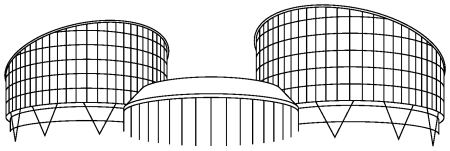

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KITANOVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 15191/12)

JUDGMENT

STRASBOURG

22 January 2015

FINAL

22/04/2015

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

In the case of Kitanovski v. the former Yugoslav Republic of Macedonia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 16 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 15191/12) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Macedonian nationals, Mr Aleksandar Kitanovski ("the first applicant") and Mr Tihomir Kitanovski ("the second applicant"), on 9 March 2012. The second applicant is the first applicant's father.

2. The applicants were represented before the Court by Mr V. Kitanovski and Mr T. Kitanovski respectively, lawyers practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mr K. Bogdanov.

3. The applicants alleged that during an incident that took place on 10 June 2009 police officers had put the life of the first applicant at risk; had ill-treated him; and that there had been no effective investigation of the matter.

4. On 12 October 2012 the President of the First Section decided to give notice of the application to the Government. It was also decided to apply Rule 41 of the Rules of Court and grant priority treatment to the application.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1988. Both applicants live in Skopje.

A. The police pursuit and arrest of the first applicant

1. The Government's version of events

6. On 10 June 2009 at about 1:30 a.m. the first applicant, driving a car belonging to the second applicant, was coming back home from a discotheque. In the centre of Skopje, two traffic police officers (J.B. and J.A.), who were in uniform and authorised by law (Order no. 1493 of 9-10 June 2009) to conduct traffic stops, ordered, using a flashlight, the first applicant to stop the car for a routine inspection. Instead of stopping, the first applicant made a U-turn and accelerated away. J.B. and J.A. followed him in a police car with active sirens and visual warnings. Four police cars and several cars from the "Alfa" special mobile police unit joined the pursuit. There were fifteen police officers involved in the chase.

7. A police car with flashing lights was used to block the street in order to stop the first applicant. The latter, however, drove around the roadblock. He continued driving at high speed. This was confirmed by written statements given by several police officers (see paragraphs 16, 18 and 19 below), as well as in a letter of 21 November 2009 that the Ministry of the Interior sent to the Helsinki Committee in reply to a request for information.

8. A second roadblock was established. The first applicant attempted to go around it by mounting the pavement on the left side of the street, where, as the Government maintained, Z.G., a police officer from the "Alfa" unit, was standing. M.D., also a member of the "Alfa" unit, who was standing on the opposite side of the street next to the roadblock, fired two shots from an automatic rifle in the direction of the car's right front tyre (see paragraph 16 below). Z.G., whom the car was allegedly approaching, jumped aside in order to avoid being hit by the car. He lost his balance and, while falling, fired two shots from a pistol towards the car's back right tyre (see paragraph 17 below). As specified in the letter of 21 November 2009 (see paragraph 7 above), the bullets fired by Z.G. hit the car, with one bullet hitting the rear of the car between the rear door and the roof. As a result, the rear window shattered. The second bullet passed through the rear door of the car and the rear seat and ended up hitting the front passenger seat.

9. The first applicant's car stopped 100 m beyond the roadblock. According to the letter of 21 November 2009, police officers approached the first applicant's car. One of them had a gun pointed at him.

10. I.A., a police officer from the "Alfa" unit, opened the door of the car. Since the first applicant did not get out, he twisted his arm behind his back, pulled him out of the car and made him lie down on the street. M.B., a police officer from the "Alfa" unit, arrived and handcuffed the first applicant. The Government provided copies of reports that I.A. and M.B. had submitted on 10 June 2009 to the Ministry of the Interior regarding the use of means of force (see paragraph 20 below). According to the Government, there were over twenty police officers present at the scene observing the first applicant's arrest.

2. The applicants' version of events

11. In their application, the applicants submitted that at 2:15 a.m. on 10 June 2009 the first applicant, driving the second applicant's car, had passed by a traffic police patrol and he had started driving backwards in order to reach a fast-food restaurant. Police officers from the "Alfa" mobile unit had started chasing him in a police car through the streets of Skopje. A roadblock with an unmarked car had been established in order to stop him. After he had driven around the roadblock, police officers had started firing at the car with a pistol and an automatic rifle in burst mode (*рафално*) "without any reason-only because maybe he had avoided a routine patrol control and had not stopped at the roadblock arranged with unmarked cars (*необележани возила на кои немало никакви ознаки дека се полициски)* established by the Alfa unit". As a result, the car had been damaged (see paragraph 8 above).

12. After the police had fired shots, the first applicant had stopped the car. He had been dragged out of the car by several police officers, who had started hitting him all over his body. He had been beaten with truncheons, and punched and kicked in the face, head, stomach and back. He had been handcuffed. The beating had continued after he was handcuffed.

B. Other relevant events of 10 June 2009

1. Medical examination of the first applicant

13. After his arrest, the first applicant was taken to a hospital in order for blood and urine tests to be carried out. He was then taken to a police station. He was released at 1 p.m. Following his release, he went to Skopje Health Centre, where a medical certificate was issued that day at 2:26 p.m., which indicated the following injuries: contusions on the back and left forearm, as well as scrapings on the back and forehead (*contusio corporis et antebrachii L*; *dex. et regio dorsi cum*; *excoriationes regio dorsi et frontis*). The certificate further provided an account of events as described by the first applicant, namely that he had sustained the injuries during an assault by police officers that had occurred at about 3 a.m. that day.

2. Medical examination of Z.G.

14. On 10 June 2009 Z.G. was admitted to the Skopje Health Centre, where he was diagnosed as suffering from a head injury and bruising to the torso. As stated in a certificate issued on that date at 4:36 a.m., he had been injured from falling onto gravel. He complained that he had a headache, chest pain and nausea. The same symptoms were confirmed in another medical certificate of that date.

C. Relevant documents regarding the events of 10 June 2009

1. Written statements by police officers regarding the events of 10 June 2009

15. The Government submitted copies of written statements given by over twenty police officers who had taken part in or otherwise witnessed the police chase and arrest of the first applicant on 10 June 2009. All statements, except the statement of M.Du. (see paragraph 18 below), were given on 10 and 11 June 2009. They all confirmed the events described above (see paragraphs 6-10 above).

16. The relevant parts of M.D.'s statement read as follows:

> "After we had received information that the car was driving at high speed ... Alfa-56 announced that [the car] had not stopped upon their signal and [was driving towards] two colleagues in order to escape ... we set a ... car with the warning lights on (*со означени светлосни сигнали*) to block the street and we left the car wearing police vests in order to stop the car and apprehend [the driver].
>
> At one point we saw that the car was approaching at high speed. We signalled with lights that the car should stop. Then I realised that the car wouldn't stop and that it was being driven towards my colleague Z. (Z.G.) with the intention of hitting him and escaping again. In order to prevent [the driver] from absconding, I fired with an automatic rifle... [I fired] two shots towards the right front wheel. At that point I saw that my colleague Z. had jumped aside and escaped being hit by the car. While falling, he fired two shots from his service gun ...
>
> After the pursuit had ended and [the first applicant] was under control, colleague Z. complained that he had a severe headache and back pain and he started to vomit. I then drove him with the official car to City Hospital ..."

17. The relevant parts of Z.G.'s statement read as follows:

> "I saw the car driving in my direction at high speed and without stopping upon [our] signalling [with] lights [to do so]; I noticed that [the driver] was driving towards the pavement where I was standing with the aim of hitting me in order to escape; I tried to avoid being hit, but I slipped; while falling I fired two shots from my service gun ... aiming at the back right wheel ..."

18. On 2 July 2009 M.Du., a police officer, stated:

> "... Alfa 56 announced that the car had not stopped upon their signal and with the intention of hitting two colleagues, who had tried to stop [the car], [the driver] had [driven on and] escaped. After the announcement, I, as the driver of a car ... with

active visual warning lights and sirens (*со вклучени светлосни и звучни сигнали*) ... formed an appropriate roadblock... We saw the car driving towards us with excessive speed; it was not braking, but it mounted the pavement in order to avoid our roadblock; it was being driven in the direction of our colleague Z.G. with the aim of hitting him and making it possible [for the driver] to escape. The team leader M.D., being aware that the life of our colleague was at risk, fired two shots aimed at the tyres. The car continued driving at high speed (approximately 130-140km/h) towards my colleague Z., who ... stepped aside ... and while falling, he fired two shots towards the rear tyre ..."

19. I.A., I.J. and T.D., police officers, confirmed that the first applicant had not stopped the car and had gone around the first roadblock, putting the lives of police officers at risk. In this connection T.D. stated:

"... We placed our car ... in the middle of the street with active visual warning lights to form a roadblock in order to stop the car, which was driving towards us at high speed. It was followed by five cars with active warning lights. When the car arrived in front of us, the driver did not reduce his speed, but he made a sharp left turn, endangering our safety; he passed next to us ..."

20. The relevant parts of the reports that I.A. and M.B. submitted to the Ministry of the Interior regarding the use of means of force read as follows:

"... Because [the first applicant] passively resisted [arrest] by disregarding our orders to get out of the car, I [I.A.] opened the door of the car and twisted his left arm; he was taken out of the car and [made to] lie down on the ground. [The first applicant] continued to resist until colleague M.B. arrived and handcuffed him.

"...[The first applicant] resisted by disregarding [our] orders; handcuffs were used because colleague I.A. was not able to put handcuffs [on him] by himself."

21. Both I.A. and M.B. stated that the first applicant had no visible injuries.

22. Police officers M.M., A.A. and D.S. stated that the first applicant's car was stopped at about 2:20 a.m.

2. Complaint of the first applicant filed with the Ombudsman

23. On 15 June 2009 the first applicant brought the incident of 10 June 2009 to the attention of the Ombudsman. In his letter of complaint, he submitted that:

"... before I reached the fast-food restaurant, I noticed that a police car was driving behind me. Then, I accelerated because I was afraid to be stopped since I had drunk a bit and I was afraid that my driving license might be seized... While I was driving, the police established several roadblocks that I successfully bypassed, but I was stopped in the end. Before I was stopped, I don't know why, the police fired from an automatic gun in burst mode (*од кое се слушна рафално пукање*)".

24. He complained that the police had overstepped their powers by having used firearms and beaten him up. As regards the alleged police brutality, he submitted that:

"After I had gotten out of the car, I was brutally assaulted by seven or eight officers, who beat me severely despite the fact that I did not resist ... [the] battering lasted 4-5 minutes and after I had been handcuffed, they continued to beat me ..."

25. He further stated:

"There is no merit in their [police officers] allegation that I endangered the life of a police officer and that owing to that other [officers] used firearms. I consider it to be a mere farce used to justify the firing [of shots] and beating [me up]."

3. Report on the assessment of whether the use of physical force by police officers M.D., I.A., M.B. and Z.G.was justified (Извештај за оценка на оправданоста за употреба на физичка сила)

26. On 3 July 2009 a superior police officer within the "Alfa" mobile police unit drew up a report regarding the use of force during the incident of 10 June 2009. According to the report, the police chase commenced after the driver (the first applicant) had refused to stop the car upon a signal by traffic police officers. Sirens and visual warnings by police cars and officers wearing police vests had been used in an attempt to stop the car. The first applicant, instead, had driven at high speed in the direction of police officers "with the aim of hurting them and escaping". In order "to disable the car [and stop the first applicant from] absconding", M.D. had fired two shots aimed at the right front tyre and Z.G.had fired two shots in direction of the back right tyre. After the first applicant had refused to get out of the car, which had stopped 100 m beyond the roadblock, I.A. and M.B. had used force to overcome his resistance, namely they had twisted his arm and handcuffed him. The report concluded that:

"On the basis of the official notes and the interview conducted (no further details were specified) as to certain relevant facts and having regard to the fact that [the first applicant] endangered the lives of police officers by attempting to hit them in order to escape, I consider the physical force used, (namely) the twisting of (his) arm and handcuffs ... as well as the shots fired towards the car ... [to have been] justified in accordance with section 27 of the Decree regarding the use of means of force and firearms (see paragraph 44 below)".

4. Expert report of 14 July 2009

27. On 14 July 2009 the Ministry of the Interior drew up an expert report, according to which two bullets had been fired from Z.G.'s pistol and two bullets from M.D.'s automatic rifle. The bullet recovered from the back of the front passenger seat in the car driven by the first applicant had been fired from Z.G.'s pistol. Blood and urine alcohol tests had confirmed the presence of blood alcohol levels of 0.50 and 0.40 promille (the letter of 21 November 2009 (see above) had specified a blood alcohol level of 0.80 promille) in the first applicant. No alcohol had been found in the blood of Z.G. or M.D.

D. Criminal complaint by the first applicant

28. On 14 July 2009 the second applicant, on behalf of the first applicant, lodged a criminal complaint with the public prosecutor against unidentified police officers on account of endangerment, torture and ill-treatment. In the complaint, the second applicant set out a factual account of the incident and alleged that after he had gone past the roadblock formed with a police car, the officers concerned had started shooting at his car "without any reason-only because maybe he had avoided a routine patrol control and had not stopped at the roadblock established by the police". The complaint stated *inter alia*:

> "After the car had stopped, police officers pulled [the first applicant] out of the car; then a larger group of police officers arrived and they all started hitting him all over his body with truncheons, [and] punching and kicking [him]. Then, they asked him why he had not stopped (as ordered) by the police patrol ... one of the police officers from the Alfa unit ordered [the first applicant] to leave Skopje on the threat that he would beat him up every time he saw him. After the [initial] beating, [the first applicant] was handcuffed and continued to be hit all over his body."

29. The first applicant submitted in support a copy of the medical certificate of 10 June 2009 (see paragraph 13 above), a copy of an X-ray taken on the same date, nine photographs, and an expert report regarding the damage to the car.

30. On 20 October 2009, A.M., the public prosecutor who examined the first applicant's complaint, contacted the Ministry of the Interior in order to obtain information regarding the identity of the police officers involved in the incident of 10 June 2009 and any other relevant documentary evidence. On 13 January 2010 the Ministry of the Interior forwarded to the public prosecutor a copy of a criminal complaint that it had filed against the first applicant on account of "assaulting an officer in performance of his duties" (see paragraph 36 below).

31. Between 31 March 2010 and 21 June 2011, the first applicant addressed the public prosecutor on four occasions seeking the initiation of criminal proceedings as provided for by law. By letters of 7 December 2010 and 1 June 2011, he further informed the public prosecutor of the identities of Z.G., M.D., J.B., J.A., I.A. and M.B., which he had meanwhile discovered.

32. By letter of 23 September 2011, A.M. notified the first applicant that:

> "... there are no grounds for action [by] the public prosecutor... due to the absence of any suspicion that the police officers are guilty and that they committed a crime subject to State prosecution."

33. There was no instruction as to whether the first applicant could take over the prosecution.

34. On 23 January 2013 A.M. (see paragraph 30 above) rendered a decision by which he rejected the criminal complaint lodged on behalf of the first applicant, on the basis that the suspected criminal offences were not subject to State prosecution. On the basis of the first applicant's criminal complaint and the Ministry's reply of 13 January 2010 (see paragraph 31 above), the public prosecutor established that after the first applicant had gone past the roadblock (by mounting the pavement on the left side of the street) and continued driving towards Z.G., both M.D. and Z.G. had fired four shots "in order to stop [the car] ... [the first applicant had then] stopped, but he had refused to get out of the car, as requested by the police officers, owing to which permissible physical force had been used by police officers I.A. and M.B. in order to neutralise and arrest him". On the basis of the case file against the first applicant (see paragraph 36 below), the public prosecutor concluded that the police officers had acted in accordance with the law and section 27(1) of the Decree regarding the use of means of force and firearms in order "to prevent the perpetrator of a serious criminal office, namely Aleksandar Kitanovski, from absconding. For this concrete action, an indictment was filed against (the first applicant) whom this prosecution's office considers guilty".

35. The public prosecutor further found, on the basis of I.A.'s and M.B.'s statements given for the purpose of the case against the first applicant, that the latter had resisted arrest and that the force used against him had been justified. Accordingly, there were no grounds for their prosecution.

E. Criminal complaint against the first applicant

36. On 29 September 2009 the Ministry of the Interior lodged with the public prosecutor a criminal complaint accusing the first applicant of having assaulted a police officer in the performance of his duties. On 1 April 2011 the public prosecutor, lodged an indictment against the first applicant.

37. On 3 December 2013 the Skopje Court of First Instance, in the presence of the first applicant and A.M., as the representative of the prosecution's office, found the first applicant guilty on account of an assault of a police officer in performance of the duties of public safety and arresting an offender (*при вршење на работи на јавна безбедност што се однесуваат на фаќање на сторител на кривично дело*). It also sentenced him to a suspended prison term of a year and a half. The court found that he had bypassed the roadblock by mounting the pavement on the left side of the street driving towards Z.G., who, at the time, had been standing on the pavement. In order to avoid being hit by the car, Z.G. had jumped aside, as a result of which he had sustained a head injury and bruising to the torso. Z.G. did not join the prosecution and waived the right to claim compensation against the first applicant. As indicated in the judgment, Z.G. gave two

statements regarding the incident. In the statement of 13 December 2011, he said that, at the relevant time, he was standing on the left side of the street, while in the statement dated 8 February 2013, he specified that the first applicant's car had bypassed the roadblock at the right side of the street mounting the pavement where he (Z.G.) was standing. The court heard oral evidence from the first applicant, D.M., I.A., M.B., B.J. and admitted as evidence the reports and medical certificates indicated above (see paragraphs 13, 14, 26 and 27).

38. At the trial, the first applicant argued that during the chase he had bypassed two roadblocks by mounting the pavement on the left side of the street, where no police officer had been standing. Accordingly, by circumventing the roadblocks he had neither injured nor endangered the life of any police officer. The court dismissed his defence as self-serving.

39. The first applicant appealed against the judgment. The higher public prosecution's office proposed that the Court of Appeal accept the appeal.

40. At a public session held on 19 March 2014, the Skopje Court of Appeal upheld the first applicant's appeal and remitted the case for fresh examination. It held that the trial court's judgment was unclear and that certain facts had no basis in admitted evidence. It found that insufficient evidence had been admitted as to what criminal offence the first applicant had allegedly committed. It further referred to the contradictory statements of Z.G. regarding his position on the street when the first applicant had gone past the second roadblock. Since relevant facts had not been established with sufficient clarity, the trial court had been unable to determine whether the first applicant had intended to commit the crime with which he had been charged.

41. The criminal proceedings are pending before the trial court.

II. RELEVANT INTERNATIONAL MATERIAL

A. United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

42. The relevant parts of these principles, which were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, provide as follows:

> "...
>
> 9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to

achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident."

B. Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 September to 1 October 2010, CPT/Inf (2012) 4, 25 January 2012

43. The relevant part of the CPT Report of 2012 reads as follows:

"10. The CPT has noted that the number of allegations of ill-treatment by law enforcement officials, as well as the severity of such allegations, has diminished since previous visits. Nonetheless, in the course of the 2010 visit, a significant number of persons interviewed by the delegation alleged that they had been ill-treated by police officers, primarily civilian crime inspectors and members of the mobile Alfa teams in Skopje. The alleged ill-treatment consisted of punches and kicks to the body and head as well as the use of batons. In most instances, the alleged ill-treatment is said to have taken place in the offices of the crime inspectors in police stations (and appeared to be related to attempts to extort confessions from the suspects) or during transfer from the place of arrest to a police station ..."

III. RELEVANT DOMESTIC LAW

Decree regarding the use of means of force and firearms (Уредба за употреба на средства на присилба и огнено оружје, Official Gazette no.22/1998)

44. The relevant provisions of the Decree read as follows:

Section 4

"When it is possible to use more [than one] means of force, only those means which, in the circumstances, cause no or less damage should be used."

Section 11

"A competent official can use, after a prior warning, a truncheon or physical force to overcome resistance by an individual who is disturbing the public order and public safety; or an individual resisting his or her arrest, apprehension or detention; to repel an assault against him or her, another individual or an object that is under guard; to forcibly remove an individual from a place; or [to remove] an individual who is resisting official authority."

Section 12

"The use of ... physical force concerns ... hand-to-hand [combat] or other techniques of self-defence or assault (applied in order) to overcome resistance by individuals as specified under section 11 of this Decree."

Section 13

"...

(2) Resistance can be active and passive.

...

(4) Resistance is passive when an individual disregards an order of a competent official or puts him or herself in a position ... hindering the performance of official duties."

Section 18

"(1) Vehicle immobilising devices ("hedgehogs") can be used when it is necessary to stop a car and prevent the flight of an individual in that car who has been caught committing an offence subject to five years' imprisonment, as the lowest sentence; or (to prevent the flight of) a detainee or an individual against whom there is a valid arrest warrant in respect of such an offence, after he or she has disregarded a lawful order of a competent official to stop the car.

(2) When the devices specified in subsection 1 are used, traffic warning signals and warning lights, if necessary, must be placed at a reasonable distance on the street."

Section 22

"(1) A competent official, who cannot use any other means of force in order to protect the life of a third party or to repel a direct attack endangering his or her life, can use a firearm if he or she is subject to physical attack by a method or means (firearm, dangerous weapon or any other similar life-threating object) that directly endangers his or her life...

(2) The individual concerned should be loudly warned before a firearm is used.

..."

Section 24

"When an individual, who has committed an offence subject to at least five years' imprisonment, or has been deprived of his or her liberty, or in respect of whom there is an arrest warrant in relation to such an offence, escapes, a competent official can use a firearm in order to prevent him or her from absconding if he or she has previously:

...

- tried to apprehend him or her by saying simultaneously: "Stop, I'll fire!" If the individual does not stop, the competent official must repeat the warning and if after the repeated warning he or she does not stop, the competent official may use a firearm, trying, in the first place, to immobilise the individual.

..."

Section 27

"(1) A competent official who has used means of force or a firearm is obliged to submit a written report to his or her immediate superior, who will assess whether their use was lawful and justified."

THE LAW

I. ALLEGED VIOLATIONS OF THE CONVENTION

45. The applicants complained under Article 3 of the Convention that the first applicant's life had been put at risk and that he had been ill-treated by police officers, who had beaten him with truncheons, had punched and kicked in the face, head, stomach and back. They further complained under this Article that there had been no effective investigation into his allegations. Relying on Article 13, they complained that there had been no effective remedy in respect of their complaints under Article 3 of the Convention. Lastly, they complained under Article 6 that they had been denied the right of access to court due to the failure of the public prosecutor to reject the criminal complaint by means of a formal decision. The Court considers that this last complaint falls to be examined under Article 13 of the Convention, as it concerns a particular aspect of the right to an effective remedy under this provision. It further considers that the applicants' complaint concerning the risk to the first applicant's life should be examined under Article 2 of the Convention. Articles 2 (the applicability of which the Court will examine, see below), 3 and 13 of the Convention read as follows:

Article 2

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

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

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

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

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

Article 3

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

Article 13

"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

1. The victim status of the second applicant

(a) The parties' submissions

46. The Government challenged the victim status of the second applicant, arguing that he had not been directly affected by the events complained of.

47. The applicants did not comment.

(b) The Court's assessment

48. It is not disputed between the parties that the events complained of only concerned the first applicant. That the second applicant was the owner of the car used by the first applicant in the incident, and his father, does not confer on him the status of a victim in respect of the complaints submitted before the Court. The second applicant was not directly affected by the acts and/or omissions in the present case (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III). Furthermore, there are no special circumstances, as to the capacity of the first applicant who was the direct victim of the events complained of, to appear before the Court.

49. It follows that the part of the application concerning the second applicant is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

2. Applicability of Article 2 of the Convention

(a) The parties' submissions

50. The Government contended that Article 2 was not applicable to the present case. Firearms had been used in self-defence (*самоодбрана*) and extreme necessity (*крајна нужда*) after the first applicant had gone around the second roadblock and put the life of a police officer at risk. In so doing, the police had conducted themselves with the utmost diligence; they had not put the lives of the first applicant or any other police officers at risk. This had been demonstrated by the fact that the police officers had aimed only at the tyres of the first applicant's car.

51. The first applicant did not comment.

(b) The Court's assessment

52. According to the Court's case-law, it is only in exceptional circumstances that actions by State agents which do not result in death may disclose a violation of Article 2 of the Convention. It is correct that the criminal liability of those concerned in the use of force is not in issue in proceedings brought under the Convention. Nonetheless, the degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case State agents' actions in inflicting injury but not death are such as to bring the facts within the scope of the safeguard afforded by Article 2 of the Convention, having regard to the object and purpose of that Article. In almost all cases where a person is allegedly assaulted or ill-treated by the police or soldiers their complaints will rather fall to be examined under Article 3 of the Convention (see *Sašo Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 49382/06, § 36, ECHR 2012 (extracts), and the references cited therein).

53. In the present case, the use of firearms against the first applicant did not turn out to be lethal. This, however, does not exclude in principle an examination of his complaints under Article 2, the text of which, read as a whole, demonstrates that it covers not only intentional killing, but also situations where it is permitted to use force which may result, as an unintended outcome, in the deprivation of life (see *İlhan v. Turkey* [GC], no. 22277/93, § 75, ECHR 2000-VII). In fact, the Court has already examined complaints under this provision where the alleged victim did not die as a result of the impugned conduct (see *Sašo Gorgiev*, cited above, § 38, and *Makaratzis v. Greece* [GC], no. 50385/99, § 55, ECHR 2004-XI).

54. What the Court must determine in the present case is whether the force used against the first applicant was potentially lethal and what kind of impact the conduct of the police officers concerned had, not only on his physical integrity, but also on the interest the right to life is intended to protect.

55. On the facts of the case, it is not disputed that the first applicant was pursued by a large number of police officers (see paragraph 6 above). The evidence adduced before the Court suggest that the police used their weapons in order to stop the first applicant from absconding and effect his arrest, as well as to stop him putting the life of police officers at risk (see paragraphs 16, 20, 26 and 34 above). According to the Government, the police also resorted to the use of firearms in self-defence (see paragraph 50 above). The Court notes that all of the foregoing are the instances contemplated by the second paragraph of Article 2 in which resorting to lethal, or potentially lethal, force may be legitimate.

56. The Court further observes that no evidence has been adduced in the proceedings before it that the police, when using firearms, had the intention of killing the first applicant. Neither was any such suggestion made by the

first applicant. It notes, however, that the fact that the latter was not killed was fortuitous. On the available material, it is clear that four bullets were fired at the first applicant's car, two of which were fired from an automatic rifle and the remaining two from a pistol. All of them were aimed at the car's tyres. It cannot be established whether the automatic rifle was set, at that time, to burst mode, as claimed by the first applicant (see paragraphs 11 and 23 above). As regards the use of the automatic fire mode, the Court has already stated that it is absolutely impossible to aim with a reasonable degree of accuracy using automatic fire (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 108, ECHR 2005-VII). In any event, the Court notes that the bullets fired from the automatic rifle have never been found, nor was their trajectory established. That demonstrates poor targeting and an increased risk of fatal consequences. Both bullets fired from the pistol hit the rear part of the car, one of them hitting the car between the rear door and the roof. As a result, the rear window shattered. The second bullet penetrated the rear door of the car, passed through the rear seat and ended up hitting the front passenger seat. In this connection it is not without relevance that Z.G., when firing at the car, was not in a steady shooting position (see paragraphs 8, 16, 17 and 18 above). That undoubtedly influenced the accuracy of his aim, given the fact that the impact sites of the shots he fired followed a horizontal or upward trajectory to the car driver's level and not a downward one, as one would expect if the tyres, and only the tyres, of the vehicle were being shot at by the pursuing police.

57. In the light of the above circumstances, and in particular the degree and type of force used, the Court concludes that the first applicant was the victim of conduct which, by its very nature, was capable of putting his life at risk, even though he in fact survived. Article 2 is thus applicable in the instant case.

3. Conclusion

58. The Government did not raise any other objection as regards the admissibility of the application in so far as it concerns the first applicant.

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

B. Merits

1. As regards the shooting incident of 10 June 2009

(a) The parties' submissions

60. The first applicant reiterated that the police had put his life at risk without having had any reasonable grounds to do so.

61. The Government submitted that after the first applicant had not stopped the car upon being signalled to do so by police officers in uniform, they had reasonably suspected that it was being driven by an individual wanted for a crime or attempting to conceal evidence of a crime. This suspicion had been reasonable given that the crime rate was much higher late at night, when the critical events had taken place. During the chase, the first applicant had been warned, with sirens and light signals, to stop the car. Two roadblocks formed with a police car with active warning lights had been set up in order to force the first applicant to stop. As noted above, firearms had been used in self-defence and extreme necessity as the only reasonable way to stop the car.

(b) The Court's assessment

62. The Court reiterates that Article 2, which safeguards the right to life and sets out the circumstances in which deprivation of life may be justified, ranks as one of the most fundamental provisions in the Convention. The situations in which deprivation of life may be justified are exhaustive and must be narrowly interpreted. The use of force which may result in the deprivation of life must be no more than "absolutely necessary" for the achievement of one of the purposes set out in Article 2 § 2 (a), (b) and (c). This term indicates that a stricter and more compelling test of necessity must be employed than that normally applicable when determining whether State action is "necessary in a democratic society" under paragraphs 2 of Articles 8 to 11 of the Convention. Consequently, the force used must be strictly proportionate to the achievement of the permitted aims. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of State agents who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see *Timus and Tarus v. the Republic of Moldova*, no. 70077/11, §§ 46 and 47, 15 October 2013, and *Esmukhambetov and Others v. Russia*, no. 23445/03, § 138, 29 March 2011).

63. The Court has already established (see paragraph 57 above) that, given the context in which the first applicant's life was put at risk and the nature of the impugned conduct of the State agents concerned, the facts call

for examination under Article 2 of the Convention. Accordingly, it must determine whether the use of potentially deadly force against the first applicant was justified in the circumstances of the case, within the meaning of Article 2 § 2 (a) and (b) of the Convention (see paragraph 56 and 61 above).

64. As regards the relevant circumstances of the incident, the Court notes that there has so far been no judicial determination of the facts of the instant case at the domestic level (see, *conversely*, *Makaratzis*, cited above, § 47). The criminal complaint submitted in relation to the incident against the police officers concerned did not result in any findings of fact or law by the domestic courts and the criminal case against the first applicant is still pending. In such circumstances, the Court will apply, in assessing evidence, the standard of proof "beyond reasonable doubt". Such proof follows from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Cobzaru v. Romania*, no. 48254/99, § 64, 26 July 2007).

65. The Court notes that the first applicant was driving the car in the centre of Skopje when he approached a traffic police patrol. The parties presented conflicting versions of events as to whether he was given a signal with a flashlight to stop the car for a routine inspection. However, the first applicant accepted that he might have avoided a routine control by the traffic police patrol (see paragraphs 11 and 28 above). Instead of stopping, he accelerated and drove off.

66. The first applicant's failure to stop the car caused a spontaneous chase, which involved several police cars and at least fifteen police officers (see paragraph 6 above). The Court does not need to establish whether the police used sirens and visual warning signals, as averred by the Government (see paragraph 6 above). It is so since the first applicant was aware that police cars were involved in the pursuit (see paragraphs 11, 23 and 28 above). He did not stop the car and continued driving with excessive speed through the streets of Skopje. In such circumstances, the police arranged alternative means to force the first applicant to stop the car, namely they established two roadblocks each formed with a single police car (see paragraphs 7, 8, 11, 28 and 38 above). Both roadblocks, as established, proved inadequate to stop the first applicant, who bypassed them on both occasions. The Court does not overlook the fact that the police did not have sufficient time to evaluate all the parameters of the situation, which gave rise to developments to which they were called upon to react without prior preparation.

67. The shooting incident complained of occurred at the second roadblock, which the first applicant's car was approaching at excessive speed. The first applicant attempted to bypass it by mounting the pavement (see paragraphs 8, 34 and 38 above). The Government, relying on the material that had become available in the course of the domestic inquiries

(see paragraphs 16-22 and 26 above), stated that in so doing, the first applicant drove towards Z.G., a member of the "Alfa" mobile police unit, who was standing on the pavement next to the roadblock. In the complaint to the Ombudsman (see paragraph 25 above) the first applicant denied that he had endangered the life of any police officer. Likewise, in the criminal proceedings against him, he argued, more explicitly, that he had mounted the pavement "where no police officer had been standing". On the other hand, in his submissions to the Court the first applicant did not argue that he had not driven towards Z.G. (see paragraphs 11 and 38 above). The trial court's failure to establish this fact with sufficient clarity was a reason for the Skopje Court of Appeal to remit the case for fresh examination. The higher court considered that fact relevant in order to establish whether the first applicant had any intention to commit the alleged crime (see paragraphs 38 and 40 above).

68. In view of the above, the Court is unable to establish "beyond reasonable doubt" whether the first applicant drove directly towards Z.G. when he had bypassed the second roadblock. Any inferences in this respect would also prejudge the ongoing criminal case against the first applicant. However, this issue of fact is in any event not the determining factor for the present case, which concerns the alleged State's responsibility under Article 2 of the Convention for the use of firearms by police officers.

69. In this connection the Court notes that the Government advanced two defence grounds to justify the use of firearms: self-defence and extreme necessity (see paragraph 50 above). As regards the first point, the Court observes that it has not been argued that M.D. acted in self-defence (see paragraphs 16-18 above) and, having regard to the difficulties in establishing the facts (see paragraph 68 above), the Court cannot base its findings on the allegation that his actions were caused by a need to protect the life and physical integrity of any third person. On the other hand, as regards Z.G. the Court observes that the bullets fired from Z.G.'s gun, unlike the bullets fired from M.D.'s rifle, hit the first applicant's car (see paragraph 8 above). The Court considers it important that Z.G. shot at the first applicant's car after it had already gone past the roadblock and, thus, could no longer pose a threat to his physical integrity. That is confirmed by the direction of the shots and the ballistic test (see paragraphs 8 and 27 above). Accordingly, the Court cannot accept the Government's assertion that Z.G. had recourse to firearms in self-defence. Neither was there any evidence that could lead the Court to conclude that Z.G. fired in the honest belief that the life and physical integrity of any third party were in danger.

70. As to whether the use of potentially lethal force was unavoidable "in order to effect a lawful arrest" of the first applicant within the meaning of sub-paragraph (b) of paragraph 2 of Article 2, the Court reiterates that the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. It considers that in

principle there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost (see *Nachova and Others*, cited above, § 95).

71. The evidence adduced before the Court suggests that the first applicant was driving the car at excessive speed. However, apart from the still disputed incidents when he went past the roadblocks, no evidence was submitted that during the chase he had put the lives of police officers, or others, at risk. Furthermore, no information that would link the first applicant or the car with any criminal activity had been communicated to the pursuing officers, although there was sufficient time during the chase (see paragraphs 6 and 22 above) for any such information to come to light. The control centre, through which the operation was organised, issued no warning that the first applicant might be armed or dangerous (see, conversely, *Makaratzis*, cited above, § 64). In such circumstances, the fact that the events took place at night, although relevant, cannot be regarded as sufficient, in the absence of any objective evidence, to justify the police's belief that the first applicant was a dangerous criminal (see paragraph 61 above). Lastly, the police could have established, on the basis of the registration plates of the car, which had not been reported stolen, the identity of the owner of the car and his address, as well as those of the first applicant. The foregoing, coupled with the absence of any threat to life and limb after he had driven past the second roadblock (see paragraph 69 above), is sufficient to lead the Court to conclude that the use of potentially lethal force against the first applicant, whose behaviour was certainly irresponsible and open to criticism, was not absolutely necessary to effect his arrest.

72. Finally, the Court notes that both M.D.'s and Z.G.'s firing was not preceded by warning shots, as required by both international and domestic law (see paragraphs 42 and 44 above), as well as the Court's case-law (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 177, ECHR 2011 (extracts)). Neither was it presented with any argument that warning shots were, in the circumstances, impossible or otherwise inappropriate.

73. Against this background, the Court concludes that in the instant case the use of potentially lethal force was not absolutely necessary within the meaning of Article 2 § 2 of the Convention. Accordingly, the first applicant was the victim of a violation of this Article in its substantive aspect.

2. As regards the alleged ill-treatment of the first applicant during his arrest

(a) The parties' submissions

74. The Government submitted that the first applicant had been injured in the incident that followed after his car had been stopped, when he had resisted arrest by refusing to get out of the car. The nature and location of the injuries (redness on the forehead and redness and scratches on the lower part of the back) suggested that they had been inflicted when the police officers had pulled him out of the car, twisted his arm, and made him lie down on the ground. According to the Government, there had been over twenty police officers when the applicant had been stopped and arrested. In such circumstances, any unlawful treatment would have been noticed and prevented.

75. The first applicant reiterated that he had been subject to police brutality. He pointed out that the Government had not contested the medical certificate of 10 June 2009 (see paragraph 13 above), which had confirmed the injuries that he had sustained at the hands of the police.

(b) The Court's assessment

76. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; and *Gorgiev v. the former Yugoslav Republic of Macedonia*, no. 26984/05, § 67, 19 April 2012). It further recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see *Jašar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 47, 15 February 2007).

77. The Court emphasises that, in respect of a person who is placed under the control of the authorities, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ertuş v. Turkey*, no. 37871/08, § 27, 5 November 2013).

78. Turning to the present case, the Court finds it incontrovertible that the first applicant sustained certain bodily injuries, which were noted in the medical certificate (see paragraphs 13 and 74 above). The Government did not dispute that those injuries reached the minimum threshold required under Article 3 of the Convention and that they had been inflicted during the first applicant's arrest on 10 June 2009 (after he had stopped the car). Accordingly, the Court must determine whether the treatment to which the first applicant was subjected during his arrest was compatible with this Article, namely whether the recourse to physical force was strictly

necessary and proportionate (see *Subaşi and Çoban v. Turkey*, no. 20129/07, § 36, 9 July 2013).

79. The Court observes that the parties did not dispute that once the car had been blocked the applicant had been taken out of it by Alfa officers (see paragraphs 12, 20, 26 and 28 above). According to the Government, it was so since he had refused to get out of the car as ordered by the police officers concerned. That version was based on the witness statements made by the arresting officers I.A. and M.B., who had been direct protagonists in the events complained of. Obviously, the internal inquiry carried out by the Ministry of the Interior was also based, at least to a decisive extent, on evidence produced by these witnesses (see paragraphs 20 and 26 above). The Court notes however, that it has not been presented with any other evidence in support of the Government's version of events. In this connection it observes that none of the twenty police officers who, as maintained by the Government (see paragraph 74 above), witnessed the applicant's arrest, produced any evidence in this respect. The written statements of police officers submitted in the case file (see paragraphs 15-19 and 22 above) also did not contain any information as to whether the applicant had resisted his arrest. In such circumstances, and in view of the fact that the facts of the dispute have not been the subject of any determination by a national court, the Court does not consider that the Government demonstrated with convincing arguments that the use of force, which resulted in the applicant's injuries, was strictly necessary and proportionate. Accordingly, it concludes that the force used was excessive and unjustified in the circumstances.

80. There has therefore been a violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected during his arrest and which the Court considers to be degrading within the meaning of this provision.

3. The alleged lack of an effective investigation

(a) The parties' submissions

81. The first applicant maintained that there had been no effective investigation into his allegations that the police had put his life at risk and had ill-treated him. He disputed the validity of the public prosecutor's decision of 2013 (see paragraph 34 above), arguing that it had been rendered for the purposes of the proceedings before the Court and it had been never served on him. The public prosecutor had refused to prosecute the police officers concerned, notwithstanding that the offences which they had been accused of in the criminal complaint were subject to State prosecution.

82. The Government submitted that the public prosecutor, by the decision rendered on 23 January 2013, had rejected the first applicant's

criminal complaint on the basis of the available evidence in the case file submitted against him. The above decision had been given in the context of the legal framework establishing the prosecutor's powers to prosecute criminal offences and the right of victims to take over a prosecution if a decision not to prosecute was taken by the public prosecutor. In this connection the first applicant had had the right to take over the prosecution as a subsidiary prosecutor.

(b) The Court's assessment

(i) General principles

83. Where an individual raises an arguable claim that he has suffered treatment contrary to Articles 2 and 3 at the hands of the police or other similar agents of the State, those provisions, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible (see *El Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 182, ECHR 2012; *Boicenco v. Moldova*, no. 41088/05, § 120, 11 July 2006; and *Makaratzis*, cited above, § 73).

84. An investigation into serious allegations of ill-treatment must be prompt and thorough. A prompt response by the authorities may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *El Masri*, cited above, § 183; *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, §§ 104 and 105, 17 December 2009; *Makaratzis*, cited above, § 74; and *Boicenco*, cited above, § 123).

85. For an investigation to be effective it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. Independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms (see *El Masri*, cited above, § 184; *Mikayil Mammadov*, cited above, § 102; and *Boicenco*, cited above, § 121).

86. Lastly, the victim should be able to participate effectively in the investigation in one form or another (*El Masri*, cited above, § 185).

(ii) Application to the present case

87. The Court notes that on 14 July 2009 the first applicant lodged a criminal complaint with the public prosecutor against unidentified police officers. In support of his assertion that his life had been endangered and that he had been ill-treated by the police, he submitted documentary evidence that was in his possession at the time (see paragraph 29 above). Subsequently, he provided the public prosecutor with the identities of the police officers concerned, which he had meanwhile discovered (see paragraph 31 above). That, in the Court's view, amounted to a credible assertion of alleged violations of the rights stated in Articles 2 and 3 which warranted an investigation by the authorities in conformity with the requirements of those Articles. The parties did not dispute that the first applicant's allegations ought to have been regarded, at that time, as credible.

88. In such circumstances, the public prosecutor was under a duty to investigate whether an offence had been committed. However, he did not take any investigative measures, apart from requesting additional information from the Ministry of the Interior. He made no attempt to question the first applicant, the police officers concerned or any other person who could provide relevant information to elucidate the facts of the case. In reply to the prosecutor's request, the Ministry of the Interior submitted a copy of the criminal complaint that it had filed with the public prosecutor's office against the first applicant. On the basis of that information, the public prosecutor informed the first applicant, over two years and two months after receiving the criminal complaint, that there were no grounds to suggest that police officers had committed any offence subject to State prosecution. This finding was not set out in a formal decision, but in a letter containing no explanation of any legal remedies that were available to the first applicant.

89. On 23 January 2013 the same public prosecutor (A.M.) reached the same conclusion and rejected, now with a formal decision, the first applicant's complaint, advising him that he could take over the prosecution as a subsidiary prosecutor. That decision was based to a considerable extent on the criminal complaint, the indictment and evidence that had become available during the investigation against the first applicant. The Court observes that A.M. represented the prosecution's office at the trial in the criminal proceedings against the first applicant (see paragraph 37 above). In the Court's view, the fact that the same prosecutor who filed criminal charges against the first applicant had examined his complaint casted doubt on his impartiality (see *Boicenco*, cited above, § 124). In support was the firm position as regards the first applicant's guilt which A.M. expressed in the decision rejecting the applicant's complaint (see paragraph 34 above)

90. The Court further notes, firstly, that this decision was given over three-and-a-half years after the criminal complaint had been lodged and after the case was communicated to the respondent Government. Secondly,

it was given on the basis of evidence that was available after the incident – yet the Government did not present any explanation as to why it took so long for the prosecutor to decide on whether to prosecute the case (see, *mutatis mutandis*, *Sulejmanov v. the former Yugoslav Republic of Macedonia*, no. 69875/01, § 51, 24 April 2008). Thirdly, that decision was given mainly on the basis of evidence provided by the police (see *ibid*., and *El Masri*, cited above, §189). Finally, it was not communicated to the first applicant. In any event, the Court recalls that victims of alleged violations are not required to pursue the prosecution of State agents on their own. This is a duty of the public prosecutor, who is better placed in that respect (*Stojnšek v. Slovenia*, no. 1926/03, § 79, 23 June 2009, and *Otašević v. Serbia*, no. 32198/07, § 25, 5 February 2013).

91. Against this background, the Court concludes that there was no effective investigation of the first applicant's claim that the police had used life-endangering force and ill-treated him. Thus, the Court finds that there has been a violation of Articles 2 and 3 of the Convention in their procedural part.

4. Alleged violation of Article 13, taken in conjunction with Articles 2 and 3 of the Convention

92. Having regard to the grounds on which it has found a violation of the procedural aspect of Articles 2 and 3, the Court considers that no separate issue arises under Article 13 of the Convention (see *Jašar*, cited above, § 62; *Sulejmanov*, cited above, § 55; and *Dželadinov and Others v. the former Yugoslav Republic of Macedonia*, no. 13252/02, § 77, 10 April 2008).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The first applicant claimed 4,000 euros (EUR) in respect of pecuniary damage. This figure was stated to represent the compensation that he would have been awarded had the prosecution authorities decided his case. He also claimed EUR 50,000 in respect of non-pecuniary damage for the mental suffering, pain and frustration suffered as a result of the alleged violations.

95. The Government contested the applicant's claims as unsubstantiated. They further alleged that there had been no causal link between the damage claimed and the alleged violations.

96. The Court does not discern any causal link between the violations found and the pecuniary damage claimed by the first applicant; it therefore rejects this claim. Nevertheless, it considers that the first applicant must have sustained non-pecuniary damage as a result of the violations found. Ruling on an equitable basis, it awards him EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

97. The first applicant also claimed EUR 2,000 for costs and expenses incurred in respect of legal representation in the proceedings before the domestic authorities (calculated under the fee scale of the Macedonian Bar) and EUR 5,900 for those before the Court. This latter amount concerned legal fees for 200 hours of legal work. He requested that any award under this head be paid directly to his lawyer.

98. The Government contested the above claims as unsubstantiated and excessive. Furthermore, they asserted that they had not been supported with any documents or particulars.

99. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV). In the present case, regard being had to the available material and the above criteria, the Court considers it reasonable to award the first applicant EUR 100 for the domestic proceedings and EUR 850 for the proceedings before the Court, plus any tax that may be chargeable to him. These amounts are to be paid into the bank account of the first applicant's representative.

C. Default interest

100. The Court considers it appropriate that the default interest rate 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. *Declares*, unanimously, the application admissible in respect of the first applicant and inadmissible in respect of the second applicant;

2. *Holds*, by six votes to one, that there has been a violation of Article 2 of the Convention on account of unjustified use of potentially lethal force against the first applicant (substantive aspect);

3. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention on account of degrading treatment of the first applicant during his arrest (substantive aspect);

4. *Holds*, unanimously, that there has been a violation of Articles 2 and 3 of the Convention on account 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 (procedural limb);

5. *Holds*, unanimously, that it is not necessary to consider the first applicant's complaint about the lack of an effective remedy under Article 13 of the Convention;

6. *Holds*, unanimously,
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into national currency of the respondent State at the rate applicable on the date of settlement:
      (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 950 (nine hundred and fifty euros), plus any tax that may be chargeable to the first applicant, in respect of costs and expenses, to be paid into the bank account of the first applicant's representative;
   (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*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

I. B.L.
S.N.

DISSENTING OPINION OF JUDGE DEDOV

I regret that I cannot agree with the majority's conclusion that there has been a violation of the substantive aspect of Article 2 of the Convention on account of the unjustified use of potential lethal force against the first applicant. In general, I follow the main reasoning of the separate opinion of Judge Wildhaber, joined by Judges Kovler and Mularoni, which was annexed to the *Makaratzis* judgment. Furthermore, the Court's conclusion is premature as the criminal proceedings against the applicant have not been completed at the national level.

But the main question remains unresolved: should the Court encourage irresponsible and dangerous behaviour? My response to this question is no. The use of lethal force was based on paragraph 2 of Article 2, in order to make a lawful arrest, as the applicant had refused to stop the car for a routine inspection. Moreover, the applicant was heavily drunk and was driving his car at excessive speed; he had mounted the pavement and endangered the life of a police officer, creating a situation in which the police officers had to fire in order to stop the car after he had already gone through the second roadblock (the authorities used two roadblocks as less extreme methods). Any warning shots would therefore have been ineffective; the applicant stopped the car only when he heard that the rear window had been shattered. Therefore, the use of force was absolutely necessary.

It is a common rule that a driving licence must be withdrawn if a certain level of alcohol has been found in the driver's blood. That rule is not based on the particular circumstances of a particular driver's behaviour, but on the general presumption that alcohol itself endangers the lives of others. In my view, the Court should treat such a risk as seriously as possible.