CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF MATKO v. SLOVENIA

(Application no. 43393/98)

JUDGMENT

STRASBOURG

2 November 2006

FINAL

02/02/2007

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 Matko v. Slovenia,

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

Mr J. HEDIGAN, *President*,
Mr B.M. ZUPANČIČ,
Mr C. BÎRSAN,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. BERRO-LEFEVRE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 12 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 43393/98) against the Republic of Slovenia lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Aleksander Matko ("the applicant"), on 22 July 1998.

2. The Slovenian Government ("the Government") were represented by their Agent, Mr Lucijan Bembič, State Attorney-General.

3. The applicant alleged that he had been ill-treated by the police and that the investigation into his allegations had not been effective. He relied on Article 3 of the Convention. He further complained that his arrest had been unlawful and thus in violation of Article 5 of the Convention. He also alleged that the criminal proceedings had been unfair and excessively long (Article 6 of the Convention).

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 8 July 2004 the Court joined to the merits the question concerning the exhaustion of domestic remedies and the issue relating to the six-month rule and declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber decided, after consulting the parties, that

no hearing on the merits was required (Rule 59 § 3 *in fine*). The parties replied in writing to each other's observations.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1961 and lives in Slovenj Gradec.

A. The incident

10. On 4 and 5 April 1995 a Special Unit (*Specialna enota*), which was under the direct control of the Ministry of Internal Affairs ("the MIA") in cooperation with officers from the Slovenj Gradec Internal Affairs Administration (*Uprava za notranje zadeve* – hereinafter referred as the "Slovenj Gradec Police") undertook a large-scale operation against the activities of a criminal organisation presumed to be operating on the territory of the town of Slovenj Gradec.

11. On 4 April 1995 the officers twice entered a coffee bar in Slovenj Gradec, called "*Pik Bar*", searching for members of the above-mentioned criminal organisation. In parallel to the investigation of the *Pik Bar*, the police carried out an extensive operation in the town and its surroundings.

12. On 5 April 1995 at about 8.30 p.m. the applicant, driving a car, was arrested in Slovenj Gradec by officers of the Special Unit and the Slovenj Gradec Police. He was brought to the Slovenj Gradec Police Station for having allegedly failed to comply with the police orders. He was questioned by the police and released on 6 April 1995 at approximately half past midnight.

13. There are two conflicting versions of what occurred during the police procedure and the transport to the police station.

1. The applicant's version of events

14. According to his submissions before the Court and the statements he gave in the relevant domestic proceedings, the applicant was driving through the centre of Slovenj Gradec on the evening of 5 April 1995 when at least two cars overtook him and forced him to stop. Approximately fifteen armed officers, wearing black jackets, arrived at the scene, some of whom approached the applicant. They were shouting and the applicant, still

sitting in the car but attempting to step out, put his hands up. At that moment, the officers dragged him out of the car. They pushed him to the ground, tied him up, took off his shoes, dragged him by his legs approximately 25-30 meters along the road into a dark area where they beat and kicked him for some 15 minutes. After someone had said "he's had enough, he's had enough", the applicant was placed in an off-road vehicle and taken to the police station. On the way there, a journey which lasted approximately 30 minutes, two officers, sitting in the front of the car, threatened to kill him and one of them electro-prodded him several times with a stun gun. At the police station, he was put in the room for provisional detention (*prostor za pridržanje*) where one of the officers untied him at his request. The applicant was questioned and told that he had failed to comply with the police order to stop his vehicle. He was then released.

In the meantime, the police also searched the applicant's car.

15. About thirty people were arrested and injured during the two-day operation.

2. The Government's version of events

16. According to the version of events given by the Government, the police noticed a car moving at high speed. Since the conduct of the driver looked suspicious, the police decided to stop the car, to identify the driver and to perform a preventative search. For this reason, they drove after the car. The driver accelerated, prompting the police to force him to stop.

17. When the driver, who was later identified as the applicant, stopped the car, an unspecified number of the Special Unit's officers confronted him and informed him that this was a police procedure. The applicant jumped towards one of the officers and attempted to hit him. The officer managed to block his blow and then with the other officers forced the applicant to lean against his car in order to search him. The applicant struggled free and escaped.

18. When the officers caught him, the applicant again tried to resist and they responded by using truncheons and gripped his elbow to handcuff him, knocking him down in the process. Since the applicant continued to resist, the officers tied his wrists with a plastic cord. They subsequently took him to the police station on suspicion of committing the criminal offence of "obstructing an official in the course of his duties" (*preprečitev uradnega dejanja uradni osebi*). The applicant was released after questioning.

19. The officers were authorised to use force on the basis of section 54 of the Internal Affairs Act. During the operation, they wore vests with the visible sign "Police" ("*Policija*"). In their later submissions, they stated that only two officers had used force against the applicant.

20. During the police procedure, the applicant did not request medical aid and the police only afterwards learned that he had sustained injuries. In

addition, he did not complain about the conduct of the officers during the procedure.

3. Documents concerning the relevant incident

(a) Documents from the criminal proceedings against the applicant

21. The judgment of 12 February 2001 issued in the proceedings instituted against the applicant (see paragraph 48), established that three officers of the Slovenj Gradec Police, D.P., J.K. and M.F., who were in the car which stopped the applicant, received information about the location of a "white Golf", believed to be being driven by the applicant, and an order to stop it.

22. Officer J.K. testified in the criminal investigation instituted against the applicant, that they had received information that the "white Golf" had left "the place", which meant that it had left *Pik Bar*. He was not able to comment on the speed of the applicant's car. In addition, he stated that by the time a minute had gone by after the applicant was stopped, there were already four or five vehicles of the Slovenj Gradec Police and the Special Unit at the scene and that three or four officers arrived in each vehicle.

23. Officer M.F. stated in the same criminal investigation:

> "We had information about individuals who were suspected members of that [criminal] organisation, and one of them was Aleksander Matko, whom I did not know since I am from Maribor, but I knew him from photographs. (...) We were on one of the streets of Slovenj Gradec when we received information that the car of Aleksander Matko had been seen and that our colleagues had tried to stop him, but he would not stop despite warnings."

24. Officer D.P. explained in his testimony in the above mentioned criminal investigation:

> "At the critical time, we were conducting, in the territory of Slovenj Gradec Police, an operation to investigate organised crime. (...) In front of the Hotel Pohorje, a group of people was noticed which included M.A. and Aleksander Matko. One of the police patrols noticed that M.A. left with the motorcycle and they also saw when Aleksander Matko drove away. In fact, everything happened very quickly (...). We placed vehicles at different locations (...). Our official vehicle, which I was driving, received a message that a white Golf was being driven by a person believed to be Aleksander Matko (...). We decided to stop him in order to search the car since there was a suspicion that he was armed."

25. Another officer from the Slovenj Gradec Police, I.G., who had arrived at the scene with the officers of the Special Unit and was also questioned in the criminal investigation, stated that there were 20 officers of the Special Unit and Slovenj Gradec Police at the scene, and that five of them had had direct contact with the applicant.

(b) Medical evidence

26. On 6 April 1995, soon after his release, the applicant was admitted to the Slovenj Gradec General Hospital where he stayed until 7 p.m. The medical report, written by a doctor in that hospital, stated that the applicant had bruises on his head, but did not include any details of the injuries. The applicant was advised to rest for a few days.

27. Next day, 7 April 1995, the applicant sought medical aid in the Maribor General Hospital. There, he also explained to a doctor that on 5 April 1995 he had been beaten by unknown armed persons. The medical report of 7 April 1995 indicates several lesions, including:

- bruises on the right eye and a small amount of suffusion in the surrounding area;
- a haematoma on the left side of the forehead
- a painful nose;
- a 6 cm by 4 cm haematoma on the left shoulder;
- two 4-5 cm linear skin abrasions on the left side of the thorax;
- a child's-hand-sized moderate oedema behind the right ear;
- an extensive haematoma on the left thigh.

The doctors had also suspected a fracture of the right temporal bone. The report of an x-ray examination on 19 April 1995 indicated that there was a hairline fracture (*fissur*a).

B. The applicant's criminal complaint and the subsequent investigation

28. On 7 April 1995 the applicant went to the Slovenj Gradec Police and made an oral complaint against the officers of the Special Unit concerning the events of 5 April 1995. A written statement was prepared by the officer in charge and signed by the applicant.

In his statement, the applicant alleged that about eight to ten officers had dragged him to the metallic fence of the construction site behind the Slovenj Gradec Health Centre where they had beaten him, shouted at him and threatened to kill him. He further stated that while being driven to the police station he had been beaten again, and given electric shocks with the special truncheons. He had not known where the police were driving since his head was pointing downwards the whole way. He also described the injuries he had sustained during the police procedure.

29. On 15 May 1995 the applicant lodged, through his lawyer, a written criminal complaint (*kazenska ovadba*) with the Slovenj Gradec Police against unidentified police officers for causing minor bodily harm (*lahka telesna poškodba*) and an unlawful deprivation of liberty (*protipraven*

odvzem prostosti). The complaint mentions the names of two officers, D.P. and J.K., who were present at the scene but not involved in the alleged ill-treatment. The applicant proposed that the names of the officers who had allegedly ill-treated him be obtained from those officers and that criminal proceedings be introduced.

30. On 15 June 1995 the Slovenj Gradec District Public Prosecutor's Office (*Okrožno državno tožilstvo*) asked the applicant's lawyer to add his client's deposition to the file, which he did on 20 June 1995. On 21 October 1996 and 6 January 1997 the applicant's lawyer sought information from the Public Prosecutor's Office about the state of progress in the proceedings.

31. In the meantime, on 14 July 1995, the Slovenj Gradec District Public Prosecutor (the "Public Prosecutor") requested the Slovenj Gradec Police to identify the officers who had participated in the procedure against the applicant and to conduct an interview with them. Subsequently, two reports concerning the relevant police operation were submitted to the Public Prosecutor: one by the MIA on 15 November 1995 and one by the Slovenj Gradec Police on 5 February 1996. They are each approximately one page and a half long and their content corresponds to the facts as submitted by the Government.

32. It transpires from the MIA's report that, on 20 April 1995, the MIA had appointed a "working group" (*delovna skupina*) consisting of officers from the Slovenj Gradec Police and the MIA to assess the lawfulness of the procedures carried out by the Special Unit and the Slovenj Gradec Police. The Court has not received any documents produced or obtained by this working group, except the above-mentioned MIA report. The latter, which under the "subject" (*zadeva*) refers solely to the criminal offence allegedly committed by the applicant, reads as follows:

> "Further to the analysis of procedures and activities which had taken place on 4 and 5 April 1995, the working group established that all the measures and procedures were lawful and in accordance with legal powers and professional rules.
>
> (...)
>
> The procedure against Aleksander Matko was carried out by criminal investigators D.P., J.K., M.F, T.G, I.G. and officers of the MIA's Special Unit, who were headed by M.J (...).
>
> On 5 April 1995, at 20.30, Aleksander Matko actively resisted the lawful procedure against him with the intention of preventing criminal police investigators from performing their official duties. Since their official duty could not be carried out otherwise, physical force and handcuffs were used against Matko in accordance with police powers.
>
> From the facts described above and from the contents of the criminal complaint [lodged against the applicant] it is evident that there exists a reasonable suspicion [*utemeljeni sum*] that Matko Aleksander on 5 April at 20.30 committed the criminal

offence of obstructing an official in the course of his duties within the meaning of section 302/II of the Criminal Code of the Republic of Slovenia.

(...)

The criminal complaint of the Slovenj Gradec Police states that Aleksander Matko sustained injuries as a result of the use of force. (...) On the basis of the facts, stated in the Slovenj Gradec Police's criminal complaint, there are no grounds for suspicion that the officers of the special working group of the Criminal Police Directorate [the officers of the Slovenj Gradec Police and the Special Unit] committed the alleged criminal offences (...)"

33. The Slovenj Gradec Police report finds, *inter alia*, that D.P. and J.K. stopped the applicant's car and that the Special Unit's officers were under the command of M.J. It explains that the Head of the Special Unit was authorised to give statements concerning the procedure of the Special Unit.

34. On 17 January 1997 the Public Prosecutor issued a decision dismissing the applicant's criminal complaint. It was served on the applicant's lawyer on 22 January 1997.

35. In the decision the Public Prosecutor identified D.P., J.K. and M. J. as the officers accused in the applicant's complaint. After giving a summary of the applicant's allegations, the Public Prosecutor concluded:

"In the course of the proceedings, the additional information concerning the above-mentioned criminal complaint by the Slovenj Gradec Police and the MIA – Office of the Minister – were obtained. This enabled it to be established that the above-mentioned officers, all employees of the MIA, had participated in the procedure against the applicant.

It would appear from the already mentioned report of the MIA – Office of the Minister – that the employees of the MIA acted in accordance with their powers.

In addition, on 17 January 1997, a request for an investigation against Matko Aleksander was lodged with the investigating judge in the Slovenj Gradec District Court, for, among other matters, obstructing an official in the course of his duties (...).

In view of the above considerations, the accused D.P., J.K. and M.J. acted in the framework of their duties and powers, which they have as employees of the MIA, and therefore there is no reasonable suspicion (*utemeljeni sum*) that they committed the alleged criminal offences (...).

For those reasons, the criminal complaint must be dismissed."

36. The decision drew the applicant's attention to his right to initiate a criminal prosecution as a subsidiary prosecutor (see paragraphs 55 and 58 below) within 8 days. He did not avail himself of this opportunity.

C. The criminal proceedings against the applicant

37. On 12 April 1995 the Slovenj Gradec Police lodged a criminal complaint against the applicant for the criminal offence of "obstructing an official in the course of his duties" under section 302, paragraph 4-1 of the Slovenian Criminal Code, which referred to the same incident as the applicant's criminal complaint.

38. On 17 January 1997 the Public Prosecutor requested the Slovenj Gradec District Court to open a criminal investigation against the applicant. It appears that her request was based on the above-mentioned reports of the MIA and the Slovenj Gradec Police (see paragraphs 31-33).

39. On 8 April 1997 the investigating judge questioned the applicant. The applicant denied having committed any offence and complained that he had been beaten and ill-treated by the police. He pointed out that he had medical reports proving his injuries. The reports were included in the file.

40. On 8 May 1997, further to a proposal of the investigating judge, the Slovenj Gradec District Court decided not to open a criminal investigation against the applicant. The court pointed out, *inter alia*, that the officers who were allegedly attacked by the applicant had not been identified and that the Ministry's report, stating that a special operation for the investigation of serious crimes was in progress at that time, and the Public Prosecutor's request for the investigation, which stated that the applicant was arrested because of his excessive speed, were contradictory.

41. On 12 May 1997 the Public Prosecutor appealed against this decision. On 4 December 1997 the Maribor Higher Court upheld her appeal finding that, despite the shortcomings mentioned in the first-instance decision, there were sufficient grounds for suspicion that the applicant had committed the alleged offence. Accordingly, it changed the first-instance court's decision and opened a criminal investigation against the applicant.

42. Between 19 February 1998 and 10 March 1998 the investigating judge interviewed five officers from the Slovenj Gradec Police who had participated in the operation, the officer M.J., who had been responsible for the officers of the Special Unit, and A.K., who had allegedly witnessed the incident.

When asked to comment on the applicant's allegations, the officers either denied the alleged ill-treatment or stated that they could not have seen the events well enough. A.K. testified in favour of the applicant, saying that he had not resisted but had been seriously beaten by the officers.

43. On 17 March 1998 the criminal investigation was concluded with the investigating judge's decision ordering the exclusion of certain documents from the case-file in accordance with section 83, paragraph 3, of the Criminal Procedure Act. It is not known when that decision was served on the applicant.

44. On 28 December 1998 the Public Prosecutor filed an indictment against the applicant for "attempting to obstruct an official in the course of his duties" (*poskus kaznivega dejanja preprečitve uradnega dejanja uradni osebi*).

45. On 27 January 1999 the applicant filed an objection to the indictment. He pointed out that he had been ill-treated and referred to the statements he had previously given in the proceedings. He also mentioned that he had lodged an application with the Court. His objection was rejected by the Slovenj Gradec District Court on 16 February 1999.

46. On 13 September 1999 and 22 November 1999 the Slovenj Gradec District Court held hearings. The court heard the applicant, and all the officers who had been questioned in the investigation and A.K.

By a judgment of 22 November 1999 the court acquitted the applicant. The court, acknowledging that the applicant had sustained injuries on the relevant day, concluded that there had been "physical contact" between the applicant and the officers. The court, however, found that it had not been proven that the applicant had physically resisted the officers as described in the indictment since none of the Special Unit's officers who had had physical contact with the applicant had been identified and there were no documents describing the conduct of the applicant after he had been stopped.

47. On 5 January 2000 the Public Prosecutor appealed against the judgment and on 27 September 2000 the Maribor Higher Court quashed the judgment and remitted the case to a new panel for retrial.

48. During the retrial, hearings were held on 15 December and 12 February 2001. At the second hearing the court heard a new witness, D.Č., at the applicant's request.

By a judgment of 12 February 2001, the Slovenj Gradec District Court convicted the applicant as charged and sentenced him to 3 months' imprisonment, suspended for 3 years. The court found:

> "Although it was not known which officers of the Special Unit were involved in the procedure after the applicant's car had been stopped, the officers questioned sufficiently described the acts and the order of events as observers. They could also not have been influenced by anything and therefore they could be entirely trusted. On the contrary, it was impossible to trust either of the witnesses A.K. and D.Č., since it clearly transpires from their testimony that they knew the applicant well; they also confirmed that they knew him. Although the first witness was able to describe the events immediately after the operation, D.Č.'s testimony was unclear and biased in favour of the accused since he said that the officers had beaten the accused with truncheons all over his body and shouted, while it transpired from the medical documentation that he sustained injuries only on the upper part of the body, which is usual for this sort of measure.
>
> The conduct of the accused (...) undoubtedly shows (...) all the elements of the criminal offence (...) since his conduct undoubtedly represented an active form of resistance against the police officers and force was also directed against the officers,

> though the latter in the interest of protecting the data concerning employees of the Special Unit were not questioned. In any event, given the sufficiently convincing testimony of witnesses questioned in the proceedings – police officers – questioning of the employees of the Special Unit was not necessary (...). ”

The court also found that the applicant had not injured any of the officers involved.

49. On 12 March 2001 the Public Prosecutor appealed against this judgment and applied for a heavier sentence. The applicant also appealed.

On 9 May 2001 the Maribor Higher Court upheld the conviction but amended the judgment with respect to the costs of the proceedings. The applicant did not appeal to the Supreme Court.

50. Lastly, on 11 October 2001 the Slovenj Gradec District Court ordered the applicant to pay an additional sum to cover the costs of one of the witnesses heard during the proceedings. On that day, the proceedings were “finally concluded” (*pravnomočno končan postopek*).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force

51. At the material time, conditions for the use of force by the police were regulated by the Law on Internal Affairs (*Zakon o notranjih zadevah*, SRS Official Gazette, no. 28/1980 with amendments, in force until 17 July 1998; hereinafter referred as the “LIA”). Section 54 of the LIA stipulated, *inter alia*, that a police officer could use force (*fizična sila*) in the performance of his duties to overcome the resistance of a person who refused to comply with the legal orders of the police. The Guidelines for the Use of Coercive Measures, issued by the then Secretary of the Interior (*Navodilo o uporabi prisilnih sredstev*, SRS Official Gazette, no. 25/1981, in force until 24 June 2000), further specified that a police officer could in the cases referred to in section 54 of the LIA exceptionally use truncheons, punches, and means of restraint, when he encountered active resistance or an attempt to evade arrest.

B. Relevant criminal offences (as in force at the material time)

52. In general, acts of ill-treatment resulting in physical harm are punishable under various provisions of the Criminal Code of the Republic of Slovenia (*Kazenski zakonik Republike Slovenije*, Official Gazette no. 63/94) prosecution being mandatory. In the case of the offence of inflicting “minor bodily harm” prosecution is triggered by the aggrieved party’s official complaint lodged with the police or the public prosecutor. However, when minor bodily harm is caused by a public official, e.g. a

police officer, this will constitute a *delictum proprium*, i.e. the offence of "violation of human dignity by abuse of office or official duties", for which prosecution is mandatory: notwithstanding the absence of a complaint by the aggrieved party (*oškodovanec*).

53. Among the offences defined by the Criminal Code, the following are relevant for the present case:

Minor bodily harm, section 133

"(1) Whoever inflicts bodily harm on another person resulting in the temporary weakness or impairment of an organ or part of his body, his temporary inability to work, the impairment of his appearance or temporary damage to his health shall be punished by a fine or by imprisonment for not more than one year.

...

(4) Prosecution of the offence defined in the first paragraph shall be initiated upon a complaint."

Violation of human dignity by abuse of office or official duties, section 270

"An official exercising his office who, by abuse of his office or official duties, 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."

Unlawful deprivation of liberty, section 143

"(1) Whoever unlawfully incarcerates another person or keeps him incarcerated or otherwise deprives him of the freedom of movement shall be sentenced to imprisonment for not more than one year.

(2) If the offence under the preceding paragraph is committed by an official through the abuse of office or of official authority, such an official shall be sentenced to imprisonment for not more than three years.

..."

Obstructing an official in the course of his duties, section 302

"(1) Whoever, by force or threat of imminent use of force, prevents an official from performing an official act, which he intended to perform within the scope of his official duties, or whoever in the same manner compels an official to perform an official act, shall be sentenced to imprisonment for not more than two years.

...

(4) Whoever commits the offence under the first or third paragraphs of the present section against an official exercising a task of national or public security, pursuing the

perpetrator of a criminal offence or guarding a detained person, shall be sentenced to imprisonment for not more than five years."

C. Criminal proceedings (provisions in force at the material time)

54. Criminal proceedings in Slovenia are regulated by the Criminal Procedure Act (*Zakon o kazenskem postopku*, Official Gazette no. 63/94; hereinafter referred to as the "CPA") and based on the principles of legality and officialness; the prosecution is mandatory when reasonable suspicion (*utemeljeni sum*) exist that a criminal offence, subject to mandatory prosecution, has been committed. Section 20 of the CPA provides:

"The public prosecutor shall be obliged to institute criminal proceedings if there is a reasonable suspicion that a criminal offence subject to mandatory prosecution has been committed, unless provided otherwise by the present Act."

55. Public prosecutions are conducted by the public prosecutor's office, an autonomous body within the justice system (Article 135 of the Constitution of the Republic of Slovenia, *Ustava Republike Slovenije,* Official Gazette no. 33/91). However, when the public prosecutor dismisses the criminal complaint or drops the prosecution at any time during the proceedings, the aggrieved party has the right to take over the proceedings in the capacity of a subsidiary prosecutor (*subsidiarni tožilec*); that is as an aggrieved party acting as a prosecutor (CPA, section 19/3). A subsidiary prosecutor has, in principle, the same procedural rights as the public prosecutor, except those vested with the public prosecutor as an official authority (CPA, section 63/1). If the subsidiary prosecutor takes over the proceedings, the public prosecutor is entitled at any time pending the conclusion of the main hearing, to resume management of the prosecution (CPA, section 63/2). In reality, however, the 2002 statistics show that out of approximately five hundred cases initiated by subsidiary prosecutors at a number of first-instance courts between 1997 and 2002 most were either still pending or had ended in favour of the accused; in eleven cases the accused was convicted and in seven cases the proceedings were handed over to the public prosecutor (see paragraph 72 below).

56. Slovenian criminal proceedings are divided into three stages – preliminary proceedings (*predkazenski postopek*), conducted by the police and the public prosecutor; criminal investigation (*preiskava*), conducted by the investigating judge of the district court, and trial (*glavna obravnava*), conducted before mixed panels of professional judges and lay-judges at district court level or a single professional judge of the local court. Proceedings falling under the jurisdiction of local courts (offences punishable by a fine or imprisonment of not more than three years) are summary proceedings (*skrajšani postopek*), which do not include the stage of a criminal investigation.

57. Preliminary proceedings are initiated either upon a criminal complaint lodged by any person with the police or the public prosecutor (CPA, section 147) or upon the police or the public prosecutor being informed by any means whatsoever of a situation that gives rise to "reasons for suspicion" (*razlogi za sum*), i.e. less than reasonable suspicion, that an offence which is subject to mandatory prosecution has been committed. In this respect, paragraph 1 of section 148 of the CPA provides:

> "If there are reasons for suspicion that a criminal offence subject to mandatory prosecution has been committed, the police shall be obliged to take steps necessary for pursuing the perpetrator, ensuring that the perpetrator or his accomplice do not go into hiding or flee, discovering and securing traces of crime or objects of value as evidence, and collecting all information that may be useful for the successful management of criminal proceedings."

In addition, paragraph 2 of section 161 of the CPA reads as follows:

> "If the public prosecutor is unable to infer from the criminal complaint whether the allegations contained in it are probable, or if information in the criminal complaint does not provide sufficient basis to request investigation, or if the public prosecutor has only been informed about a criminal offence and, in particular, if the perpetrator is not known, the public prosecutor may request the police to collect the necessary information which he cannot collect himself or through other agencies and to take other measures in order to discover the criminal offence and the perpetrator (sections 148 and 149). The public prosecutor shall be entitled to ask the police at any time to notify him of what they have undertaken and they shall be under an obligation to reply without delay."

In the preliminary proceedings, most of the activities are carried out by the police, who, like the public prosecutor, do not have discretion as to whether to act (CPA, section 148), i.e. they must pursue the investigation *ex-officio*. However, it is the public prosecutor's statutory right and duty to ensure that the facts are sufficiently investigated in order to decide whether or not there should be a prosecution (CPA, sections 20, 45 and 161/2).

58. If the evidence from the criminal complaint is inconclusive or if the perpetrator is not identified, the public prosecutor may request the police to collect further necessary information and report back to him or her on the results (CPA, section 161/2, above). When, even after such additional measures were taken, the public prosecutor concludes that there is no reasonable suspicion (*utemeljeni sum*) that a specific person committed a criminal offence or the perpetrator cannot be identified, the criminal complaint must be dismissed (CPA, section 161/4). Following the dismissal of the criminal complaint, the public prosecutor must within eight days notify the aggrieved party of the dismissal (CPA, section 161/1).

59. Conversely, when the standard of reasonable suspicion is satisfied, the investigating judge, upon the request of the public prosecutor or

subsidiary prosecutor, opens a criminal investigation into the alleged criminal offence (CPA, sections 167 and 186). The prosecutor's request for investigation must specify, *inter alia*, the person against whom an investigation is requested (CPA, section 168). The investigation is conducted only for the criminal offence and only against the accused specified in the investigating judge's decision opening the investigation. However, if during the investigation a suspicion is raised of another criminal offence or of another suspect, the investigating judge must notify the public prosecutor thereof. Paragraph 2 of section 175 of the CPA provides as follows:

> "If, in the course of investigation, it appears that the proceedings should be expanded to cover another criminal offence or an offence against another person the investigating judge shall notify the public prosecutor accordingly. In this case investigative acts that call for urgent attention may be performed and the public prosecutor should be informed of everything that has been done."

60. The investigating judge may at any time during the investigation terminate the proceedings if he determines 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 (CPA, section 181).

61. At the end of investigation, when the investigating judge decides that a case has been investigated to the extent that an indictment can be made out, he must send the case-file to the public prosecutor (CPA, section 184). Before doing that he must eliminate from the case-file all contaminated evidence (exclusionary rule). He must also eliminate from the file all information obtained by the police directly from the accused and from certain other persons in the preliminary proceedings: such information is denied the status of legitimate evidence and cannot constitute the basis of the indictment or the judgment (CPA, section 83).

62. In summary proceedings before a local court, the criminal proceedings start with the bill of indictment (*obtožni predlog*, CPA, section 430) submitted by the prosecutor. The bill of indictment has to include the name and surname of the defendant, with his personal data if known, and a description of the criminal offence (CPA, section 434). Before lodging the bill of indictment, the public prosecutor or subsidiary prosecutor can request the judge to perform individual investigative measures (CPA, section 431).

D. Civil remedy

63. Article 26 of the Slovenian Constitution provides:

> "Everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or body performing such function or activity under state authority, local community authority or as a bearer of public authority. Any person having sustained

damage also has the right, in accordance with the law, to demand compensation directly from the person or body that has caused the damage."

64. The compensation claim may be pursued in civil litigation. In these proceedings, the courts are bound by the final criminal court's judgment of conviction but only in so far as the existence of the criminal offence and criminal liability are concerned (section 12 of the Civil Procedure Act, *Zakon o pravdnem postopku*, SFRJ Official Gazette no. 4-37/77 with amendments, valid until 14 July 1999). In addition, the aggrieved party may lodge his compensation claim within the on-going criminal proceedings against the perpetrator (*premoženjsko-pravni zahtevek,* sections 100-111 of the CPA).

65. The statistical overview provided by the Government in their observations of 2 April 2002 shows that out of all registered civil claims submitted by aggrieved persons who had been injured during police procedures prior to 2002, forty-nine civil claims had been settled or withdrawn and sixty-seven civil claims were still pending. As to the first group of cases, the statistics are inconclusive; sixteen cases were transferred to the State Attorney Office (*državno pravobranilstvo*) and fifteen were settled during the preliminary proceedings. However, no information is provided as to their outcome. As to the remainder of the first group of cases, one case was settled out of court, two discontinued, five cases were decided against the plaintiff and five claims were wholly or partly upheld. In five cases no information as to the stage of proceedings or their outcome has been provided.

E. Constitutional Court's decision of 6 July 2006 (Up-555/03-41 and Up-827/04-26)

66. 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. The Constitutional Court found a violation of the right to the effective protection of human rights, as provided by Article 15 of the Slovenian Constitution, taken together with Article 13 of the Convention, on account of a failure by the authorities to conduct an independent investigation into the incident. The Constitutional Court established (paragraph 33 of the decision):

"Article 15 paragraph 4 of the Slovenian Constitution should be interpreted so as to include also a right to independent investigation of the circumstances of an incident where a person was allegedly subject to torture or inhuman or degrading treatment by the police (*državni represivni organi*) or where he or she lost his or her life during a police operation. The aforementioned right includes also the effective access of aggrieved parties to such investigation. Despite the fact that Article 15 paragraph 4 of

the Constitution secures the right to judicial protection of human rights, it suffices in the situations concerned, according to the (aforementioned) jurisprudence of the European Court of Human Rights in respect of Article 13 of the Convention, that the investigation is conducted outside of judicial proceedings under the condition that it is independent and provides for the effective access of aggrieved parties."

THE LAW

I. THE SCOPE OF THE CASE

67. In his application, the applicant complained of ill-treatment, of an inadequate response by the authorities to his allegations, that his arrest and detention had been unlawful, and, in general, of the unfairness and the length of the proceedings concerning the incident. At the time of the lodging of his application, the criminal investigation against the applicant had been concluded and the criminal proceedings against him were pending. In the application, he invoked Articles 3 and 5. In his subsequent letters to the Court he continued to complain of, *inter alia*, the length and unfairness of the proceedings against him.

68. On 14 January 2002 the case was communicated to the respondent Government with specific questions concerning the issue of exhaustion of domestic remedies and the observance of the six-month rule, the alleged breach of Article 3, and the length of the proceedings before the Public Prosecutor.

The Government replied to the questions concerning the exhaustion of domestic remedies and the six-month rule and the alleged breaches of Articles 3 and 5. In addition, they provided comments on both sets of proceedings – those following the applicant's criminal complaint and the criminal proceedings against the applicant.

69. In the admissibility decision of 8 July 2004, the Court joined the questions of the exhaustion of domestic remedies and compliance with the six-month rule raised by the Government under Article 3 and 5 to the merits of the relevant complaints. In respect of Article 6 § 1, the Court declared inadmissible the complaint concerning the unfairness of the criminal proceedings against the applicant. As regards the length of both sets of proceedings, it joined this issue to the merits of the Article 3 complaint.

70. The Court considers that, although the Government were not asked to comment specifically on the question concerning Article 5 § 1 and the length of the criminal proceedings against the applicant (Article 6 § 1), the arguments raised by the Government on those issues in their observations, submitted before and following the admissibility decision, do permit the Court to conclude that they had an opportunity to respond to the applicant's

allegations and to submit their defence. The Court therefore sees no obstacles to ruling on all the applicant's allegations under Articles 3, 5 and 6 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Preliminary objections

1. Arguments of the parties

(a) The Government

71. The Government averred that the applicant had not exhausted all domestic remedies which were effective, accessible and capable of providing redress in respect of his allegations. Since no criminal investigation had been carried out into the applicant's injuries, the State was not afforded an opportunity to properly address the allegations. The case was thus submitted to the Court although the crucial facts had not been investigated domestically.

They argued that the applicant, after the dismissal of his criminal complaint on 17 January 1997, could have tried to institute criminal proceedings as a subsidiary prosecutor by submitting either a bill of indictment (*obtožni predlog*) or a request for investigative measures (*preiskovalna dejanja*) to the Slovenj Gradec District Court. Had he used this opportunity, the applicant would have been also able to file his compensation claim in the criminal proceedings (*premoženjsko-pravni zahtevek*).

72. In that context, the Government submitted a statistical overview of cases initiated by subsidiary prosecutors between 1997 and 2002 (see paragraph 55 above). In the Government's view, the statistics revealed that this remedy was frequently used and was thus accessible. They stressed that the outcome of these proceedings should not be used for measuring the effectiveness of the remedy at issue.

73. In addition, the Government argued that the applicant had a further effective remedy under the civil law, namely an action for damages against the State or directly against those who had allegedly breached his rights and caused the injuries. A civil action was a remedy entirely independent of any criminal proceedings or decisions not to prosecute alleged criminal offences.

In support of their arguments, the Government submitted a statistical overview of civil claims submitted by persons who had been injured during police procedures prior to 2002 (see paragraph 65 above).

74. Finally, the Government also maintained that the six-month time limit set by Article 35 should be counted from the date of the dismissal of the applicant's criminal complaint and that his application, lodged eighteen months after that date, should be rejected as inadmissible.

(b) The applicant

75. With respect to the allegation that he had not availed himself of the possibility to take over the prosecution as a subsidiary prosecutor, the applicant argued that this remedy had not offered him any prospect of success, given the result of the proceedings carried out by the Public Prosecutor; this fact was supported also by the Government's statistics. As to the possibility of bringing a civil action, he had been unable to avail himself of this remedy since the State had not provided him with the list of names of the police officers who had taken part in the incident. Moreover, civil proceedings were well known to be very lengthy in Slovenia.

76. According to the applicant, in the criminal proceedings instituted against him, his and his witnesses' statements concerning the treatment by the police had been ignored. He had thus lost all confidence in the Slovenian judiciary and realised that the criminal proceedings had been instituted against him in order to punish him for the lodging of a criminal complaint against the police.

2. The Court's assessment

77. The Court recalls 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 (*Balogh v. Hungary* (dec.), no. 47940/99, 13 May 2003). The six-month period runs from the date of the final domestic decision after effective and sufficient domestic remedies have been used (*Babayev v. Azerbaijan* (dec.), no. 36454/03, 27 May 2004). Likewise, the obligation to exhaust domestic remedies requires that an applicant makes normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances. To be effective, a remedy must be capable of remedying directly the impugned state of affairs (*Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

78. The Court further reiterates that in cases where an individual has an arguable claim under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (*Selmouni v. France* [GC], no. 25803/94, § 79, ECHR 1999-V, and *Egmez v. Cyprus*, no. 30873/96, § 65, ECHR 2000-XII).

The Court has held on many occasions that this requirement cannot be satisfied solely by instituting civil proceedings (see, among others, *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004).

79. That being said, the Court notes that in its admissibility decision of 8 July 2004 it considered that the questions of exhaustion of domestic remedies and compliance with the six-month rule were closely linked to the substance of the applicant's complaints and should be joined to the merits. Noting the arguments submitted by the parties on this question, the Court considers it appropriate to address these questions in its examination of the applicant's allegations concerning the procedural limb of Article 3.

B. Merits

80. The applicant alleged that the police had inflicted ill-treatment on him and that the authorities had failed to conduct an effective investigation into his allegations, contrary to Article 3, which reads as follows:

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

1. Arguments of the parties

81. The Government denied any ill-treatment of the applicant and stated that the use of force against the applicant had been necessary to effect his submission to the lawful requirement of the police officers and had been based on section 54 of the LIA (see paragraph 51). They referred to the findings of the police and the MIA. In any event, for there to be inhuman or degrading treatment it had to be established that the injuries were inflicted intentionally – with *dolus specialis*. However, in the instant case the use of force, even if it were excessive, had not been prompted by such an intention.

82. The applicant contested these conclusions and alleged that the facts as presented by the Government were a wholly constructed version of events. He stated that he had been brutally beaten and intimidated by the police and he denied having resisted the police officers. As regards the latter, he pointed out that he had been surrounded by some fifteen armed officers and would thus in any event not have been able to resist. He further maintained that the Slovenian police frequently overstepped their powers and alleged that the judicial authorities tolerated such acts.

83. In his response to the Government's observations, the applicant alleged that the Government's version of events was full of inconsistencies. He also argued that the Government had not explained the presence of different patrols at the place of the incident and that they had failed to reveal the number of the officers involved.

2. The Court's assessment

(a) Concerning the alleged inadequacy of the investigation

(i) General principles

84. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (*Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgements and Decisions* 1998-VIII, p. 3288, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

85. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used by the police was or was not justified in the circumstances (*Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, § 87, and *Corsacov v. Moldova*, no. 18944/02, § 69, 4 April 2006).

86. The investigation into arguable allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see, *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, §§ 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000).

87. Finally, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation was at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see, among others, *Labita*, cited above, § 133).

(ii) Application of these principles in the present case

88. The Court considers that the medical evidence and the applicant's complaints submitted to the competent domestic authorities together raised at least a reasonable suspicion that the applicant's injuries could have been

caused by the excessive use of force. As such, his complaints constituted an arguable claim and the Slovenian authorities were thus under the obligation to conduct an effective investigation.

89. It appears that, in the instant case, the only investigation into the applicant's allegations was carried out by the Slovenj Gradec Police and the MIA, i.e. by the very authorities to which the officers who had allegedly inflicted injuries on the applicant belonged organisationally and were subordinated hierarchically. As to the thoroughness of this investigation, it is noted that there is no evidence, within the material submitted to the Court, to document any concrete steps taken by the police or the MIA to investigate the applicant's allegations. In addition, since the officers conducting the investigation were subordinated to the same chain of command as those officers subject to investigation, serious doubts arise as to their ability to carry out an independent investigation (see, *mutatis mutandis*, *Oğur v. Turkey* [GC], no. 21594/93, § 91, ECHR 1999-III).

90. The Court further observes that it was ultimately the Public Prosecutor's responsibility to ensure that an effective investigation was carried out into the applicant's complaints (see paragraph 57 above). According to the CPA, after having been informed about the applicant's allegation and his medical reports, the Public Prosecutor was under an obligation to ensure that the preliminary investigation was carried out and that the necessary evidence, such as identification of the alleged perpetrators, was obtained. Furthermore, the Public Prosecutor was not bound by the legal characterisation of the alleged criminal offence as provided in the applicant's criminal complaint, but was obliged to initiate criminal prosecution and request investigating measures if reasonable suspicion existed that the applicant had been subjected to ill-treatment by the police officers such treatment constituting an offence under section 270 of the Slovenian Criminal Code (paragraphs 53, 54, 57 and 62 above).

However, in the instant case the Public Prosecutor's conduct also lacked the necessary transparency and appearance of independence (see, *mutatis mutandis*, *McKerr v. the United Kingdom*, no. 28883/95, § 131, ECHR 2001-III, and *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 123, ECHR 2001-III (extracts)). In this respect, the Court notes that the Public Prosecutor based her decision to dismiss the applicant's criminal complaint solely on the reports submitted by the police and the MIA. These reports lacked information as to the investigative measures taken (see, *mutatis mutandis*, *Mahmut Kaya v. Turkey*, no. 22535/93, § 105, ECHR 2000-III). Nor did the Public Prosecutor undertake any independent steps; for example, interviewing the applicant and the officer involved, ordering a forensic examination of the applicant's injuries, questioning the use of electroshock equipment, etc. (see, by contrast, *Berliński v. Poland*, nos. 27715/95 and 30209/96, §§ 69 and 70, 20 June 2002). There are no

indications that she was prepared in any way to scrutinise the police and the MIA's account of the incident.

91. Moreover, in the proceedings against the applicant, which concerned precisely the same incident, the applicant continued to allege that he had been ill-treated and referred to the medical reports which were also included in the file (paragraph 39 above). According to the domestic law, the Public Prosecutor and the investigating judge remained under an obligation effectively to investigate the applicant's allegation. Both of them were in a position to remedy the applicant's complaints (see, *mutatis mutandis*, *Balogh v. Hungary* (dec.), cited above). They, being aware of the applicant's allegations supported by the medical certificates, could have obtained further evidence in order to verify the credibility of the police's version of the facts and could have at least identified the relevant officers. The Public Prosecutor was in a position to request, in the light of any new evidence, such as the potential testimonies of the officers who had allegedly ill-treated the applicant, that investigative measures be taken in respect of the applicant's allegations (see paragraphs 57, 59 and 62 above). However, none of the above was done. On 17 March 1998 the investigating judge, despite the fact that no serious steps had been taken in order to investigate the applicant's allegations, closed his investigation (paragraphs 43 and 61 above). An indictment was subsequently filed against the applicant.

92. The Court finds it particularly striking that the officers who had used force against the applicant were not even identified let alone questioned during the investigation of the applicant's criminal complaints, nor in the proceedings against him (see paragraphs 106-109 below). In this connection, it is noted that the Public Prosecutor, without any explanation, named three officers as "accused" (paragraph 35 above) despite the fact that the applicant stated in his criminal complaint that two of them (D.P. and J.K.) had no physical contact with him and had not been involved in the alleged ill-treatment (see paragraph 29 above). For the third officer – the head of the Special Unit (M.J.) – it was confirmed in the proceedings against the applicant that he had also not been among those using force against him (paragraph 48 above); a fact which the Public Prosecutor could have verified before coming to the opposite conclusion.

93. Finally, the investigation was also dilatory. It took over a year and a half before the Public Prosecutor dismissed the criminal complaint whereas no significant steps had been taken to investigate the circumstances of the incident (paragraphs 28-34 above).

94. In the light of the foregoing, the Court is not satisfied that the investigation carried out in the instant case was thorough as required by Article 3 of the Convention. It recalls that an investigation similar to the present one has already been the subject of the Court's criticism in the case of *Rehbock v. Slovenia* (no. 29462/95, § 74, ECHR 2000-XII). The present case, moreover, involved the same police unit – the Slovenj Gradec Police.

95. That being so, the Court, contrary to the Government's submissions (paragraph 71 above), considers that the only way of putting matters right in the circumstances of the case should have been the prompt institution of an effective official investigation. In that connection, the Court welcomes the Constitutional Court's decision of 6 July 2006 (paragraph 66 above). The Court nevertheless reiterates that the investigation, in order to be effective, must be capable of leading to the identification and, if appropriate, punishment of those responsible (see, *mutatis mutandis*, *Egmez*, cited above, § 72).

In the instant case, provided that the authorities discharged their duties as required by Article 3 of the Convention as well as by the relevant domestic law (see paragraphs 57-59 above), the criminal complaint and, moreover, the applicant's repeated allegations in the context of the criminal proceedings pertaining to the same historical event, should normally have brought about this result. However, as the Court has established above, in the instant case the authorities did not undertake the necessary measures. The investigation thus failed to produce any tangible results, not even the names of the alleged perpetrators. In such circumstances, the applicant could not be required to institute a subsidiary prosecution, which would have had the same objective as a criminal complaint and had no prospect of success. Nor was the applicant obliged to institute civil proceedings for compensation (see, *mutatis mutandis*, *H.D. v. Poland* (dec.), no. 33310/96, 7 June 2001, *Wójcik v. Poland*, no. 26757/95, Commission decision of 7 July 1997, DR 90, p. 24, and *Krastanov*, cited above, § 60). As pointed out above, even if the applicant had made such attempts, the Court is not persuaded that they would have had any reasonable prospect of success (see, *mutatis mutandis*, *Gül*, cited above, § 95). The statistics submitted by the Government do not contain anything that would lead the Court to reach a different conclusion.

96. The Court considers that, having received the decision of 17 March 1998 (paragraph 43 above), the applicant, faced with the charges against him and the manifest inactivity of the authorities regarding his allegations concerning the police brutality, understandably formed the belief that it was pointless for him to wait until the end of the criminal proceedings to have his allegations properly examined. By applying to the Commission on 22 July 1998, i.e. before the criminal proceedings against him were concluded, and within six months from the termination of the criminal investigation against him, the applicant complied, in the circumstances of the present case, with the six-month rule (see *Murat Demir v. Turkey*, no. 42579/98, §§ 29 and 30, 2 March 2006, *Laçin v. Turkey*, no. 23654/94, Commission decision of 15 May 1995, DR 81-B, p. 31, and *Selmouni*, cited above, §§ 76-81).

97. The Court therefore dismisses the Government's preliminary objections (paragraphs 71-79 above) and holds that there has been a

violation of Article 3 in that the authorities failed to conduct a thorough and effective investigation into the applicant's credible allegation that he had been ill-treated by the police.

(b) Concerning the alleged ill-treatment

(i) General principles

98. The Court reiterates that in respect of a person deprived of his liberty, 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 (*Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, p. 26, § 38, and *Krastanov*, cited above, § 53).

The requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (the *Ribitsch*, cited above, § 38). In this connection, the Court recalls that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or organised crime, the Convention prohibits, in absolute terms, torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79, and *Assenov and Others*, cited above, § 93).

99. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" –, but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Labita*, cited above, § 121). The Court has held on many occasions that 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 (*Corsacov*, cited above, § 55, 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 (*Selmouni*, cited above, § 87, and *Ribitsch*, cited above, § 34).

100. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (*Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas*,

cited above, p. 18, § 30). Where allegations are made under Articles 2 and 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, p. 24, § 32).

(ii) Application of these principles in the present case

101. It is undisputed that the applicant's injuries as shown by the medical reports had arisen from the use of force by the police.

102. The Court however observes that the applicant was not injured in the course of a random operation which might have given rise to unexpected developments to which the police might have been called upon to react without prior preparation (*Rehbock*, cited above, § 72). Despite the Government's assertion that the applicant was first arrested for speeding, the materials in the case-file show that the police procedure against the applicant was a part of an organised operation against the activities of a local criminal organisation (paragraphs 21-25 above). About fifteen officers were involved in the procedure; about ten of them were officers of the Special Unit. According to the domestic court's findings, none of them sustained injuries in the incident (paragraph 48 above).

103. It is thus obvious that the officers, who were armed, clearly outnumbered the applicant, who was alone, and, given the information in the case-file, was not carrying a weapon or conveying the impression that he was doing so during the procedure. It is moreover true that the incident occurred in the evening in a remote location. According to the applicant, two persons other than police officers witnessed the event from a distance. However, those witnesses, who confirmed the applicant's allegations, were not considered credible by the domestic authorities (see paragraph 48 above).

104. Thus, the burden rests on the Government to demonstrate with convincing arguments that the use of force, which resulted in the applicant's numerous injuries (paragraph 27 above), was not excessive (see, *mutatis mutandis*, *Rehbock*, cited above, § 72).

105. The Government did no more than refer to two reports produced by the direct superiors of the respective units involved in the incident – the MIA's report of 15 November 1995 and the Slovenj Gradec police's report of 5 February 1996 (see paragraph 81 above). It follows from them that the use of force against the applicant was lawful and necessary in order to ensure his compliance with police orders. The reports, which formed the basis for the Public Prosecutor's decision dismissing the applicant's criminal complaint (paragraph 35 above), do not specify on which information and evidence are they based. It does not appear from them that their authors even questioned the applicant, possible witnesses or the officers directly involved (see paragraph 89 above).

106. In the criminal proceedings against him, the applicant contested the charge of "obstructing an official in the course of his duties" by submitting

that he had been ill-treated by the officers (paragraph 39 above). Throughout these proceedings, the statements of the officers, who had used force against the applicant, remained unexamined. No evaluation was carried out with respect to the quantity and nature of the applicant's injuries in the view of the different versions of what had occurred during the relevant incident. The Slovenj Gradec District Court, on 12 February 2001, nevertheless established that the applicant, *inter alia*, had physically resisted the officers (paragraph 48 above).

107. In its judgment, the Slovenj Gradec District Court briefly mentioned that the relevant officers were not questioned owing to the need to protect their personal data as employees of the Special Unit (paragraph 48). The Court is struck by this argument, which was not supported by any further explanation by the Slovenj Gradec District Court nor has it been explained by the Government.

108. In that connection, the Court notes that in order to protect their anonymity, the Special Unit's officers would first have to be identified. Yet the Slovenj Gradec District Court, which apparently was not even aware of the exact number of the relevant officers, noted that they had not been identified. Moreover, even if the officers had been identified and assuming that the protection of their anonymity was justified, this does not mean that they could not have been questioned and examined by the judge with adequate protection of their security and of the applicant's defence rights (*Birutis and Others v. Lithuania*, nos. 47698/99 and 48115/99, § 30, 28 March 2002, and *Kostovski v. the Netherlands*, judgment of 20 November 1989, Series A no. 166, § 43). The Court does not consider that it need be concerned with the question whether this possibility was provided for in the Slovenian legislation at the relevant time (see, *mutatis mutandis*, *Vasilescu v. Romania*, judgment of 22 May 1998, *Reports* 1998-III, § 39). Its function is confined to ascertaining whether in the present case Mr Matko's right under Article 3 was breached.

109. Accordingly, the Court considers that an examination concerning the relevant Special Unit officer's account of events was crucial for the proper establishment of the facts immediately relevant to the necessity and proportionality of the use of force against the applicant and therefore for a determination of the question whether the applicant was subjected to treatment contrary to Article 3 (see, *mutatis mutandis*, *Hugh Jordan*, cited above, § 127, and, by contrast, *Bubbins v. the United Kingdom*, no. 50196/99, § 157, ECHR 2005-...). As on previous occasions (see, for example, *Kostovski*, cited above, § 44), the Court does not underestimate the importance of the struggle against organised crime. The Court however notes that in the instant case the lack of any examination of the testimonies of the officers who allegedly ill-treated the applicant could not have been considered to serve this or any other legitimate interest.

110. Even accepting that the applicant refused to comply with some of the police orders and that the officers were initially authorised to use force in accordance with section 54 of the LIA, the Court, having regard to the above considerations, cannot see on what basis the domestic authorities satisfied themselves that the force used against the applicant had not been excessive. Nor can it be convinced by the Government's explanation which is based solely on that – official – version of events.

111. Consequently, regard being had to the applicant's consistent allegations, corroborated by the medical reports, and to the circumstances in which the applicant sustained the injuries (paragraphs 102 and 103 above), the Court considers that the Government have not furnished convincing or credible arguments which would provide a basis to explain or justify the degree of force used against the applicant.

112. The Court therefore concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected during the police procedure.

Having reached that conclusion and since the Court is not able to determine whether the impossibility of establishing the facts concerning the use of electric shocks is due to the lack of a proper investigation or not, the Court does not consider it necessary to examine the applicant's allegations in that respect (*Ay v. Turkey*, no. 30951/96, § 58, 22 March 2005).

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

113. The applicant alleged that his arrest had been unlawful, contrary to Article 5 of the Convention, which, in so far as relevant, provides:

> " 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ..."

114. The Government however raised preliminary objections of non-exhaustion of domestic remedies and non-compliance with the six-month rule as provided in Article 35 of the Convention. In the Government's opinion, the applicant should have tried to institute criminal proceedings as

a subsidiary prosecutor and should have lodged a civil claim for compensation. In any event, his arrest was lawful.

The applicant, on the other hand, claimed that the remedies referred to by the Government were not effective in his case.

115. The Court notes that in its admissibility decision of 8 July 2004 the preliminary objections were joined to the merits.

116. As far as the use of force against the applicant is concerned, the Court notes that the applicant's argument amounts to a restatement of his case under Article 3 of the Convention. Having regard to the grounds on which it has found a violation of the substantive aspect of Article 3 (paragraphs 101-112 above), it concludes that no separate issue arises under Article 5 § 1 of the Convention in this respect. However, as regards the remaining issues concerning the lawfulness of the applicant's arrest and the subsequent detention in police custody, it considers that the above-mentioned objections should be severed from the merits and examined now.

117. The Court considers that even if it were to accept the applicant's argument that he did not have any effective remedy under Slovenian law to challenge the grounds of his arrest and detention, the application must be rejected for failure to comply with the six-month rule.

118. The Court reiterates that if no effective remedies are available in domestic law, the six months period begins to run in principle from the date of the act complained of in the application, or from the date when the applicant first became aware of it (see, for example, *Arslan v. Turkey* (dec.), no. 36747/02, 21 November 2002). In the instant case the applicant was released from police custody on 6 April 1995 at approximately half past midnight. Having considered that he had no effective remedies with respect to his grievance, he should therefore have lodged an application with the Commission within six months of his release, namely at the latest on 6 October 1995. In any event, assuming that the outcome of the investigation following his criminal complaint was relevant for the effectiveness of the potential civil proceedings for compensation, he should have applied to the Commission within six months of receiving the Public Prosecutor's decision dismissing his criminal complaint; that is no later than 22 July 1997 (*Laçin*, Commission decision, cited above).

119. The Court therefore allows the Government's objection regarding the remainder of the complaint under Article 5 § 1 on the grounds of non-compliance with the six-month rule, and therefore cannot consider its merits under Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

120. The applicant, in substance, complained about the excessive length of the proceedings concerning the relevant incident.

Article 6 § 1 of the Convention, in so far as relevant, provides:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by (a) ... tribunal..."

1. The proceedings concerning the applicant's criminal complaint

121. The applicant submitted that there had been inexcusable inactivity on the part of the authorities dealing with his allegations of ill-treatment. The Government, on the other hand, argued that the Public Prosecutor, who was dealing with both criminal complaints, one from the applicant and one against him, could not be criticised for not acting in a reasonable time.

122. Notwithstanding the issue of the applicability of Article 6 to the proceedings concerning the applicant's criminal complaint (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I), the Court notes that this complaint is inextricably bound up with the more general complaint concerning the manner in which the investigating authorities treated the applicant's allegations. In conformity with its approach in the admissibility decision of 8 July 2004, the Court considers that it is not necessary to examine this complaint separately, having regard to its earlier finding that the authorities did not comply with the procedural requirements of Article 3 (paragraphs 88-97 above).

2. The criminal proceedings against the applicant

123. The applicant further complained about the length of the criminal proceedings instituted against him. He submitted that more than four years had elapsed between the events in question and the judgment of the first-instance court. Such a delay could not, in his view, be attributed to him.

124. The Government pleaded non-exhaustion of domestic remedies.

125. The Court notes that the present case is similar to the cases of *Belinger* and *Lukenda* (see *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001, and *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005). In those cases the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies in respect of the alleged excessive length of proceedings were ineffective. As regards the instant case, the Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish it from its established case-law.

126. Regarding the period to be taken into consideration, the Court recalls that it necessarily begins with the day on which a person is charged, for otherwise it would not be possible to determine the charge, as this word is understood within the meaning of the Convention (*Neumeister v. Austria*, judgment of 27 June 1968, Series A no. 8, p. 41, § 18). "Charge", for the purposes of Article 6 § 1, may be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", a definition that also corresponds to the test

whether "the situation of the [suspect] has been substantially affected" (*Deweer v. Belgium*, judgment of 27 February 1980, Series A no. 35, p. 24, § 46).

127. As to the instant case, the Court considers that the applicant was charged, for the purposes of Article 6 § 1, on 17 January 1997**,** i.e. the day the Public Prosecutor requested that a criminal investigation be opened against him. The Court observes that no arguments were advanced to show that any acts had been taken beforehand such as to affect the applicant's situation negatively. It further notes that the criminal proceedings against the applicant ended on 11 October 2001 (paragraph 50 above). The relevant period therefore lasted about four years and nine months.

128. As to the reasonableness of the length of the proceedings, the Court recalls that it must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case as well as what was at stake for the applicant (see, among other authorities, *Klamecki v. Poland*, no. 25415/94, § 87, 28 March 2002).

129. In the instant case, the only delays in the proceedings occurred between the termination of the criminal investigation on 17 March 1998 and the lodging of an indictment on 28 December 1998 and between the rejection of the applicant's objection on 16 February 1999 and the first hearing in the case on 13 September 1999. The Court however observes that the criminal investigation in the case against the applicant was concluded in about three months. After the applicant's objection to the indictment was rejected in less than a month, the case was heard by the courts at four instances during the period of two years and eight months.

130. In view of the overall length of the proceedings and having regard to its case-law on the subject, the Court therefore finds that the proceedings in the applicant's case did not exceed a reasonable time within the meaning of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. 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

132. The applicant claimed that, due to the incident complained of, he had lost his business and all opportunity to obtain proper employment. In this connection, he claimed 33,600 euros (EUR) by way of pecuniary damage. As regards the physical and mental trauma he had suffered in consequence of his ill-treatment by the police, the applicant claimed EUR 30,000.

133. The Government argued that the finding of a violation should in itself be sufficient satisfaction for the applicant.

134. As regards pecuniary damage, the Court is unable to establish any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As to non-pecuniary damage, the Court finds that the applicant can reasonably be considered to have suffered non-pecuniary damage on account of the distress and suffering resulting from his ill-treatment by the police. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 under this head.

B. Costs and expenses

135. The applicant claimed EUR 400 for the costs he had paid in the domestic proceedings instituted against him and EUR 2,500 for the legal representation in the domestic proceedings without further specifying the claim. He further claimed EUR 50 for the costs concerning the correspondence with the Court and EUR 4,345 for translation costs, out of which approximately EUR 3,310 concerned the translation of the text of the Convention and the rest concerned the translation of the correspondence.

136. The Government did not express their opinion on the issue.

137. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award EUR 1,000 for the proceedings before the Court.

C. Default interest

138. 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. *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;

2. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicant's allegations that he was ill-treated by the police;

3. *Holds* that it is not necessary to consider the applicant's complaints concerning the use of force during the police procedure under Article 5 § 1of the Convention;

4. *Allows* the Government's preliminary objection concerning the lawfulness of the applicant's arrest and detention (Article 5 § 1);

5. *Holds* that it is not necessary to consider the applicant's complaint concerning the length of the proceedings following his criminal complaint under Article 6 § 1 of the Convention;

6. *Holds* that there has been no violation of Article 6 § 1 of the Convention as regards the length of the criminal proceedings against the applicant;

7. *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, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent Berger Registrar	John Hedigan President