



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

FIRST SECTION

CASE OF STEFANOU v. GREECE

(Application no. 2954/07)

JUDGMENT

*This version was rectified on 1 July 2010 under Rule 81 of the
Rules of Court*

STRASBOURG

22 April 2010

FINAL

04/10/2010

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

In the case of Stefanou v. Greece,

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

Nina Vajić, *President*,
Christos Rozakis,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 2954/07) 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 Theodoros Stefanou (“the applicant”), on 4 January 2007.

2. The applicant was represented by Greek Helsinki Monitor, a non-governmental organisation registered in Greece. The Greek Government (“the Government”) were represented by their Agent's delegates, Mr K.Georgiadis, Senior Adviser at the State Legal Council, and Ms Z. Hadjipavlou, Legal Assistant at the State Legal Council.

3. The applicant alleged, in particular, violations of Articles 3 (substantial and procedural violation), 6 § 1 (length of proceedings, access to court and alleged failure of the Appeal Court to give reasons for its decision), and 14 (discrimination on the ground of ethnic origin) of the Convention.

4. On 8 July 2008 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a Greek national of Roma origin, who was born in 1985 and lives in Athens. He was sixteen years old at the time of the events.

A. The proceedings before the criminal courts

6. On 5 August 2001, P.P., a kiosk owner in Argostoli, on the island of Cephalonia, reported to the local police that approximately 9,500,000 Greek drachmas (GRD, 28,000 euros (EUR)) had been stolen from him. During the summary investigation that was immediately carried out by the local police, four Roma youths were taken to Argostoli police station. On the same day the four youths were transferred to the Cephalonia prosecutor's office and then, on 6 August 2001, taken to court for an immediate summary trial, where they were acquitted of all charges.

7. The applicant, who was a friend of the four youths, turned up at the police station spontaneously on 5 August 2001 out of fellow feeling for his friends. He was also shown to the kiosk owner but was not recognised by him.

8. According to the applicant, while he was at the police station he was questioned as to whether or not he had been involved in the theft. The applicant submitted that he had been punched and slapped hard in the face for over a quarter of an hour by a police officer, N.K., and in the presence of the commander of the police station, who questioned him to make him confess that he had participated in the theft. He was subsequently allowed to leave the police station. However, the applicant maintained that the police officer kept his mobile phone to find out whether it was stolen.

9. A few hours after his release on 5 August 2001 the applicant was admitted to the local hospital, the General Prefectural Medical Hospital of Cephalonia, and had a medical examination there. He stayed there for four hours. The hospital certificate indicated the following:

“[The applicant] came to our hospital's emergency department on 5 August 2001 and was found to be suffering from: a head injury reportedly inflicted by beating, dizziness, severe headache, swelling and sensitivity of the nose and difficulty in maintaining eye focus. No trace of fracture of the skull was detected. He remained at the hospital for a short period, of four hours. He was treated with Lonarid ...”

10. On 7 August 2001, the applicant went to the Cephalonia prosecutor's office. He was intending to lodge a complaint against the policemen involved in the alleged beating but the prosecutor was not in his office. The applicant alleged that the prosecutor's secretary was so struck by the bruises on his face that she called the police station and asked the policemen to

leave him alone in future. The applicant did not submit a complaint on that occasion.

11. On 5 September 2001, the applicant was arrested by police officer N.K. because he could not provide a receipt to show that he had bought the mobile phone and the police officer thought he had stolen it. He was taken to the police station, questioned and released again.

12. On 27, 28 and 29 September 2001, two local newspapers published a statement made on 25 September 2001 by the World Organisation Against Torture (OMTC) which denounced the alleged ill-treatment of the applicant. The statement, whose title read 'Appeal of the OMTC in relation to the ill-treatment of two Roma youth in Argostoli – two Roma in the Cephalonia slaughterhouse', indicated that the [applicant], who had been questioned in connection with a theft, was punched and slapped hard in the face by a policeman whose first name was Nikos, in the presence of the commander of the police station.

13. On 8 October 2001, the applicant lodged a complaint with the Cephalonia prosecutor's office that he had been ill-treated at the police station on 5 August 2001 and sought to join the proceedings as a civil party claiming damages, jointly with his father. The complaint was against the police station commander and anyone else involved. In his complaint the applicant described his interrogation, which had lasted approximately one hour. He specified that when he was unable to answer the questions asked by the policemen one of them started punching him violently and persistently in the head, trying to make him confess. The commander continued to question him while he was being beaten. He was released when the kiosk owner confirmed that he did not recognise him. The applicant provided as a supporting document the medical certificate produced by the hospital.

14.¹ On 21 November 2001 the Director of the Cephalonia Police Directorate ordered a sworn administrative investigation (“*Enorki Dioikitiki Exetasi EDE*”), which was conducted by the Deputy Director of the Cephalonia Police Directorate, being the hierarchical superior authority to the Argostoli police and situated in the same building.

15. During the EDE, on 2 May 2002, the kiosk owner was summoned to testify before the Deputy Director. He submitted *inter alia*:

“... as I have been informed, the previous evening the victim [the applicant] had fallen down and injured himself or had been involved in a brawl with persons of the same race with him ...”.

16. On 15 May 2002 the Deputy Director, who had now been promoted to Director of the Cephalonia Police Directorate, concluded the EDE,

¹ Rectified on 1 July 2010. The text was: « the prosecutor's office ordered a sworn administrative investigation (« *Enorki Dioikitiki Exetasi EDE* ») »

arguing that the applicant's allegations were “manifestly ill-founded” and recommended that no disciplinary action be taken.

17. According to the findings of the EDE:

“... all the allegations in the denunciation dated 25 September 2001 by the World Organisation Against Torture, the attached press releases, the letters from British citizens, the Amnesty International letter and letters from other agencies are false and do not contain a grain of truth, which is proved by the testimonies of the police officers, citizens and the Roma people themselves who were allegedly tortured and ill-treated by police officers. They are also refuted by the documents attached hereto: the hospital's medical certificate, and so on.

...

All the accusations against Commander G.H. are false, as during the conduct of a summary investigation into the theft of a large sum of money (GRD 9,500,000) from P.P. he acted in line with his official duties and according to the rules of the Code of Criminal Procedure, in an effort to investigate whether the charge was true or false, protecting the suspects and respecting all personal data and behaving impeccably, kindly and with respect for the person of all suspects.

The accusations against Sergeant N.K. are also false, as he acted in line with his official duties, kindly and with respect for the suspects' person, during the investigation of the case of theft, always according to the explicit orders and instructions of his commander, Commander G.H.”

18. As regards the applicant's complaint of 8 October 2001, the request from the Cephalonia Indictment Division dated 19 December 2003 was dismissive of the charges against the commander of the police station and another police officer. The Indictment Division recommended, however, that police officer N.K. be charged with ill-treating the applicant and tried.

19. On 12 April 2006, the Three-Member Criminal Court of Cephalonia convicted police officer N.K. and sentenced him to three years' imprisonment, commutable to a fine and suspended pending appeal. The court also awarded the applicant pecuniary compensation of fifty euros. The court concluded, after examining twelve witnesses, that police officer N.K. had repeatedly punched the applicant in the head and face and caused him serious bodily harm in order to make him confess to the theft. In particular, the court held as follows:

“It transpires from the proceedings, the documents which were read, the witness statements, the examination of the civil party, the accused's pleading and the deliberation, that at midnight on 4 August 2001, P.P., the owner of a kiosk, reported to the Argostoli police the theft of a large amount of money (GRD 9,500,000). The Argostoli police security department carried out a preliminary investigation. Police officers tried to find [the applicant] at the Roma encampment in Argostoli, where he lived with his sister, but he was not there. When he came back and his sister informed him that the police were looking for him, he went of his own free will to the Argostoli police security department, where he was questioned in relation to the above-mentioned theft. The accused, who was serving as a police officer at Argostoli police station, of Argostoli, participated in the questioning. On 5 August 2001, in order to

make the applicant confess that he had committed the theft, he punched him in the head and face and caused him bodily harm, in particular a severe headache, swelling and sensitivity of the nose and difficulty in maintaining eye focus. Consequently, he should be found guilty”.

20. The defendant appealed against this judgment to the Court of Appeal of Patras.

21. At the hearing of 23 February 2007, neither the applicant nor the representative of Greek Helsinki Monitor, who was one of the first-instance trial prosecution witnesses, were summoned to the proceedings. The hearing was then adjourned, first to 21 September 2007 and then to 1 February 2008. It continued on 18 February 2008 at the request of the defendant's lawyer and was then postponed to 15 April 2008 because a storm made it impossible for many out-of-town witnesses to attend.

22. On 15 April 2008 the Court of Appeal held a hearing in the presence of the applicant and his lawyer and acquitted the police officer for lack of evidence. In particular, the Court of Appeal stated the following:

“...The prosecution and defence witnesses' testimonies, the perusal of the record of the first-instance trial and the documents referred to in that record, the defendant's statement of defence and the overall evidence procedure gave rise to doubts as to whether the accused police officer had committed the offence referred to in Article 137A § 3-1 of the Criminal Code against Theodoros Stefanou. The Court's doubts are reinforced by the following evidence: 1) the content of medical certificate No. 4433 of the Prefectural Hospital of Cephalonia ...

Besides, as can be seen from the sworn examination report of witness P.P. (the person who reported the theft ...) which was read out in the courtroom, when the victim arrived at the Argostoli Police Security Department in the early hours of 5 August 2001 he had one arm bandaged, because as witness P.P. testified, the victim had been involved in a fight with other Roma the previous night (4 August 2001) ... On the basis of all the foregoing, it is highly probable that the bodily injuries attested to by the Cephalonia hospital certificate were caused to the victim not by the defendant, police officer N.K., but during a fight that had taken place on the night of 4 August 2001, in which the victim had participated actively, as he came to the Argostoli Police Security Department of Argostoli with a broken right arm...Furthermore, if the victim's bodily injuries had been caused by the accused police officer inside the Police Security Department and had been as violent as the victim claimed, the wounds to his face would have been much more serious and would certainly have been verifiable by a doctor.

If the accused police officer had caused the bodily injuries to the victim in order to force him to confess to the theft ... the defendant or his other colleagues would have shown the same violent behaviour also to ..., acquaintances and friends of the victim, who were the only ones to be committed for trial before the Three-Member Criminal Court of Cephalonia for flagrant offences (while the victim was not so committed). ... The defendant had no reason to use violence against the victim, all the more since the victim was not identified by P.P. as one of the four suspects of the theft against him”

B. Additional complaints lodged by the applicant

1. The complaint of 4 September 2003

23. On 4 September 2003, the applicant lodged a complaint with the Cephalonia prosecutor's office for breach of duty, false certification, perjury, incitement to perjury, forgery, incitement to commit forgery and blackmail against eleven police officers who had been involved in the events of 5 August 2001, in the EDE and in the procedure resulting in the first applicant's complaint, including the commander of the police station and police officer N.K.

24. In his observations and supplementary observations of 25 May 2004, concerning more specifically the commander of the police station, the applicant submitted that the commander had used racial profiling when he admitted having used the applicant as a "visual suspect" only for the reason that he was "of the same age and appearance as the other Roma youth". He also maintained that the police had examined his mobile phone twice, suspecting that he might have stolen it, on the sole basis that it seemed to be of a value disproportionate to his means because he was a Rom. He further contended that in his observations in defence, the commander again racially profiled the Roma as criminals, including the use of terms such as "racial environment" and the phrase "Roma are people without professions who are seeking cultural and social goods and who have chosen as their permanent means of attaining them the illegal acquisition of money". He underlined that the racial bias of the commander explained why such methods were used during the interrogation of the applicant, with a view to extracting a confession to the alleged theft of a large sum of money which was never found in the possession of the applicant. The applicant alleged a breach of the Law Against Racism, no. 927/79.

25. On 11 August 2004, the Cephalonia prosecutor's office decided not to press any charges against the police officers concerned, because the file did not indicate that they had committed any breach of duty.

2. The complaint of 18 July 2005

26. On 18 July 2005 the applicant lodged a complaint with the Athens prosecutor's office against the same eleven police officers (as in the complaint of 4 September 2003), and sought to join the proceedings as a civil party claiming damages, seeking compensation of thirty euros. The applicant complained again of breach of duty, false certification, perjury, incitement to perjury, forgery, incitement to commit forgery and blackmail on the part of these officers and added a complaint of violation of Laws Against Racism nos. 927/1979 and 3304/2005. In this respect he claimed that there was a causal link between his ethnic origin and his ill-treatment.

27. The Athens prosecutor's office forwarded the complaint to the Cephalonia prosecutor's office.

28. On 29 November 2005, the Cephalonia prosecutor's office indicted three police officers before the Criminal Court of Cephalonia for forgery and multiple perjury: they were accused of having on 5 September 2001 forged the applicant's signature, without his knowledge, on the record of interview. In its decision of the same date, the prosecutor stated that the file did not indicate that the commander of the police station had made any offensive statements about the Roma ethnic origin of the applicant.

29. The three police officers appealed against their committal for trial. On 27 June 2006 the applicant was served with a copy of a decision of the Indictment Division of Cephalonia of 13 June 2006, in which all charges against the three police officers were dropped.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. Under the Code of Criminal Procedure, police officers who are carrying out a preliminary inquiry or a summary investigation are subject to the instructions and supervision of the prosecutor, who is entitled to attend interviews in person or by sending a deputy, and to have access to all the documents in the case file.

31. Article 137A of the Criminal Code penalises acts of torture and other offences against human dignity.

32. Under the provisions of Article 137A.1:

“An official or military officer whose duties include the prosecution, questioning or investigation related to criminal offences or disciplinary offences or the execution of sentences or the guarding or custody of detainees, is punished ... if he subjects to torture, during the performance of these duties, a person who is under his authority with the aim of a) extorting from that person or a third person a confession, testimony, or information or a statement, or the repudiation or acceptance of a political or other ideology; or b) administering a punishment; or c) intimidating that person or a third persons.”

33. Subsequent to the events in the present case and in order to guarantee the impartiality of investigations in cases of torture and inhuman treatment, decree 3/2004 specified that such investigations cannot be entrusted to a police officer serving in the same directorate with those suspected of the ill-treatment.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that, a minor at the time, he had suffered serious bodily harm and great mental suffering at the hands of the police on 5 August 2001. He also complained that the investigative and prosecuting authorities had failed to carry out a prompt, comprehensive and effective investigation capable of providing a plausible explanation of the injuries he had sustained during his brief detention in the police station and of leading to the identification and punishment of all police officers responsible. He alleged a breach of Article 3 of the Convention, which provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

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

B. Merits

1. The submissions of the parties

36. The Government submitted that following the final judgment of the Court of Appeal, which held that it had not been proved that the offence referred to in Article 137A of the Criminal Code had been committed, there could be no question of inhuman and degrading treatment in breach of Article 3. In the Government's view, the Court had no competence to assess the evidence and substitute its own assessment for that of the domestic courts. As regards the applicant's injuries, the Court of Appeal relied on the evidence before it and in particular on the medical certificate produced by the Cephalonia hospital, and concluded that the injuries had been sustained prior to the applicant's detention and had another cause.

37. The Government further contended that the applicant's case had been fully and effectively investigated at both the administrative and the judicial levels, since a sworn administrative investigation was carried out and two decisions and two judgments were delivered, by the Cephalonia prosecutor and by two criminal courts respectively. Furthermore, all the charges brought against several police officers involved in the applicant's case

following the complaint lodged by the applicant on 18 July 2005 were dropped.

38. The applicant emphasised that he came out of the police station with injuries he did not have when he went in.

39. The applicant further argued that there was a systematic failure to investigate his initial treatment and subsequent charges of a cover-up by Greek police, independent and judicial authorities, either of their own motion when they were alerted about possible violations of the Convention or even after the applicant had made his complaints, with the sole exception of the belated committal for trial of police officer N.K.

2. *The Court's assessment*

a. **Concerning the alleged ill-treatment**

40. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or 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 of the Convention even in the event of a public emergency threatening the life of the nation (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, § 93).

41. 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, § 161). 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 under 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).

42. The Court notes from the outset that it is common ground that the applicant suffered injuries on or around the date of his arrest. However, the parties disagreed on whether or not the injuries were caused by police officers. According to the Court's case-law, “where an individual is taken into police custody 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 as to the causing of the injury, failing which a clear issue arises under Article 3 of the Convention” (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996–VI, p. 2278, § 61).

43. The Court observes that as soon as the applicant left the police station he was admitted to the local hospital, the General Prefectural Medical Hospital of Cephalonia, which recorded his injuries. It was specified in the certificate supplied by the hospital that the applicant had a head injury inflicted by beating, also dizziness, a severe headache, swelling and sensitivity of the nose and some difficulty in maintaining eye focus.

44. The Criminal Court of Cephalonia held that one police officer had repeatedly punched the applicant in the head and caused him serious bodily harm. The finding of the Criminal Court was largely based on the conclusions of the medical certificate. The Appeal Court, however, ruled that the bodily injuries certified by the Cephalonia hospital's certificate were caused to the applicant not by police officer N.K., but during a fight that had taken place on the night of 4 August 2001, in which the applicant had participated actively, as he had arrived at the Argostoli Police Security Department with a broken right arm. The Court of Appeal based this conclusion on a statement by the owner of the kiosk who reported the theft, who testified that he had seen the applicant having his hand bandaged. It was the same witness who alleged that the applicant had been in a fight with other Roma the evening before the arrest.

45. However, the Court notes that the Cephalonia hospital certificate, which describes in detail the injuries sustained by the applicant, contains no mention of a broken arm. In addition, even assuming that the applicant had a broken arm, he complained that he had received blows to the head while he was at the police station, and this was indeed the type of injury certified by the hospital doctor who examined him.

46. The fact that the applicant was not identified by the kiosk owner who reported the theft and who might have had doubts as to whether the applicant was part of the gang which committed the theft, does not exclude the possibility that the police did not attempt to make him confess because all the minors arrested were friends.

47. The Court thus has serious doubts as to whether the alleged fight in which the applicant participated provides a convincing explanation of the origin and cause of the applicant's head injuries. The Court considers that these doubts are supported by the inadequacy of the investigation into this particular aspect. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police, that provision requires by implication that there should be an effective official investigation. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would 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.

48. Having regard to this, the Court considers that a number of shortcomings in the investigation occurred. First, the investigation was

carried out by a police officer from the Directorate responsible for the police station of the alleged perpetrators. Second, the witness P.P. whose testimony appeared to be crucial in the national courts' assessment was nothing but hearsay and neither the EDE nor the subsequent investigations of the prosecuting authorities established the applicant's state of health at the time he arrived at the police station. It does not appear that any serious attempt was made to elucidate whether the applicant had actually participated in a previous fight or any other event which could have caused the injuries he had.

49. For these reasons the Court considers that the Government have not established beyond reasonable doubt that the bruises on the applicant's head pre-dated his questioning at the police station.

50. The next question which arises is whether the minimum level of severity required for a violation of Article 3 of the Convention can be regarded as having been attained in the instant case (see, among other authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 84, ECHR 2000-VII). The Court reiterates that the assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Tekin v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1517, § 52).

51. In that connection the Court notes that at the time of the events the applicant was a sixteen-year-old minor.

52. The Court considers that the serious physical harm suffered by the applicant at the hands of the police as confirmed by the medical evidence submitted certainly brings into play Article 3 of the Convention. Having regard to the above findings, the Court concludes that this physical harm was inflicted by the police. This, as well as the feelings of fear, anguish and inferiority which the impugned treatment produced in him as a result of his young age, must have caused him suffering of sufficient severity for the acts of the police to be categorised as inhuman and degrading treatment within the meaning of Article 3 of the Convention (see, *mutatis mutandis*, *Bekos and Koutropoulos v. Greece*, no. 15250/02, 13 December 2005, § 51). The Court concludes that there has been a breach of Article 3 of the Convention.

b. The alleged inadequacy of the investigation

53. The Court finds, in the light of its above findings, that it is not necessary to examine separately whether or not the investigation into the ill-treatment would comply with the requirements of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. The applicant complained that the Greek authorities had failed to promptly investigate, prosecute and sanction the crimes committed against him. He alleged a violation of Article 13 of the Convention, which stipulates:

“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.”

55. The Court finds that this part of the application is linked to the above complaint under Article 3 of the Convention. It should therefore also be declared admissible. However, in view of its conclusion concerning Article 3 of the Convention, the Court considers that there is no need to examine the complaint under Article 13 of the Convention separately.

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

56. The applicant complained, in connection with his complaint of ill-treatment and lack of an effective investigation and prosecution of police officers, that he had suffered discrimination on the ground of his Roma ethnic origin, contrary to Article 14 of the Convention read in conjunction with Article 3. Article 14 provides as follows:

“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.”

57. The Government submitted that the applicant had not suffered discrimination on that ground.

58. The Court reiterates that when investigating violent incidents, State authorities have the duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice might have played a role in the events. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and is not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious matters that may be indicative of racially induced violence (see *Turan Cakir v. Belgium*, n° 44256/06, § 77, 10 March 2009)

59. The Court notes that it was in his complaint of 4 September 2003 that the applicant claimed for the first time that he had been a victim of

racial discrimination by the commander of the police station and notably submitted that the commander had used racial profiling when he admitted having used the applicant as a “visual suspect” only because he was “of the same age and appearance as the other Roma youths”. Then, on 18 July 2005, the applicant lodged a second complaint, which was a more detailed version of the complaint of 4 September 2003. On 11 August 2004 and 27 June 2006, the Cephalonia prosecutor's office and the Indictment Division of Cephalonia decided not to press any charges against the police officers concerned.

60. The Court notes that the six-month period for lodging an application with the Court had begun to run on 11 August 2004 and 27 June 2006, the dates of the above-mentioned decisions taken in respect of the applicant's complaints. The applicant lodged his application with the Court on 4 January 2007, which is out of time as regards the complaint under Articles 3 and 14 taken together.

61. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

62. The applicant complained that the length of the criminal proceedings concerning ill-treatment, following his complaint of 8 October 2001, was excessive: the first-instance proceedings in particular exceeded a reasonable length. He alleged a violation of Article 6 § 1 of the Convention, which provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

63. The period to be considered began on 8 October 2001, when the applicant sought to join the proceedings as a civil party claiming damages for ill-treatment, and ended on 15 April 2008, when the judgment of the Patras Court of Appeal was delivered. It therefore lasted six years, six months and seven days at two levels of jurisdiction.

A. Admissibility

64. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds.

B. Merits

65. The Government maintained that the length of the impugned proceedings had not been excessive, given the large volume of evidence, in particular the large number of witness statements, as well as the number of complaints, prosecutor requests, and appeals against writs of summons and judgments.

66. The Court reiterates that the “reasonableness” of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria set out in its case-law, especially the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

67. The Court notes that the Three-Member Criminal Court of Cephalonia delivered judgment on 12 April 2006, which is approximately four and a half years after the applicant presented himself as a civil claimant. At the Patras Court of Appeal hearing of 23 February 2007 the case was adjourned to 21 September 2007 and then to 1 February 2008. The Government provided no specific explanation for these delays and adjournments and the file does not indicate that they were due to the applicant's conduct.

68. Accordingly, having regard to its case-law in this area, the Court considers that in the instant case the length of the proceedings was excessive and failed to fulfil the “reasonable time” requirement.

69. There has therefore been a violation of Article 6 § 1.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. The applicant complained under Article 6 of the Convention that he had been denied access to court twice (in November 2005 and June 2006) in connection with several charges related to a cover-up, racist behaviour towards him and a breach of his personal rights because of violation of data protection. He also complained that the Patras Court of Appeal's judgment lacked sufficient reasoning. Under Article 6 § 2 the applicant complained of a claim made by the Patras prosecutor that the applicant had signed a forged document in order to incriminate the police officers. Finally, the applicant complained under Article 8 of the Convention that his private and family life had been violated because one of the defendant police officers had submitted information on past criminal activity of the applicant's relatives in order to discredit the applicant's statements.

71. The Court has examined the remainder of the applicant's complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not

disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant submitted that the frustration and helplessness suffered by him, the acquittal of the police officer, and the deficiencies in the investigatory process which yielded no sanctions, were equal in severity to cases of the same type already considered by the Court, such as *Bekos and Koutropoulos*, cited above, in which the Court awarded EUR 10,000 for non-pecuniary damage. The applicant sought non-pecuniary damages which reflected the extreme pain, distress and anxiety he had suffered from the age of sixteen onwards, and takes into consideration that there is also an allegation of excessive length of proceedings. He claimed a total amount of EUR 25,000.

74. The Government considered the amount claimed exorbitant and submitted that the finding of a violation would constitute sufficient just satisfaction. Otherwise, the Government considered that if the Court held that an amount should be awarded to the applicant EUR 5,000 would be adequate and reasonable.

75. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage which cannot be compensated solely by the finding of a violation in respect of Articles 3 and 6 § 1 of the Convention. Having regard to the specific circumstances of the case, the number of violations found and ruling on an equitable basis, the Court awards the applicant EUR 20,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

76. The applicant requested that Greek Helsinki Monitor, which is representing him free of charge before the Court, be directly awarded the sum of EUR 3,000 for fees and expenses incurred during all the stages of both the domestic proceedings and the proceedings before the Court, to be

paid to lawyer T.A. as evidenced by the invoice issued on 30 November 2008. The applicant invited the Court to specify in the judgment that the award be paid directly into the bank account indicated by Greek Helsinki Monitor.

77. The Government pointed out that the invoice of 30 November 2008 was drafted vaguely and did not mention the nature of the expenditure and the actions for which the lawyer is to be paid. Moreover, lawyer T.A. had no involvement in the proceedings before the Court.

78. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

79. In the present case, the Court notes that the applicant informed that he did not himself have to pay any costs and expenses (paragraph 76 above). It follows that the applicant is not entitled to any compensation under this head.

C. Other requests

80. Referring to a joint concurring opinion in the judgment of *Salduz v. Turkey* (no. 36391/02, 27 November 2008), and to the judgment of *Nitã v. Romania* (no. 10778/02, §§ 35–36, 4 November 2008), the applicant invited the Court by analogy to examine the possibility of requesting the reopening of proceedings against those responsible for the violation of Article 3 in the present case, or at the very least, should it consider that this is not feasible, to award punitive damages to the applicant.

81. The Government did not submit any comments in this respect.

82. The Court notes that in a number of cases it has rejected requests by applicants for exemplary and punitive damages (see, among others, *Selçuk and Asker v. Turkey*, judgment of 24 April 1998, *Reports* 1998-II, p. 918, § 119; *Lustig-Prean and Beckett v. the United Kingdom*, [GC], nos. 31417/98 and 32377/96, §§ 22-23, 27 September 1999; and *İkincisoy v. Turkey*, n^o 26144/95, §§149, 27 July 2004).

83. Furthermore, the Court reiterates that in some of its judgments and in order to assist respondent States in fulfilling their obligations under Article 46 of the Convention, it has sought to indicate to them the nature of the general measures they should adopt in cases involving structural problems concerning a large number of persons and where dozens of applications of the same type have been lodged with it. The Court proceeded likewise for the adoption of individual measures in cases related

to the physical liberty of applicants and in cases of restitution of property, while offering the States the choice between restitution and compensation (see *De Clerck v. Belgium*, no. 34316/02, 25 September 2007, § 99).

84. However, the present case does not fall into one of these categories. The Court has no jurisdiction to direct the Government to reopen proceedings as regards a third party to them, especially as the Convention, and in particular Article 6 § 1, does not guarantee the right to have criminal proceedings instituted against third persons or the right to secure a conviction in criminal proceedings.

85. The Court therefore dismisses the applicant's claims under this head.

D. Default interest

86. 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, Article 6 § 1 (length of proceedings) and Article 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 its substantive part;
3. *Holds* that there is no need to examine separately the procedural complaint under Article 3 of the Convention;
4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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.

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

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President