



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

SECOND SECTION

CASE OF ILJINA AND SARULIENĖ v. LITHUANIA

(Application no. 32293/05)

JUDGMENT

STRASBOURG

15 March 2011

FINAL

15/06/2011

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

In the case of Iljina and Sarulienė v. Lithuania,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Ireneu Cabral Barreto,

David Thór Björgvinsson,

Giorgio Malinverni,

András Sajó,

Işıl Karakaş, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 22 February 2011,

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

PROCEDURE

1. The case originated in an application (no. 32293/05) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Lithuanian nationals, Ms Danuta Iljina (“the first applicant”) and Ms Evelina Sarulienė (“the second applicant”), on 23 August 2005.

2. The applicants were represented by Ms D. Gumbrevičiūtė-Kuzminskienė, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. The applicants alleged, in particular, that they and their close family members had been subjected to acts of police brutality and that the authorities had failed to carry out an adequate investigation into the incident.

4. On 10 July 2008 the President of the Second Section decided to give notice to the Government of the applicants' complaints under Articles 3 and 13 of the Convention. It was also decided to examine the merits of the complaints at the same time as their admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1958. The second applicant was born in 1978. Both of them live in Vilnius. The first applicant is the second applicant's mother.

6. According to the second applicant, at about 5 p.m. on 3 August 2004 a police officer, in plain clothes, arrived at the applicants' apartment block to conduct a search for stolen goods in a flat which was situated next door to that of the applicants. The police officer was accompanied by a technical expert who worked for the company which owned the goods in question. The applicants' neighbour refused to let the police officer in, alleging that he was not the owner of the flat and that the officer was not wearing a uniform. At the same time, the second applicant, her uncle, O.B., and her brother, V.I., came out on to the staircase for a smoke. According to the second applicant, she and her brother told the police officer that he had no right to enter the flat by force. The policeman went for reinforcements, but before leaving said "get ready to go [with the police]".

7. The further circumstances of the conflict on the staircase are in dispute between the parties.

A. The applicants' version of events

8. According to the second applicant, two more uniformed policemen arrived later at the scene of the incident. One of them suddenly grabbed V.I., loaded his gun and pointed it at V.I. The second applicant screamed for help and the policeman pointed the gun at her. The other policemen told the first officer to put away the gun and both policemen started hitting V.I. The officers called for more reinforcements, and more policemen arrived; they hit V.I. and O.B. with rubber truncheons and punched and kicked them. At that time the second applicant's father, A.I., returned from work and asked the police to explain what was happening. Instead of replying, the police started hitting him on the head, shoulders and hands with a rubber truncheon. The second applicant's daughter, who was one year and seven months old, attempted to come out of the flat to see what was happening in the corridor; a policeman tried to push and close the flat's reinforced door. The second applicant placed her foot between the door and the wall to prevent her daughter from being hurt; consequently, the second applicant's foot was injured. O.B., V.I. and A.I. were arrested. The second applicant telephoned the first applicant.

9. According to the first applicant, she received a telephone call from her daughter and went straight to the scene of the incident. In the courtyard of

the apartment block she saw three police cars and several policemen. O.B., V.I. and A.I. were in the police cars and there were a lot of people milling around. She asked the police officers what was going on. However, no explanation was given, and the officers started pushing people further away from the police cars. The first applicant tried to stop the police officers and lay down on the bonnet of a police car. The policemen started driving the car and the applicant felt pain in her whole body. An officer forcibly dragged her away from the car, tore off her blouse, kicked her bottom and threw her, wearing no blouse but only a bra, onto the grass. She came round as the police were leaving.

B. The Government's version of events

10. In their submissions of 3 December 2008 the Government stated that as reinforcement, two more police officers arrived at the staircase. V.I. again came out of his flat and used offensive language towards the officers. The second applicant and her friend S.Š. came out on to the staircase. The police officers demanded that V.I. stop acting inappropriately and warned him of the impending consequences. V.I. did not comply and the police officers attempted to arrest him. He resisted the arrest, hitting the officers. Then O.B. ran out of the flat and started hitting the officers. More reinforcements were called for and four more officers arrived at the scene. The policemen attempted to arrest V.I. and O.B. At this point A.I. turned up and joined in the fight, trying to prevent the policemen from restraining his relatives. The second applicant and S.Š. were also obstructing the officers from carrying out their duty by jostling and pulling their clothes. The Government pointed out that as regards the second applicant's leg injury, the latter's friend S.Š., when questioned by police, stated that "the police officer slammed the door so loudly that the second applicant's daughter started crying". Eventually V.I., O.B. and A.I. were handcuffed and put into police cars in the courtyard of the apartment block. None of the policemen used or showed a gun, nor did they threaten to use one. The first applicant tried to prevent the police cars from leaving the courtyard and lay down on the bonnet of the first car. At the time the engine was turned off and the car was not moving. One of the officers, with some help from two other officers, forcibly moved the second applicant away from the car, holding her by both hands.

C. Further developments

11. The documents before the Court indicate that on 4 and 5 August 2004 a medical expert of the Lithuanian Law University Court Forensic Medicine Institute examined the applicants and three of their family members who had taken part in the incident. It was established that all five

of them had sustained light health impairment. In particular, the first applicant had a scratch on her forehead and five bruises on her upper arms, ranging in size from 1.5 cm to 7 cm, which were the result of at least three impacts. A doctor's certificate attested that she was unfit for work from 4 to 13 August.

12. The second applicant had an injury to her right foot, caused by a single impact with a hard blunt object. The second applicant's brother, V.I., had sustained bruises and scratches on his elbows, forearms and left knee, caused by having had at least five traumatic impacts with small hard blunt objects. He received leave of absence from work until 13 August.

13. The second applicant's father, A.I., told the doctor that the police officer had hit him several times on the head and left shoulder with a rubber truncheon. The doctor found a 3-centimetre-diameter bruise on A.I.'s left temple and scratches on his right hand. Those injuries had been caused by at least three traumatic impacts.

14. The first applicant's brother, O.B., told the medical expert that during the altercation with the police the officers had beaten him, twisted his arms behind his back and kicked him in the chest. The medical expert established that there was a swollen 0.5 x 3-centimetre scratch on O.B.'s right forearm and a 2-centimetre-diameter swollen bruise on his right shoulder, which were the consequence of at least two traumatic impacts from hard blunt objects, possibly in the way and at the time described by O.B. He received leave of absence from work until 13 August.

15. The medical expert also concluded that the injuries mentioned above could have been received during the altercation with the police officers.

16. During the evening of 3 August 2004 the two applicants submitted written complaints about the police actions to the Vilnius City Police Headquarters and to the prosecutors. The applicants asked for an assessment of the actions of the policemen, and that the officers who had taken part in the events be identified. O.B., V.I. and A.I. were kept in police custody overnight. The following morning O.B., V.I. and A.I. were questioned and the same morning released from custody.

17. The police investigator charged A.I., V.I. and O.B. under Article 286 of the Penal Code (insulting a public servant or a person discharging public functions) and Article 290 of the Penal Code (resistance to a public servant or a person discharging public functions). However, on 15 December 2004 the prosecutor dropped the charges against A.I., V.I. and O.B. for lack of evidence of guilt (Article 212 § 1 (2) of the Code of Criminal Procedure).

18. On 4 August 2004 A.I., V.I. and O.B. submitted a written complaint to the Vilnius Region chief prosecutor. They stated that they had been beaten up by the policemen without any reason and even experienced a threat that a firearm would be used against them. Whilst arguing that the police officers had brought charges against them of obstruction of justice only to defend the uniform, A.I., V.I. and O.B. invoked Articles 169 and

170 § 1 of the Code of Criminal Procedure and asked the prosecutor that the actions of the policemen be scrutinised by a prosecutor, without delegating the inquiry to police investigators.

19. At the applicants' request, on 12 August 2004 the Internal Affairs Department of Vilnius City Police Headquarters began a pre-trial investigation into alleged ill-treatment by the police officers, under Article 228 § 1 of the Penal Code, which establishes criminal liability for abuse of power.

20. When testifying to the investigators of the Internal Affairs Department, the police officers stated that V.I. had tried to obstruct them in the performance of their duties and had insulted them. They had attempted to arrest him for this behaviour, but he had resisted, using violence against them; then O.B. had arrived and tried to stop the policemen from restraining V.I. Lastly, A.I. had appeared on the scene and also become involved in the fight. Moreover, there were two women on the staircase who grabbed the officers by the arms. Consequently, O.B., V.I. and A.I. had been arrested and taken to the police station. During the incident none of the policemen had used or shown a gun, nor had they threatened to use one.

21. Between 13 August and 3 November 2004 the Internal Affairs Department investigator at the Vilnius City Police Headquarters questioned the policemen, the applicants and their male family members as well as the applicants' neighbours who had witnessed the incident. The questioning took place on police premises. Neither the applicants nor A.I., V.I. or O.B. had lawyers present when they were being questioned. The policemen and the applicants maintained their respective versions of events.

22. On 1 December 2004 a prosecutor of the Vilnius City District Prosecutor's Office discontinued the pre-trial investigation, stating that there was not enough objective evidence to conclude that the police officers had abused their powers or used unnecessary force.

23. On 12 and 14 January 2005 the applicants appealed against that decision to the Vilnius Regional Prosecutor's Office, claiming that "they could not have expected a different outcome of the inquiry, given that the [police] investigator was misleading the witnesses with the aim of obtaining testimony favourable to the [police] officers". The applicants argued that the police officers had used excessive force against them and threatened to use a firearm. They also alleged that the testimony police officers had given during the pre-trial investigation was not comprehensive, given that the officers had not specified which special fighting actions (*kovinių imtynių veiksmus*) they had used. Moreover, the localisation of the wounds on the applicants' bodies allowed the assumption that the police had had recourse not only to restraining measures, but to clear physical violence.

24. On 7 February 2005 the deputy chief prosecutor of the Vilnius Regional Prosecutor's Office dismissed the applicants' appeal as unfounded. He noted the prosecutor's decision of 15 December 2004 to drop the charges

against A.I., V.I. and O.B. as unfounded, for lack of evidence. However, having, as it appears from his decision, analysed the statements of the parties to the incident, as written down by the police internal affairs investigator, the prosecutor found that there were no objective data to substantiate the applicants' allegations that the policemen had acted unlawfully. For the prosecutor, the applicants' request that the policemen be questioned one more time was not to be entertained, because "the testimony of the police officers about the actions of V.I., A.I. and the others who obstructed the police, as well as about the force used when arresting them, was sufficiently detailed and comprehensive".

25. On 18 February 2005 the applicants appealed to the Vilnius City First District Court asking that the pre-trial investigation be reopened and the witnesses be comprehensively questioned one more time. They maintained that the police investigator had refused to record statements by certain witnesses, thereby destroying the evidence of the crime committed by the policemen. The investigation into the police actions had been superficial. The applicants asked the court to establish which particular actions should be attributed to each of the policemen. They also noted that on 15 December 2004 the prosecutor had decided to drop the criminal charges against A.I., V.I. and O.B.

26. On 3 March 2005 the Vilnius City First District Court in a one-page ruling held that the pre-trial investigation had been thorough and that the prosecutors had taken reasoned decisions. According to the court, the medical experts' conclusions that the applicants and their family members had sustained light physical harm was not evidence of an abuse of powers by the police – the applicants had resisted the policemen and had been injured as a result. The court also noted that the applicants had not submitted new evidence. For those reasons the complaint was dismissed. That decision was final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. Article 228 of the Penal Code sets out that there is criminal liability for abuse of authority when such abuse by a civil servant or a person of equivalent status causes serious damage to a legal or natural person. Under Article 286 of the Code a person can be held criminally liable for having opposed a policeman's orders and threatened the latter with physical violence. Article 290 of the Code sets out that there is criminal liability for insulting a public officer or a civil servant.

28. Under Article 21 of the Law on Police Activities, a police officer must respect and protect human dignity, ensure and safeguard human rights and freedoms. The police officers have a right to use coercion when it is necessary to prevent violations of the law and to apprehend those who have committed such violations, as well as in other cases when lawful interests of

an individual or the State are at stake. Physical coercion can be used when apprehending a person who has committed a violation of the law and who evades arrest by active actions (Articles 23 and 24).

29. The Law on the Prosecutor's Office stipulates that in discharging his functions the prosecutor is independent (Article 11). It is for a prosecutor to conduct, organise and direct the pre-trial investigation and to supervise the procedural activities of pre-trial investigation officers. A prosecutor's decision can be appealed against to a superior prosecutor (Articles 15 and 16).

30. The Code of Criminal Procedure provides that parties to criminal proceedings can lodge complaints with the prosecutor against the procedural actions and decisions of the pre-trial investigating officer. The prosecutor's decision can be complained against to a superior prosecutor and subsequently to an investigating judge (Articles 62 and 63). When examining the complaint, the prosecutor and the investigating judge have a right to examine the pre-trial investigation materials and request statements from the pre-trial investigation officer or the prosecutor, provided that they had not been submitted before. The prosecutor, counsel, the accused and the complainant may be present during the examination of the complaint by the investigating judge. Furthermore, an investigating judge has a right to question witnesses, suspects and victims. Up to 31 August 2007 the decision of the investigating judge was final (Articles 64 and 173). Since that date, a decision of an investigating judge can be appealed against to a superior court (Article 214 § 3).

31. The pre-trial investigation can be conducted by the police, but it has to be organised and led by a prosecutor, who has an obligation to oversee the course of the investigation and who can decide to conduct all or part of the investigation himself (Articles 164, 165, 169 and 170 § 1 of the Code of Criminal Procedure). Under Articles 212 § 1 (2) and 214 § 1 of the Code, a prosecutor is to terminate the pre-trial investigation where insufficient evidence of the suspect's culpability in respect of a crime has been gathered.

32. The Regulations of the Internal Affairs Department of Vilnius City Police Headquarters, approved on 13 May 2000, stipulate that the Department is an autonomous structural unit subordinate and accountable to the Chief of Police at Vilnius City Police Headquarters or his deputy. It is the Department's function to conduct pre-trial investigations of criminal acts committed by police officers. When conducting an investigation, the Department's officials have the right to question police officers and other persons.

33. In their observations on the admissibility and merits of the case, the Government provided the Court with examples of recent domestic courts' practice in cases of abuse by the police. In particular, the Government referred to the judgment of 21 July 2008 when the Vilnius City First District Court convicted two police officers of abuse of authority. The policemen

were charged with using excessive force when apprehending two suspects and later beating them while they were in custody. The Government noted that after hearing and seeing various witnesses and evaluating their credibility, the court had accepted the victims' version as more credible. The Government also referred to the judgment of the same court of 21 July 2003, subsequently upheld by the Supreme Court, when two police officers were convicted of abuse of authority and beating up a suspect during questioning. The conviction was based on the version of events presented by the victim, supported by corroborating medical examination. The fact that fellow police officers had testified in favour of the accused policemen did not cast doubt for the court on the credibility of the victim's claims.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicants complained that the treatment to which they and their close family members had been subjected by the police officers during the events of 3 August 2004 had caused them great physical and mental suffering, amounting to inhuman and degrading treatment contrary to Article 3 of the Convention. They also complained that the investigating and prosecuting authorities, as well as the court, had failed to proceed with an effective and impartial investigation into the incident capable of leading to the identification and punishment of the police officers responsible. In that connection the applicants invoked Article 3 as well as Articles 6 and 13 of the Convention.

35. The Court considers that the above complaints fall to be examined solely from the standpoint of Article 3 of the Convention, which reads as follows:

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

36. The Government contested the applicants' arguments.

A. Admissibility

37. The Court considers, in the light of the parties' submissions, that the applicants' complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

B. Merits

1. The parties' submissions

38. The applicants submitted that their injuries were the result of the unnecessary and disproportionate use of force by the police officers involved in the incident. Moreover, even worse than the pain of their physical injuries, they had suffered fear, distress, anguish, uncertainty, humiliation and a sense of injustice when they saw their family members being beaten up and arrested, apparently without a proper legal basis. The applicants were also critical of the manner in which the authorities had conducted the investigation into their allegations of ill-treatment. For the applicants, the investigating and prosecuting authorities had failed to proceed with a comprehensive and effective official investigation capable of leading to the identification and punishment of the police officers responsible.

39. The Government pointed out that in the applicants' case the alleged ill-treatment, resulting in minor injuries, had taken place in the course of the lawful arrest of the applicants' relatives. The applicants themselves had been actively involved in the conflict and had been obstructing the police officers in the performance of their lawful duties. Furthermore, the Government had serious doubts that the minor injuries sustained by the applicants reached a level of severity sufficient to bring them within the scope of Article 3 of the Convention. Whilst admitting that any recourse to physical force against the applicants, if it had not been made strictly necessary by the applicants' own conduct, could be seen as a possible breach of Article 3 requirements, the Government also submitted that the force used by the police officers was strictly necessary and not excessive, according to the applicants' actions. Lastly, as regards the effectiveness of the investigation and the judicial proceedings, the Government argued that the investigation into the incident had been prompt, independent and thorough and that twenty-two witnesses had testified. Given that two sets of proceedings concerning precisely the same incident had been conducted and the investigators in both cases had shared the material, there was no reason to hold that any of the evidence had not been secured and the establishment of the truth thereby precluded.

2. The Court's assessment

a) General principles

40. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under

Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V). The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, § 79, *Reports* 1996-V).

41. The Court also recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII).

42. The Court has also consistently held that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, 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. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

43. When the use of force by the police is at issue, the investigation must also be effective, in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances. The investigation into arguable allegations of ill-treatment must also be thorough. This means that 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 as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. 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 *Corsacov v. Moldova*, no. 18944/02, § 69, 4 April 2006).

44. Moreover, for an investigation into ill-treatment by agents of the State to be regarded as effective, the general rule is that the persons responsible for the inquiries and those conducting the investigation should be independent of anyone implicated in the events. This means not only that there should be no hierarchical or institutional connection, but also that the investigators should be independent in practice (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 135, ECHR 2004-IV (extracts))

45. Lastly, and as concerns the assessment of evidence and 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 those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts. Where allegations are made under Articles 2 and 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006).

b) Application of those principles to the present case

46. The Court notes that the parties to the national proceedings did not dispute the fact that the injuries as shown by medical evidence actually arose in the course of the conflict with the police. In particular, the forensic expert concluded that the applicants and their three male family members had sustained light physical injuries, consisting of bruises and scratches, and that, except for the second applicant and A.I., all of them would recover within nine days. Having examined the materials submitted to it, the Court also finds that the applicants' injuries are consistent with their version of events, including being pulled by the arms off the police car (the first applicant), and having a foot shut in a door (the second applicant).

47. The Court further reiterates that Article 3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by “creating a state of anguish and stress by means other than bodily assault” (see, *mutatis mutandis*, *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161). In this connection the Court observes that the three men arrested were the applicants' closest family members – V.I. was the first applicant's son and the second applicant's brother, A.I. was the first applicant's husband and the second applicant's father and O.B. was the first applicant's brother and the second applicant's uncle. There can be little doubt that the sight of them being beaten up by the police officers (as concerns the second applicant) and unsuccessful attempts to obtain information about the reason behind their arrest (as concerns the first applicant) intimidated the applicants on account of the arbitrariness of the situation and caused them emotional and psychological distress. Overall, having regard to the first applicant's physical injuries and the fact that due to them the forensic expert deemed her to be unfit to work for nine days, the traces of injuries on the second applicant's body and the fact that both applicants witnessed the police violence, the Court finds that the applicants were subjected to ill-treatment which was sufficiently serious to be considered degrading and thus to fall within the scope of Article 3 of the Convention.

48. Against this background the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive.

49. On the facts of the case the Court cannot ignore that the applicants were injured in the course of a random police operation which gave rise to unexpected developments. Thus, the police officers were called upon to react without prior preparation (see, by converse implication, *Matko*, cited above, § 102, and *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII). Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the positive obligation must be interpreted in a way which does not impose an impossible burden on the authorities (see, *mutatis mutandis*, *Mahmut Kaya v. Turkey*, no. 22535/93, § 86, ECHR 2000-III).

50. The Court notes that as justification of the use of force against the applicants and their relatives the Government have advanced the argument that those family members had been arrested lawfully for obstructing the police officers in the performance of their legitimate duties and for insulting them. However, the Court cannot overlook the fact that by a prosecutor's order of 15 December 2004 those charges were dropped as unfounded. This, although not conclusive on its own, nevertheless does cast doubt on the real necessity to arrest the applicants' family members and to have recourse to physical force to put the arrest into effect. The Court also notes the absence of signs of physical injuries to the policemen which is a typical consequence of resistance to arrest in comparable cases.

51. As for the Government's argument that the use of force against the applicants was proportionate, the Court notes that there are two conflicting versions of events. The Internal Affairs investigator, the prosecutor and the Vilnius First District Court found against the applicants, noting that they and A.I., V.I. and O.B. would have sustained no physical damage had they not resisted arrest. In this connection the Court observes that, in contrast to the facts in *Klaas* (paragraph 30), in the present case the Vilnius City First District Court and even the prosecutor, who had to assure the independence and objectivity of the investigation, had no opportunity of hearing the parties to the criminal proceedings and witnesses at first hand and of evaluating their credibility. Quite the contrary, as it appears from the prosecutors' decisions to terminate the pre-trial investigation into the alleged police abuse, the prosecutors, although explicitly asked by the applicants to take over the pre-trial investigation, to question the witnesses one more time and to establish the concrete actions and involvement of each of the policemen, limited themselves to summing up the witness testimonies, as written down by Internal Affairs investigator within the police premises.

52. Furthermore, the Court considers that it is not required to address the issue of hierarchical and institutional independence of the police directly,

given that the investigation, taken as a whole, was ineffective for following further deficiencies. As concerns the Vilnius City First District Court, the Court notes that in a one-page ruling it merely succinctly repeated the procedural steps taken in the case and summed up the prosecutor's conclusions (see, *in contrario*, *Peleckas v. Lithuania* (dec.), no. 18293/03, 6 November 2007, as regards the effective and thorough investigation of the alleged ill-treatment by the police). The Court is mindful of the fact that the decision the court took was of a procedural nature, as opposed to examining the complaint of alleged police abuse on the merits and passing a judgment as to the actual guilt of the policemen. However, the Court is particularly concerned by the fact that the charges against the three men having being dismissed on 15 December 2004, neither the deputy chief prosecutor of the Vilnius Region Prosecutor's Office in his decision of 7 February 2005, nor the investigating judge on 3 March 2005 deemed it important and reasonable to take this circumstance into account and to reopen the pre-trial investigation, and to question the applicants, the policemen and the witnesses in a more transparent manner than mere questioning at the police station, where, naturally, the witnesses and victims were prone to more psychological pressure. On this latter point the Court draws attention to the applicants' accusation, irrespective of the question of whether it was founded, that the police investigator misled certain witnesses and wrote down their testimony in a way which was more beneficial to the police officers concerned. What is more, in their observations on the admissibility and merits the Government did provide examples of domestic case-law (see paragraph 33 above), albeit when the issue of police officers' responsibility was decided on the merits, where police officers had been convicted for abuse of office and where the victims and witnesses had been questioned in court. The Court also notes that the investigation failed to establish the particular roles of each of the policemen implicated in the events – to this day it is not clear to what extent each of them contributed to the applicants' injuries. Lastly, in their observations to the Court the Government themselves admitted that some of the contradictions could not have been eliminated in the applicants' case.

53. In the light of the above, the Court concludes that the State is responsible for degrading treatment under Article 3 of the Convention on account of the physical and mental violence, considered as a whole, committed against the applicants as well as the lack of an effective investigation into the incident, and that therefore there has been a violation of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. Relying on Article 5 § 1 of the Convention, the applicants complained about the arrest of O.B., V.I. and A.I. In this connection the

Court notes that the applicants themselves were not deprived of their liberty. Consequently, they cannot claim to be victims within the meaning of Article 34 of the Convention, and their complaint is to be rejected under Article 35 § 4 thereof.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicants claimed 289,855 euros (EUR) in respect of non-pecuniary damage.

57. The Government contested that claim as excessive and unsubstantiated.

58. The Court notes that it has found a violation of Article 3 in the present case. In these circumstances, it considers that the applicants have experienced a certain suffering and frustration, which the mere finding of a violation cannot compensate. Making its assessment on an equitable basis, the Court awards each of the applicants EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

59. The applicants also claimed 1,250 Lithuanian litas (LTL, approximately EUR 360) for the costs and expenses incurred before the domestic authorities and LTL 2,380 (approximately EUR 690) for those incurred before the Court.

60. The Government contested above claims.

61. 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 were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicants, jointly, the sum of EUR 1,050 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning ill-treatment by the police and the lack of an effective investigation admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention:
 - (i) EUR 9,000 (nine thousand euros) to each of the applicants in respect of non-pecuniary damage;
 - (ii) EUR 1,050 (one thousand and fifty euros), to both applicants, jointly, in respect of costs and expenses; and
 - (iii) any tax that may be chargeable, these amounts to be converted into Lithuanian litas at the rate applicable on the date of settlement;
 - (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;
4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 15 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President