



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

FOURTH SECTION

CASE OF EIKENAAR v. THE NETHERLANDS

(Application no. 52053/18)

JUDGMENT

Art 3 (substantive) • Degrading treatment • Police officer's deliberate punch to the back of applicant's late partner's head during arrest not strictly necessary and proportionate in case-circumstances

Prepared by the Registry. Does not bind the Court.

STRASBOURG

30 June 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Eikenaar v. the Netherlands,

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

Lado Chanturia, *President*,

Faris Vehabović,

Ana Maria Guerra Martins,

Anne Louise Bormann,

Sebastian Rădulețu,

András Jakab,

Corinna Wissels, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 52053/18) against the Kingdom of the Netherlands lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Dutch national, Ms Elisabeth Gertrude Eikenaar (“the applicant”), on 5 November 2018;

the decision to give notice to the Government of the Kingdom of the Netherlands (“the Government”) of the complaint concerning the alleged ill-treatment of the applicant’s late partner by a police officer and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 9 June 2026,

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

INTRODUCTION

1. The case concerns the alleged disproportionate use of force against the applicant’s late partner by a police officer who, *inter alia*, administered a punch to the back of his head in the course of his arrest. The applicant relied on Article 3 of the Convention.

THE FACTS

2. The applicant was born in 1960 and lives in Hellevoetsluis. She was represented, in turn, by Ms C.M. Bijl, Ms N. Hoogenboom and Mr R. Korver, all lawyers practising in Amsterdam.

3. The Government were initially represented by their Deputy Agent at the time, Ms K. Adhin, and subsequently by their Agent, Ms B. Koopman, both of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. POLICE INTERVENTION

5. On 23 November 2016, at approximately 4.20 p.m., the control centre of the Rotterdam police received reports from neighbours that a man – the applicant’s partner, E.C.U. – was behaving in a confused manner in the street. He was said to be acting aggressively and swearing at passers-by. Five police officers, including a dog handler, were assigned to respond to the incident. They were informed that E.C.U. had a prior record of acts of violence, making threats and drug offences.

6. When the police arrived at the scene, they found that E.C.U. had returned to his home. From the street below, the officers could hear him shouting wildly and aggressively in his home. His speech was unintelligible, and he seemed very agitated. The police were under the impression that he was destroying the furniture in his home in a confused state and that he possibly posed a danger to himself and others. They could see E.C.U. through a glass panel beside the front door. He fitted the description in the report.

7. The officers tried to get in contact with E.C.U. and asked him several times to open the door. He did not respond and reacted hysterically. As E.C.U. had been outside in the street in a similar state of mind shortly beforehand, the police officers decided to enter the property. Before entering, they had discussed and agreed on how to approach him and take him out of his home.

8. When E.C.U. again did not respond to the call to open the door, the police forced it open with a battering ram and proceeded to enter. As agreed beforehand, the dog handler entered last. On entering, the officers identified themselves as police officers. They approached E.C.U. using the “shield procedure”, a tactic employed by police officers if they consider it highly likely that they could be injured while overpowering someone. The procedure involves using a shield to pin a person against a wall or on the floor, reducing the person’s ability to resist.

9. Once the officers had entered, the officer with the shield yelled: “Police, show yourself. You are under arrest. And identify yourself”. E.C.U. showed himself, with his hands stretched out. He complied with the instruction to approach the officers and lie on the floor.

10. While on the floor, as two officers were trying to pull his arms behind his back to handcuff him, E.C.U. began to resist and yell loudly. A third officer assisted by proceeding to sit on his back and buttocks, but he did not submit. He kicked out and swung his arms wildly back and forth. The officers told him to stop resisting, show his hands and cooperate. A fourth officer, Officer X, pushed a sofa to the side to create more space. One of the officers tried to keep E.C.U.’s head and neck still. Another officer exerted pressure on E.C.U.’s back and neck, but he continued to move and shout. Officer X placed his knee on E.C.U.’s neck, but he was unable to pull E.C.U.’s right arm from under his body.

11. Officer X then decided to administer an unexpected pain stimulus by punching E.C.U. twice on the ribs, just below the right shoulder. However, E.C.U. did not react, and the police officers were unable to restrain him. He was ordered throughout to cooperate and stop resisting.

12. Officer X again tried to grab E.C.U.'s right arm. He removed his knee from E.C.U.'s neck and punched him with a closed fist on the back of the head. E.C.U. then moved his arm from under his body and aimed a hit at Officer X, which enabled him to place E.C.U. into an armlock. The dog handler saw that the other officers were still unable to restrain E.C.U. An officer called for the dog. Following an unheeded warning, the dog bit E.C.U. twice on the calf, to which E.C.U. barely reacted, still refusing to comply. After one of the officers managed to apply a handcuff to E.C.U.'s left arm, Officer X placed E.C.U.'s right arm behind his back, but they could not cuff that arm as he was still resisting. One of the police officers, who was sitting on E.C.U.'s back, punched him twice on the left side of his body, after which both his arms could be cuffed behind his back as he lay down on his stomach. After being cuffed, E.C.U. gradually calmed down.

13. After his arrest, E.C.U. was taken to a nearby police station, where it soon became clear that he was losing consciousness. Medical assistance was called for immediately, but resuscitation proved unsuccessful. E.C.U. died at 6.05 p.m. He was 58 years old at the time of his death.

II. INVESTIGATION

14. The pathologist of the Netherlands Forensic Institute (*Nederlands Forensisch Instituut*) concluded in his final report of 20 April 2017 that based on the autopsy and toxicological examination on the body of E.C.U., his death could well be explained by effects of high cocaine concentration ("a cocaine-related death"). No other cause of death had emerged. Whether E.C.U. had been suffering from excited delirium could not be determined. A causal link between the force used by the police and E.C.U.'s death was not established.

15. In the autopsy report it was further noted that superficial skin lesions (*huidletsels* or *huidbeschadigingen*) and hematomas (*bloeduitstortingen*) and a bruise (*kneuzing*) on E.C.U.'s head and face could be observed, including a 0.8 cm long superficial skin lesion and a hematoma on the back of the head. Superficial skin lesions and bruises were also observed on the arms, elbows and left wrist. These injuries were attributed to "clashing violence" (*botsend geweld*) such as punches, sustained when he was still alive. Many superficial or very superficial skin lesions and very minor hematomas were observed on E.C.U.'s legs, including wounds matching superficial dog bites and two slightly deeper bites. Four of his ribs, including three on his right side, were broken, which the report attributed to the resuscitation.

16. The official report of the investigation by the National Criminal Investigations Department (*rijksrecherche* – “the NCID”) of 19 May 2017 included proof of the fact that all police officers involved were trained and certified to use force.

17. On 5 July 2017 the Chief Public Prosecutor decided to close the investigation, finding that the police officers’ use of force had been necessary and proportionate given the fierce resistance (*hevig verzet*) put up by E.C.U. There was no indication that the physical violence inflicted on him had caused or contributed to his death. The Chief Public Prosecutor noted that the officers involved had stated that they had no indications that during the intervention and the transport to the police station E.C.U. – while possibly psychotic (*psychotisch*) and posing a danger to himself and others – was unwell, would lose consciousness or had an injury that would put him at risk. Accordingly, the Chief Public Prosecutor decided that no criminal investigation or prosecution would be instituted in respect of any of the officers.

III. DOMESTIC PROCEEDINGS

18. On 2 October 2017 the applicant lodged a complaint under Article 12 of the Code of Criminal Procedure (see paragraph 24 below) against the decision not to prosecute Officer X on charges of (aggravated) assault in relation to the violence employed by him during the arrest. She argued that the use of force by Officer X, including the punch to the head, had been unnecessary and disproportionate, and thus unlawful in the light of, *inter alia*, E.C.U.’s confused state of mind. The complaint did not address the (cause of) death of E.C.U. as such, nor the conduct of any of the other police officers involved.

19. On 6 November 2017 the Chief Public Prosecutor submitted an official report, recommending that the complaint be dismissed:

“It can be established from the file that the police officers entered as part of the relief effort. They wanted to take [E.C.U.] to the police station to have him assessed by a police doctor ... Taking everything into consideration ... the decision not to prosecute the police officers concerned was taken on proper grounds. The force used was necessary and met the requirements of proportionality and subsidiarity. Because of [E.C.U.’s] fierce resistance at his place of residence, the intended objective could not be achieved by any other/less intrusive means. In addition, a pathological examination has established that there is no causal link between the physical force applied to [E.C.U.’s] body and [his] death.”

20. On 5 February 2018 the Advocate-General with the Court of Appeal of The Hague recommended that the complaint be dismissed:

“I am of the view that in the context of the present complaint the actions of all [officers involved] will have to be – and can be – assessed ... It is clear that [E.C.U.] resisted very violently, making it impossible even for four police officers to control and handcuff him without force. The various police officers initially tried to take [E.C.U.] without force. For this reason, they decided to approach him with the ‘shield procedure’

and to keep the police dog in the background. [E.C.U.] was continuously warned that he had to cooperate and not resist, otherwise force would be used. The various statements show that the police officers were in constant communication with each other and that attempts were always made to coordinate the various (forceful) actions. In view of all the circumstances of the case, the force used by the police officers, including [Officer X], was necessary to achieve the objective and met the requirements of proportionality and subsidiarity. In that context, it is significant that no further force was used after [E.C.U.] had been brought under control.”

21. On 18 April 2018 the Court of Appeal, sitting in chambers, held a hearing at which the applicant, assisted by counsel, elaborated on the complaint. She submitted again that Officer X should be prosecuted for (aggravated) assault because the force used by him during E.C.U.’s arrest had been unnecessary and disproportionate, and thus unlawful. Further, she questioned whether the police had genuinely entered the house to render assistance to E.C.U. (compare section 3 of the Police Act 2012, quoted in paragraph 25 below), pointing out that he had been subjected to violence while obviously in a confused state of mind and under the influence of cocaine, whereas he had clearly been in need of medical and/or psychological assistance. The applicant also submitted that it was a systemic problem that the police in the Netherlands appeared to be ill-equipped to deal with individuals who displayed a confused state of mind, whereas those individuals were particularly vulnerable and in need of additional protection from State violence.

22. On 9 May 2018 the Court of Appeal dismissed the applicant’s complaint against the decision not to prosecute, based on the following reasoning:

“It transpires from the case file that force was used by several police officers towards [E.C.U.], consisting of, among other things, giving punches (with the fist) to the body and to the back of the head and having a police dog bite [his] leg. The documents show that [E.C.U.] resisted very violently, making it impossible for even four police officers to control him without force. [E.C.U.] was throughout warned that he had to cooperate and not resist, or force would be used. ... [T]he course of events [described in the domestic case file and the Advocate-General’s report of 5 February 2018 – see paragraph 20 above] is not disputed ...

[T]he file does not show any relationship between E.C.U.’s subsequent death and the force used in his home. This has not been alleged by [the applicant] either and the complaint is only aimed at the hitting on E.C.U.’s head by [Officer X].

The issue, therefore, is whether the hitting on the head constitutes assault and whether [Officer X] should be prosecuted for it ...

[T]he officers in this case were faced with an almost impossible situation for which they were inadequately prepared. The plan was to take a confused and aggressive man ([E.C.U.]) about whose behaviour reports had been received by the police, from his home to have him assessed at the police station by a police doctor.

[I]t is unclear on what legal basis the officers – who by their own account had come to render assistance – proceeded to ‘arrest’ using force. This question arises all the more now that there are legal regulations and rules for the detention of confused people.

However, the fact that [E.C.U.’s] home may not have been entered in accordance with ... section 3 of the Police Act and [the fact that the officers] proceeded to arrest [him] by means of force is, in the court’s opinion, not in itself a reason to initiate a criminal prosecution for assault.

The case file shows that the officers entered [E.C.U.’s] house with the intention of rendering assistance, which, mainly on account of the violent and almost uncontrollable force (*gewelddadige en bijkans niet te corrigerende geweld*) by this man, resulted in a chaotic situation in which force was applied to bring him under control. The complaint focuses (mainly) on the lack of proportionality of the punch to [E.C.U.’s] head.

In the court’s opinion there are no indications that [Officer X] and his colleagues applied one-sided and excessive force (*eenzijdig en excessief geweld*). The court does note that, in view of the requirements of subsidiarity and proportionality, the police should exercise caution when applying force and that, given the associated risks, they ought in particular to avoid force against the head if at all possible. The court is of the opinion that in the instant case [Officer X] ought to have refrained from administering the punch to the head (*de klap tegen het hoofd had achterwege moeten blijven*), but that – having regard to [E.C.U.’s] behaviour, the circumstances of the case, the volatile situation, the intentions of the police officers to provide assistance and the lack of specialist training in cases such as this one – there has not been a criminal offence requiring prosecution.”

23. No appeal lay against the Court of Appeal’s decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

24. At the relevant time, the Code of Criminal Procedure (*Wetboek van Strafvordering*) included the following:

Article 12

“1. If the perpetrator of a punishable act is not prosecuted [or] if the prosecution is not pursued to a conclusion ..., then anyone with a direct interest [*rechtstreeks belanghebbende*] may lodge a written complaint with the [relevant] Court of Appeal within whose area of jurisdiction the decision has been taken not to prosecute or not to pursue the prosecution to a conclusion. ...”

Article 12i

“1. If the complaint falls within the Court of Appeal’s jurisdiction, if the [action brought by the complainant] is admissible, and if the Court of Appeal finds that a prosecution ought to have been brought or pursued to a conclusion, the Court of Appeal shall order the prosecution to be brought or pursued in respect of the fact to which the complaint relates. ...

2. The Court of Appeal may also refuse to give such an order for reasons relating to the general interest.

3. The order may also include an instruction that the public prosecutor shall make [a request to the investigating judge [*rechter-commissaris*] for the implementation of

investigative measures] or that the person whose prosecution is being sought be summoned for trial.

4. In all other cases the Court of Appeal shall ... dismiss the complaint.”

25. At the time of the police intervention in the present case (see paragraph 5 above), the Police Act 2012 (*Politiewet 2012*) included the following:

Section 3

“The task of the police, in subordination to the competent authority and in accordance with the applicable rules of law, is to ensure the effective enforcement of the rule of law [*daadwerkelijke handhaving van de rechtsorde*] and to provide assistance to those who need it [*verlenen van hulp aan hen die deze behoeven*].”

Section 7

“1. A police officer ... shall be authorised to use force or means of restricting freedom in the lawful exercise of his or her duties when it is justified by the purpose thereby intended to be served, taking into account the dangers involved in such use of force, and when that purpose cannot otherwise be served. The use of force shall be preceded, if possible, by a warning.

...

5. The exercise of the powers referred to in [subsection 1] shall be reasonable and moderate and in proportion to the objective [*in verhouding tot het beoogde doel redelijk en gematigd*].”

II. DOMESTIC CASE-LAW

26. On 4 July 2023 (ECLI:NL:RBMNE:2023:3245) the Central Netherlands Regional Court acquitted a police officer who had punched a suspect in the face in an attempt to handcuff him. The court held that, in the given circumstances, the punch was justified given the suspect’s resistance and the intended purpose of being able to arrest him. In particular, the court noted that the officer had been in an uncontrollable, escalating situation, which was potentially dangerous to himself and his colleague, when they were faced with an uncooperative suspect who was not (yet) under control.

27. On 23 August 2024 (ECLI:NL:RBMNE:2024:5045) the Central Netherlands Regional Court gave judgment in a case concerning a police officer who had punched a suspect in the face, breaking his nose, in an attempt to handcuff him. The court held that it had been possible to issue a warning, that a punch to the head was unlikely to contribute to making an arrest, and that the suspect had not been resisting. The court convicted the officer of assault and imposed a sixty-hour community service order (*taakstraf*), half of which was conditional with a two-year probationary period.

III. DOMESTIC PRACTICE

28. On 2 June 2013 the Netherlands Ombudsperson issued a report on use of force by the police (*Verantwoord Politiegeweld*, report no. 2013/055) which includes the following general principles (*algemene uitgangspunten*) (at pp. 56-60, emphasis and some footnotes omitted):

“Avoid vulnerable body parts: When using force, injuries to vulnerable body parts, head, face and crotch must be avoided as much as possible [a footnote adds that ‘hitting the head (as a vulnerable part of the body) can be regarded as an appropriate use of force only in very exceptional circumstances’]

...

Hitting vulnerable body parts (face, head or crotch)

Main rule: Hitting vulnerable body parts[,] head, face or crotch can lead to serious injury and is in principle [*in beginsel*] not permissible.

Head versus face: Hitting the head is less intrusive than hitting the face. A punch [*vuistslag*] to the face is in principle not permissible.

Flat hand versus fist: Striking the face or the head with a flat hand is less intrusive than punching the face or the head.”

THE LAW

I. SCOPE OF THE CASE

29. The case was communicated to the Government on 30 August 2019 under the substantive limb of Article 3 of the Convention. The Court notes that, after communication, the applicant introduced a new complaint under the procedural limb of Article 3 of the Convention, which was not raised in the application form, alleging that the investigation into Officer X’s conduct had been ineffective. For instance, the applicant complained that the NCID was not independent and that its investigation had been inadequate because certain witnesses had not been heard.

30. As it has decided in previous cases, the Court need not rule on complaints raised after communication of an application to the Government (see, for example, *Vigovskyy v. Ukraine*, no. 42318/02, § 14, 20 December 2005). Moreover, in the Court’s view, this new complaint does not amount to a mere elaboration of the applicant’s original complaint on the basis of subsequent factual developments, but rather constitutes a distinct grievance raised after the communication of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 121-22, 20 March 2018).

31. In view of the above, the Court considers that the complaint under the procedural limb of Article 3 of the Convention is not part of the case referred to the Court.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that by using force during E.C.U.’s arrest, Officer X had subjected him to treatment prohibited 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. *Locus standi*

33. The Court observes that the Government have not objected to the applicant’s standing to lodge the application. The Court considers, however, that it must assess of its own motion the issue of compatibility *ratione personae* with the provisions of the Convention (see, for example, *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009). In that connection, the Court reiterates that owing to the fact that Article 3 of the Convention belongs to the category of strictly personal and non-transferable rights, applicants who complain about treatment concerning exclusively their late relative, whereas that treatment was not closely linked to that person’s death, must show a strong moral interest, besides the mere pecuniary interest in the outcome of the domestic proceedings, or other compelling reasons, such as an important general interest which requires their case to be examined (see, for example, *Boacă and Others v. Romania*, no. 40355/11, § 46, 12 January 2016, with further references).

34. Such an interest may exist, in particular, where the alleged perpetrator is, as in the present case, a law-enforcement official. In this connection the Court reiterates that allegations of police brutality involve issues of general interest (see *Boacă and Others*, cited above, § 49, and *Kaburov v. Bulgaria* (dec.), no. 9035/06, § 57, 19 June 2012). Otherwise, possible violations of one of the most fundamental provisions of the Convention would stay outside the Court’s jurisdiction.

35. In the present case, the Court notes at the outset that a causal link between the alleged ill-treatment of E.C.U. and his death has not been established (see paragraph 14 above). As E.C.U. died shortly after his arrival at the police station following his arrest, he was evidently precluded from initiating domestic proceedings and lodging an application with the Court. After E.C.U.’s death, the applicant, who had a relationship with E.C.U. for three years, initiated domestic proceedings against the decision not to prosecute Officer X. In so doing, she sought to challenge the lack of accountability for the alleged ill-treatment. Her actions thus disclose an interest in ensuring that the circumstances surrounding the alleged ill-treatment are clarified and that those responsible, if any, are held

accountable (see also, *mutatis mutandis*, *Stepanian v. Romania*, no. 60103/11, §§ 40-41, 14 June 2016; *Karpylenko v. Ukraine*, no. 15509/12, § 109, 11 February 2016; and *Boacă and Others*, cited above, § 49, in respect of the first six applicants; compare and contrast *ibid.*, § 51, in respect of the seventh applicant).

36. The Court considers that, in these circumstances, the applicant must be regarded as having shown to have the requisite strong moral interest, within the meaning of its case-law, which goes beyond a mere pecuniary interest (contrast, for example, *Kaburov*, cited above, § 57, where the applicant claimed only pecuniary compensation in tort proceedings). In particular, the fact that E.C.U. was evidently precluded from initiating domestic proceedings and lodging an application before the Court, the applicant's active involvement in the domestic proceedings and the nature of her claims distinguish the present case from those in which the Court has declined to recognise victim status in the absence of such a moral interest.

37. In the light of all the foregoing considerations and in the particular circumstances of this case, the Court accordingly accepts the applicant's *locus standi* in respect of her complaint under the substantive limb of Article 3 of the Convention. Accordingly, she may claim to be a "victim" within the meaning of Article 34 of the Convention.

2. *Applicability of the substantive limb of Article 3 of the Convention*

38. The Government contended that the minor injuries sustained by E.C.U. (see paragraph 15 above) did not reach the minimum level of severity to fall within the scope of Article 3.

39. The Court considers that the Government's objection raises an issue which is closely related to the merits of the complaint (see also *A.P. v. Slovakia*, no. 10465/17, §§ 42-43, 28 January 2020, and *Perkov v. Croatia*, no. 33754/16, §§ 30-32, 20 September 2022). Accordingly, it finds that this objection is to be joined to the merits of the complaint.

3. *Conclusion*

40. The Court notes that the applicant's complaint under the substantive limb of Article 3 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) **The applicant**

41. The applicant submitted that E.C.U. had been subjected to inhuman or degrading treatment in breach of Article 3 of the Convention, because the

use of force by Officer X had not been made strictly necessary by E.C.U.'s own conduct. She claimed it was well known that violence – in particular a blunt force impact – to the head carried serious risks. In view of those risks, hitting or kicking the head was not permitted at all, except in emergency situations, which clearly had not been the case here.

42. Furthermore, the applicant asserted that the punch to the back of the head by Officer X had been disproportionate, also when viewed in conjunction with the other pain stimuli that had been applied. The applicant pointed out that that E.C.U.'s injuries included a 0.8 cm skin lesion on the back of his head, as well as large superficial bruises on the right side of his head and face and on the right temple (see paragraph 15 above).

43. Lastly, she submitted that E.C.U. had been vulnerable, confused and in need of medical attention. In this connection the applicant challenged the Government's position (see paragraph 46 below) that the police had entered E.C.U.'s house to render assistance. According to the applicant, the sole reason had been to make an arrest. The applicant also pointed out that the police officers had not been specifically trained to deal with such a situation.

(b) The Government

44. The Government argued that E.C.U. had not been subjected to treatment in breach of Article 3 of the Convention. Referring to the results of the investigation (see paragraphs 14-15 above), which showed no severe injury and no causal link between the force used and E.C.U.'s death, the Government submitted there was no evidence of ill-treatment attaining the minimum level of severity within the meaning of Article 3 of the Convention.

45. In the alternative, the Government argued that, in the circumstances of the case, the recourse to physical force had been made strictly necessary by E.C.U.'s own conduct and had not been excessive.

46. In that connection, the Government submitted that the police, after discussing and coordinating their approach, had entered E.C.U.'s home with the intention of rendering assistance and having him assessed by a doctor at the police station, thereby preventing any possibility that he might go back outdoors in the state he was in. The intention had been to use no force or, in any event, as little as possible.

47. The use of force through pain stimuli had been increased only when, in view of E.C.U.'s very aggressive and violent behaviour, the police officers had been unable to subdue and handcuff him while he was kicking out and flailing his arms wildly in the restricted space where the incident had taken place. His conduct had created a situation that was dangerous, highly chaotic and almost impossible to handle, as the Court of Appeal had also recognized (see paragraph 22 above). It was in this situation that Officer X had resorted to administering a punch to the back of the head of E.C.U. Moreover, no more force had been applied once E.C.U. had been brought under control.

48. Lastly, the Government contended that the facts of the present case clearly differed from those underlying the Court’s judgment in *Bouyid v. Belgium* ([GC], no. 23380/09, ECHR 2015), where the applicants, one of them a minor, had been ill-treated while under the total control of a police officer. The actions of the police officers in the present case had in fact been aimed at subduing an adult who had, moreover, resisted violently and initially could not be brought under control, even by four trained police officers.

2. *The Court’s assessment*

(a) *General principles*

49. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim’s conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, §§ 100-01, and *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, § 81, 30 January 2020). In respect of recourse to physical force during an arrest, Article 3 does not prohibit the use of force for effecting a lawful arrest (see *Annenkov and Others v. Russia*, no. 31475/10, § 79, 25 July 2017). However, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, and *Ilievi and Ganchevi v. Bulgaria*, nos. 69154/11 and 69163/11, § 49, 8 June 2021). The Government therefore needs to prove that the use of police force was “a strictly necessary and proportionate use of force for a legitimate law-enforcement purpose” (see *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, § 329, 11 December 2025). In this regard, it is of importance, for instance, whether there is reason to believe that the person concerned would resist arrest or try to abscond or cause injury or damage or suppress evidence (see *Mafalani v. Croatia*, no. 32325/13, § 120, 9 July 2015, and the cases cited therein).

50. As the Court also pointed out in *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, § 155, ECHR 2012), although it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, it has to apply “particularly thorough scrutiny” where allegations are made under Article 3 of the Convention, even if certain domestic proceedings and investigations have already taken place. In other words, in such a context the Court is prepared to conduct a thorough examination of the findings of the national courts. In examining them it may take account of the quality of

the domestic proceedings and any possible flaws in the decision-making process (see *Bouyid*, cited above, § 85, and *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, § 362, 21 January 2021).

(b) Application of the principles to the present case

51. The Court notes at the outset that the complaint lodged by the applicant before the Court of Appeal concerned the decision not to prosecute Officer X (see paragraph 18 above). She did not initiate such proceedings in relation to any of the other police officers involved in the intervention. The scope of the case before the Court is thus limited to the force used by Officer X. This does not, however, prevent the Court from examining the complaint against the factual background of the police intervention taken as a whole (see also, among many examples, *Necdet Bulut v. Turkey*, no. 77092/01, §§ 24-26, 20 November 2007, and *Samüt Karabulut v. Turkey*, no. 16999/04, §§ 40-43, 27 January 2009).

52. The Court further notes that it is not in dispute between the parties that E.C.U.'s injuries, as identified in the course of the investigation (see paragraph 15 above), were caused by the police during his arrest. However, the parties disagree on whether the force used by Officer X on that occasion, in particular the punch to the back of E.C.U.'s head, was strictly necessary in the circumstances. As already noted (see paragraph 49 above), the burden of proving that this was the case rests on the Government.

53. At this juncture the Court finds it appropriate to reiterate the specificity of the face and head in the context of Article 3 of the Convention (see also *Samüt Karabulut*, cited above, §§ 41 and 43; *A.P. v. Slovakia*, cited above, §§ 61-62; and *Şakir Kaçmaz v. Turkey*, no. 8077/08, § 90, 10 November 2015).

54. The Court reiterates that E.C.U. was pushed to the ground by four police officers employing various degrees of restraint and force. He was clearly outnumbered by the officers, who were equipped with a shield and a police dog and thus placed in a considerably superior position in terms of controlling the situation (see also *Panayotopoulos and Others v. Greece*, no. 44758/20, § 129, 21 January 2025). Even accepting that E.C.U. did resist and, as a result, the police officers had had to press him to the ground, and use force to handcuff him, thereby causing several injuries (see paragraph 15 above), that would not explain one further method of restraint to make him more cooperative – namely, Officer X's deliberate punch to the back of his head (see, *mutatis mutandis*, *A.P. v. Slovakia*, § 62, and *Panayotopoulos and Others*, § 129, both cited above; compare and contrast *Perkov*, cited above, §§ 44-48; see, *a contrario*, *Adam v. Slovakia*, no. 68066/12, 26 July 2016, where the Court found no violation because it had not been shown that the police had *deliberately* hit the applicant in the face). Indeed the Court of Appeal found, after having examined all the evidence, that the punch to the

head should not have been administered (see paragraph 22 above). This must be taken to mean that it was not strictly necessary.

55. In the Court's view, after the applicant was knocked down and pressed to the ground by several officers, even a single punch to the head would have been able to arouse in him feelings of arbitrary treatment, injustice and powerlessness.

56. The Court also observes that while he was reportedly aggressive and confused, E.C.U. was not suspected of being, or found to be, in possession of anything that could be used as a weapon (see also *A.P. v. Slovakia*, cited above, § 60, and *Dembele v. Switzerland*, no. 74010/11, § 47, 24 September 2013). Moreover, none of the officers who took part in the intervention had any serious physical injuries which would indicate violent actions, such as kicking or biting, on E.C.U.'s part (see also *A.P. v. Slovakia*, § 60, and *Panayotopoulos and Others*, § 129, both cited above).

57. In light of this, the Court considers that it cannot be said that the officers, including Officer X, could have held a genuine belief that their lives or safety were endangered (see also *Mîtu v. the Republic of Moldova*, no. 23524/14, § 34, 30 June 2020, and *Panayotopoulos and Others*, cited above, §§ 128-29 and 136). The Court emphasises in this regard that Officer X punched E.C.U. on the head *before* E.C.U. aimed a hit at the police (see paragraph 12 above).

58. Further, the Court notes that the police officers, including Officer X, had not been appropriately trained for such situations (see the Court of Appeal's reasoning quoted in paragraph 22 above; see also *Samüt Karabulut*, cited above, § 43). Moreover, despite the lack of training, the police officers did not request assistance from medical professionals or specialised police officers who would have been better equipped to deal with a person in such state of mind. Indeed, as noted by Court of Appeal, the police had been faced with an almost impossible situation for which they were inadequately prepared. The fact that E.C.U. was said to have been acting in a very confused and agitated manner should have raised concerns about his mental well-being and the possibility of an overdose or mental illness. In these circumstances, the police should have been able to foresee that they might be faced with some resistance from him and they should have planned and executed the intervention accordingly (see, *mutatis mutandis*, *Fyodorov and Fyodorova v. Ukraine*, no. 39229/03, § 65, 7 July 2011; *Pranjić-M-Lukić v. Bosnia and Herzegovina*, no. 4938/16, § 79, 2 June 2020; *Castellani v. France*, no. 43207/16, §§ 55-67, 30 April 2020; and *Annenkov*, cited above, § 87).

59. Lastly, the Court considers that the reasoning of the Court of Appeal about the necessity of the use of force in this particular case was not entirely clear, which may be taken into account when examining a State's compliance with the substantive limb of Article 3 (see, for instance, *P.M. and F.F. v. France*, nos. 60324/15 and 60335/15, §§ 79 and 87, 18 February 2021, and *Mafalani*, cited above, § 126). First, the Court of Appeal held that the punch

to the back of E.C.U.'s head should not have been administered (see paragraph 22 above). It nevertheless considered that the use of force by Officer X had not amounted to a criminal offence requiring prosecution because of the circumstances of the case, E.C.U.'s own behaviour, the volatile situation and the lack of specialised trained police officers for these types of cases. While it is not for the Court to speculate as to whether the conditions for prosecution were fulfilled, it observes that the reasoning does not fully explain why a punch to the head that should not have been administered did not constitute an assault. This lack of clarity is capable of affecting the overall assessment of whether the use of force was shown to have been strictly necessary in the circumstances.

60. In view of the above, and in particular the nature and location of the force used, namely a blow to the head (see the cases cited in paragraph 53 above; see also, by way of illustration, the relevant general principles in the Netherlands Ombudsperson's report of 2 June 2013, cited in paragraph 28 above) as well as the requirement of professionalism and a high level of competence on the part of law-enforcement officials (see *Bouyid*, cited above, §§ 108 and 110), the Court considers that the Government have failed to demonstrate convincingly that it was strictly necessary and proportionate, in the circumstances of the case, for Officer X to resort to such force in order to break E.C.U.'s resistance and make him more cooperative.

61. Accordingly, the Court rejects the Government's objection of incompatibility *ratione materiae* with the provisions of the Convention (see paragraph 38 above) and it concludes that the applicant's late partner was subjected to degrading treatment contrary to Article 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage resulting from the alleged violation of the substantive limb of Article 3 of the Convention and EUR 5,000 under the same head for the alleged violation of the procedural limb of Article 3 of the Convention.

64. The Government contested the amounts claimed in respect of non-pecuniary damage, stating that they were not sufficiently substantiated.

65. As regards the amount claimed with regard to the alleged violation of the procedural limb of Article 3 of the Convention, the Court notes that that

complaint is outside the scope of the present case (see paragraphs 29-31 above). Therefore, the Court rejects the claim in respect of non-pecuniary damage on that account. However, it awards the applicant EUR 5,000 in respect of non-pecuniary damage for the violation of the substantive limb of Article 3 of the Convention, plus any tax that may be chargeable.

B. Costs and expenses

66. The applicant also claimed EUR 8,466.58 for the costs and expenses incurred before the Court.

67. The Government contended that they were not satisfied that the claims for legal costs had been actually and necessarily incurred.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present case, regard being had to the documents in its possession and the above criteria, as well as the fact the some of the claimed legal costs pertained to a complaint which is outside the scope of the present case (see paragraphs 29-31 above), the Court considers it reasonable to award EUR 7,000, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection of incompatibility *ratione materiae* with the provisions of the Convention of the complaint under the substantive limb of Article 3 of the Convention;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of the substantive limb of Article 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 7,000 (seven thousand euros), 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; and

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

Done in English, and notified in writing on 30 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Lado Chanturia
President