



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

FIFTH SECTION

CASE OF BUTOLEN v. SLOVENIA

(Application no. 41356/08)

JUDGMENT

STRASBOURG

26 April 2012

FINAL

26/07/2012

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

In the case of Butolen v. Slovenia,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Mark Villiger,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 3 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 41356/08) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Mr Boris Butolen (“the applicant”), on 26 August 2008.

2. The applicant was represented by Mr S. Klemenčič, a lawyer practising in Ptuj. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged, in particular, that he had been ill-treated by police and that there had been no effective investigation into his allegations.

4. On 9 June 2009 the Court (Third Section) declared the application partly inadmissible and decided to communicate the complaints concerning Article 3 to the Government. The Court subsequently changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the present case has been assigned to the newly composed Fifth Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Žetale.

A. Arrest

7. At 8.10 p.m. on 18 February 2001 the Podlehnik police patrol, consisting of two officers, J.Š. and G.K., was called to a bar, B. According to the Government the officers were told by customers and a waitress there that the applicant had been shouting at customers and threatening them with a gun. The officers were also told that a person they believed to be the applicant had headed to another bar, Š., in the town of Čermožiše.

6. At 8.30 p.m., the two police officers entered bar Š. They asked the owner of a white VW Golf to come forward. The applicant, who was the owner of the car in question and was in the bar that evening, approached the officers and followed them out to the car. The events which followed are in dispute between the parties.

7. According to the applicant, on the way out the officers asked him where his gun was. The applicant replied that he had no gun. One officer requested the applicant to open the boot of the car. The applicant took the keys from the car to unlock the boot. At that point one of the officers hit him on the head. Both officers continued to beat the applicant until they knocked him down. They then kicked him all over his body. When the applicant started to get up, he received several punches to the stomach. The police officers then handcuffed him and took him to Podlehnik Police Station in a police car. In his criminal complaint (see paragraph 11 below), the applicant also alleged that he was hit twice in the face in the police car. At the police station one of the officers punched the applicant, who was still handcuffed, several times in the face.

8. According to the Government, the police officers informed the applicant that he was charged with breach of the peace and possession of a weapon. The applicant then started hitting his car. When he learned of the officers' intention to search the car the applicant opened the boot and took out a metal bicycle wrench. Officer J.Š. asked the applicant to put the wrench down. The applicant refused, and lifted the wrench above his head. The officer then hit the applicant on the head, at which point the wrench fell to the ground. The applicant then attempted to run away. Officer J.Š. caught the applicant by the shirt. The applicant then fell to the ground, but got up again immediately. At that point he also told officer G.K. that he would kill his family. Not having been able to restrain the applicant, G.K., using professional skills, threw the applicant over his hip by gripping his neck. The officers then handcuffed the applicant, who was lying on the ground but still trying to resist, and searched him, as well as the car, but found no weapons. On suspicion that the applicant, who was believed to be under the influence of alcohol, would continue to commit offences, the officers ordered his detention at around 9.15 p.m. The officers took the applicant to Podlehnik Police Station, where the handcuffs were taken off him. The applicant was bleeding from the mouth.

9. The applicant, who was complaining of pain, was taken to hospital by officers B.H. and M.B., who had taken over for the night shift. He remained hospitalised until 22 February 2001. According to the hospital reports, the applicant had suffered concussion, injury to the upper arm (fracture of the left humerus), excoriation, haematoma and contusion on the head, neck and thorax, and a rupture of the eardrum (perforation of tympanums). The applicant also submitted that two of his teeth were loose and one had been broken during the alleged ill-treatment. He continued outpatient treatment until 19 June 2001. The medical records noted that the results of the treatment were “satisfactory”.

B. Proceedings against the applicant

10. On 12 March 2011 the police lodged a criminal complaint of violent behaviour against the applicant. A bill of indictment was lodged by the Ptuj District Prosecutor, S.E., whereupon the Ptuj Local Court heard the applicant, as well as four witnesses. On 15 May 2006 the charges were reclassified to the criminal offence of endangering security. Since the proceedings concerning the latter offence could only have been conducted at the request of an aggrieved party, the court requested the presumed aggrieved party, G.H., to inform the authorities whether he wished to pursue proceedings. On 18 September 2006 the proceedings were discontinued, as G.H. refused to submit a request for them.

C. The applicant’s criminal complaint against the officers

11. On 28 March 2001 the applicant lodged a criminal complaint with the Ptuj District Prosecutor’s Office against unidentified officers, of aggravated bodily harm and violation of human dignity by abuse of authority or official position. The applicant supported his criminal complaint with hospital records and photographs of his injuries. He also proposed that A.K., who saw the incident, be examined.

12. On 6 November 2001 the Ptuj District Prosecutor, S.E., dismissed the criminal complaint on the basis of the police report prepared by Maribor Police (to which Podlehnik Police Station was subordinate). The latter was based on official notes concerning interviews held by officer S.P. from Podlehnik Police Station with officers J.Š., G.K., B.H. and M.B. It would appear that in the context of the police inquiry, statements were taken by an officer from Maribor Police from five persons who had been present in the two bars but had not witnessed the relevant events outside the bar. The police report noted that witness A.K. had not been questioned, as he was working in Austria. The public prosecutor found that the police officers,

who were identified as J.Š. and G.K., had acted in accordance with the law. In the decision dismissing the applicant's criminal complaint the public prosecutor found that the applicant had allegedly breached the peace in bar B., where he had threatened customers with a gun. Further to that allegation, which had been communicated to the police by a person from that bar, the two officers attempted to find the applicant. They entered bar Š. for that purpose. As regards the subsequent events, the public prosecutor found in her decision that the applicant had refused to cooperate with the officers and had taken a metal tool out of his car in an attempt to attack officer J.Š. She concluded that this, and the fact that the applicant had presumably been carrying a gun, justified the use of force and the injuries the applicant had sustained as a result. The applicant was not heard by the public prosecutor or involved in those proceedings in any way. The public prosecutor's decision was served on his representative on 16 November 2001.

D. The criminal proceedings instituted against the officers by the applicant

1. The judicial investigation

13. On 22 November 2001 the applicant, acting as a subsidiary prosecutor represented by a lawyer, lodged a request with the Ptuj District Court for an investigation.

14. On 24 January 2002 the two accused officers appeared before the investigating judge. Both of them refused to give statements. On the same day the investigating judge upheld the request for an investigation. The officers appealed against the decision. On 23 April 2002 their appeals were rejected by an interlocutory-proceedings panel, which found that the applicant's criminal complaint, and in particular the medical records, gave rise to a reasonable suspicion that the offences had been committed.

15. Further to the investigating judge's request, the police informed her that no disciplinary proceedings had been instituted against the officers in question with respect to the alleged abuse of power.

16. On 3 June 2002 the investigating judge heard evidence from the owner of bar B., who testified that she had seen the applicant with a gun in the bar that evening and that the applicant was known as an aggressive person.

17. On 1 July 2002 the investigating judge heard the applicant. The applicant's testimony essentially corresponded to the description of the arrest as provided in his application to the Court; however, before the investigating judge, he denied having been beaten up in the police car. The applicant maintained that he did not possess a gun and that that was why the police had not found one. He also stated that nobody had witnessed the arrest except A.K., a customer from bar Š. Lastly, the applicant stated that

he had no interest in pursuing a pecuniary claim for compensation in these proceedings, because he was seeking damages in civil proceedings.

18. On the same day the investigating judge examined six witnesses: four from bar B. and two from bar Š. As regards the latter, a waitress testified that she had noticed nothing unusual that day and confirmed that the officers had entered the bar and asked the applicant to step outside with them. She had not witnessed the events outside the bar. A.K. testified that he had heard the applicant screaming outside and as he was leaving the bar had seen the applicant lying on the ground being beaten by the officers. He had observed the situation for only a few seconds, however, and had not been able to see the incident very well because it was night.

19. On 25 September 2002 the investigating judge heard evidence from a forensic expert in general surgery, L.T. The latter stated, on the basis of the applicant's medical records relating to his hospitalisation following the arrest in question, that the applicant had sustained at least five blows during the arrest: at least two to the head, one to the neck, one to the left side of his thorax and a hard blow to the left shoulder, and had possibly also been kicked while he was on the ground. He further specified that it was possible that the applicant's face had been hit with an open hand, but powerful force would have had to be used to cause such an ear injury. As regards the injury to the upper arm, L.T. explained it could have been the result of a hard direct blow or kick, but could also have been caused during a professional hit or throw.

20. On 27 January 2003 one of the customers from bar B., M.K., was examined. He denied seeing the applicant carrying a gun or noticing anything special that evening. After further questioning, M.K. admitted that he had known that the police had been called to the bar because of the applicant's threatening customers with a gun. He indicated that he had not said that earlier during questioning because he was afraid of the applicant. However, M.K. later denied having had any previous negative experience with the applicant.

21. On 12 February 2003 the applicant lodged an indictment against the two police officers. The officers lodged objections to the indictment. On 5 May 2006 the interlocutory proceeding panel rejected the objections, finding that the evidence collected so far supported a reasonable suspicion that the alleged acts had been committed.

2. The trial

22. The Ptuj District Court, sitting as a panel, held hearings on 12 and 29 December 2006 and on 23 March, 13 April, 31 May, 22 and 31 August and 6 September 2007. It heard the accused officers, the applicant and a number of witnesses from the bars in question, as well as the officers who had taken over for the night shift. In addition, the court obtained a forensic report from an expert in general surgery, L.T., and a report by the

Commission of the Faculty of Medicine prepared by V.S., an expert in traumatology and surgery, and L.Š., an expert in otorhinolaryngology. It also examined all three experts at the hearing. It furthermore obtained the opinion of an expert in fighting techniques, B.Z.

23. At one of the hearings, expert L.T. testified that the rupture of the eardrum could only have been the consequence of a slap. The shoulder injury could have occurred as a result of a professional throw. He further explained that the haematoma on the right side of the applicant's face could have been the result of a blow to the right cheekbone. The haematoma on the forehead was caused by a blow or a kick from the heel of a shoe while the applicant was either kneeling or lying down. Expert V.T. testified that the bruises on the applicant's forehead and the right side of his face could have been caused by a blow from a closed fist. Furthermore, he said that the damage to the eye socket was very unlikely to have been caused by the pressure employed during the professional throw, but must have been the result of a direct blow with a fist or a kick to this area. Expert L.Š. testified that being thrown down, or pressure on the thorax, would be very unlikely to cause perforation of the eardrum. He further stated that in his opinion there had been two or more blows to the applicant's face. Lastly, the expert in fighting techniques, B.Z., gave an opinion that the professional throw, which was called *koshi guruma*, and the blow with a hand, called *oi tsuki jodan*, were professionally justified during the applicant's arrest.

24. On 6 September 2007 the court convicted J.Š. and G.K. of the criminal offence of violation of human dignity by abuse of powers or official position under Article 270 of the Penal Code and sentenced them to imprisonment of four and three months respectively, suspended for two years. The court found that J.Š. and G.K. had been beating and kicking the applicant while he was lying on the ground after he had been thrown down by G.K. In addition, the court found that J.Š. had hit the applicant at least once on the right side of the face at Podlehnik Police Station. The officers were acquitted of the charges of aggravated bodily harm.

25. In its judgment the Ptuj District Court, referring to the case of *Matko v. Slovenia*, (no. 43393/98, 2 November 2006), noted that it had reached the decision independently of the findings of the initial police inquiry and the public prosecutor's decision, which had not complied with the requirement of an effective investigation. The court accepted the accused officers' assertion that the applicant had attempted to attack them with a tool, which, however had not been seized. It also accepted the accused officers' explanation that they had used a professional hit and a professional throw to overcome his resistance, which was lawful. It also considered that there was insufficient evidence that the applicant had been hit while he was in the car, an allegation that had, moreover not been made consistently. On the other hand the court found, on the basis of the evidence gathered in the criminal investigation and during the trial, in particular from

the testimony of A.K. and the forensic medical reports, that the applicant had not been subjected only to the above-mentioned use of force. In particular, the court concluded, referring to the opinions of forensic experts, which it found to be consistent, that the applicant had received several blows to the head, not just one. As regards witness A.K., who had passed the scene of the incident when leaving the bar, the court noted that although A.K. had known the applicant, there was no close relationship between them which could call into question A.K.'s credibility as a witness. It further noted that A.K. had first stated during the investigation that he had seen the applicant being beaten up by the officers while he was lying on the ground, but that subsequently, at the hearing at which the two accused officers had been present in their uniforms, he had modified his statement by saying that he had seen one of them kick the applicant. The court, which took into account the evidence concerning the visibility at the scene of the incident and heard witnesses for the defence, who failed to undermine A.K.'s credibility, concluded that it was to be believed that A.K. had seen the applicant being kicked by at least one of the officers. It also rejected the accused officers' assertion that, given the circumstances, they had been entitled to use even lethal force. It noted in this respect that the officers outnumbered the applicant, were in excellent physical condition and were trained in fighting techniques. In addition, they had been aware of the possibility that the applicant might be carrying a gun and could therefore have predicted his behaviour. The court concluded that the accused officers had ill-treated the applicant in breach of Article 3 of the Convention and Article 18 of the Slovenian Constitution and committed the criminal offence under Article 270 of the Penal Code. As regards the charges of aggravated bodily harm, the court found that it could not determine with the degree of certainty required in criminal cases whether the injuries with long-term consequences, namely, the fracture of the left humerus and rupture of the eardrum, had been caused intentionally by the unlawful use of force. Finally the court ordered the applicant to pay court fees in the amount of 400 euros (EUR).

3. The appeal

26. The applicant appealed on 5 November 2007. The officers also lodged appeals against the judgment in so far as it related to their conviction.

27. On 27 February 2008, after deliberations, the Maribor Higher Court dismissed the applicant's appeal and upheld the accused officers' appeal. As regards the quashing of the conviction, the court found, in a reasoning of less than two pages, that the first-instance court had erred in establishing the facts. However, referring to sections 392 (5) and 394 (1) of the Criminal Procedure Act, it was of the opinion that a reassessment of the evidence could be done without a remittal of the case or a fresh hearing. The Maribor

Higher Court then found that the defence statements of the accused officers were consistent and credible and should be fully followed and that the operation had not been a random one, as the applicant had a reputation as a dangerous person and had attacked the officers with a tool. The court found that the applicant's statements had not been consistent and called into question the credibility of witness A.K. In this connection it rejected the reasoning given by the first-instance court, that the change in A.K.'s testimony had been understandable. It found that "the conduct of both accused officers, who had ultimately managed to get the applicant under control, had therefore proved to be correct and lawful". The court concluded that "there was no evidence that the officers had committed the criminal offence concerned, but only certain indications on the basis of which the court could not conclude with all certainty that the accused had committed the alleged criminal offence". It acquitted them of all the charges and ordered the applicant to pay court fees in the amount of 600 euros (EUR). The judgment was served on the applicant on 19 March 2008.

28. By the Ptuj District Court's decision of 5 May 2008 the applicant was ordered to pay EUR 14,572 for the costs and expenses of the proceedings, which was broken down to EUR 3,214 for procedural costs such as expert fees, and EUR 11,358 for the officers' legal representation. Following an appeal by the applicant, the Ptuj District Court altered the decision concerning the costs and expenses so that the applicant was now required to pay EUR 2,441 for the procedural costs and EUR 413 for the costs relating to the preparation of G.K.'s appeal. The court found that the remaining costs of the legal representation of the officers had already been paid by the Ministry of the Interior during the trial, and reimbursement could therefore no longer be claimed by the officers.

4. Further remedies

29. On 16 May 2008 the applicant requested the Supreme Prosecutor's Office to lodge a request for protection of legality against the Maribor Higher Court's judgment. On 15 September 2008 the Supreme Prosecutor's Office rejected his request.

30. On 19 May 2008 the applicant lodged a constitutional appeal in which he argued that the subsidiary prosecutor should have *locus standi* in proceedings before the Constitutional Court, and that he should have been able to lodge a request for protection of legality with the Supreme Court, as the public prosecutor had. He complained that the proceedings, in particular the judgment of the Maribor Higher Court, had been unfair and arbitrary. He submitted that the Maribor Higher Court's judgment was biased, which could also be because the judge rapporteur was a former police officer. The applicant also referred to the case-law of the European Court of Human Rights, which had found that a subsidiary prosecution was not a proper remedy for the protection of human rights. Lastly, the applicant complained

that he, unlike other parties in criminal proceedings, was not able to be exempted from payment of the costs of the proceedings.

31. On 14 December 2010 a panel of three judges of the Constitutional Court rejected the applicant's constitutional appeal without further examination. It found that the applicant presented no reason to distinguish his case from case no. Up-285/97, in which it had taken the position that the aggrieved party could not lodge a constitutional appeal against acquittal. It moreover noted that the applicant's case was also to be distinguished from cases nos. Up-555/03 and Up-827/04, which concerned lack of independent investigation into a death during police intervention (see paragraphs 50 and 51 below). As regards the complaint concerning the costs of the proceedings, the Constitutional Court rejected it as manifestly ill-founded.

E. Civil proceedings for compensation instituted by the applicant

32. On 27 December 2001 the applicant instituted civil proceedings against the State in the Ptuj District Court, seeking damages for the injuries he had sustained as a result of ill-treatment by the police.

33. In the course of the proceedings the applicant modified his claim for non-pecuniary damages to 2,800,000 Slovenian tolar (SIT) (approximately EUR 11,700). The court heard several witnesses, including officers K.G. and J.Š., obtained a medical report from an expert, S.T. (see paragraphs 38 and 39 below), and took account of the evidence obtained in the criminal proceedings.

34. The court delivered its judgment on 22 August 2006. It found that the officers had admitted to using only one "professional hit" and one "professional throw" against the applicant. They maintained that they had not used any other force against him and that all the injuries he had sustained had been caused by his passive resistance to arrest. Having regard to the medical opinions of experts S.T. and L.T., which confirmed that the applicant had sustained injuries as a result of several kicks or blows, the court concluded that the officers had "clearly overstepped their powers". It continued by saying that there was no excuse for the behaviour of the police officers and that "there was nothing to be proud of in this under the rule of law". The court further stated that "no officer in this country was authorised to kick a person who was lying on the ground, no matter how violent that person was". It concluded that the applicant was responsible for 30% of the injuries and the State was responsible for the rest. The court noted that the State, through its agents, had not acted "diligently and within its powers" but had acted "negligently, irresponsibly and culpably and therefore should be liable for damages in accordance with section 154 č of the Civil Code". The applicant was granted compensation for non-pecuniary damage in the amount of SIT 1,820,000 (approximately EUR 7,600).

35. The applicant and the State appealed.

36. On 18 September 2007 the Maribor Higher Court dismissed the applicant's appeal.

37. On 13 November 2007 the Maribor Higher Court upheld the first-instance court's conclusion as regards the unlawfulness of the use of force against the applicant, finding that the police officers had "greatly overstepped their powers" and that the applicant had sustained injuries as a result. However, it allowed the State's appeal in part, and reduced the amount of compensation awarded for damage suffered as a result of "fear" and "bodily pain" related to the injuries. The court reduced the award of damages to EUR 5,853.

F. Medical forensic reports

1. Report of 2 July 2006 by forensic expert S.T., prepared in the context of the civil proceedings

38. The report lists the following injuries sustained by the applicant on the day of the incident and their most probable cause:

- Lesions on the face: caused by a punch, kick or fall on to hard ground.
- Rupture of the right eardrum: normally caused by a slap.
- Several excoriations: caused by friction between the skin and an object.
- Fracture of the left humerus: likely to have been caused during a direct fall or by a blow to the shoulder.

39. As regards the above-mentioned injuries, the forensic expert concluded that the applicant had received several hard blows to the right side of his face, one of which had resulted in the eardrum injury. He also considered it possible that the applicant had received a hard blow to his left shoulder. Most of the injuries could have been caused by a punch or a kick. As regards the remaining skin excoriations, these had been caused by a lighter application of force.

2. Report of 16 February 2007 by the Commission of the Faculty of Medicine, Ljubljana, prepared in the context of the criminal proceedings by experts L.Š. and V.S.

40. The report lists the following injuries sustained by the applicant on the day of the incident, with their most probable cause:

- Fracture of the left humerus (*abruptio tuberculi maioris humeri sin*): most likely caused by a fall on to hard ground.
- Concussion: caused by a punch, kick or fall on to hard ground.
- Excoriation on the neck and thorax: caused by a punch, kick or fall on to hard ground.
- Rupture of the right eardrum: caused by a punch or a slap.

- Lesions on the thorax, left shoulder, neck and head: caused by a punch, kick or fall on to hard ground.

41. The report concludes that the above injuries had consequences of a temporary nature.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Procedure Act

42. In Slovenia public prosecution is mandatory where there is a reasonable suspicion (*utemeljeni sum*) that a criminal offence subject to mandatory prosecution has been committed. Public prosecutions are conducted by the public prosecutor's office, an autonomous body within the justice system.

43. If the public prosecutor dismisses the criminal complaint or drops the charges at any time during the proceedings, the aggrieved party has the right to take over the conduct of the proceedings as a "subsidiary prosecutor" (*subsidiarni tožilec*), that is, as an aggrieved party acting as a prosecutor (section 19(3) of the Criminal Procedure Act, *Zakon o kazenskem postopku*, Official Gazette no. 63/94 – "the CPA"). A subsidiary prosecutor has, in principle, the same procedural rights as the public prosecutor, except those that are vested in the public prosecutor as an official authority (CPA, section 63(1)). If the subsidiary prosecutor takes over the conduct of the proceedings, the public prosecutor is entitled at any time, pending the conclusion of the main hearing, to resume the conduct of the prosecution (CPA, section 63(2)).

44. Preliminary proceedings are initiated either upon a criminal complaint lodged by any person with the police or the public prosecutor or upon the police or the public prosecutor being informed by any means whatsoever of a situation that gives rise to "grounds for suspicion" (*razlogi za sum*), that is, less than a reasonable suspicion that an offence which is subject to mandatory prosecution has been committed.

45. In the preliminary proceedings most of the measures are taken by the police, who, like the public prosecutor, do not have discretion as to whether to act (CPA, section 148). Accordingly, they must always pursue the investigation. However, it is the public prosecutor's statutory right and duty to ensure that the matter is adequately investigated, in order to decide whether or not there should be a prosecution (CPA, sections 20, 45 and 161/2).

46. If the standard of reasonable suspicion is satisfied, the public prosecutor or subsidiary prosecutor may lodge a request with the investigating judge to allow judicial investigation into the alleged criminal offence. The investigating judge may at any time during the investigation

terminate the proceedings if he establishes that the act under investigation is not a criminal offence or if there is not enough evidence that the accused has committed a criminal offence. At the end of the investigation, the public or subsidiary prosecutor may decide to lodge an indictment. The accused can challenge the indictment before an interlocutory-proceedings panel. If no challenge is made to the indictment or if the challenge is unsuccessful, the court begins the trial.

B. Penal Code

47. Article 134 of the Penal Code (*Kazenski zakonik*, Official Gazette no. 63/94), which concerns the criminal offence of aggravated bodily harm, reads, in so far as relevant, as follows:

“(1) Whosoever inflicts bodily harm on another person or causes him life-endangering personal injury or destruction or permanent serious impairment of an organ or part of the body, serious temporary weakness of a vital part or organ of the body, temporary loss of the ability to work, permanent or serious temporary diminution of the ability to work, temporary disfigurement, or serious temporary or less severe but permanent damage to his health, shall be sentenced to imprisonment for not less than six months and not more than five years.”

48. Article 270, entitled “Violation of human dignity by abuse of powers or official position”, provides:

“An official who, in the exercise of his office and by abuse of his powers or official position, treats another person badly, insults him, inflicts minor bodily harm upon him or otherwise treats him in such a way as to affect his human dignity, shall be sentenced to imprisonment for not more than three years.”

49. The above offences are both subject to mandatory prosecution.

C. Constitutional Court decision of 6 July 2006 (Up-555/03 and Up-827/04)

50. On 6 July 2006 the Constitutional Court (*Ustavno sodišče*) delivered a decision in a case concerning a person who had died during a planned police operation and alleged interference with several constitutional rights of the deceased and his wife. In that case the request for a criminal investigation into the incident lodged by the subsidiary prosecutors - the deceased's wife and father - was rejected by the court, and so was their request for the proceedings to be reopened.

51. The Constitutional Court drew a distinction between, on the one hand, cases where the subsidiary prosecutors challenged before it a final acquittal or other court decision by which the proceedings were finally terminated, and, on the other hand, cases where a request for an investigation or reopening of an investigation in respect of officers who had been involved in an operation leading to the death of an individual was

rejected. As regards the former, the Constitutional Court noted that it was established case-law, such as decision no. Up-285/97, that subsidiary prosecutors in such a position could not challenge final judgments or decisions before the Constitutional Court. As regards the latter, the Constitutional Court found that appellants had *locus standi* to complain of lack of an effective independent investigation.

THE LAW

I. SCOPE OF THE CASE

52. The Court notes that in his observations of 17 November 2009 the applicant complained under Article 6 § 1 of the Convention that the length of the criminal proceedings against the officers had been unreasonable. This was the first time he had raised this complaint. Having regard to the fact that this complaint was made after the Court's decision of 9 June 2009 declaring part of the application inadmissible and after the communication of complaints under Article 3 to the Government, the Court considers that it is not appropriate to take it up now. It should therefore be dealt with in a separate case (see *Andriy Rudenko v. Ukraine*, no. 35041/05, § 21, 21 December 2010).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant complained that he had been ill-treated by police and that no effective investigation had been carried out into his allegations as was required by 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. Victim status

54. The Government maintained that the applicant could not claim to be a victim of a violation of Article 3, as the civil court had thoroughly examined his claim, found that the acts of the police officers were unlawful, unacceptable and in breach of the principles of rule of law, and awarded him compensation. The applicant had not lodged an appeal on points of law

against the Maribor Higher Court judgment, which demonstrated that he agreed with it.

55. The applicant disputed the Government's argument. He also submitted that he could not have challenged the Maribor Higher Court judgment before the Supreme Court, as the amount at stake was below the statutory threshold of admissibility.

56. The Court reiterates that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, a breach of the Convention (see, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 180, ECHR 2006-V).

57. As to redress which is appropriate and sufficient to remedy a breach of a Convention right at national level, the Court has repeatedly found in cases of wilful ill-treatment by State agents in breach of Article 3 that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, the possibility of seeking and obtaining compensation for the damage sustained as a result of the ill-treatment should be available to the applicant (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010 and the case-law referred to therein).

58. Turning to the present case, the Court notes that the Government objected to the victim status, referring to the judgments issued in the applicant's favour in the civil proceedings. The Court, although conscious of the fact that the civil proceedings concerned the State's strict liability and not directly the responsibility of the officers, notes that the civil courts established that the applicant had been beaten up by the officers in question and referred to the officers' treatment of the applicant as inexcusable and exceeding their powers (see paragraphs 34 and 37 above). Having regard to the foregoing, the Court considers that the civil courts acknowledged in substance that the applicant's treatment had not been compatible with his right enshrined in Article 3 of the Convention (see *Çamdereli v. Turkey*, no. 28433/02, § 27, 17 July 2008).

59. As regards the requirement of appropriate and sufficient redress, the Court notes that it was not disputed that, following the civil judgments, the State had paid the applicant compensation in the amount of EUR 5,853 for non-pecuniary damage incurred as a result of ill-treatment by the police. However, the Court notes that the focal point of the applicant's complaint concerns the alleged inadequacy of the criminal proceedings, and recalls that in cases of wilful ill-treatment a breach of Article 3 cannot be remedied merely by an award of compensation to the victim (see, among many other authorities, *Krastanov v. Bulgaria*, no. 50222/99, §§ 48 and 60, 30 September 2004, and *Vladimir Romanov v. Russia*, no. 41461/02, § 78,

24 July 2008). The Court must therefore determine whether the State carried out a thorough and effective investigation in respect of those responsible (see *Gäfgen*, cited above, § 121). However, since this is an issue which is closely linked to the substance of the applicant's complaint under the procedural aspect of Article 3, the Court considers that its examination should be joined to the merits of the case.

2. *Exhaustion of domestic remedies*

60. The Government argued that the applicant failed to exhaust domestic remedies. In particular, he failed to lodge a claim before the Administrative Court. Had he done so and been unsuccessful he could have challenged the decisions issued in those proceedings before the Constitutional Court. The Government further submitted that the applicant could have lodged an appeal on points of law against the High Court judgment issued in the civil proceedings. In addition, they maintained that the applicant should have lodged another civil claim for compensation, alleging an interference with his personal rights.

61. As regards constitutional appeal as a remedy in the criminal proceedings pursued by the applicant, the Government submitted that while the Constitutional Court had explicitly addressed the issue of the procedural aspect of the right to life in its decision of 6 July 2006, it continued to be the Constitutional Court's established case-law that the subsidiary prosecutor had no right to lodge a constitutional appeal against a final judgment of acquittal. In this connection, they referred to leading decision Up-285/97 issued on 10 May 2001.

62. The applicant argued that he had not lodged a claim with the Administrative Court or directly lodged a constitutional appeal because he had been pursuing a subsidiary prosecution, which he had hoped would be successful.

63. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after all domestic remedies have been exhausted. The purpose of Article 35 § 1 is to afford the Contracting States the opportunity of preventing or putting right violations alleged against them before those allegations are submitted to it (see, for example, *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002-VIII).

64. As regards the present case, the Court notes that the applicant lodged a criminal complaint concerning the alleged police ill-treatment and, after it was rejected, pursued proceedings against the officers in the capacity of a subsidiary prosecutor. He therefore exhausted all the possibilities within the criminal-law system that were available to an alleged victim of police ill-treatment in Slovenia (compare to *Matko v. Slovenia*, § 95, no. 43393/98, 2 November 2006, and *Stojnšek v. Slovenia*, §§ 79 and 80, no. 1926/03, 23 June 2009). As to the constitutional appeal, the Court notes that the applicant lodged his application with the Court while the proceedings before

the Constitutional Court were still pending. On 14 December 2010 his constitutional appeal was rejected on the basis of the established jurisprudence that the subsidiary prosecutor could not challenge proceedings which had produced a final judgement of acquittal. Therefore, even if the applicant had relied on Article 3 in substance before the Constitutional Court, it would not appear that he would have stood a reasonable chance of success (see, *mutatis mutandis*, *Nalbantski v. Bulgaria*, no. 30943/04, § 54, 10 February 2011) .

65. As to civil remedies, the Court notes that the applicant pursued civil proceedings for damages and received compensation in this regard. It notes that the fact that the applicant did not challenge the High Court judgment of 31 November 2007 before the Supreme Court, provided that such a possibility was open to him, could not be considered as a failure to exhaust domestic remedies, since he had been in large part successful with his civil claim and does not complain about the outcome of these proceedings.

66. As regards other remedies referred to by the Government, the Court notes that the applicant, having used the above-mentioned criminal and civil-law remedies, was not required to embark on another attempt to obtain redress by bringing an administrative claim or another kind of civil proceedings referred to by the Government (see, for example, *Çamdereli*, cited above, § 31, and *Stojnšek*, cited above, § 80). The Court therefore rejects this objection by the Government.

3. Compliance with the six-month limit

67. The Government argued that the applicant did not comply with the six-month time-limit, relying on the following. Firstly, as the applicant complained that the public prosecutor had failed to pursue an effective investigation, he should have lodged the application within six months of the decision dismissing his criminal complaint being served on him. Alternatively, the Government submitted that the applicant should have lodged an application with the Court after it had become clear to him that the public prosecutor had no intention of taking over the criminal proceedings against the two accused officers. In this connection, the Government referred to the criminal proceedings which the public prosecutor had pursued against the applicant and which had ended with the decision of 18 September 2006. In these proceedings the applicant said that he had been beaten up by police and that he had been pursuing criminal proceedings against the police officers responsible. By then, the applicant should have realised that the public prosecutor had no intention of prosecuting the officers.

68. The applicant disagreed. He stressed that the domestic legislation provided for the possibility that victims could take over a prosecution, and argued that he had done so because of the inaction of the public prosecutor. He thus could not be penalised for using this avenue.

69. The Court reiterates that the six-month time-limit is an autonomous rule which must be interpreted and applied in a given case in such a manner as to ensure the effective exercise of the right of individual petition (see *Balogh v. Hungary* (dec.), no. 47940/99, 13 May 2003). The six-month period runs in principle from the date of the final domestic decision after effective and sufficient domestic remedies have been used (see *Babayev v. Azerbaijan* (dec.), no. 36454/03, 27 May 2004).

70. Turning to the present case, the Court would emphasise that in respect of allegations of ill-treatment by State officials the injured party is not required to pursue prosecution of the accused officer in the capacity of a so called subsidiary prosecutor, this being the responsibility of the public prosecutor, who is certainly better, if not exclusively, equipped in that respect (see *Stojnšek*, cited above, § 79, and *Matko*, cited above, § 90). However, when an applicant, such as the present one, takes over the prosecution and moreover is successful in obtaining a judicial investigation and later a trial against the officers accused of ill-treatment, these proceedings, which clearly concern the substance of his Article 3 complaint, as well as the evidence produced therein, become an inherent part of the case and shall be taken into account (see *V.D. v. Croatia*, no. 15526/10, §§ 53-4, 8 November 2011; *mutatis mutandis Vladimir Romanov*, cited above, § 52; and *Gasparyan v. Armenia (no. 1)*, no. 35944/03, § 30, 13 January 2009). The Court therefore finds that by lodging his application within six months of 19 March 2008 (see paragraph 27 above), which was the date of service of the final decision issued in the criminal proceedings, the applicant complied with the six-month time-limit provided in Article 35 § 1 of the Convention.

4. Conclusion

71. The Court considers that the applicant's complaint under Article 3 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an effective official investigation

(a) The parties' arguments

72. The applicant complained under Article 3 that the public prosecutor had failed to investigate his allegations of ill-treatment effectively and independently and had relied solely on the police report. The applicant was not involved in the investigation at all. Due to the passivity of the public

prosecutor the applicant had had to pursue the criminal proceedings as a subsidiary prosecutor who, as a private party, had limited authority as well as limited capacity to conduct an effective prosecution. In the criminal proceedings he carried the burden of proving the officers' guilt as well as the financial cost of the proceedings. Nevertheless, the applicant succeeded at the first level of jurisdiction. However, following the judgment of the court at the second level of jurisdiction, which the applicant believed to be biased, the officers were ultimately acquitted. The applicant further argued that the ineffectiveness of the criminal proceedings pursued by him could be demonstrated by the fact that the civil court had found the officers' actions unlawful. Regardless of the different nature of the two sets of proceedings, the assessment of "lawfulness" could not be different, as it did not depend on the burden of proof.

73. The Government argued that further to the applicant's criminal complaint the public prosecutor had requested a report from the police which had shown that the applicant's injuries had not been intentionally inflicted. After the applicant had taken over the prosecution, a thorough judicial investigation was conducted. The indictment against the officers was upheld by the court and the trial took place. As regards the applicant's complaint that these proceedings were pursued at his cost, the Government argued that the applicant should have been aware of the consequences of his taking over the prosecution. The Government also maintained that the fact that the officers had ultimately been acquitted confirmed the initial findings of the public prosecutor. In addition, the Government submitted that there was no requirement under the Convention that an independent investigation should be conducted in the context of criminal proceedings, and argued that in the present case an effective investigation of the incident took place within the civil proceedings.

(b) The Court's assessment

74. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, 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. That investigation must be thorough. That 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, forensic evidence, and so on. 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, among

many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102 et seq.).

75. Turning to the present case, the Court considers that the medical evidence and the applicant's complaints submitted to the competent domestic authorities raised an arguable claim that the applicant's injuries could have been caused by excessive use of force. As such, his complaints constituted an arguable claim and the Slovenian authorities were thus under an obligation to conduct an effective investigation.

76. The Court notes that under the domestic law the public prosecutor who received the applicant's criminal complaint was responsible for initiating a criminal prosecution and requesting investigating measures if reasonable suspicion existed that the applicant had been subjected to ill-treatment by the police officers (see paragraphs 42 and 49 above, and *Matko*, cited above, § 90). Despite the serious nature of the applicant's allegations and the medical reports confirming his injuries, the public prosecutor does not appear to have taken any steps to secure the evidence after the incident. Moreover, relying solely on the report prepared by the police unit which was connected to the one involved in the applicant's treatment, she rejected the applicant's criminal complaint. There are no indications in the present case that the public prosecutor was prepared in any way to scrutinise the police's account of the incident (*ibid.*, and by contrast *Berliński v. Poland*, nos. 27715/95 and 30209/96, §§ 69-70, 20 June 2002).

77. The Court further notes that a judicial investigation was carried out during the subsequent criminal proceedings pursued by the applicant. During that investigation and the ensuing trial, the accused officers and several witnesses were heard, and three independent medical experts were examined. In this respect, the Court is satisfied with the diligence displayed by the investigating judge and the trial court in performing their functions. However, it cannot lose sight of the fact that these proceedings were a result of the applicant's determination to pursue the charges against the officers. The applicant was acting as a prosecutor and therefore had to file all the necessary procedural requests as well as requests concerning the evidence-taking. He also had to pay for the expert fees and, apart from the costs of his own legal assistance, he had to cover the costs of the accused officers' legal representation. The latter were in the present case significantly reduced only because the Ministry of the Interior had paid most of the officers' lawyers' fees before the end of the trial. Although she was in a position to take over the prosecution of the officers during the criminal proceedings, in which the courts upheld both the request for investigation and the indictment against the officers, the public prosecutor remained passive. The Court cannot agree with the Government's argument that the fact that the officers were eventually acquitted should justify in retrospective the public prosecutor's

lack of action. The Court would emphasise in this connection that it was the public prosecutor's, not the applicant's, obligation to ensure that an official independent investigation was carried out and to act upon its results.

78. Moreover, apart from the passivity of the prosecution authorities with respect to the criminal proceedings, the lack of determination on their part to scrutinise the conduct of the officers is shown by the fact that no proceedings appear to have been initiated to establish their potential disciplinary responsibility.

79. Lastly, as regards the Government's argument that the civil proceedings provided for an effective investigation of the applicant's allegations, the Court would note that these proceedings were premised on the strict liability of the State, and could only result in the award of compensation. They cannot be considered as satisfying the procedural requirements of Article 3 (see, among others, *Krastanov*, cited above, § 60).

80. In view of the above, the Court finds that the authorities, whose obligation was to ensure that an effective investigation and any appropriate proceedings were pursued against the officers accused of ill-treatment, failed to comply with their obligations arising from Article 3 of the Convention. There has accordingly been a violation of this provision.

81. Since the measures taken by the authorities failed to provide appropriate redress to the applicant (see *Okkaly v. Turkey*, no. 52067/99, § 78, ECHR 2006-XII (extracts), and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 64, 20 December 2007), he may still claim to be a victim within the meaning of Article 34 of the Convention. This objection by the Government should therefore be rejected.

2. Whether the applicant was ill-treated by police in violation of Article 3

(a) The parties' arguments

82. The applicant argued that he had been ill-treated by the police officers, who were highly trained in defence techniques. He disputed the allegation that he had resisted arrest, and pointed out that the officers had not sustained any injuries during the incident. He further submitted that he had not been carrying a gun or a wrench as alleged by the police, and the police had not adduced any evidence to prove this allegation. The applicant maintained that his allegations were fully supported by forensic reports and that in particular it was established that the perforation of the eardrum could only have occurred as a result of a serious slap on the face, which was not a lawful police technique but a means of humiliating the applicant.

83. The Government argued that it had not been proven in the present case that the applicant had been treated in breach of Article 3 of the Convention. They maintained that the resort to physical force by the officers had been strictly necessary due to the applicant's behaviour. The police

actions were not planned in advance but were provoked by the applicant's resistance. It is true that the applicant suffered certain bodily injuries but he could not be considered to have suffered intensely, either mentally or emotionally. As regards the civil courts' finding that the officers had acted unlawfully and abused their powers, the Government stressed that this had been established in the context of the civil liability.

(b) The Court's assessment

84. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies and makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others*, cited above, § 93). In respect of a person deprived of his liberty, the Court has consistently held that any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 38). Moreover, where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Corsacov v. Moldova*, no. 18944/02, § 55, 4 April 2006, and *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87, and *Ribitsch*, cited above, § 34).

85. The Court would also state that though it 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, *Gäfgen*, cited above, § 93, and *Ribitsch*, cited above, § 32).

86. As regard the present case, the Court notes that it is not disputed that the applicant's injuries as shown by the medical reports were the result of the use of force by the police. The medical experts appointed in the civil and criminal proceedings concluded that the applicant could have sustained a fracture of the left humerus as a result of a fall on to hard ground or a blow. The report of the Commission of the Faculty of Medicine noted that the excoriation and lesions on the thorax, neck and head could have been caused by a fall on to hard ground or by kicks or punches (see paragraphs 40-41 above). As regards the injuries to the applicant's head, a forensic expert S.T., appointed in the civil proceedings, noted that the applicant had received several hard blows to the right side of the face and that the rupture

of the eardrum was likely to have been caused by a slap. He was also of the opinion that most of the applicant's injuries had been caused by punches or kicks (see paragraphs 38 and 39 above). Further to questioning during the investigation and/or the criminal trial the medical experts specified the most likely cause of the injuries. The expert in general surgery, L.T., said that the applicant had received at least two blows to the head, and had possibly also been kicked while he was on the ground. He was of the opinion that the ruptured eardrum could only be the result of a slap (see paragraphs 19 and 23 above). Similarly, the expert in otorhinolaryngology L.Š., who was a member of the Commission of the Faculty of Medicine, ruled out as very unlikely that the rupture of the eardrum could have been caused by being thrown down, or by pressure on the thorax. He was also of the opinion that there had been two or more blows to the applicant's face (see paragraph 23 above).

87. The explanation given by the officers was that the applicant's injuries had been caused by one blow to his face, which had been administered as a response to his lifting the wrench, and by being thrown down once, which was done by holding the applicant's neck, with the aim of preventing him from fleeing. The criminal court accepted that the hit and throw described were lawfully employed in order to overcome the applicant's resistance. However, trial courts in criminal and civil proceedings found that the applicant had sustained injuries which were not explained by the aforementioned methods admittedly used by the police. In particular, the courts found that the applicant had received kicks or blows, possibly when lying or kneeling on the ground. The criminal court, referring to the consistent statements of experts, found that the applicant had received more than one blow to the head. It found the officers guilty of violating the applicant's dignity by abuse of powers or official position (see paragraphs 24, 34 and 37 above). The higher criminal court, on the other hand, acquitted the officers. This court found it impossible to conclude with certainty that the accused had committed the alleged criminal offence. It based its conclusion on its own assessment of the evidence, finding that the statements of the accused officers were consistent and reliable, while those of the applicant and A.K. were not consistent. It did not address the opinions of medical experts (see paragraph 27 above).

88. The Court notes that it would appear that all courts involved in the case accepted that the throw and the blow to the head were necessary to overcome the applicant's resistance. Although with certain reservations, based on the fact that the officers were highly trained and that the wrench referred to was not seized, the Court will proceed on the assumption that these two measures were strictly necessary to restrain the applicant. Having said that, the Court notes that they could still explain only the injury to the applicant's shoulder, perhaps also to his neck, and some of the injuries on his head. The injuries relating to the rupture of the eardrum, as well as other

injuries on the applicant's face and body, could not be explained only by the aforementioned use of force, as found consistently by the independent medical experts.

89. As regards the higher criminal court's conclusion, which contradicted that of the civil courts and the first-instance criminal court, the Court would state that acquittal in criminal proceedings by a court bound by the principle of presumption of innocence does not absolve the respondent Government of its responsibility under the Convention (see *Darraj v. France*, no. 34588/07, § 36, 4 November 2010; *Rivas v. France*, no. 59584/00, § 38, 1 April 2004, and *Ribitsch*, cited above, § 34). It notes in particular that the conclusion of the higher criminal court was based on the explanation that the applicant had resisted arrest and that the officers were entitled to use force against him. The higher criminal court, however, did not address the discrepancy between the injuries which could have occurred as a result of the means allegedly used by the police and the injuries the applicant actually received at the hands of police. The Government, likewise, submitted no arguments which would provide an explanation for the aforementioned discrepancy.

90. The Court notes that the applicant's alleged resistance to arrest may have justified the initial use of force. However, it would appear from the evidence in the case file that the applicant, who was not armed, sustained injuries which were caused by means other than those necessary to restrain him. In conclusion, the Court finds that the Government failed to furnish convincing arguments to prove that the force used against the applicant was not excessive.

91. Accordingly, there has been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant was subjected during the police procedure.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed EUR 5,847 in respect of non-pecuniary damage.

94. The Government argued that the applicant had been awarded just satisfaction by the domestic court, and that that his claim was excessive.

95. The Court considers that the amount the applicant was awarded by the domestic court with respect to non-pecuniary damage, namely EUR 5,853, related only to bodily injuries sustained by the applicant during the police ill-treatment. Having regard to the nature of the violations found in the present case and ruling on an equitable basis, the Court considers it reasonable to award the applicant the full sum claimed, that is EUR 5,847, under this head.

B. Costs and expenses

96. The applicant also claimed EUR 21,715 for costs and expenses incurred in the domestic proceedings he pursued against the officers. The applicant claimed that this sum included court fees, costs for experts, and the officers' legal representation, as well as his own legal representation, for which he had paid EUR 4,470.

97. The Government contested the claim.

98. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant was ordered to pay EUR 1,000 in domestic court fees (see paragraphs 24 and 27 above), EUR 2,441 in procedural costs and EUR 413 in costs relating to the preparation of G.K.'s appeal (see paragraph 28 above). Having regard also to the costs of his legal representation in the domestic proceedings, the Court awards the applicant EUR 8,500 under this head.

C. Default interest

99. 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 complaints concerning Article 3 of the Convention admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure of the authorities to conduct an effective investigation into the applicant's allegations that he was ill-treated by the police;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment of the applicant by the police;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,847 (five thousand eight hundred and forty-seven euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 8,500 (eight thousand five hundred), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President