment of the police officers responsible.

41. The Government pointed out that the police officers had been trying to effect a lawful arrest and had been prevented from doing so by the resistance displayed by the applicant and by the actions of a group of other young men who had been eager to assist the applicant in his attempt to run away and avoid arrest. They submitted that the injuries to some parts of the applicant's body had been the result of wrestling with Police Officers Apostolidis, Tsiorakis and Hamopoulos beforehand. According to the Government, the police officers had acted in self-defence when faced with an unfair and unprovoked attack. The Government also relied on the conclusions of all the competent prosecuting authorities, who considered that the injuries caused to the applicant were not severe and had been necessary in order to protect the police officers' physical integrity. As regards the effectiveness of the investigation and the judicial proceedings, the Government argued that the investigation into the incident had been prompt, independent and thorough and that twenty-eight witnesses had testified. Criminal charges had also been brought against the police officers involved in the incident. The fact that the applicant's criminal complaint had finally been rejected as "factually unfounded" had no bearing on the effectiveness of the investigation.

2. The Court's assessment

a. Concerning the alleged ill-treatment

i. General principles

42. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95,

ECHR 1999-V, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93). The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79).

43. Furthermore, the Court reiterates 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 (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 38, and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

44. 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).

45. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Articles 2 and 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, p. 24, § 32).

ii. Application of those principles to the present case

46. It is undisputed that the applicant's injuries, as shown by the medical reports, were caused by the use of force by the police. In particular, the forensic expert concluded that he had sustained medium-intensity bodily injury, caused by blunt instruments, and that, barring any unforeseen complication, he would recover within eighteen to twenty-one days.

47. Against this background, given the serious nature of the applicant's injuries, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive.

48. From the outset, the Court cannot ignore that the applicant was injured in the course of a random operation which gave rise to unexpected developments. Thus, the police officers were called upon to react without prior preparation (see, *a contrario*, *Matko v. Slovenia*, cited above, § 102, and *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible burden on the authorities (see, *mutatis mutandis*, *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

49. Furthermore, the Court observes that the parties have given a different account of the incident, especially as regards how both the applicant and the police officers sustained injuries. For this reason, the Court will set out the factual circumstances of the incident as they are related in judgment no. 683/2005 of the Salonika Court of First Instance. In that connection the Court notes that the latter established that the applicant had physically resisted his arrest. In particular, he had refused to comply with Officer Apostilidis's request to identify himself and had instead shoved him violently with his arm and subsequently violently pushed Officers Hamopoulos and Tsiorakis with his arms and feet. Nevertheless, the domestic court stated that the three police officers had in fact been assaulted by the applicant's acquaintances, who had run out of a nearby café and tried to help the applicant escape from the scene.

50. It can be seen from the above facts thus established that the applicant's involvement in the event was limited up to this point as the injuries were inflicted on the police officers by a group of ten to fifteen youths who had run to the scene. The Court acknowledges that the three police officers must have felt insecure and vulnerable as they were suddenly outnumbered by a group of persons assaulting them verbally and physically. In the Court's view, this is an important factor that could justify the firing of gunshots by Police Officer Apostolidis in order to intimidate them. However, the Court considers that acts of self-defence against the persons who ran out from the café could not, in the specific circumstances of the case, also justify the infliction of serious injuries on the applicant, who, by that time, was not the one threatening the physical integrity of the police officers. The Court considers that weight should be given in this respect to the significant difference in extent of the applicant's and the police officers' injuries: according to the medical reports and certificates, the former was hospitalized for five days and was expected to convalesce for eighteen to twenty-one days, whereas the three police officers, allegedly assaulted by a mob of ten to fifteen people, were admitted to hospital late on 23 February and were discharged the next day.

51. Consequently, regard being had to the applicant's allegations, which were corroborated by the medical reports, and to the circumstances in which the applicant sustained the injuries, the Court considers that the Government have not furnished convincing or credible arguments which would provide a basis to explain or justify the degree of force used against the applicant.

52. The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected while in the police's charge and that there has been a violation of this provision.

53. Having reached that conclusion, and since the Court is not able to establish the facts as regards the conduct of the police officers inside Toumba police station as it is confronted with completely divergent accounts of the events that are not corroborated by a judicial decision, it does not consider it necessary to examine the applicant's allegations in that respect (see, *mutatis mutandis*, *Matko v. Slovenia*, cited above, § 112).

b. Concerning the alleged inadequacy of the investigation

i. General principles

54. 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, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, cited above p. 3290, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

55. The investigation must be effective as well in the sense that it is capable of leading to a determination of whether the force used by the police was or was not justified in the circumstances (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, § 87, and *Corsacov v. Moldova*, no. 18944/02, § 69, 4 April 2006).

56. The investigation into arguable allegations of ill-treatment must also be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, p. 3290, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and

forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, §§ 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000).

ii. Application of those principles to the present case

57. The Court considers at the outset that the medical evidence and the applicant's complaints, which were both submitted to the competent domestic authorities, created at least a reasonable suspicion that his injuries might have been caused by excessive use of force. As such, his complaints constituted an arguable claim in respect of which the Greek authorities were under an obligation to conduct an effective investigation.

58. As regards the present case, the Court observes that both an administrative inquiry and judicial proceedings were launched after the impugned events. As far as the administrative investigation is concerned, the Court notes, firstly, that it was entrusted to the special agency of the police dealing with disciplinary investigations and not assigned to a police officer serving in the same police station as the persons subjected to the disciplinary investigation. The Court acknowledges that this is an element that reinforces the independence of the inquiry, as the agent conducting it was, in principle, independent of those involved in the events.

59. However, with regard to the thoroughness of the investigation, the Court notes some discrepancies capable of undermining its reliability and effectiveness. Firstly, the administrative investigation did not deal with the issue of how many shots Police Officer Apostolidis had fired. Accordingly, the administrative inquiry does not show that each bullet missing from the police officer's firearm was in fact accounted for.

60. Secondly, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authority. In particular, the Court notes that the Government claimed that twenty-eight witnesses were examined during the investigation. Nonetheless, the Court observes that the administrative inquiry included excerpts from the testimonies given mainly by the applicant, two of his acquaintances present at the scene and some other individuals accused of assaulting the police officers. It is also apparent from the relevant report that the agent based his conclusions mainly on the testimonies given by the police officers involved in the incident. He thus observed, initially, that the violent behaviour transpired from the testimonies of the persons who had provoked the illegal acts. However, he did not consider these testimonies to be credible for two reasons: firstly, because they undoubtedly reflected personal opinions and assessments that would be of assistance to the accused during the trial; and secondly, because they could be considered as constituting defence tactics by the applicant's acquaintances, who were already facing grave criminal charges and whose depositions aimed to damage the credibility of the police officers. However, the administrative inquiry did accept as such the

credibility of the police officers' testimonies by considering that "not all the testimonies have been proven; on the contrary, the police officers (involved in the events) have denied them. The latter insisted in their testimonies that there had been no violence in the police station and that all the injuries sustained by the civilians had been provoked before their transfer to the police station". In the Court's view, the administrative inquiry applied different standards when assessing the testimonies as those given by the civilians involved in the events were recognised as subjective but not those given by the police officers. However, the credibility of the latter testimonies should also have been questioned as the administrative proceedings had also sought to establish whether they were liable on disciplinary grounds (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

61. Furthermore, the investigating authority omitted to take into account the report on the forensic medical examination that the applicant underwent on 29 January 2002. On the contrary, when assessing the evidence with regard to the medical certificates, the administrative inquiry observed that both the applicant and the police officers had omitted to undergo a medical examination by a forensic doctor. However, it drew a negative conclusion only in respect of the applicant as it accepted that this omission revealed the latter's intention to prevent the disclosure of new evidence facilitating the investigation of the case. As far as the police officers were concerned, it was accepted that "the disciplinary liability that derived from that omission was obvious in the present case but was of minor importance in the context of the case as a whole".

62. Finally, as regards the judicial proceedings instituted after the applicant had lodged his criminal complaint against the police officers, the Court observes firstly that the judicial investigation was not launched *ex officio* by the competent authorities but only after the applicant had lodged a criminal complaint. Secondly, the prosecuting authorities concluded that the applicant's allegations were "factually unfounded" by endorsing the testimonies given in the context of the judicial investigation carried out by the police. Neither the Prosecutor at the Court of First Instance nor the Prosecutor at the Court of Appeal questioned personally the eyewitnesses mentioned in the report of the administrative investigation or the applicant and the police officers, who were, nevertheless, the protagonists in the incident (see *Osman v. Bulgaria*, no. 43233/98, § 75, 16 February 2006). In fact, the Court notes that both prosecutors relied heavily on the police officers' depositions and discredited the eyewitness evidence and the results of the applicant's forensic examination (see, *mutatis mutandis*, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, p. 1778, § 83).

63. In the light of the above-mentioned shortcomings in the administrative and judicial investigation, the Court concludes that they were not sufficiently effective. The Court accordingly holds that there has been a

violation of Article 3 of the Convention under its procedural limb in that both investigations into the alleged ill-treatment were ineffective.

64. Lastly, the Court considers that, in view of the grounds on which it has found a violation of Article 3 in relation to its procedural aspect, there is no need to examine separately the complaint under Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

65. The applicant complained that Police Officer Apostolidis had submitted inaccurate information from his criminal record to the investigating judge in the context of the criminal complaint lodged against him. The applicant asserted that the submission of these documents by Police Officer Apostolidis, ostensibly proving his "criminal and socially deviant character", could have had an impact on the investigating judge's decision to impose a bail requirement on him. He contended, in particular, that the submission of these documents violated the "equality of arms" principle as he had been unable to obtain a copy of the police officer's criminal or disciplinary records, as these were confidential. He argued that there had been a breach of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

Admissibility

66. The Court's task under the Convention is to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports* 1997-III, p. 711, § 50). The Court observes that, as can be seen from the file, the proceedings instituted against the applicant are still pending. Hence, this complaint is premature.

67. It follows that this complaint is inadmissible under Article 35 § 1 for non-exhaustion of domestic remedies. It must therefore be rejected pursuant to Article 35 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

68. The applicant further complained that the ill-treatment he had suffered, together with the subsequent lack of an effective investigation into the incident, was at least partly attributable to his ethnic origin. He alleged a violation of Article 14 of the Convention, which provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Admissibility

1. The submissions of the parties

69. The applicant acknowledged that in assessing evidence the standard of proof applied by the Court was that of "proof beyond reasonable doubt", but noted that the Court had made it clear that that standard did not have to be interpreted as requiring such a high degree of probability as in criminal trials. He affirmed that the burden of proof had to shift to the respondent Government when the claimant established a *prima facie* case of discrimination. Moreover, the applicant asserted that, under Greek law, there was no obligation incumbent upon either judicial officials or police officers to examine the potentially racist animus of a perpetrator, nor were they trained to do so.

70. Turning to the facts of the instant case, the applicant referred to the defence pleadings of Dimitrios and Charalambos Kalaitsidis, who stated that various police officers had shouted racist abuse while taking them to the police station and once inside it.

71. The Government pointed out that the Court had always required "proof beyond reasonable doubt" and that in the present case there was no evidence of any racially motivated act on the part of the authorities. They firmly denied that the applicant had been ill-treated; however, even assuming that the police officers who were involved in the incident had acted in a violent way, the Government believed that their behaviour had not been racially motivated but had been linked to the fact that the applicants had previously committed an offence.

2. The Court's assessment

72. Discrimination is differently treating, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, 6 July 2005).

73. Regarding the applicant's complaint under Article 14, as formulated, the Court's task is to establish whether or not racism was a causal factor in the impugned conduct of the police officers so as to give rise to a breach of Article 14 of the Convention taken in conjunction with Article 3.

74. The Court reiterates that in assessing evidence it has adopted the standard of proof "beyond reasonable doubt"; nonetheless, it has not excluded the possibility that in certain cases of alleged discrimination it may require the respondent Government to disprove an arguable allegation of discrimination and – if they fail to do so – find a violation of Article 14 of the Convention on that basis. However, where it is alleged – as here – that a violent act was motivated by racial prejudice, such an approach would amount to requiring the respondent Government to prove the absence of a particular subjective attitude on the part of the person concerned. While in the legal systems of many countries proof of the discriminatory effect of a policy or decision will dispense with the need to prove intent in respect of alleged discrimination in employment or the provision of services, that approach is difficult to transpose to a case where it is alleged that an act of violence was racially motivated (see *Nachova and Others*, cited above, § 157).

75. Therefore, turning to the facts of the present case, the Court considers that whilst the police officers' conduct during the applicant's arrest calls for serious criticism, that behaviour is not of itself a sufficient basis for concluding that the treatment inflicted on the applicant by the police was racially motivated. Further, in so far as the applicant has relied on the defence pleadings of Dimitrios and Charalambos Kalaitsidis concerning their own conditions of transfer and stay at Toumba police station, the Court cannot lose sight of the fact that its sole concern is to ascertain whether in the case at hand the treatment inflicted on the applicant was motivated by racism (see *Nachova and Others*, cited above, § 155).

76. Hence, having assessed all relevant elements, the Court does not consider that it has been established beyond reasonable doubt that racist attitudes played a role in the applicant's treatment by the police.

77. Accordingly, it follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

1. Pecuniary damage

79. The applicant claimed 1,400 euros (EUR) for the cost of orthodontic surgery that he has to undergo in order to have his two teeth mended. He submitted a medical certificate from an orthodontic surgeon in Salonika according to which the cost of the medical operation is estimated at the same amount.

80. The Government argued that the medical certificate submitted by the applicant had not duly proved the existence of pecuniary damage and that his claim on this point should be dismissed.

81. The Court notes that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention (see *Mikheyev v. Russia*, no. 77617/01, § 156, 26 January 2006). In the instant case, the Court has found that the applicant was subjected to inhuman and degrading treatment while in the police's charge. The authorities are thus responsible for the consequences ensuing from the incident on 23 December 2001. Consequently, there is a causal link between the violation found and the necessity for the applicant to undergo medical surgery to mend the teeth that were damaged during the impugned incident between the applicant and the police officers. Furthermore, the Court notes that the applicant's claim as regards the cost of his medical treatment is based on a certificate delivered by an orthodontic surgeon that is considered as a sufficient basis for the calculation of future expenses. Thus, the Court awards in full the claim under this head, that is, EUR 1,400, plus any tax that may be chargeable on this amount.

2. Non-pecuniary damage

82. The applicant claimed EUR 20,000 in respect of the fear, pain and injury he suffered.

83. The Government argued that the applicant was himself responsible for the injuries he had sustained and that, consequently, no compensation should be awarded to him for non-pecuniary damage.

84. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage which cannot be compensated solely by the findings of violations. Having regard to the specific circumstances of the case and ruling on an equitable basis, the Court awards EUR 15,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

85. The applicant sought reimbursement of EUR 6,405.19, which he broke down as follows:

(a) EUR 3,389.12 in respect of costs and expenses incurred in the criminal proceedings in Greece. In support of his claim the applicant produced seven bills of costs, amounting to EUR 1,373.82 in total.

(b) EUR 3,016.07 corresponding to the costs and expenses incurred in the proceedings before the Court. In this connection he submitted a bill of costs drawn up by his lawyer for an amount of EUR 2,500.

86. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

87. In the present case, having regard to the evidence before it and the above-mentioned criteria, the Court considers it reasonable to award the sum of EUR 3,500 for the proceedings before the domestic courts and the Court, plus any tax that may be chargeable on that amount.

C. Default interest

88. 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. *Declares* the complaints concerning Articles 3 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the treatment suffered by the applicant at the hands of the police;

3. *Holds* that there has been a violation of Article 3 of the Convention in that the authorities failed to conduct an effective investigation into the incident;

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,400 (one thousand and four hundred euros) in respect of pecuniary damage,

EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage and EUR 3,500 (three thousand and five hundred euros) in respect of costs and expenses, plus 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 May 2007 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Loukis LOUCAIDES
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Mr Loucaides joined by Mr Malinverni is annexed to this judgment.

L.L.
S.N.

CONCURRING OPINION OF JUDGE LOUCAIDES JOINED BY JUDGE MALINVERNI

I agree with the finding of the majority that "the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected while in the police's charge and that there has been a violation of this provision" (see paragraph 52 of the judgment). I also agree with the basic reasoning preceding this conclusion, according to which "regard being had to the applicant's allegations, which were corroborated by the medical reports, and to the circumstances in which the applicant sustained the injuries, the Court considers that the Government have not furnished convincing or credible arguments which would provide a basis to explain or justify the degree of force used against the applicant" (see paragraph 51).

In fact I believe that this reasoning can very well cover all the applicant's relevant allegations regarding his ill-treatment by the police from the moment of his arrest up to the moment of his transfer to hospital. During all that period he was in the police's charge and his allegations of injuries sustained as a result of the conduct of the police were corroborated by medical reports. These reports do not, and could not, attribute the injuries to any specific period during which the applicant was in the police's custody. Therefore, I do not see how the majority could find that the medical reports corroborate the applicant's allegations only in respect of the period before he was inside Toumba police station.

In any event, I do not understand why the majority failed to examine the applicant's allegations as regards his ill-treatment by the police at the station. The reasoning given by the majority does not appear at all convincing to me. It runs as follows: "Having reached that conclusion, and since the Court is not able to establish the facts as regards the conduct of the police officers inside Toumba police station as it is confronted with completely divergent accounts of the events that are not corroborated by a judicial decision, it does not consider it necessary to examine the applicant's allegations in that respect ..." (see paragraph 53).

Neither the fact that there were conflicting accounts of the events nor the fact that a judicial decision does not corroborate the relevant events are sufficient reasons to justify the finding that the Court "does not consider it necessary to examine the applicant's allegations". The preceding finding of the majority regarding the ill-treatment of the applicant was also lacking judicial corroboration – the Salonika Court of First Instance's conclusions went in the opposite direction to the applicant's version of events, and, according to the majority, "the parties have given a different account of the incident, especially as regards how both the applicant and the police officers sustained injuries" (see paragraph 49).

In any event, in cases involving complaints of ill-treatment by the police the Court always faces the problem of denial by the police of the relevant allegations, and where the applicant has exhausted domestic judicial remedies the Court faces the problem of deciding whether the findings of the domestic courts are the correct ones or not. In such cases the task of the Court is to decide where the truth lies irrespective of the account given by the police authorities or even the domestic courts (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336). It is precisely because of the scope and object of the Court's task in cases of this kind that the judicial review it carries out ensures effective protection of the relevant individual human rights.

I must add that in finding myself that the State in this case is also responsible under Article 3 on account of the inhuman and degrading treatment suffered by the applicant as a result of the conduct of the police officers inside Toumba police station, I took the following facts into account as corroboration of this finding:

(a) the finding that the applicant was ill-treated soon after his arrest and up to his transfer to the police station, which is shared by the majority;

(b) the inadequacy of the investigation into the applicant's allegations as regards his ill-treatment by the police both before he entered the police station and afterwards; and

(c) the lamentable explanations given in the report of the police administrative investigation – endorsed by the prosecuting authorities – which was confined to the depositions of the police officers and their denials of the applicant's allegations, without questioning the witnesses. The report even went so far as to find that the applicant had failed to submit to an examination by the forensic doctor, thereby turning a blind eye to the forensic medical examination he underwent on 29 January 2002.

In the circumstances I find that the applicant's allegations that he was ill-treated by the police at Toumba police station are well-founded and that the State was responsible for such ill-treatment.