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

FIRST SECTION

CASE OF PETROPOULOU-TSAKIRIS v. GREECE

(Application no. 44803/04)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

06/03/2008

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 Petropoulou-Tsakiris 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 A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr G. MALINVERNI, *judges,*
and Mr S. NIELSEN, *Section Registrar,*

Having deliberated in private on 15 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 44803/04) 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, Ms Fani-Yannula Petropoulou-Tsakiris ("the applicant"), on 2 December 2004.

2. The applicant was represented by the European Roma Rights Centre, and the Greek Helsinki Monitor. The Greek Government ("the Government") were represented by their Agent's delegates, Mr S. Spyropoulos, Adviser at the State Legal Council and Mr I. Bakopoulos, Legal Assistant at the State Legal Council.

3. The applicant alleged that she 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. She further alleged that the impugned events had been motivated by racial prejudice, in breach of Article 14 of the Convention.

4. On 5 October 2006 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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is of Roma ethnic origin and lives in Nea Zoe, in Aspropyrgos (western Attica), in a Roma settlement.

A. Outline of the events

6. On 28 January 2002, between 11 a.m. and 1 p.m., the Police Directorate of western Attica, on the initiative of Aspropyrgos police station, conducted a large-scale police operation in the Roma settlement of Nea Zoe. The operation was aimed at arresting persons who, according to information obtained by the police, were involved in drug trafficking. Thirty-two police officers and one judicial official took part in this operation, in the course of which eleven Roma dwellings were searched and four individuals arrested.

7. The applicant, who was two and a half months pregnant, was in the settlement at the time of the operation.

1. The applicant's version

8. The applicant and other Roma women were rounded up by the police for a body search. According to her statement, whilst the police operation was taking place the applicant waited her turn to be searched by the police who were searching other residents of the settlement. She noticed that certain police officers were taunting a disabled Roma who was a relative of hers.

9. As she moved to approach the police officers, she was forcefully pushed back by one of them while another one kicked her in the back, in spite of the fact that she had shouted that she was pregnant. As a result of the kick, the applicant felt an intense pain in the abdominal area and started bleeding. Although the bleeding was obvious to all the police officers present, the applicant was not taken to hospital. Not having any personal documents – as she was at the time an unregistered stateless person – and being alone, she felt she could not go to the hospital on her own for fear of being refused treatment.

10. The next day she informed members of the Greek Helsinki Monitor that she had been kicked by a police officer and that she was bleeding. One of them then rushed her to Elena Venizelou Maternity Clinic, where she was admitted immediately. She underwent a number of medical tests.

11. On 1 February 2002 the applicant suffered a miscarriage and was kept under medical supervision until 5 February 2002, when she was discharged from the hospital.

2. The Government's version

12. According to the version of events given by the Government, the police officers who participated in the police operation of 28 January 2002 did not use force against civilians. Neither the four persons arrested nor any other individual who was in the settlement during the operation had been assaulted or subjected to racial abuse. The presence of a judicial officer guaranteed the police officers' proper conduct.

B. Medical report

13. According to the medical report drawn up at the end of the examination, "the applicant was admitted to the hospital on 29 January 2002, 10 weeks pregnant, with haemorrhaging from her uterus (risk of spontaneous abortion). On 2 February 2002 there was a complete expulsion of the foetus and on 4 February 2002 her uterus was cleaned".

C. Criminal proceedings

14. On 1 February 2002 counsel for the applicant lodged a criminal complaint with the Athens public prosecutor against the police officer who had allegedly used violence against the applicant and whose identity was unknown to her. In the complaint the applicant joined the proceedings as a civil party seeking damages, asked to be examined by a forensic doctor and named three persons who could testify as witnesses. She also included the address and telephone numbers of her lawyers.

15. On 10 February 2002 the Athens public prosecutor sent a letter to the commander of Aspropyrgos police station requesting that a preliminary inquiry (*προανάκρισηη*) be launched into the allegations contained in the applicant's criminal complaint so as to identify the unknown perpetrators, who would be charged with inflicting serious bodily harm under Articles 308 § 1 (a) - 309 of the Greek Criminal Code.

16. On 11 March 2002 two witnesses named by the applicant submitted a written testimony to the police officer in charge of the preliminary inquiry. On the same date the applicant submitted a written memorandum to the police requesting that the police officers from Aspropyrgos police station be excluded from conducting the preliminary inquiry since officers from that station had participated in the operation in question and it was most likely that one of them had ill-treated her.

17. By a letter dated 12 March 2002 the commander of Aspropyrgos police station informed the Athens public prosecutor of the applicant's request and asked him to make a decision and issue the relevant order as to whether he should continue to conduct the preliminary inquiry. It cannot be ascertained from the case file whether the public prosecutor replied. However, Aspropyrgos police station continued with the preliminary inquiry.

18. On 1 May 2002 two police officers, the head of the security division of Aspropyrgos police station and the head of the anti-crime unit of Elefsina police station respectively, testified before the police officer conducting the preliminary inquiry. Both officers stated that they did not have any knowledge of ill-treatment inflicted upon the applicant.

19. On 28 November 2002 the investigation file was forwarded to the Athens public prosecutor. In the covering letter the Aspropyrgos police station commander repeated the applicant's request that the police officers serving at his police station be prevented from conducting the preliminary inquiry.

20. On 10 September 2003 the Athens public prosecutor requested the Elefsina magistrate (*πταισματοδίκης*), the competent judicial authority, to summon the applicant and any other witnesses she wished to call.

21. On 16 January 2004 a court bailiff visited the settlement where the applicant lived in order to summon her and another woman to testify before the Elefsina magistrate on 26 January 2004. The court bailiff stated that she was unable to find either the applicant or the other witness and that she had been informed by police officers from Aspropyrgos police station that the two women had moved to "an unknown address".

22. On 26 January 2004 the Elefsina magistrate returned the case file to the Athens public prosecutor.

23. On 3 July 2004 the Athens public prosecutor closed the file with the indication "Perpetrator unknown". The authorities did not inform the applicant or her legal representatives that the file had been closed. On 28 July 2004, when making an enquiry at the Athens public prosecutor's office, the Greek Helsinki Monitor was informed that the case had been closed.

24. On 1 September 2004 the Greek Helsinki Monitor sent a letter to the Aspropyrgos police station commander, enclosing a copy of the bailiff's statement and enquiring as to how the police officers could have been aware of the applicant's change of address.

25. In his reply dated 6 September 2004 the Aspropyrgos police station commander commented on the court bailiff's reference to Aspropyrgos police station's having informed her that the applicant had moved to "an unknown address". According to the station commander, the reference was general and vague and thus could not be confirmed and the records of the police station did not contain any relevant information.

D. Administrative investigation into the incident

26. In the meantime, on 5 March 2002, responding to the publicity that had been generated, the Chief of the Greek Police launched an informal investigation in order to clarify whether the police operation of 28 January 2002 had involved unlawful or excessive use of force by members of the police. The investigation was conducted under the direct supervision of the Deputy Director of Police, A.V., who had been actively involved in the police operation of 28 January 2002. As he stated in his report: "[T]he general supervision and coordination of the police actions had been orally assigned by the commander of the Police Directorate of western Attica to the undersigned, who prepared the action plan and personally supervised the police officers' action on the operational level."

27. Police officer A.V. proceeded to question five senior police officers who had participated in the operation in question. According to their statements, they had not witnessed any of their colleagues ill-treating the Roma residents.

28. On 6 March 2002 the police went to the applicant's settlement in order to serve her with a summons for interview, but did not find her.

29. On 7 March 2002 the report on the findings of the informal investigation was issued. According to the report, the presence of a judicial officer during the police operation guaranteed that, in the event of incidents of police brutality, the public prosecutor would be informed. Furthermore, according to officer A.V.'s findings: "the complaints are exaggerated ... It is in fact a common tactic employed by the *athinganoi* (Greek word for Roma) to resort to the extreme slandering of police officers with the obvious purpose of weakening any form of police control." The report concluded that, given that a criminal investigation had already been initiated, it was advisable to suspend the disciplinary proceedings until either a criminal court had ruled on the case or the alleged perpetrator had been identified. In accordance with this recommendation, the disciplinary proceedings were suspended.

II. RELEVANT DOMESTIC LAW AND PRACTICE

30. The Greek Ombudsman issued a report on 12 October 2004 entitled "Disciplinary/administrative investigations into allegations against police officers". It stated as follows in relation to investigations into complaints raising serious issues, such as excessive use of force and/or police brutality:

> "*4. Failure to conduct Sworn Administrative Inquiry (Ενορκη Διοικητική Εξέταση, – SAI)*
>
> The fact that informal investigations are more frequently conducted - informal investigations represent some 66% of the investigations carried out in total - raises the important question whether the methods of investigation used by the Greek Police are

adapted to the offences complained of. In a number of cases where an informal investigation was carried out, although the nature of the offence complained of required an SAI, the Ombudsman observed that although there were elements that would have justified disciplinary proceedings against police officers, the Greek Police refused to carry out an SAI. ... Such complaints [concerning allegations of ill-treatment or police brutality] could not be easily rejected on the basis of an informal investigation, given that they are often substantiated with forensic examinations or other medical certificates. ... In the following examples, an SAI was not carried out although the nature of the offences required it: (a) use of physical force: e.g. ... striking and subsequent miscarriage of a pregnant woman of Roma origin ... The Greek Ombudsman observed that the Greek Police omit, on a regular basis, to institute disciplinary proceedings even in cases where the existence of strong objective evidence, such as witness statements, photographs, forensic reports, medical certificates etc., cannot be denied. Such evidence cannot be summarily overruled but needs to be examined thoroughly through the formal procedure of an SAI. Cases with strong evidence requiring an SAI that was never conducted: (a) forensic or medical reports: e.g. ... a pregnant woman of Roma origin suffered a miscarriage after being struck ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

31. The applicant complained under Article 3 of the Convention that she had been subjected to acts of police brutality which had caused her great physical and mental suffering amounting to torture, inhuman and/or degrading treatment or punishment. She also complained under the same provision, taken together with Article 13 of the Convention, that the Greek investigating and prosecuting authorities had failed to carry out an effective and impartial official investigation into the incident which could have led to the identification and punishment of the police officers responsible. The applicant therefore claimed that she had been denied an effective domestic remedy for her sufferings.

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

32. The Government requested the Court to declare the case inadmissible as the applicant had failed to exhaust domestic remedies. In particular, they submitted that the fact that the Athens public prosecutor had closed the file with the indication "Perpetrator unknown" did not mean that the outcome of the case was definitively decided. According to domestic law, when the perpetrator of an alleged offence was not identified, the preliminary inquiry remained pending until new evidence was brought before the authorities. Thus, when the applicant was informed that the case had been closed, she should have appeared before the public prosecutor in order to testify and request the reopening of the case. By failing to do so, she had not assisted the authorities in their investigations and had not exhausted an effective remedy.

33. The applicant disagreed with the Government's objection. She argued that she had sought a criminal prosecution by lodging a complaint, but that avenue had proved ineffective. She submitted that the investigation had not been effective, and in particular that the investigating authorities had failed to take timely steps to collect evidence and identify the perpetrators. She further noted that the prosecutor had closed the file two years and five months after the incident. In the light of the ineffectiveness of the criminal investigation there had been no point in the applicant's waiting any longer before lodging an application before the Court, as in fact any delay would have entailed a serious risk of having her application before the Court rejected on the grounds that it failed to comply with the time-limit of six months.

34. The Court finds that the question of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Articles 3 and 13 of the Convention. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits of the complaint.

35. The Court further notes that the application 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 applicant submitted that her miscarriage had been the result of the unnecessary and disproportionate use of force by the police officers involved in the police operation of 28 January 2002. She also complained of the failure of the investigating and prosecuting authorities to carry out a

prompt, comprehensive and effective official investigation capable of leading to the identification and punishment of the police officer responsible.

37. The Government pointed out that since the miscarriage suffered by the applicant had not occurred while she was in police custody, the police authorities could not be held responsible for it. According to the Government, the presence of a judicial officer during the police operation guaranteed that no incident of police brutality could have occurred. Furthermore, the Government argued that the applicant had failed to produce a medical report stating that there were signs of physical violence on her body that could have provoked the miscarriage, such as bruises. The Government also referred to the lack of a medical examination by a forensic doctor and the applicant's failure to assist the investigating authorities. As regards the effectiveness of the investigation, the Government emphasised that the applicant had not appeared to testify before the competent judicial authority and that she was solely responsible for the fact that the Athens public prosecutor had closed the file.

2. The Court's assessment

a. Concerning the alleged ill-treatment

i. General principles

38. 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 the *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 the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79).

39. 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).

ii. Application of those principles to the present case

40. The Court reiterates that it is not disputed that the applicant was present in the Roma settlement during the police operation and that she was admitted to hospital the following day with bleeding from her uterus. However, the circumstances under which the bleeding occurred are not entirely clear and the Court notes that there are some elements in this case which cast doubt on whether the applicant suffered treatment prohibited by Article 3.

41. Firstly, the medical report produced by the applicant only states that she was bleeding and that she suffered a miscarriage, without mentioning the existence of bruises or other injuries and without reference to reasons that may have caused the bleeding. Furthermore, the Court notes that the applicant has not produced any other cogent evidence in support of her allegations of ill-treatment, such as objective eye-witness testimonies.

42. In conclusion, since the evidence before it does not enable the Court to find beyond all reasonable doubt that the miscarriage suffered by the applicant was the result of the alleged ill-treatment inflicted by police officers, the Court considers that there is insufficient evidence for it to conclude that there has been a violation of Article 3 on account of the alleged torture.

b. Concerning the alleged inadequacy of the investigation

i. General principles

43. 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).

44. 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).

45. The investigation into arguable allegations of ill-treatment must also be thorough. This means that the authorities must make serious attempts 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).

46. The procedural limb of Article 3 is invoked, in particular, where the Court is unable to reach any conclusions as to whether there has been treatment prohibited by Article 3 of the Convention, deriving, at least in part, from the failure of the authorities to react effectively to such complaints at the relevant time (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 178, 24 February 2005).

ii. Application of those principles to the present case

47. 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 her miscarriage might have been caused by excessive use of force. As such, her complaints constituted an arguable claim in respect of which the Greek authorities were under an obligation to conduct an effective investigation.

48. As regards the present case, the Court observes that two separate sets of proceedings were conducted: criminal proceedings against the unknown perpetrators on the applicant's initiative and an administrative informal investigation following the publicity given to the incident. However, the Court is not persuaded that those proceedings were sufficiently thorough and effective to meet the above requirements of Article 3.

49. In particular, concerning the criminal proceedings, the Court notes some discrepancies capable of undermining their reliability and effectiveness. Firstly, the Court notes that contrary to its established case-law, the preliminary inquiry launched into the applicant's allegations was conducted by police officers serving in the same police station as the ones who had participated in the police operation in question, even though the applicant had requested that they be excluded (see, *mutatis mutandis*, *Oğur v. Turkey* [GC], no 21594/93, §§ 91-92, ECHR 1999-III).

50. Secondly, the Court observes omissions as to the assessment of evidence by the investigating authority. In particular, the only witnesses

examined were two members of the Greek Monitor Helsinki and two police officers. Moreover, the authorities omitted to take into account the medical report produced by the applicant and they did not order a forensic examination with a view to establishing the injury sustained by the applicant, despite the latter's request. The Government relied on the lack of such a medical examination to claim that the applicant's allegations were unsubstantiated; however, in the Court's view, it is the investigating authorities' obligation to take whatever reasonable steps they can to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV). Any deficiency in the investigation which undermines its ability to establish the cause of injury or the person responsible will risk falling foul of this standard and could not in any event be imputable to the applicant.

51. Moreover, the Court is further struck by the fact that the case was closed because the authorities could not locate the applicant even though her lawyers' contact details had been previously communicated to them. The Court cannot agree with the Government that the applicant was the only person responsible for the preliminary inquiry's failing to identify the perpetrator because she had not assisted the investigating authorities. Having regard to its case-law, the Court cannot accept the submission that the progress and the effectiveness of proceedings concerning allegations of ill-treatment could depend entirely on the victim's conduct.

52. Finally, the Court notes that the criminal proceedings as a whole were very slow, with long periods of inactivity. In particular, it observes that on 28 November 2002, that is to say, ten months after the complaint was lodged, the investigation file containing the testimony of four witnesses was forwarded to the Athens public prosecutor. It took the prosecutor almost a year to request the competent judicial authority to summon the applicant to testify. However, it was not until four months later that the court bailiff visited the settlement in order to summon the applicant to testify. Finally, on 3 July 2004, two years and five months after the complaint was lodged, the Athens public prosecutor closed the file without carrying out any further inquiries. In view of this substantial delay in the conduct of the preliminary inquiry, the Court finds that the Greek authorities cannot be considered to have acted with sufficient promptness or with reasonable diligence, with the result that the perpetrator of alleged acts of violence remained unidentified.

53. As far as the administrative proceedings are concerned, the Court observes that despite the seriousness of the applicant's allegations, the

authorities did not consider it necessary to conduct a sworn administrative inquiry (see the report issued by the Greek Ombudsman in *Relevant domestic Law and practice*). On the contrary, they conducted an informal investigation that ended in less than one day and was carried out by the Deputy Director of Police, who had been actively involved in the police operation in question. It is apparent from the relevant report that the agent based his conclusions on the testimonies given by five police officers involved in the incident. Neither the applicant nor any of the other alleged victims of police brutality were examined.

54. In the light of the above-mentioned shortcomings in the administrative and judicial investigations, the Court concludes that they were not effective. The Court rejects, therefore, the Government's objection based on exhaustion of domestic remedies (see paragraphs 32-34 above), and 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.

55. 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.

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

56. The applicant further complained that the ill-treatment she had suffered and the subsequent lack of an effective investigation into the incident were in part due to her Roma ethnic origin. She 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."

57. The Government contested that argument.

A. Admissibility

58. 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

59. The applicant argued that the police officers' and the judicial authorities' perception of her as a Roma (Gypsy) had been a decisive factor in their attitude and acts.

60. 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.

2. The Court's assessment

61. Discrimination is treating differently, 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, ECHR 2005-VII).

62. The Court recalls that when investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may 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 not absolute; the authorities must do what is reasonable in the circumstances of the case (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 160, ECHR 2005-VII.).

63. Turning to the present case, the Court's task is to establish whether in carrying out the investigation into the applicant's allegation of ill-treatment by the police, the domestic authorities discriminated against the applicant and if so, whether the discrimination was based on her ethnic origin.

64. In this respect, the Court considers unacceptable that not only was there no attempt on the part of the investigating authorities to verify whether the behaviour of the policemen involved in the incident displayed anti-Roma sentiment, but the Deputy Director of Police made tendentious general remarks in relation to the applicant's Roma origin throughout the administrative investigation.

65. In particular, the Court is struck by the report on the findings of the informal administrative investigation. It considers that the general assertion

that complaints raised by Roma were exaggerated and formed part of their "common tactic to resort to the extreme slandering of police officers with the obvious purpose of weakening any form of police control" discloses a general discriminatory attitude on the part of the authorities which reinforced the applicant's belief that the lack of an effective investigation into the incident was due to her Roma ethnic origin. No justification was advanced by the Government with regard to these remarks.

66. Having regard to all the elements above, the Court finds that the failure of the authorities to investigate possible racial motives for the applicant's ill-treatment, combined with their attitude during the investigation, constitutes discrimination with regard to the applicant's rights which is contrary to Article 14 taken in conjunction with Article 3 in its procedural limb.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

68. The applicant claimed EUR 25,000 in respect of the physical, psychological and emotional pain she had suffered.

69. The Government argued that the amount claimed was excessive and disproportionate on the basis of the criteria established by the Court's case-law.

70. The Court considers that the applicant 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 20,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

71. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Court, in respect of which a bill of costs was produced.

72. The Government did not agree with the amount claimed, stating, *inter alia*, that it was excessive.

73. According to the Court's settled case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred and were also reasonable as to quantum

(see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII).

74. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering costs for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Joins to the merits* the question of exhaustion of domestic remedies and *rejects* it unanimously;

2. *Declares* unanimously the application admissible;

3. *Holds*, by six votes to one, that there has been no violation of Article 3 of the Convention in respect of the treatment suffered by the applicant at the hands of the police;

4. *Holds* unanimously 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;

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

6. *Holds* unanimously that there has been a violation of Article 14 taken in conjunction with Article 3 of the Convention;

7. *Holds* unanimously
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN	Loukis LOUCAIDES
Registrar	President

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

L.L.
S.N.

PARTLY DISSENTING OPINION OF JUDGE LOUCAIDES

Although I agree with the conclusions of the majority as regards the violations of the Convention set out in the operative part of the judgment, I cannot share their opinion that there has been no violation of Article 3 of the Convention in its substantive aspect as regards the alleged ill-treatment inflicted by police officers on the applicant.

According to the applicant, she and other Roma women were rounded up by the police for a body search. Whilst the police operation was taking place, the applicant waited her turn to be searched by the police, who were searching other residents of the settlement. She noticed that certain police officers were taunting a disabled Rom who was a relative of hers. As she moved to approach the police officers, she was forcefully pushed back by one of them while another one kicked her in the back, in spite of the fact that she had shouted that she was pregnant. As a result of the kick, the applicant felt an intense pain in the abdominal area and started bleeding. Although the bleeding was obvious to all the police officers present, the applicant was not taken to hospital. Not having any personal documents – as she was at the time an unregistered stateless person – and being alone, she felt that she could not go to the hospital on her own for fear of being refused treatment.

The next day she informed members of the Greek Helsinki Monitor that she had been kicked by a police officer and that she was bleeding. One of them then rushed her to a maternity clinic, where she was admitted immediately. According to the medical report drawn up at the end of the examination, "the applicant was admitted to the hospital on 29 January 2002, 10 weeks pregnant, with haemorrhaging from her uterus (risk of spontaneous abortion). On 2 February 2002 there was a complete expulsion of the foetus and on 4 February 2002 her uterus was cleaned."

On 1 February 2002 counsel for the applicant lodged a criminal complaint with the Athens public prosecutor against the police officer who had allegedly used violence against the applicant and whose identity was unknown to her. In the complaint the applicant joined the proceedings as a civil party seeking damages, asked to be examined by a forensic doctor and named three persons who could testify as witnesses. She also included the address and telephone numbers of her lawyers.

The Court found that there had been a violation of Article 3 in its procedural aspect as regards the incident described by the applicant.

On 3 July 2004, two years and five months after the complaint was lodged, the Athens public prosecutor closed the file without carrying out any further inquiries. In view of this substantial delay in the conduct of the preliminary inquiry, the Court rightly found that the Greek authorities could not be considered to have acted with sufficient promptness or with reasonable diligence, with the result that the perpetrator of alleged acts of

violence had remained unidentified. As far as the administrative proceedings were concerned, the Court observed that despite the seriousness of the applicant's allegations, the authorities had not considered it necessary to conduct a sworn administrative inquiry. On the contrary, they had conducted an informal investigation that had ended in less than one day and had been carried out by the Deputy Director of Police, who had been actively involved in the police operation in question. It is apparent from the relevant report that the agent based his conclusions exclusively on the testimonies given by five police officers involved in the incident. Neither the applicant nor any of the other alleged victims of police brutality were examined.

However, the majority considered that there was insufficient evidence to conclude that there had been a violation of Article 3 on account of the alleged torture. They based their finding on the following reasoning:

(a) The circumstances under which the bleeding from the applicant's uterus occurred were not entirely clear.

(b) The medical report produced by the applicant only stated that she was bleeding and that she had suffered a miscarriage, without mentioning the existence of bruises or other injuries and without reference to any possible causes of the bleeding.

(c) The applicant had not produced any other cogent evidence in support of her allegations of ill-treatment, such as objective eyewitness testimonies.

The impression is given, by the reasoning of the majority, that the evidence of a victim of police ill-treatment is not enough to establish such ill-treatment, regardless of the credibility of such testimony. I cannot accept that approach, which I consider harks back to the early legal history of many countries when more than one witness was required to establish anything in judicial proceedings. The approach of the majority is very dangerous in the sense that it may cause injustice to individuals like the applicant, whose evidence may not by itself be taken seriously because of police prejudice as regards their status (see paragraphs 64-66 of the judgment); at the same time, it may encourage the police to use unacceptable methods of investigation amounting to ill-treatment in respect of persons like the applicant or other persons who do not have any eyewitnesses to corroborate their complaints of ill-treatment.

The applicant stated her complaint in a coherent and convincing manner. She explained that she had been kicked on her back and as a result had felt an intense pain in the abdominal area and started bleeding. There followed a miscarriage. She could not identify the police officer who had kicked her. That is understandable. What I cannot understand is why the majority did not believe her story, without even finding a concrete well-founded reason why she must have lied. In fact the evidence does not disclose any such reason.

The fact that the medical report produced by the applicant made no reference to bruises and to any possible causes of the bleeding does not detract from the truthfulness of the applicant's complaint, bearing in mind that the report in question was prepared by a gynaecologist and not by a forensic doctor.

Moreover, the inadequacy and ineffectiveness of the police investigation of the applicant's complaint, as set out above, does not amount only to a violation of the procedural aspect of the complaint in question. In my opinion it amounts also to a strong corroboration of the same complaint in its substantive aspect. For the attitude of the police could not be explained as anything other than an effort to cover up the guilty behaviour of one of their colleagues.

In the light of the above, I believe that the applicant's version of events is true and I therefore consider beyond any doubt that there has been a violation of Article 3 in its substantive aspect.