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THE PROHIBITION OF TORTURE - CASES VERSUS MACEDONIA IN FRONT OF THE EUROPEAN COURT OF HUMAN RIGHTS

Abstract

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention) contains the so-called "Prohibition of torture" stipulated as "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". Despite the fact that it is one of the shortest provisions in the entire text of the Convention (consisting of exactly 15 words), it does not mean that the provided prohibition should not be taken seriously. On the contrary – the States are obliged to respect both obligations set by Article 3, i.e. negative obligation (to refrain from taking the said acts) and positive obligation (to take any appropriate actions aimed to secure and protect the persons from the said acts, as well as to investigate allegations for performing such acts and to sanction their perpetrators).

Having in mind that in 1997 the Macedonian Assembly adopted the Law on Ratification of the Convention, the Paper shall focus on the several cases that target Article 3. Namely, if Article 3 is chosen as a search criteria through the HUDOC database, which provides access to the case law, 14 Macedonian cases until 30 June 2020 are found as a result of the search. Therefore, the Paper shall provide a theoretical and critical overview of Article 3, to the 14 judgements that address the Republic of North Macedonia, as well as to the other relevant documents.

Keywords: Prohibition of torture; European Court; Macedonian cases.

I. INTRODUCTION

"No one shall be subjected to torture or inhuman or degrading treatment or punishment" or "Prohibition of torture" is defined in Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention). In essence, to understand what type of behaviour is forbidden, and how that behaviour is to be classified, it is necessary to understand what the legal implications for each term set out in Article 3 are. Article 3 can be broken down into five elements: torture, inhuman, degrading, treatment and punishment.[1] Furthermore, the rights protected under Article 3 of the Convention relate directly to an individual's personal integrity and human dignity. Freedom from torture, inhuman or degrading treatment or punishment are therefore rights of an extremely serious nature.[2]

Article 3 unlike most Convention articles, is expressed in unqualified terms. This can be understood in the sense that ill-treatment under Article 3 is never allowed, even for the sake of high public interest.[3] Moreover, although the standard of proof in relation of violation of Article 3 is "beyond reasonable doubt", where an applicant is taken in into official custody in good health, but emerges injured, the

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[1] For more, see: A. Reidy: *The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights - Council of Europe human rights handbooks*, Council of Europe, Strasbourg, 2003, p. 11.

[2] See: D. Gomien: *Short guide to the European Convention on Human Rights,* Council of Europe, Strasbourg, 2002, p. 10.

[3] See: D. Haris / M. O'Bojl / E. Bejts / K. Bakli: *Pravo na evropskata konvencija za čovekovi prava (Vtoro izdanie) (Makedonsko izdanie),* Skopje, 2009, p. 69.

onus of proof shifts to the state to show that injures in question was caused in ways which did not amount to the prohibited conduct. Effective action must also have been taken to reduce the risk of violation, and an effective investigation, capable of identifying those responsible.[4]
Concerning the judgements delivered by the European Court of Human Rights (ECHR), in which violation of Article 3 was found, they can be systematized into three categories, i.e. judgments establishing torture, judgments establishing inhuman or degrading treatment or punishment, and judgments establishing that there was a lack of effective investigation.[5] Or, to be more precise, ECHR in many of its judgements has established that there was a violation of the substantive aspect and/or the procedural aspect of Article 3.
As for the Republic of Macedonia, it became a member of the Council of Europe in 1995, and in 1997 the Law on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the First Protocol, Protocol No. 4, Protocol No. 6, Protocol No. 7 and Protocol No. 11 to the said Convention was adopted by the Assembly. In the years that followed, Protocol No. 12, Protocol No. 13, Protocol No. 14 and Protocol No. 14 *bis* to the said Convention were also ratified.[6]
Even though there are more than 600 Macedonian cases in front of the ECHR, if Article 3 is chosen as a search criteria through HUDOC database that provides access to the case law, 14 cases can be found as a result of the search. Despite the fact that the order of appearance given by HUDOC is the following:[7] *Case of L.R. v. Macedonia, Case of SH.D. and others v. Greece, Austria, Croatia, Hungary, Macedonia, Serbia and Slovenia, Case of Selami and others v. Macedonia, Case of Asllani v. Macedonia, Case of Hajrulahu v. Macedonia, Case of Andonovski v. Macedonia, Case of Ilievska v. Macedonia, Case of Kitanovski v. Macedonia, Case of El-Masri v. Macedonia, Case of Gorgiev v. Macedonia, Case of Sulejmanov v. Macedonia, Case of Dzeladinov and others v. Macedonia, Case of Trajkoski and others v. Macedonia,* and *Case of Jasar v. Macedonia,* the cases shall be elaborated on the bases of the year in which the judgment was delivered, starting with the first judgment in 2007. It should be pointed out that in some of these cases, ECHR found a violation of other Convention's articles as well.

II. MACEDONIAN CASES IN FRONT OF THE ECHR

The first case initiated in front of the ECHR was the ***Case of Jasar v. Macedonia***.[8] As a result of the application submitted by the Macedonian national Pejrusan Jasar in 2001, ECHR in the judgement ruled in 2007, established that there was no violation of Article 3 about the alleged ill-treatment because of insufficient evidence. ECHR was not able to establish which version of the events was more credible because eight years after the events have passed, the national authorities were inactivated and reluctant to carry out an effective investigation into the applicant's allegations, as well as there was inconsistency about his injuries and the circumstances under which he sustained them. When it comes to the procedural aspect of Article 3, ECHR established a violation of it because of the

[4] See: S. GRIR: *Evropska konvencija za čovekovi prava - dostignuvanja, problemi i izgledi (makedonsko izdanie),* Skopje, 2009, p. 237.
[5] See: C. T. Mojanoski / V. Ortakovski / M. Milenkovska / K. Krstevska / A. Ivanov: *Istražuvački izveštaj - Implementiranje na praktikata na Evropskiot sud za čovekovi prava vo Republika Makedonija: Strazbur doma ili Makedonija pred Strazbur*, Fakultet za bezbednost - Skopje, Skopje, 2017, p. 51.
[6] See: Law on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the First Protocol, Protocol No. 4, Protocol No. 6, Protocol No. 7 and Protocol No. 11 to the said Convention ("Official Gazette of the Republic of Macedonia" No. 11/1997); Protocol No. 12 ("Official Gazette of the Republic of Macedonia" No. 30/2004); Protocol No. 13 ("Official Gazette of the Republic of Macedonia" No. 30/2004); Protocol No. 14 ("Official Gazette of the Republic of Macedonia" No. 30/2005); Protocol No. 14 *bis* to the said Convention ("Official Gazette of the Republic of Macedonia" No. 41/2010).
[7] The HUDOC database search was done on 30 June 2020. In the meantime, there is one more case, i.e. *Case of X and Y v. Macedonia.* See: European Court of Human Rights: *Case of X and Y v. Macedonia,* Application No. 173/17, Judgement 05.11.2020 - Final 05.02.2021.
[8] See: European Court of Human Rights: *Case of Jasar v. Macedonia,* Application No. 69908/01, Judgement 15.02.2007 - Final 15.05.2007, para. 1, 53, 54, 58, 59, 60.

failure of the authorities to conduct an effective investigation and observed that the applicant filed a criminal complaint to the public prosecutor and lodged his compensation claim more than a month after the decisive event. Despite the fact that the applicant failed to inform the public prosecutor of the identity of the police officers who had apprehended him in the bar (it had been determined in the course of the civil proceedings), the public prosecutor did not undertake any investigative measures after receiving the criminal complaint from the applicant's lawyer. That was the reason why the ECHR noted that the national authorities took no steps to identify who was present when the applicant was apprehended or when his injuries were received, nor was there any indication that any witnesses, police officers concerned or the doctor, who had examined the applicant, were questioned about the applicant's injuries. Furthermore, the public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicant as to the alleged ill-treatment. The only investigative measure undertaken by the prosecutor (made more than a year and a half after the criminal complaint had been lodged), was his request for additional information submitted to the Ministry of Internal Affairs. Such prosecutor's inactivity prevented the applicant from taking over the investigation as a subsidiary complainant and denied him access to the subsequent proceedings. In addition, ECHR in its judgement pointed out that the applicant was still barred from taking over the investigation as the public prosecutor has not yet decided to dismiss the complaint.

The next case was initiated by six Macedonian nationals in 2002, when they lodged an application (No. 13191/02), resulting in a judgement in the case known as ***Case of Trajkoski and others v. Macedonia***.[9] Concerning the alleged violations of Article 3, ECHR found no violation of the substantive aspect and a violation of the procedural aspect. ECHR pointed out that the description of the injuries noted on the certificates contradicts that given in the forensic expert report submitted by the applicant himself (the side of the applicant's body which was injured and the nature of the injuries). Further, ECHR considered that at least partly of the injuries might have been brought by the applicant's own provocative behaviour and the need to remove him from the police premises by force and that the applicant did not provide sufficient evidence to support his version of events. ECHR, based on the provided evidence, was not in a position to find beyond reasonable doubt that during his visit to the police station the applicant was subjected to inhuman or degrading treatment within the meaning of Convention's Article 3. At the same time, ECHR noted that the investigation into the applicant's claim that he had sustained injuries at the hands of the police was not thorough and effective. To be exact, the public prosecutor rejected them finding no evidence of an offence and solely based his conclusions on the statements of the police officers involved. In the subsidiary criminal proceedings, the applicant provided the identity of one of the police officers involved and left it to the court to identify the remaining four. But, the trial court rejected the applicant's complaint as incomplete without taking any further action.

Same as above, no violation of Article 3 on account of the alleged ill-treatment was found in the third judgement, i.e. judgement regarding the ***Case of Dzeladinov and others v. Macedonia***.[10] However, ECHR found a violation of Article 3 because of the failure of the authorities to conduct an effective investigation. The case, originated by five Macedonian nationals in 2002 by lodging an application (No. 13252/02), ended with a judgement in which ECHR, because of insufficient evidence, was not enabled to find beyond reasonable doubt that the applicants were ill-treated whether at a scene or while in police custody or that the force used against them was excessive. ECHR found no cogent elements that would support the applicants' allegations of ill-treatment and stressed that even assuming that certain injuries could have been sustained as a result of the police intervention, it could not establish whether the force used by the police to suppress the alleged disorder was excessive. On the other hand, a violation was found on the procedural aspect of Article 3. Although the applicants' lawyer lodged a criminal complaint about the alleged police brutality nine days after the incident, the public prosecutor did not take any investigative measures after receiving it apart from requesting the Ministry of Internal

[9] See: European Court of Human Rights: *Case of Trajkoski and others v. Macedonia,* Application No. 13191/02, Judgement 07.02.2008 - Final 07.07.2008, para. 1, 40, 41, 42, 47, 48, 49.

[10] See: European Court of Human Rights: *Case of Dzeladinov and others v. Macedonia,* Application No. 13252/02, Judgement 10.04.2008 - Final 10.07.2008, para. 1, 67, 68, 72, 73, 74.

Affairs to make additional inquiries. The prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicants. Further, the applicants were enabled to take over the investigation as subsidiary complainants because of the inactivity of the public prosecutor and because he did not decide to dismiss the complaint.

Once again, no violation of the substantive aspect of Article 3 was found in the ***Case of Sulejmanov v. Macedonia***.[11] On account of the alleged ill-treatment, in case that was raised as a result of an application (No. 69875/01), submitted in 2001 by the Macedonian national Demir Sulejmanov, ECHR observed that the provided evidence was insufficient and did not enable to find beyond reasonable doubt that the applicant was subjected to physical ill-treatment while he was arrested or while in police custody. Thus, ECHR was not able to establish which version of the events was more credible (the applicant's or the Government's version), as well as no cogent elements have been adduced which could call into question the findings of the national authorities and support the applicant's allegations. Contrary to this, ECHR established that there has been a violation of the procedural aspect of Article 3 on account of the failure of the authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated at the hands of the police. In the present case, ECHR noted that the applicant lodged a criminal complaint to the public prosecutor, as well as he lodged a compensation claim more than seven months after the decisive event. At that time of the incident, the applicant did not know the identity of the police officers involved, and later he failed to inform the public prosecutor of the officers' identity which was determined within the civil proceedings. Nevertheless, the public prosecutor was under the duty to investigate whether an offence had been committed, but he did not take any investigative measures after receiving the criminal complaint, except for requesting additional inquiries from the Ministry of Internal Affairs. Nearly eight years after the criminal complaint had been lodged and after the case was communicated to the Government, the public prosecutor just gave a "written conclusion" about the incident.

Only procedural aspect of Article 3 was violated in the fifth case – ***Case of Gorgiev v. Macedonia***,[12] since the authorities failed to conduct an effective investigation into the applicant's allegations. Macedonian national Gorgi Gorgiev in 2005 submitted an application (No. 26984/05), that raised a procedure in front of ECHR. In the judgement, ECHR noted that the applicant did not make a criminal complaint to the public prosecutor that would initiate a procedure to identify and prosecute the responsible, and at the same time it stressed that such applicant's omission cannot release the State from the duty to carry out "an official investigation". ECHR pointed out that the public prosecutor remained inactive despite the fact that the alleged offence was subject to a State prosecution, as well as he took no step to uncover the truth after the applicant brought the incident to his attention with the request for legality review proceedings. In addition, no measures were taken with a view to establishing whether any individual was disciplinarily liable in relation to the applicant's allegations. On the other hand, ECHR did not find a violation of the substantive aspect of Article 3 concerning the alleged failure of the authorities to protect the applicant. ECHR's attention was addressed whether the Government complied with the obligation to protect the applicant in the given circumstances and since the uncastrated bull was an inherently dangerous animal, as the domestic courts recognised. Namely, ECHR found that no responsibility can be attributed to the State for having permitted the applicant to handle the bull since there was nothing to suggest that special measures should be taken in order to reduce any potential risk. Basically, the applicant was assigned to work on the prison farm owing to his forty-year experience in rearing livestock; no evidence was presented that the applicant opposed to this engagement; before he took up the duty, he attended a week's work-related induction course and remained on the farm for a month before he was allowed to pasture duties; and finally – the bull had been under constant medical supervision by the examining vet.

[11] See: European Court of Human Rights: *Case of Sulejmanov v. Macedonia,* Application No. 69875/01, Judgement 24.04.2008 - Final 24.07.2008, para. 1, 45, 46, 49, 50, 51, 52.

[12] See: European Court of Human Rights: *Case of Gorgiev v. Macedonia,* Application No. 26984/05, Judgement 19.04.2012 - Final 19.07.2012, para. 1, 64, 65, 66, 73, 74, 75.

The ***Case of El-Masri v. Macedonia*** is one of the most important Macedonian cases,[13] when it comes to established violations of the Convention, among which were the violations of Article 3. The case started in 2009 with an application (No. 39630/09), lodged by the German national Khaled El-Masri, and ended in 2012 when ECHR adopted the judgement. The first violation was its procedural aspect of Article 3 on the account of the failure of the State to carry out an effective investigation into the applicant's allegations of ill-treatment. Namely, ECHR concluded that the summary investigation that has been carried out cannot be regarded as an effective one capable of leading to the identification and punishment of those responsible for the alleged events and of establishing the truth. The second violation was on the account of the inhuman and degrading treatment to which the applicant was subjected while being held in a hotel in Skopje. Despite the fact that no physical force was used against the applicant, his solitary incarceration intimidated him on account of his apprehension as to what would happen to him next and must have caused him emotional and psychological distress. The applicant's prolonged confinement in the hotel left him entirely vulnerable. He undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate during the interrogation sessions to which he was subjected. Furthermore, the threat that he would be shot if he left the hotel room was sufficiently real and immediate which, in itself, was in conflict with Article 3. The applicant's suffering was further increased by the secret nature of the operation and the fact that he was kept incommunicado for twenty-three days in a hotel. The third violation was that the State was responsible for the ill-treatment to which the applicant was subjected at the Skopje Airport and that such treatment was classified as torture within the meaning of the Convention's Article 3. In essence, the State must be considered directly responsible for the violation of the applicant's rights, since its agents actively facilitated the treatment and then failed to take any measures that might have been necessary in the circumstances of the case to prevent it from occurring. The measures were used in combination and with premeditation with an aim to cause severe pain or suffering in order to obtain information, inflict punishment or intimidate the applicant (the applicant, handcuffed and blindfolded, was taken from the hotel and driven to Skopje Airport; he was placed in a room, and was beaten severely by several disguised men dressed in black; he was stripped and sodomised with an object; he was placed in an adult nappy and dressed in a dark blue short-sleeved tracksuit; he was shackled and hooded, and was subjected to a total sensory deprivation; was forcibly marched to a CIA aircraft which was surrounded by Macedonian security agents who formed a cordon around the plane; on the plane, he was thrown to the floor, chained down and forcibly tranquillised). And the fourth violation was that the State was responsible for the applicant's transfer into the custody of the US authorities despite the existence of a real risk that he would be subjected to further treatment contrary to Article 3. ECHR observed that how the applicant was transferred into the custody of the US authorities, was "extraordinary rendition", and concluded that the State was responsible for the inhuman and degrading treatment to which the applicant was subjected while in the hotel, for his torture at Skopje Airport and for having transferred the applicant into the custody of the US authorities, thus exposing him to the risk of further treatment contrary to Article 3 of the Convention.

Once again, both violations of Article 3 were noted in the ***Case of Kitanovski v. Macedonia,***[14] i.e. the substantive (because of the degrading treatment of the first applicant during his arrest) and procedural aspect (because of the failure of the authorities to conduct an effective investigation into the first applicant's allegations that the police put his life at risk and ill-treated him). The procedure in front of ECHR was initiated with an application (No. 15191/12), submitted in 2012 by two Macedonian nationals Aleksandar Kitanovski ("the first applicant", son) and Tihomir Kitanovski ("the second applicant", father). Concerning the first violation, ECHR in the judgement pointed out that the Government did not provide convincing arguments that the use of force, which resulted with the applicant's injuries, was strictly necessary and proportionate, and it concluded that the force used was excessive and unjustified in the circumstances. In essence, none of the twenty police officers who

[13] See: European Court of Human Rights: *Case of El-Masri v. Macedonia,* Application No. 39630/09, Judgement 13.12.2012, para. 1, 193, 194, 202, 203, 204, 205, 211, 220, 221, 222, 223.

[14] See: European Court of Human Rights: *Case of Kitanovski v. Macedonia,* Application No. 15191/12, Judgement 22.01.2015 - Final 22.04.2015, para. 1, 78, 79, 80, 87, 88, 89, 90, 91.

witnessed the applicant's arrest, as well as the written statements of the police officers submitted in the case file did not contain any information as to whether the applicant had resisted his arrest. When it comes to the second violation, the first applicant lodged a criminal complaint to the public prosecutor against unidentified police officers, and after discovering their identity – he informed the prosecutor. However, the public prosecutor did not take any investigative measures, apart from requesting additional information from the Ministry of Internal Affairs. And, after two years and two months, the prosecutor just informed the first applicant that there were no grounds to suggest that the police officers had committed any offence subject to State prosecution. He informed the first applicant by a letter (not a formal decision), that did not contain an explanation of any legal remedies that were available to the applicant. Later (after three-and-a-half years of submission of the criminal complaint), the same public prosecutor reached the same conclusion and rejected the complaint. He did it with a formal decision and advised the first applicant that he can take over the prosecution as a subsidiary prosecutor. In addition, ECHR pointed out that the same prosecutor who filed the criminal charges against the first applicant had also examined his complaint which casted doubt on his impartiality.

In the eighth case – ***Case of Ilievska v. Macedonia,***[15] only one violation of Article 3 was found. Macedonian national Marina Ilievska in 2011 lodged an application (No. 20136/11), and four years after ECHR ruled that the substantive aspect was violated (degrading treatment), because of the applicant's handcuffing during her transfer from Kriva Palanka to Bardovci hospital in Skopje. In addition, ECHR stressed that it was not proportionate for the applicant to be handcuffed throughout the transfer to Bardovci hospital. Moreover, the Government did not provide arguments that less stringent measures and precautions were available to diminish the opportunities for self-harm without infringing the applicant's personal autonomy, and also it remained unclear whether any medicine was administered to the applicant (the police officers and the applicant provided conflicting evidence as to whether a tranquilliser had been administered to her before she was transferred to Bardovci hospital). At the end, ECHR noted that throughout the transfer two police officers were sitting next to the applicant and contrary to this – neither the applicant's husband nor any other relative accompanied her.

A violation of Article 3 on its procedural and substantive aspect was established by ECHR in the ***Case of Andonovski v. Macedonia***,[16] or to be more precise the authorities failed to conduct an effective investigation into the applicant's allegations of police brutality, and the applicant was treated by the police in an inhuman and degrading manner. The judgement was delivered by ECHR in 2015, based on the application (No. 24312/10), filed in 2010 by Macedonian national Vladimir Andonovski. ECHR ruled that the public prosecutor did not take any serious steps to secure the evidence after the incident, despite the serious nature of the applicant's allegations and the medical reports confirming his injuries. The prosecutor asked for information from Skopje Clinic regarding some of the applicant's injuries, however, he did not summon the applicant and the accused, or any other third person who could have provided relevant information. Later, the applicant conducted subsequent criminal proceedings since the prosecutor rejected his criminal complaint about lack of evidence that the accused had committed the impute crimes. ECHR pointed out that the trial court invited the public prosecutor on three occasions to take over the prosecution since the aggravated bodily harm was subject to a State prosecution, however on each occasion the prosecutor explicitly refused to take it over. The criminal proceedings ended based on the applicant's statement in which he withdrew the charges against the accused. However, the applicant contested before the trial court the assertion that he had withdrawn the indictment and argued that he had requested the prosecution to be taken over by the public prosecutor. Finally, ECHR observed that the authorities did not submit the applicant's case to scrutiny and failed to comply with their procedural obligations arising from Article 3. The substantive aspect of Article 3 was also violated on account of the inhuman and degrading treatment to which the applicant was subjected during the police procedure. ECHR did not consider that the applicant's behaviour during his transfer to the police station, as established by the criminal courts, could explain the

[15] See: European Court of Human Rights: *Case of Ilievska v. Macedonia,* Application No. 20136/11, Judgement 07.05.2015 - Final 07.08.2015, para. 1, 62, 63.

[16] See: European Court of Human Rights: *Case of Andonovski v. Macedonia,* Application No. 24312/10, Judgement 23.07.2015 - Final 23.10.2015, para. 1, 89, 90, 91, 92, 97, 102, 103.

numerous contusions on the applicant's face and body, as well as the fracture of the spinal vertebrae. Therefore, ECHR concluded that the force used was excessive and unjustified in the circumstances and that the Government did not furnish convincing or credible arguments that would provide a basis to justify or explain the injuries that the applicant had received at the hands of the police.

Once again two violations of Article 3 were established in the ***Case of Hajrulahu v. Macedonia***,[17] originated in 2007 by an application (No. 37537/07), submitted by Macedonian national Ferid Hajrulahu. Namely, in the judgement of 2015, ECHR concluded that there was a failure of the authorities to investigate the applicant's allegations on police ill-treatment because the number and the position of the injuries on the applicant's body were sufficient to raise a reasonable suspicion that they could have been imputed to the State authorities. However, the public prosecutor took no action to investigate the applicant's allegations and remained inactive in the further proceedings. The substantive aspect of Article 3 was also violated, on the account of the ill-treatment by the State's agents. The applicant was abducted and incommunicado detained in a house for three days, and such position, according to ECHR, intimidated the applicant as to what would happen to him next and must have caused him emotional and psychological distress. Further, he lived in a permanent state of anxiety owing to his uncertainty about his fate. In addition, the treatment during the interrogation must have caused him considerable physical pain, fear, anguish and mental suffering. From all these circumstances, ECHR ruled that the measures used towards the applicant aimed to extract a confession about his alleged involvement in the bomb incident.

Same as above, in the tenth case – ***Case of Asllani v. Macedonia***,[18] ECHR found two violations of Article 3, i.e. the authorities failed to conduct an effective investigation into the applicant's allegations of police brutality and the police treated the applicant in an inhuman and degrading manner during his questioning at Resen police station. The judgement was delivered in 2015, based on an application (No. 24058/13), lodged by the Macedonian national Esat Asllani. After receiving the applicant's criminal complaint, the public prosecutor initiated a prosecution and later he withdrew the charges due to lack of evidence. The applicant took over the prosecution, but the case was beset by delays caused by the fact that two first-instance courts decided the applicant's case, as well as because of the repeated remittal of the case for re-examination. For these reasons, ECHR concluded that the authorities failed in their obligation under Article 3 to investigate the applicant's allegations of police brutality effectively, promptly, expeditiously and with the required vigour. The second violation was the substantive aspect of Article 3 – degrading and inhuman treatment, since the applicant suffered a broken nose and facial bruising due to the use of "brute" force on his face. These injuries were described in the medical records admitted at the trial and amounted to bodily injury. In the absence of any justification for these injuries, ECHR considered that the treatment to which he was subjected did cause him physical pain, fear, anguish and mental suffering.

A violation of Article 3 in its procedural aspect was found in the ***Case of Selami and others v. Macedonia***,[19] because according to the ECHR there was no official investigation *proprio motu* in respect of the late S. Selami's allegations. The application (No. 78241/13) was submitted in 2013 by four Macedonian nationals (Dževrije Selami – "the first applicant", Nedžmije Aliu – "the second applicant", Mesut Selami – "the third applicant" and Nedžmi Selami – "the fourth applicant"). The first applicant was the widow of S. Selami (he died on 6 April 2011), and the rest applicants were children of the first applicant and the late S. Selami. ECHR pointed out that the late S. Selami and the fourth applicant brought a civil action against the State seeking pecuniary and non-pecuniary damages, but they did not make a criminal complaint to the public prosecutor in respect of the treatment inflicted on S. Selami by the police and his undisclosed detention. Nevertheless, ECHR assessed that S. Selami's communication to the authorities contained enough elements to be considered as an "arguable

[17] See: European Court of Human Rights: *Case of Hajrulahu v. Macedonia,* Application No. 37537/07, Judgement 29.10.2015 - Final 29.01.2016, para. 74, 75, 78, 80, 101, 102.

[18] See: European Court of Human Rights: *Case of Asllani v. Macedonia,* Application No. 24058/13, Judgement 10.12.2015 - Final 10.03.2016, para. 1, 85, 86, 87, 61, 62, 63, 64, 67, 68.

[19] See: European Court of Human Rights: *Case of Selami and others v. Macedonia,* Application No. 78241/13, Judgement 01.03.2018 - Final 01.06.2018, para. 1, 79, 80, 81.

claim" for the purposes of Article 3, since he brought the alleged violation of his rights to the attention of the Ministry of Justice, but the Ministry took no action to notify the public prosecutor. In addition, the authorities did not make any attempt to investigate even though the judgment brought within the civil proceedings established that S. Selami had been subjected "to serious physical ill-treatment and was beaten" by the police.

Despite the fact that the application was raised against seven states, ECHR in the ***Case of SH.D. and others v. Greece, Austria, Croatia, Hungary, Macedonia, Serbia and Slovenia,***[20] established that only Greece have violated the rights of the applicants. The applicants were five Afghan nationals, whose initials were given in the Judgement's appendix (SH. D., A.A., S.M., M.M. and A.B.M). Their application (No. 14165/16), filed in 2016, resulted in a judgement in which ECHR found a violation of substantive aspect of the Article 3 (prohibition of torture, i.e. degrading treatment), regarding the conditions of detention in various police stations, as well as the living conditions in Idomeni camp.

The last Macedonian case in front of ECHR was the ***Case of L.R. v. Macedonia***.[21] It was originated in 2015 when the Helsinki Committee for Human Rights in Skopje on behalf of the Macedonian national L.R. lodged an application (No. 38067/15). In this case, a violation of the Convention's Article 3 on three grounds concerning the degrading and inhuman treatment was found. According to the ECHR, the authorities were under an obligation to safeguard the applicant's dignity and well-being, since he had been suffering from a moderate mental disability, the most severe form of physical disability and a speech disability since birth. Therefore, they were held responsible for the inappropriate placement of the applicant in the Rehabilitation Institute B.B.S., the lack of requisite care provided and the inhuman and degrading treatment which he endured there. To be exact, the applicant was tied to his bed at night and frequently during the day, and such a "measure" was used for approximately a year and nine months. The applicant, as an eight-year-old child, was even more vulnerable because of his disability, which meant that he could not complain at all about how he was affected by such treatment. Furthermore, ECHR found that the procedural aspect of Article 3 was also violated, since the authorities failed to conduct an effective investigation, i.e. the overall response of the authorities in investigating the allegations of serious human rights violations cannot be regarded as adequate because there were allegations of wilful ill-treatment.

III. CONCLUSION

The prohibition against torture, cruel, inhuman and degrading treatment in international human rights law can, at best, therefore, only be 'virtually', rather than strictly, absolute. It applies, in other words, in all but the rarest circumstances but not, as the received wisdom maintains, to the exclusion of every possible justification, exoneration, excuse, or mitigation.[22] Despite the fact that the Republic of North Macedonia as a Contracting Party to the Convention obliged itself to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention, the ECHR's jurisprudence shows that this is not happening in the practice. Namely, if the Macedonian cases are being analysed from the aspect of Article 3, it can be noted that most of the applicants were Macedonian nationals, one applicant was a German national and five applicants were Afghan nationals (in their case, Article 3 was violated only by Greece). Furthermore, there was only one case in which a violation of Article 3 was inflicted towards a woman. In addition, it can be observed that in almost all of the cases, the Macedonian authorities failed to conduct an effective investigation about the alleged violations of the applicant's rights that arise from the Convention's Article 3. In essence, the public prosecutor remained inactive despite the fact that the alleged offence was subject to the State prosecution. Depending on the severity of the treatment under which the applicants were undergone, ECHR

[20] See: European Court of Human Rights: *Case of SH.D. and others v. Greece, Austria, Croatia, Hungary, Macedonia, Serbia and Slovenia,* Application No. 14165/16, Judgement 13.06.2019 - Final 13.09.2019.

[21] See: European Court of Human Rights: *Case of L.R. v. Macedonia,* Application No. 38067/15, Judgement 23.01.2020 - Final 23.05.2020, para. 1, 80, 94, 95.

[22] See: S. Greer: Is the Prohibition against Torture, Cruel, Inhuman and Degrading Treatment Really 'Absolute' in International Human Rights Law? in *Human Rights Law Review,* Oxford, 2015, p. 1.

established different types of violations of the substantive aspect of Article 3, i.e. they were tortured or they were treated in a degrading or inhuman manner. Furthermore, ECHR noted that only one violation of the substantive aspect of Article 3 was concerning the inappropriate placement of the applicant in the Rehabilitation Institute, one violation about the handcuffing the applicant during her transfer to hospital, and the rest of the violations were performed by the police officers (torture or inhuman or degrading treatment). It is interesting to note that Macedonian authorities in some cases used incommunicado, i.e. an extraordinary places of detention**.**

Having in mind the above remarks, it can be concluded that the Macedonian authorities must make efforts in order truth to be established and must comply with the principles of independence, thoroughness, comprehensiveness, expeditious and public scrutiny, as well as with the required vigour, when it comes to investigating the alleged violations of the Convention's articles. In addition, the offenders must be identified and brought to justice, in order for two aims to be achieved - the first one is to prevent the offenders to committing crimes in the future as well as for their correction, and the second one is to influence educationally upon others not to perform crimes. Finally, no explanation should be given to the statement made by Martin Solc, former president of the International Bar Association, when he stressed: "If someone tells you that torture is an efficient tool to obtain critical information, imagine that the person under suspicion is your child".

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