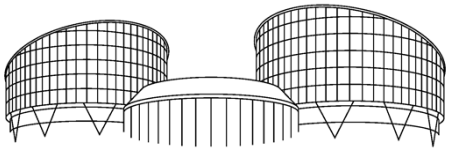

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF D.H. AND OTHERS v. NORTH MACEDONIA

(Application no. 44033/17)

JUDGMENT

Art 3 (substantive) • Inhuman or degrading treatment • Respondent State's failure to present sufficient evidence demonstrating conclusively that the police authorities provided detained sex workers with food, water and access to a toilet • No breach in relation to complaint of alleged inadequate medical treatment
Art 8 • Private life • Domestic courts failure to protect detained sex workers' right to respect for their private life against the infringement of that right by the publication of their photographs, taken while in custody, on the Ministry of Interior's website • Applicants' complaint dismissed by the Court of Appeal without sufficient reasoning • No prima facie evidence of any responsibility on the part of the police authorities for the taking and the publication of their photographs in certain media outlets

STRASBOURG

18 July 2023

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of D.H. and Others v. North Macedonia,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Egidijus Kūris,
Pauliine Koskelo,
Lorraine Schembri Orland,
Frédéric Krenc,
Diana Sârcu*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 44033/17) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms D.H. ("the first applicant"), Ms S.A. ("the second applicant"), Ms I.J. ("the third applicant") and Ms K.N. ("the fourth applicant"; together "the applicants"), all Macedonians / citizens of the Republic of North Macedonia, on 17 June 2017;

the decision to give notice to the Government of North Macedonia ("the Government") of the complaints concerning Articles 3, 6 and 8 of the Convention and to declare the remainder of the application inadmissible;

the decision not to have the applicants' names disclosed;

the parties' observations;

Having deliberated in private on 27 June 2023,

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

INTRODUCTION

1. The case concerns the alleged ill-treatment of the applicants, all sex workers, while in police custody, in particular the conditions of their detention, the taking and publishing photographs of them as well as lack of reasons in the domestic courts' judgments. The applicants complained of a violation of their rights under Articles 3, 6 § 1 and 8 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicants were born between 1955 and 1986 and live in Skopje. They were represented before the Court by Ms N. Boshkova, a lawyer practising in Skopje.

3. The Government were represented by their Agent, Ms D. Djonova.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On the evening of 20 November 2008 at about 7 p.m., the applicants were arrested by the police as part of a group of thirty-two people and taken to a police station.

6. On 21 November 2008 an order was issued by an investigating judge under Article 205 of the Criminal Code (see paragraph 22 below), pursuant to which the applicants were taken to the State University Clinic in Skopje ("the clinic") to have blood samples taken to detect sexually transmittable diseases. The second applicant was diagnosed with hepatitis C.

7. On 21 November 2008, according to the police register, the first and second applicants were released at about 1.30 p.m. and the third and fourth applicants at about 2.30 p.m.

A. Proceedings for a review of the legality of the applicants' deprivation of liberty

8. The applicants submitted separate requests for a review of the legality of their deprivation of liberty (*барање за испитување на законитоста на лишувањето од слобода*). They claimed that they had been detained unjustifiably; that they had not been informed of the reasons of their arrest; that no official record of the seized objects had been provided to them; that no food, water and use of toilet had been provided; that no medical care had been provided and that the taking of their blood samples had been carried out without a court order. Soon after, the fourth applicant withdrew her request. In the proceedings before the investigating judge, the first applicant stated, *inter alia*:

> "...
>
> I did not ask for medical assistance. They neither gave us food nor allowed us to use the toilet. One of the girls urinated on herself.
>
> ...
>
> Nobody informed me of the order that I was to undergo a medical examination.
>
> ...
>
> I saw twenty to thirty photographers upon our arrival at the clinic.
>
> ...
>
> One official told me that there was an order for a medical examination. I voluntarily raised my hand so that they could take a blood sample.
>
> ...
>
> We stayed at the police station until 3 p.m.
>
> ..."

9. The second applicant stated, *inter alia*:

"...

As we returned to the police station, I asked for a doctor, given that I am a drug addict. Upon his arrival, I refused his treatment – I was nervous. An official said that we were drug addicts, stinky whores who had been making jokes with them. The police gave us nothing, neither water nor food. There were many photographers at the State University Clinic. The police chased them away, but they photographed us. The next morning they took us to the State clinic without telling us why.

...

One doctor said that the persons who were willing to give blood for analysis could do so. I voluntarily gave blood for analysis. Later on, they took us back to the police station, gave us back our personal items and let us go home. I went home at around 12 noon.

..."

10. The third applicant stated, *inter alia*:

"I did not ask for a doctor at the police station. I asked for medication, telling them that I was taking medication, but nobody provided any to me.

...

Nobody informed us that an investigating judge had issued an order for the taking of blood samples.

..

The doctors told us why it was necessary to take blood samples. I told them about my medical condition and they provided me with medication for high blood pressure.

...

After we returned from the clinic to the police station, they kept us in custody and we were not given bread or water and we were not allowed to use the toilet.

...

I was at the police station for two days, starting from 7 p.m. until 5 p.m. the next day.

..."

11. In the same proceedings, Mr D.N. (a police inspector) stated that only one person in police custody had asked for medical help at 4.20 a.m. and an ambulance had been called by the police officers. He further stated that all the persons in police custody had been allowed to use the toilet facilities and had been provided with food and drink. Mr Zh.B. (a legal representative of one of the arrested persons) stated that the police officers had acted in a professional manner and that he had left the police station at about 1 a.m.

12. On 2 February 2009 the first, the second and the third applicants' requests were dismissed on the merits by an investigating judge of the Skopje Criminal Court of First Instance, who found that none of their rights had been violated during their detention. In reaching the above conclusion, the investigative judge took into consideration the fact that the police officers wore uniforms and were perceived by the applicants as law-enforcement officials; the statement given by Mr Zh.B (see preceding paragraph); that they

were given the official record of the search-and-seizure operation; that they were informed of their right to a lawyer; that they had been informed of the order for medical examination and that any footages taken in the police station were in protection of their identity and for internal purposes of the Ministry of the Interior ("the Ministry"). It concluded that the applicants' deprivation of liberty had been lawful. That decision was subsequently upheld by a three-judge panel of the same court.

B. Decision of the Data Protection Agency

13. On 8 June 2009 the Data Protection Agency ("the Agency") granted a request for the protection of personal data in respect of thirteen persons, including the first applicant. The Agency stated that four media outlets had published photographs and videos of the first applicant and two other persons, violating their right to protection of their personal data. It also found that it had not been established that the information in the media had been leaked by the police authorities and that there had been no evidence that the Ministry had published the personal data on its website. The Agency dismissed the requests in respect of the other applicants as they had not been identifiable in the photographs published by the media outlets. That decision became final on 18 April 2015.

C. Proceedings before the domestic courts

14. On 17 June 2009 fourteen persons, including the applicants, lodged a civil claim against the Ministry, seeking compensation for having been ill-treated by the police and having their right to privacy violated. They described their allegations as outlined in paragraphs 8-10, relying on, *inter alia*, Articles 3, 5 and 8 of the Convention. They further asserted that while they had been in custody, photographs had been taken of them and published on the website of the Ministry; the photographs had subsequently been reproduced in national media outlets without their faces being concealed. As regards their medical examination, they submitted that they had been forced to undergo the procedure by the police. They also asserted that the media had been alerted to their examination and, as a consequence, they had been photographed at the entrance to the clinic. Photographs and news about the taking of their blood samples appeared in newspapers' articles with titles such as "Prostitutes forced by truncheon to undergo a check-up" (*Курвите со пендрек на преглед*).

15. On 5 and 11 May and 27 June 2011 the Skopje Civil Court of First Instance ("the trial court") held public hearings, during which the third and fourth applicants stated that on 21 November 2008 they had been released from police custody at 2 p.m. or 3 p.m. and at 4.30 p.m. respectively. The applicants reiterated that while detained they were not provided with any

food, water or access to toilet facilities. The second, third and fourth applicants, who were allegedly suffering from heart problems and drug addiction withdrawal symptoms, submitted that they had not been provided with any medical assistance. The second applicant stated that she had refused to be examined by a doctor. The third applicant stated that "a woman had urinated on herself". She acknowledged that she had told the police officers that she was taking certain medication. The fourth applicant stated that she had been vomiting while in police custody and had not been informed of the purpose of the taking of blood samples.

16. Two other persons, Ms A.D. and Ms E.D., who had also been arrested on the evening of 20 November 2008, stated that some women had suffered withdrawal symptoms and had urinated on themselves because they had not been allowed to use the toilet facilities and had not been given water.

17. After a remittal, on 28 May 2015 the trial court granted the applicants' claims and awarded them compensation between 90,000 and 130,000 Macedonian denars (equivalent to approximately 1,500 and 2,150 euros) each. The court, referring to Article 8 of the Convention, found that the police had failed in their duty to protect the privacy of the applicants by not securing the premises and removing the journalists on the day when they had been taken to the clinic. It further held that a violation of the applicants' private life as protected under Article 8 had occurred on account of photographs of the applicants being taken at the police station and subsequently published on the Ministry's website. This had, in turn, drawn undue attention to the applicants' arrest at a time when their guilt had not yet been decided and had alerted the media outlets to the time and place of the blood tests the following day. The court further referred to Article 3 of the Convention, finding that the applicants had not been provided with food, water or access to toilet facilities for twenty hours while in police custody and that they had been forced to undergo blood tests the following day. In reaching the above findings, the court relied on the applicants' statements, statements of the police officers who had been on duty on the relevant day, excerpts from the media and other evidence.

18. The trial court also referred to an expert opinion of 30 May 2015 in which Dr L.I., a psychiatrist, interviewed the applicants and concluded, *inter alia*, that while in police custody, they had suffered from hunger and thirst and had been unable to satisfy their physiological needs and to maintain personal hygiene. The second applicant stated that "nobody called for a doctor" while she had been suffering from withdrawal symptoms. Dr L.I., relying on the available medical documentation, stated that the third applicant, who had partial paralysis and suffered from high blood pressure, was in a good state of health in general. The fourth applicant had undergone physical and psychological suffering, as her addiction to psychotropic substances had been left untreated.

19. On 28 November 2016, on an appeal lodged by the Ministry and the applicants, the Skopje Court of Appeal ("the Court of Appeal"), after holding a public hearing, overturned the judgment and dismissed the applicants' claim. Referring, *inter alia*, to a report from the Data Protection Agency and a report from the Ministry's Department for Control and Professional Standards, neither of which had been forwarded to the applicants, the court held that no breach of the applicants' rights had been caused by the respondents' actions (referring to the decisions of 2 February 2009; see paragraph 12 above). This was also confirmed in a statement by Mr Zh.B, legal representative of one of the arrested persons. In particular, the Court of Appeal found that the length of their detention had been lawful; there were no shortcomings in the search- and seizure operation; that the applicants' statements had been contradictory and based on no evidence; and that the applicants had allowed their blood samples to be taken. Lastly, the court held that the police authorities had had no responsibility with regard to exposing the applicants to the press during their visit to the clinic as they were photographed by journalists. The judgment was served on the applicants' representative on 20 December 2016.

20. Subsequently, the applicants lodged an appeal on points of law (*ревизија*) with the Supreme Court which the latter, with a judgment of 15 January 2019, rejected as the value of each individual claim did not reach the required statutory threshold (the *ratione valoris* criterion).

D. Other relevant information

21. On 17 November 2010 the second applicant was convicted of spreading infectious diseases (*пренесување заразни болести*) and was given a suspended prison sentence. No charges were brought against the other applicants.

II. RELEVANT DOMESTIC LAW

Criminal jurisdiction

22. Pursuant to Article 205 of the Criminal Code, a person who has a contagious disease is to be held accountable in the event of the transmission of the disease through sexual intercourse.

23. Section 144(1) and (2) of the Criminal Proceedings Act ("the Act") provides that the Ministry is to take the necessary measures to ensure that the perpetrator of a criminal offence is discovered.

24. Section 273 of the Act provides that the taking of a blood sample or similar physical interventions may be ordered to determine facts which are relevant in a criminal case, provided that the examination is not to the detriment of a person's health.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicants complained that they had been subjected to inhuman and degrading treatment during their lengthy detention in police custody without access to water, food or toilet facilities. Moreover, they had not been provided with medical care despite their serious medical conditions. They relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

26. The Government argued that the complaint had been lodged more than six months following the dismissal of the applicants' requests for legality review of their detention in police custody (see paragraph 12 above). As for the fourth applicant, they submitted that she had failed to exhaust domestic remedies, given that she had withdrawn her request (see paragraph 8 above). The subsequent civil action for damages had not been an effective legal remedy. In any event, the applicants had failed to initiate criminal prosecution proceedings against the police officers.

27. The applicants contested the Government's arguments. In particular, they submitted that they had exhausted all available remedies and that the respondent State had been obliged to institute criminal proceedings of its own motion in respect of their grievances under this head.

2. The Court's assessment

28. The general principles regarding the exhaustion of domestic remedies are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014) and *Alekseyev and Others v. Russia* (nos. 14988/09 and 50 others, § 12, 27 November 2018). In addition, the only remedies which Article 35 § 1 of the Convention requires to be used are those which relate to the breaches alleged and which are, at the same time, available and sufficient (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). Thus, the time-limit only starts to run from the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in respect of the matter complained of (see *Hambardzumyan v. Armenia*, no. 43478/11, § 41, 5 December 2019).

29. The Court notes at the outset that the applicants raised the issues of lack of access to food, water, a toilet and a medical care in the legality review proceedings before the investigating judge and later in their civil action for

damages before the trial court (see paragraphs 8 and 14 above). The remedy which the applicants pursued in the former proceedings could have given rise to a declaration that their detention overnight from 20 to 21 November 2008 was unlawful (compare, in the context of Article 5, *Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, § 38, 8 October 2009). However, it observes that those proceedings did not provide an effective remedy in so far as the applicants' complaints under Article 3 of the Convention were concerned. In particular, the investigating judge in the present case did not examine questions relating to the substance of the applicants' Convention complaints that they had suffered inhuman or degrading treatment (see paragraph 12 above); still less was it open to him to grant appropriate relief in connection with those complaints.

30. The Court notes that the civil action which the applicants pursued, arguing, *inter alia*, that there had been a violation of Articles 3 of the Convention (see paragraph 14 above), was examined twice upon remittal first by the trial court, which assessed the evidence, declared it admissible and ruled in their favour on the merits (see paragraph 17 above), and then by the Court of Appeal, which examined it in substance and dismissed it (see paragraph 19 above). The latter court made a passing reference to the decisions in the legality review proceedings but in the present context this was not decisive (see paragraph 19 above). There can therefore be no doubt that all the applicants raised their arguments relying on Article 3 of the Convention before the competent judicial authorities in the respondent State. Moreover, none of the arguments advanced by the Government suggest that criminal charges against the police officers would have added anything to the possibilities offered by the civil action for damages pursued by the applicants. In the present case no complaint was made as to unlawful use of force by the police officers. The Court therefore does not consider that criminal proceedings against them would have been an appropriate remedy for the applicants' grievances (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 76, 5 July 2016, and *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 135, 19 December 2017). In the light of the foregoing, the Court finds that in the particular circumstances of the case the applicants should be considered as having exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention; the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed. Accordingly, the starting-point of the six-month time-limit should be set at the date on which the applicants were served with the decision of the Court of Appeal of 28 November 2016 (see paragraph 19 *in fine* above). The Court therefore dismisses also the Government's objection of non-compliance with the six-month time-limit.

31. In view of the foregoing, the Court dismisses the Government's objections as to the admissibility of the complaint under Article 3 of the Convention. The Court notes that this complaint is neither manifestly

ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

32. The applicants submitted that the police records (see paragraph 7 above) did not reflect the real situation and alleged that they had spent long hours in police custody. They reiterated that there had been no access to water or food and that they had not been allowed to use the toilet at the police station. The second and fourth applicants submitted that, although they had informed the police authorities that they required treatment for methadone therapy addiction, the police authorities had failed to take the necessary steps to have them examined by a doctor. The third applicant argued that she had suffered from high blood pressure and that the State authorities had failed to provide her with adequate treatment.

33. The Government contended that, in contrast to the situation in *Soare and Others v. Romania* (no. 24329/02, 22 February 2011), the applicants had been suspects and not witnesses in the case, and the police officers had informed them of their status immediately after they had arrived at the police station. According to the documents produced by the domestic authorities, including documents signed by the applicants themselves, the applicants had been placed in police custody for an amount of time that was reasonable, in accordance with domestic law. The Government argued that the investigation in respect of the applicants had been complex and had been part of a set of proceedings which had involved thirty-two other individuals and had required a large number of procedural steps which had been carried out within a short period of time. The applicants had had access to a toilet and had not been prevented from moving around, a fact that could be observed from the statements given by Mr D.N. and Mr Zh.B. (see paragraph 11 above). The applicants had failed to inform the police officers about their illnesses or the fact that they needed medical treatment. The second applicant, who had informed the police officers about her illness, had refused to undergo a medical check-up when the doctor arrived. The applicants had not provided any medical documents substantiating their allegations.

2. The Court's assessment

(a) General principles

34. The relevant general principles regarding the prohibition of inhuman or degrading treatment are set out in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90, ECHR 2015) and *Feilazoo v. Malta* (no. 6865/19, § 80, 11 March 2021) and regarding the conditions of detention in the context of

Article 3 in *Muršić v. Croatia* ([GC], no. 7334/13, § 99, 20 October 2016 and the cases cited therein). The Court reiterates that, as is apparent from its well-established case-law, in cases of alleged violations of Article 3 of the Convention, it must, in its assessment of the evidence, apply a particularly thorough scrutiny. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them. Even though in cases involving Article 3 the Court is prepared to be more critical of the conclusions of the domestic courts (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 155, ECHR 2012), in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Cestaro v. Italy*, no. 6884/11, § 164, 7 April 2015).

35. The Court further reiterates that an unsubstantiated allegation that medical care has been non-existent, delayed or otherwise unsatisfactory is normally insufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question; medical treatment that was sought, provided, or refused; and some evidence – such as expert reports – which is capable of disclosing serious failings in the applicant's medical care (see, for example, *Valeriy Samoylov v. Russia*, no. 57541/09, § 80, 24 January 2012, and *Yevgeniy Bogdanov v. Russia*, no. 22405/04, § 93, 26 February 2015).

(b) Application of the above principles to the present case

(i) Time frame and alleged lack of access to food, water and a toilet at the police station

36. In the present case the Court notes that the factual circumstances of the case are disputed by the parties (see paragraphs 32 and 33 above). The applicants alleged that the records signed by them while in police custody had been inaccurate in terms of the length of their detention and the actual events that had occurred on 20 and 21 November 2008 (see paragraph 32 above). The Court notes that the Skopje Criminal Court of First Instance in its decision of 2 February 2009 (see paragraph 12 above), to which the Court of Appeal's judgment in the civil proceedings refers (see paragraph 19 above), found no irregularities regarding the length of the first, second and third applicants' detention in police custody. Those findings of the domestic courts were supported by evidence obtained in the course of the proceedings before the investigating judge and the trial court, such as the applicants' testimonies (see paragraphs 8-10 and 15 above) and the police records (see paragraphs 5 and 7 above). In their statements before the investigating judge, the first and second applicants confirmed that they had been released at 3 p.m. and 12 noon respectively (see paragraphs 8 and 9 above), whereas the police records

submitted by the Government noted that they had been released at 1.30 p.m. – see paragraph 7 above). As regards the third applicant, she argued before the investigating judge that she had been released at 5 p.m. (see paragraph 10 above) and the police records indicated 2.30 p.m. as the time of her release (see paragraph 7 above). However, in her testimony before the trial court she stated that her release had taken place at 2 p.m. or 3 p.m. (see paragraph 15 above). As regards the fourth applicant, contrary to the records in the police register submitted by the Government, according to which she was released from police custody on 21 November 2008 at 2.30 p.m. (see paragraph 7 above), the applicant argued on 11 May 2011 before the trial court that she had been released from police custody at 4.30 p.m. (see paragraph 15 above). The Court is not persuaded by this argument. It considers that the fact that almost two and a half years had elapsed since the fourth applicant's release prevents it from drawing inferences from her statement of 11 May 2011 before the trial court. It also observes that she withdrew her request of 5 December 2008 for a review of the legality of her deprivation of liberty in connection with her arrest (see paragraph 8 above). The Court therefore considers that the applicants have not provided a satisfactory and convincing explanation as to the time frame of the events in question. In such circumstances, it considers it reasonable to believe that the applicants remained in police custody for about twenty hours, starting at 7 p.m. on 20 November 2008 (see paragraph 5 above).

37. As regards the applicants' allegations that they were not provided with water, food and access to a toilet, the Court notes that the Court of Appeal's judgment, contrary to the findings of the first-instance court (see paragraphs 17 and 19 above), merely states that their statements had been contradictory but provides no explanation as to what those contradictions were as to the substance of the applicants' complaint. It appears that the Court of Appeal largely relied on the conclusions reached in the proceedings before the investigating judge who did not examine the applicants' grievances as to the lack of access to food, water and a toilet (see paragraph 12 above). In this context, the Court observes that the applicants' description as to the circumstances regarding their alleged inhuman and degrading treatment in that they were not provided with water, food and access to a toilet was very detailed, specific and consistent in the proceedings before both the investigating judge and the civil courts (see paragraphs 8-10 and 15 above). The Court observes further that all of them confirmed that they had not been given access to food, water or a toilet. The first and third applicants further stated that "a woman had urinated on herself". They stated that the police officers had called them "whores" and that the event had instilled in them feelings of inferiority and humiliation. All of this was confirmed by two other direct protagonists, who were present at the scene as detainees together with the applicants (see paragraph 16 above). The Court notes the statements of Mr D.N. and Mr Zh.B., referred to by the Court of Appeal (see paragraph 19

above) and later by the Government before the Court (see paragraph 33 above), but it considers them insufficient to outweigh the facts described by the applicants. In this connection it is noteworthy that Mr Zh.B. left the police station at around 1 a.m., that is only a few hours after the start of the applicants' detention, and he could not have witnessed the ensuing events - a fact that the Court of Appeal disregarded (see paragraph 19 above). In addition, there are other aspects of the case which further strengthen the credibility of the applicants' depiction of events. In this connection, it had to be assumed that the applicants, that belonged to a vulnerable group recognised in various international instruments (see *S.M. v. Croatia* [GC], no. 60561/14, §§ 107-209, 25 June 2020), would not have been able to gather evidence in respect of the above events while being held in the police station under full control of the police officers without the presence of any other persons. In the light of the above circumstances, the Court also takes note of the expert opinion issued in 2015 concerning the applicants' medical condition, which, taken together with the above circumstances, attests to the fact that the applicants had suffered from hunger and thirst and had been unable to satisfy their physiological needs or to maintain personal hygiene (see paragraph 18 above). Accordingly, bearing in mind that the alleged events in issue lied wholly within the exclusive knowledge and control of the authorities and that the burden of proof was on the Government to provide a satisfactory and convincing explanation, the Court notes that the Government have failed to present sufficient evidence demonstrating conclusively that the police authorities took account of the applicants' basic needs, such as by providing them with food, water and access to a toilet (see, *mutatis mutandis*, *Bouyid*, cited above, §§ 83-84, and *Iustin Robertino Micu v. Romania*, no. 41040/11, § 71, 13 January 2015).

38. The foregoing is sufficient for the Court to conclude that there has been a violation of Article 3 of the Convention in this respect.

(ii) Lack of adequate medical treatment at the police station

39. The Court observes that the second, third and fourth applicants also complained that the police authorities had failed to provide them with adequate medical care.

40. As regards the second applicant, it appears from her statements before the investigating judge and the trial court that she refused medical assistance (see paragraphs 9 and 15 above). Accordingly, the Court finds implausible her allegations that she had not been provided with medical assistance while in police custody.

41. As regards the third applicant, it is uncontested that she had partial paralysis and suffered from high blood pressure prior to her detention (see paragraph 18 above). Furthermore, it appears that she was not given any form of medication while in police custody, although she asked for certain types of medication without informing the police officers of her precise medical

condition at that time (see paragraphs 10 and 15 above). On the morning of 21 November 2008, during the taking of blood samples in the clinic, she was given appropriate medication for treating high blood pressure (see paragraph 10 above). The Court is therefore willing to accept that the applicant's inability to take her medication during the detention could have caused her some distress. However, it notes that the root cause of her potential anxiety lasted a very short time (she received medication on the morning of 21 November 2008) and that, according to the available evidence, there is nothing to indicate that not receiving medical treatment for her blood pressure during such a short period had any adverse medical consequences for her health (see paragraph 18 above). Assessing the relevant facts as a whole, the Court considers that neither the third applicant's state of health nor the potential distress generated by the brief lack of medication alone attained a sufficient level of severity in the particular circumstances of the case (see, *mutatis mutandis*, *Viorel Burzo v. Romania*, nos. 75109/01 and 12639/02, § 86, 30 June 2009).

42. As regards the fourth applicant, the evidence suggests that she was a heroin addict and that, while in police custody, she was vomiting (see paragraph 15 above). This situation may have exacerbated to a certain extent her feelings of distress, anguish and fear anguish (see paragraph 18 above). However, there is nothing in the case-file to suggest that the seriousness of her condition necessitated urgent medical treatment. The Court further observes that a doctor visited the police station at around 4 a.m. on 21 November 2008 (see paragraph 11 above), but neither the records nor the other documentation indicate that the fourth applicant asked that he or any other doctor examine her. She could have also asked for medical assistance on the morning of 21 November 2008 as did the third applicant (see preceding paragraph). On the basis of the evidence before it and assessing the relevant facts as a whole, the Court does not find it established that the fourth applicant was subjected to inhuman or degrading treatment contained in Article 3 of the Convention (see, conversely, *McGlinchey and Others v. the United Kingdom*, no. 50390/99, §§ 57-58, ECHR 2003-V).

43. Accordingly, there has been no violation of Article 3 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. The applicants complained that their right to respect for their private life had been violated in that blood samples and photographs had been taken while they were in police custody and the photographs had subsequently been published on the Ministry's website and in certain media outlets, contrary to Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. The parties' submissions

45. The Government consented that the taking of blood samples had constituted an interference with the applicants' right to respect for their private life. However, in their view, that interference had been in accordance with the law (see paragraph 22 above), which had been sufficiently precise and foreseeable, and had pursued a legitimate aim, namely that of protecting public health and detecting and preventing the spread of contagious diseases. Furthermore, it had been proportionate to the aim sought to be achieved. In that connection, they maintained that the taking of the blood samples had been done under the supervision of medical personnel and that the applicants had given their consent, as could be seen from their statements before the investigating judge (see paragraphs 8-10 above).

46. As to the publication of their photographs on the Ministry's website and in the media outlets, the Government argued that the applicants had not exhausted domestic remedies, as they had failed to institute proceedings before the administrative courts against the Agency's decision of 8 June 2009 (see paragraph 13 above).

47. The applicants maintained that the Protection of Patients' Rights Act provided for the taking of blood samples only in the event of medical necessity. In that connection, they maintained that the taking of blood had been the result of numerous arbitrary actions by the police and judicial authorities. The order for the taking of blood samples targeting sex workers had not been necessary in a democratic society. There had been no concrete evidence of transmission to other persons, nor had the applicants intended to transmit the hepatitis C virus. They had regularly used condoms when providing sexual services.

48. In the applicants' view, the action for damages before the civil courts had been an effective legal remedy for the complaints under this head.

2. The Court's assessment

(a) Taking of blood samples from the applicants

49. The Court reiterates that the respect for private life as protected by Article 8 involves respect for a person's physical integrity and the taking of a blood sample constitutes a medical intervention which, even if it is of minor importance, must consequently be considered an interference with the right to privacy (see *Schmidt v. Germany* (dec.), no. 32352/02, 5 January 2006, and

Caruana v. Malta (dec.), no. 41079/16, § 26, 15 May 2018). Such interference will be in breach of Article 8 of the Convention unless it can be justified under its paragraph 2 (see *Caruana*, cited above, § 26).

50. As regards the requirement of lawfulness, the Court notes that the interference giving rise to the complaint in question was based on Article 205 of the Criminal Code and the relevant provisions of the Criminal Proceedings Act (see paragraphs 22 and 23 above). It also takes note of section 273 of the Criminal Proceedings Act which provides for various guarantees against the arbitrary or improper taking and use of blood samples (see paragraph 24 above). It has not been submitted that those provisions were not precise or foreseeable; there is therefore no reason for the Court to delve further into the matter.

51. The Court further considers that the interference pursued a "legitimate aim" – namely the protection of public health by, *inter alia,* "the prevention of crime", that concept encompassing the securing of evidence for the purpose of detecting as well as prosecuting crime (see *Van der Heijden v. the Netherlands* [GC], no. 42857/05, § 54, 3 April 2012). Accordingly, the only salient point is the proportionality of the measure. In this connection, the Court notes that the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention (see *Z v. Finland*, 25 February 1997, § 95, *Reports of Judgments and Decisions* 1997-I; see also, *mutatis mutandis, Armonienė v. Lithuania*, no. 36919/02, § 40, 25 November 2008, and *Biriuk v. Lithuania*, no. 23373/03, § 39, 25 November 2008).

52. In the present case, the applicants were arrested on reasonable suspicion of an offence consisting in spreading sexually transmitted diseases. The taking of their blood samples had been ordered by an investigating judge in the context of an investigation regarding the suspected offence in question (see paragraph 6 above). As to the effects of the impugned measure on the applicants' health, the Court reiterates that the taking of a blood sample in general, when effected *lege artis* by a medical doctor, is only of a very short duration, causes only minor bodily injury and cannot be said to cause intense physical or mental suffering (see *Schmidt*, cited above). In this connection, the Court notes that the samples were obtained by a medical doctor at the clinic in Skopje (see paragraphs 8-10 above). The applicants did not submit, either before the domestic courts or before the Court, that the taking of blood samples had involved excessive use of force or that it had been detrimental to their health. Furthermore, as it transpires from the applicants' statements given before an investigating judge, some applicants agreed to and were informed of the purpose of the testing (see paragraphs 8 and 10 above). Even if the second and fourth applicants had not been directly informed of the purpose of the testing (see paragraphs 9 and 15 above), it is reasonable to assume that in the given context these two applicants were also cognisant of

the situation. In any event, the Convention does not, in principle, prohibit recourse to a forcible medical intervention that will assist in the investigation of an offence subject to certain conditions (see *Jalloh v. Germany* [GC], no. 54810/00, § 76, ECHR 2006-IX; *Salikhov v. Russia*, no. 23880/05, § 75, 3 May 2012; and *R.S. v. Hungary*, no. 65290/14, § 57, 2 July 2019). Lastly, it has not been brought to the Court's attention that the applicants' personal data were retained or stored after they had fulfilled the purposes for which they were taken.

53. Taking all these considerations into account, the Court cannot find that the application of the impugned measure in question was in violation of the requirements of Article 8 of the Convention.

54. It follows that this complaint must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) Publication of the applicants' photographs on the Ministry's website and in certain media outlets

55. The general principles relevant to the Government's objections under this head are set out in paragraph 29 above. Furthermore, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010).

56. It appears to be common ground that the avenue proposed by the Government – an appeal to the administrative courts against the decision of 8 June 2009 – could, in principle and if pursued successfully, have led to compensation proceedings and an award of monetary compensation in respect of the alleged violations under this head, a remedy to which the applicants have already had recourse in the civil proceedings (see paragraph 14 above). None of the arguments advanced by the Government suggest that such administrative law procedures would have added anything to the possibilities offered by the civil action. Their claim was examined by courts at two levels of jurisdiction, which established the facts and assessed the evidence, declared it admissible and considered the applicants' claim on the merits (see paragraphs 17 and 19 above). Ultimately, the Court of Appeal did not rule in their favour. There can therefore be no doubt that all the applicants raised their arguments relying on Article 8 of the Convention before the civil courts in the respondent State. There was no reason for the applicants to pursue an administrative law remedy in addition to the civil law remedy, the effectiveness of which was not disputed by the parties. It follows that this objection must be rejected.

B. Merits

1. *The parties' submission*

57. The applicants maintained that the Ministry had informed the media outlets of their arrest and the taking of their blood samples at the clinic, which had resulted in the taking and subsequent publication of their photographs in the media outlets. They further submitted that the Court of Appeal had failed to protect them from the unlawful publication on the Ministry's website of their photographs taken while they were in police custody.

58. The Government indicated that the journalists had been at the clinic's entrance area, but that there was no indication that the police authorities had informed them of the taking of the applicants' blood samples. They maintained that the photographs had been blurred and had not been accompanied by the applicants' personal data and that they had subsequently been removed from the Ministry's website.

2. *The Court's assessment*

(a) General principles

59. The general principles regarding the protection of a person's photograph are set out in *Von Hannover v. Germany (no. 2)* ([GC], nos. 40660/08 and 60641/08, §§ 95-96, ECHR 2012) and in *P.N. v. Germany* (no. 74440/17, § 56, 11 June 2020). As regards the protection of an applicant's private life, the boundaries between the State's positive and negative obligations under the Convention do not lend themselves to precise definition, nonetheless the applicable principles are similar. In both contexts regard must be had in particular to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, subject in any event to the margin of appreciation enjoyed by the State (see *Bărbulescu v. Romania* [GC], no. 61496/08, § 112, 5 September 2017, and *Liebscher v. Austria*, no. 5434/17, § 62, 6 April 2021).

(b) Application of the above principles in the present case

60. The Court observes at the outset that the applicants' allegations under this head contained two main parts. First, they contended that the police authorities had informed the media of their visit to the clinic, which had resulted in the taking and publication of the applicants' photographs in certain media outlets. Second, they argued that the Ministry had published their photographs, which had been taken while they were in police custody, on its website – a fact which had been disregarded by the Court of Appeal. The Court will therefore examine in turn these two aspects of the complaint.

(i) Alleged responsibility of the police authorities for informing the media outlets of the applicants' location

61. The Court notes that the complaint under this head is limited to the allegation that the police authorities had borne direct responsibility for informing the media outlets of the applicants' location at the relevant time and particularly for the publication of their photographs in the media outlets. The Court observes that the applicants were photographed by journalists while they were being transferred to the clinic and later those photographs were published by certain media outlets, together with articles relating to that incident (see paragraph 13 above). It accepts that the publication of the applicants' photographs by the media outlets falls within the scope of their private life (see *Lazariu v. Romania*, no. 31973/03, § 178, 13 November 2014). However, in the instant case, it has not been clearly established that the police authorities were directly responsible for the taking and the subsequent publication of the applicants' photographs. Unlike in *Sciacca v. Italy* (no. 50774/99, § 26, ECHR 2005-I), in the present case there is no evidence that the applicants' photographs were taken by the State authorities and were distributed by them to the press. Furthermore, the photographs were taken at the entrance to the premises of the clinic in Skopje (see paragraph 19 *in fine* above). Accordingly, unlike in *Toma v. Romania* (no. 42716/02, § 91, 24 February 2009), where the photographs were taken inside the police headquarters, in the instant case they were taken in a public area to which the press had unrestricted access. It also appears from the second applicant's testimony before the domestic courts (see paragraph 9 above) that the police were trying to disperse the reporters gathered at the clinic's premises. According to the Court's case-law, the distribution of the burden of proof and the level of persuasion necessary for reaching a particular conclusion are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 85, 13 February 2020, and *Sabani v. Belgium*, no. 53069/15, § 43, 8 March 2022). In view of the foregoing, the Court observes that the applicants did not present prima facie evidence that the police officers had informed the media outlets of their transfer to the clinic and therefore the burden of proof had not been shifted to the Government. The Court therefore concludes that there is nothing to suggest that any responsibility for the taking and the publication of the applicants' photographs by the media can be attributed to the police authorities.

62. Accordingly, there has been no violation of Article 8 of the Convention in this connection.

(ii) Alleged publication of their photographs on the Ministry's website

63. The applicants complained that the Ministry had published on its website their photographs, taken while they were in police custody, in which

their identity was not concealed – a fact of which the Court of Appeal had not taken due account.

64. The Court observes that in its decision of 28 May 2015 the trial court found that the police authorities had violated the applicants' rights under Article 8 of the Convention by taking their photographs while they were in police custody and publishing them on the Ministry's website (see paragraph 17 above). On appeal, the Court of Appeal did not address that issue and did not explicitly depart from or overrule the findings made by the trial court. Instead, it upheld the appeal lodged by the Ministry and observed, with a formulation expressed in rather general terms, that none of the applicants' rights had been breached. No reason was provided for that conclusion in respect of the applicants' allegations under this head (see paragraph 19 above). As to whether the photographs were indeed published with the applicants' identities concealed, as argued by the Government (see paragraph 58 above), the Court will not delve into this question as it finds no evidence, such as a screenshot of the Ministry's website at the relevant time, corroborating such allegations. In the present case, the Court of Appeal having failed to address the matter, it is not for the Court to do so.

65. In view of the above, the Court finds that the Court of Appeal dismissed the applicants' complaint in respect of the alleged actions on the part of the Ministry – namely, the taking and publication of the applicants' photographs in which their identities were not concealed - without sufficient reasoning. The Court concludes therefore that the national courts failed in their obligation to protect the applicants' right to respect for their private life against the infringement of that right by the publication of their photos on the Ministry's website.

66. There has accordingly been a violation of Article 8 of the Convention under this head.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

67. Lastly, the applicants also complained under Article 6 § 1 of the Convention for lack of reasons in the judgment of the Court of Appeal in respect of Article 3 of the Convention and the publication of their photographs on the Ministry's website. In respect of the latter, they complained that certain evidence (notably reports of the Data Protection Agency and the Ministry's Department of Control and Professional Standards) had not been forwarded to them.

68. Having regard to the facts of the case, the submissions of the parties and its above findings (see paragraphs 38 and 66 above), the Court considers that it has examined the main legal questions raised in the present application. It thus considers that there is no need to give a separate ruling on the applicants' remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicants jointly claimed 55,000 euros (EUR) in respect of non-pecuniary damage. They also jointly claimed EUR 9,500 in respect of pecuniary damage relating to the costs and expenses incurred before the domestic courts. The latter claim will be dealt with under the head of costs and expenses (see paragraph 73 below).

71. The Government contested this claim as unsubstantiated. They further submitted that there was no causal link between the damage claimed and the violations alleged. Lastly, they argued that the finding of a violation of the Convention would constitute sufficient just satisfaction.

72. The Court, having regard to all the circumstances leading to the above findings (see paragraphs 38 and 66 above), awards the applicants EUR 3,300 each in respect of non-pecuniary damage on account of the violations found under Articles 3 and 8 of the Convention, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicants jointly claimed EUR 9,500 in respect of the costs and expenses incurred before the domestic courts.

74. The Government contested this claim as excessive and unsubstantiated.

75. 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 were actually and necessarily incurred and are reasonable as to quantum (see *Strezovski and Others v. North Macedonia*, nos. 14460/16 and 7 others, § 100, 27 February 2020). In the present case, regard being had to the documents in its possession and the above criteria, and given that monetary assistance as far as evidenced was provided to the applicants through a non-governmental organisation in the respondent State, the Court finds no grounds to make any award in respect of the costs and expenses in the domestic proceedings; it therefore rejects this claim.

C. Default interest

76. 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, UNANIMOUSLY,

1. *Declares*, the complaints concerning Article 3 and Article 8 of the Convention regarding the publication of the applicants' photographs on the Ministry's website and in certain media outlets, admissible and the remainder of the application inadmissible;

2. *Holds*, that there has been a violation of Article 3 of the Convention concerning the lack of access to food, water and a toilet;

3. *Holds*, that there has been no violation of Article 3 of the Convention concerning adequate medical treatment in respect of the second, third and fourth applicants;

4. *Holds*, that there has been a violation of Article 8 of the Convention as a result of the publication of the applicants' photographs by the Ministry;

5. *Holds*, that there has been no violation of Article 8 of the Convention on account of the publication of the applicants' photographs in certain media outlets;

6. *Holds*, that there is no need to examine the complaint under Article 6 of the Convention;

7. *Holds*,
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,300 (three thousand three hundred euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	D.H.	1986	Macedonian/citizen of the Republic of North Macedonia	Skopje
2.	S.A.	1982		
3.	I.J.	1955		
4.	K.N.	1980		