

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

GRAND CHAMBER

CASE OF BOUYID v. BELGIUM

(Application no. 23380/09)

JUDGMENT

STRASBOURG

28 September 2015

This judgment is final.



In the case of Bouyid v. Belgium,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President*,
Guido Raimondi,
Isabelle Berro,
Alvina Gyulumyan,
Ledi Bianku,
Nona Tsotsoria,
Nebojša Vučinić,
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Erik Møse,
Helen Keller,
Paul Lemmens,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc, *judges*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 8 October 2014 and 24 June 2015,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 23380/09) against the Kingdom of Belgium, lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Belgian nationals, Mr Saïd Bouyid ("the first applicant") and Mr Mohamed Bouyid ("the second applicant"), on 28 April 2009.

2. The applicants were represented by Mr C. Marchand and Mr Z. Chihaoui, lawyers practising in Brussels. The Belgian Government ("the Government") were represented by their Agent, Mr M. Tysebaert, Senior Adviser, Federal Justice Department.

3. Alleging, in particular, that they were both slapped by police officers while they were in a police station, the applicants complained of degrading treatment and argued that they were victims of a violation of Article 3.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). In a judgment delivered on

21 November 2013 a Chamber of that Section declared the application admissible in respect of the complaint under Article 3 of the Convention and the remainder inadmissible, and unanimously found that there had been no violation of Article 3. The Chamber was composed of Mark Villiger, President, Ann Power-Forde, Ganna Yudkivska, André Potocki, Paul Lemmens, Helena Jäderblom and Aleš Pejchal, judges, and Stephen Phillips, Deputy Section Registrar. On 24 January 2014, under Article 43 of the Convention, the applicants requested referral of the case to the Grand Chamber. A panel of the Grand Chamber acceded to this request on 24 March 2014.

5. The composition of the Grand Chamber was decided in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24.

6. Both the applicants and the Government submitted further observations on the merits (Rule 59 § 1).

7. The non-governmental organisation REDRESS and the Human Rights Centre of the University of Ghent were granted leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

8. A public hearing was held in the Human Rights Building, Strasbourg, on 8 October 2014 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms I. NIEDLISPACHER, *Co-Agent*;

(b) *for the applicants*
Mr C. MARCHAND,
Mr Z. CHIHAOUI, *Counsel*.

The Court heard statements by Mr Marchand, Mr Chihaoui and Ms Niedlispacher, and the replies given by Mr Marchand and Ms Niedlispacher to the questions put by judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicants were born in 1986 and 1979 respectively and live in Saint-Josse-ten-Noode (a district of the Brussels-Capital region).

10. The applicants are brothers who live with their parents, their brother and two sisters next to the local police station of Saint-Josse-ten-Noode. They both complained that they had been slapped in the face by police

officers – which allegation is disputed by the Government – one on 8 December 2003 and the other on 23 February 2004. They submitted that those events had taken place against a background of tense relations between their family and certain officers in the police station.

A. Events of 8 December 2003 and 23 February 2004

1. The events of 8 December 2003

11. The applicants submitted that on 8 December 2003, at around 4 p.m., the first applicant had been standing with a friend in the street outside the door of the building where he lived with his family and, since he had forgotten his keys, had been ringing the bell so that his parents would let him in, when a plain-clothes policeman, A.Z., had asked him to show him his identity card. The first applicant had refused to comply, asking the officer to show him his credentials. The officer had then grabbed him by his jacket – tearing it – and taken him to the police station. The first applicant had been placed in a room and, while he was alone with A.Z., the officer had slapped him in the face as he was protesting about his arrest.

12. The applicants provided a certificate issued at 7.20 p.m. on the same day by a general practitioner attesting that the first applicant had been "in a state of shock" and had presented the following injuries: "erythema on the left cheek (disappearing)" and "erythema on the left-side external auditory canal".

13. The Government submitted that, on account of the first applicant's refusal to show him his identity card, Officer A.Z. had had no choice but to take him to the police station for identification. The first applicant had then caused a scene, claiming to have suffered an injustice and been subjected to an unlawful identity check, and had insulted an officer who was telling him to calm down. He had been allowed to leave the police station once his identity had been verified and after being informed by A.Z. that a police report would be filed against him for forceful resistance to a public officer, abusive behaviour and verbal threats. He had returned to the police station a few minutes later with his parents, accusing A.Z. of having struck him, but the officer had always denied this.

14. At 6 p.m. A.Z. had lodged a criminal complaint against the first applicant, alleging forceful resistance to a public officer, abusive behaviour and verbal threats. The record drawn up on that occasion showed that A.Z. had notified his superiors of the events at 5.30 p.m., as well as a certain Superintendent K.

2. The events of 23 February 2004

15. The applicants indicated that on 23 February 2004, between 9.44 a.m. and 10.20 a.m. (as shown by the record of the second applicant's

questioning), while the second applicant was at the Saint-Josse-ten-Noode police station and Officer P.P. was interviewing him about an altercation involving him and his mother together with a third party (and about which the latter had filed a complaint), P.P. had slapped him in the face after asking him not to lean on his desk. He had then forced him to sign his statement by threatening to put him in a cell.

16. The applicants provided a medical certificate issued on the same day by a general practitioner, who observed "bruising [on the] left cheek" of the second applicant. The certificate did not specify the time at which it had been drawn up, although it must have been before 11.20 a.m., the time at which it was presented to the Standing Committee for the oversight of police services (known as "Committee P" – see paragraph 25 below).

17. The Government explained that the second applicant had been very arrogant during his interview: slouching in his chair, leaning casually on P.P.'s desk, laughing without any reason and giving pithy answers to questions. He had also had his statement changed several times, saying that the police were paid to do that, and had threatened the officers on leaving by shouting that they would be hearing from him again. The Government emphasised that, in spite of the attitude shown by the second applicant, who had clearly been intent on conflict, P.P. had remained calm and patient.

B. Background to the events

18. In the applicants' submission, their family had been harassed by the Saint-Josse-ten-Noode police force. They stated that the problems had begun in 1999, when one of the officers had suspected N. of deliberately scratching his car. N. had subsequently been charged with threatening the same officer and committing robberies, on which charges he had been acquitted by the Brussels Youth Court on 21 April 2000. According to the applicants, the case against him had been entirely fabricated by members of the Saint-Josse-ten-Noode police force by way of reprisal.

19. They added that on 24 June 1999 the first applicant, then aged 13, had been "beaten" by another police officer in the police station, where he had been taken following a fight in the street. He had sustained a perforated eardrum. His mother and one of his sisters, who had been in the waiting room, had been shaken and manhandled by police officers.

20. On 25 November 1999 one of their sisters had been verbally abused by an officer of the Saint-Josse-ten-Noode police force, and on 11 March 2000 their brother, N., had been searched, jostled and verbally abused by police officers.

21. They further stated that in 2000 a "case ... initiated by the Saint-Josse-ten-Noode police force had been opened against N. and entrusted to an investigating judge", but the proceedings had been discontinued. In the same year the second applicant had been "wanted for

questioning" and, even though the Saint-Josse-ten-Noode police force had announced on 23 July 2002 that he was being taken off the relevant "wanted" list, he had still had to make various applications to the prosecutor's office and wait until March 2005 for the process to be completed, causing him a great deal of inconvenience.

22. On 6 April 2001 and 12 July 2001 respectively, N. and the second applicant had been verbally abused by officers of the Saint-Josse-ten-Noode police force.

23. The applicants explained that they had systematically reported to the judicial authorities or police all the incidents of which they had been victims, and had filed complaints.

C. Complaints concerning the events of 8 December 2003 and 23 February 2004, civil-party application, judicial investigation and decision to discontinue proceedings

24. At 9.42 a.m. on 9 December 2003 the first applicant filed a complaint with Committee P and was interviewed by a member of the investigation department. A copy of the medical certificate drawn up the previous day was appended to the initial record.

25. The second applicant followed suit at 11.20 a.m. on 23 February 2004. He indicated in particular that he considered that the "general attitude of the Saint-Josse-ten-Noode police force *vis-à-vis* [his] family [had become] absolutely intolerable and excessive to the point [where they had envisaged] moving house". A copy of the medical certificate drawn up the same day was appended to the initial record.

26. The applicants' mother was also interviewed on 23 February 2004 by the investigation department of Committee P in relation to the second applicant's complaints. She pointed out that as soon as they had returned home she had called Superintendent K. (see paragraph 14 above) to ask him to persuade P.P. to apologise. Superintendent K. had immediately come to their house, where he had found himself in the company of the physician who had drawn up the medical certificate. The applicants' mother also filed a complaint, indicating, moreover, that she herself had been treated with scant respect by Officer P.P.

27. On 5 May 2004 Officer P.P. was interviewed by the director of internal oversight of the local police force in relation to the complaints by the second applicant and his mother. P.P. stated in particular that the second applicant had been particularly disrespectful towards him during his interview and that, although he had grabbed the youth by the arm to make him leave the office, he had not slapped him in the face.

28. On 17 June 2004 the applicants applied to intervene as civil parties in respect of charges of harassment, arbitrary interference with fundamental freedoms, abuse of authority, arbitrary arrest and wounding with intent.

They gave an overview of all their difficulties with the Saint-Josse-ten-Noode police force, and expressly stated that they wished to intervene as civil parties in relation to the events of 8 December 2003 and 23 February 2004.

29. Officers A.Z. and P.P. were charged with using violence against individuals in the course of their duties and, in particular, with intentional wounding or assault, and with engaging in arbitrary acts in breach of the rights and freedoms guaranteed by the Constitution.

30. On 26 June 2004 an investigating judge of the Brussels Court of First Instance gave directions to the investigation department of Committee P asking it to take note of the applicants' civil-party application, to interview them in order to ascertain the details of their complaint, to draft a report on the conduct of the Bouyid family, to draw up a list of the cases brought against them and complaints filed by them, and to explain what action had been taken in that connection.

31. Having regard to the fact that it had already taken testimony from the applicants when they had filed their respective complaints (see paragraphs 24-25 above), the investigation department of Committee P decided not to interview them again. On 26 July 2004 it forwarded a report to the investigating judge, based on the documents from the internal oversight department of the police district covering Saint-Josse-ten-Noode, describing developments in the relations between the applicants' family and the local police force. The report then listed the cases against the family, noting in this connection that the first applicant had been implicated in proceedings opened in December 2003 for abusive and threatening behaviour and for obstructing a police officer, and N. in seven sets of proceedings opened between October 1997 and June 1999. It then noted that, in addition to the applicants' complaints in issue in the present case, three judicial complaints had been filed by members of their family (two with Committee P, in June 1999 and July 2001, and one with the "Youth Division" in 1999) and two complaints had been dealt with by the internal oversight department of the police district covering Saint-Josse-ten-Noode. Lastly, citing a report drawn up in the context of a case against the first applicant and the findings of administrative inquiries, it noted the problematic nature of the relations between the local police and the Bouyid family and commented on the "general behaviour" of the latter, observing as follows.

> "In sum, according to the police officers, the Bouyid family (especially the women and the mother in particular) apparently refuse to admit that the children of the family bear any responsibility for the abusive conduct in question. The children are thus supported in their behaviour by this protective attitude. More generally, the family members are said to behave aggressively and provocatively towards the police.

> Following the incidents involving police officer [B.], a dialogue facilitator apparently failed in an attempt at reconciliation, owing to an intransigent attitude on the part of the women in the Bouyid family.
>
> In 1999 and 2000 the situation required the appointment of a police cadet as a mediator for this family."

32. On 3 August 2004 the investigating judge decided to close the investigation and sent the file to the prosecuting authorities.

33. On 16 November 2004 Officer A.Z. was interviewed by a member of the investigation department of Committee P about the events of 8 December 2003. He stated in particular that he had not previously known the first applicant when he had taken him to the Saint-Josse-ten-Noode police station that particular day.

34. In an application of 10 November 2005, the Crown Prosecutor called for the discontinuance of the case on the ground that "the judicial investigation [had] not established that the facts constituted a serious or petty offence and [had] not adduced any evidence that would justify the taking of further measures".

35. The applicants were informed that the case file would be finalised before the Committals Division of the Brussels Court of First Instance on 2 March 2006. On 1 March 2006 they sent an application to the investigating judge seeking twenty additional investigative measures. That request resulted in the adjournment *sine die* of the case before the Committals Division.

36. On 7 March 2006 the investigating judge ordered two of the requested measures and rejected the remainder of the application on the grounds that it concerned facts that predated the events referred to him and that the measures sought were not necessary for establishing the truth. Consequently, recapitulating all their complaints against the Saint-Josse-ten-Noode police force, the applicants and other members of their family sent the investigating judge a request for an "extension of civil-party status", but it was rejected. The two additional measures were put into effect on 25 April, 15 May and 24 May 2006.

37. In an order of 27 November 2007, the Committals Division, endorsing the grounds set out in the Crown Prosecutor's application, discontinued the proceedings.

38. The applicants appealed against that order.

39. In an application of 3 December 2007, the Principal Crown Prosecutor requested that the discontinuance order be upheld.

40. On 5 February 2008 the applicants and other members of their family filed a complaint as civil parties in respect of all the facts that the investigating judge had considered not to have been referred to him (see paragraphs 43-44 below).

41. On 9 April 2008 the Indictments Division of the Brussels Court of Appeal, after refusing to join the case concerning the events of 8 December

2003 and 23 February 2004 to the new case that had been opened after the civil-party complaint of 5 February 2008, upheld the discontinuance order in a judgment that read as follows.

"...

The facts of the case can be summarised as follows:

– On 8 December 2003 the defendant [A.Z.] is alleged to have engaged in illegal police conduct against the civil party Saïd Bouyid, described by the latter as follows: police officer [A.Z.], on stopping him outside his house, allegedly grabbed him by his jacket and tore it; he was then taken to the police station close by, where the same officer allegedly slapped him on the face with his right hand.

– On 23 February 2004 the defendant [P.P.] is alleged to have engaged in illegal police conduct against the civil party Mohamed Bouyid, described by the latter as follows: on stopping his car in front of his house so that his mother could take out her shopping, he had a row with the driver of the car behind; he was summoned to the police station following a complaint by that driver; during the interview, Mohamed Bouyid was allegedly slapped by the defendant [P.P.] (see the medical certificate issued by Dr ...), who threatened to put him in a cell if he did not sign his statement, when in fact he wanted to change it.

– The Bouyid family have apparently encountered great difficulties with certain members of the Saint-Josse-ten-Noode police force since March 1999, when police officer [B.] suspected [N.] Bouyid of having scratched his car, giving rise to a certain degree of tension and to persecution of this family by the police.

– There is said to be constant provocation on the part of the police of Saint-Josse-ten-Noode making the life of the Bouyid family unbearable.

Both the police's internal oversight department for the police district [concerned] and the investigation department of Committee P conducted an in-depth investigation into the facts complained of by the civil parties.

It transpires from all the findings of the judicial investigation, and in particular from the inconsistent statements of the parties in question, that there is no evidence against the defendants such as to justify their committal on the charges listed in the submissions of the Principal Crown Prosecutor, in respect of the period in which the offences were said to have been committed.

The statements of the defendants, who deny the charges, are consistent; it is appropriate in this connection to refer to the detailed report concerning the general conduct of the civil parties' family drawn up by Committee P, which sheds light on the general context of the case.

The civil parties have not adduced before the court, sitting as the Indictments Division, any new, relevant and convincing information not previously brought to the attention of the court below and capable of revealing the slightest evidence against the defendants that might justify their committal for trial.

Moreover, the judicial investigation did not bring to light sufficient evidence to show that a criminal offence had been committed by the defendants at the time of the incidents in which they were allegedly implicated.

In addition, it does not appear from the case file that the provisions of section 37 of the Law of 5 August 1992 on police duties have not been complied with.

As emphasised by the submissions of both the Crown Prosecutor of 10 November 2005 and those of the Principal Crown Prosecutor, and by the decision of the Committals Division, the facts of the present case do not constitute a serious or petty criminal offence.

..."

42. An appeal on points of law lodged by the applicants – relying in particular on Articles 3, 6 and 13 of the Convention – was dismissed on 29 October 2008 by the Court of Cassation.

D. The civil-party complaint concerning events prior to those of 8 December 2003 and 23 February 2004

43. On 5 February 2008 six members of the Bouyid family, including the two applicants, had filed a civil-party complaint with an investigating judge of the Brussels Court of First Instance concerning all their accusations against the Saint-Josse-ten-Noode police officers, in particular relating to facts that predated the events of 8 December 2003 and 23 February 2004.

44. The civil-party complaint led to the appearance of six officers before the Brussels Court of First Instance, hearing the case on the merits. In a judgment of 30 May 2012, the court declared that the prosecution of the relevant offences was time-barred. It does not appear from the file that an appeal was lodged against that judgment.

II. INTERNATIONAL TEXTS, INSTRUMENTS AND DOCUMENTS

A. The concept of dignity

45. The Preamble to the 26 June 1945 Charter of the United Nations affirms the determination of the peoples of the United Nations "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". The concept of dignity is also mentioned in the Universal Declaration of Human Rights of 10 December 1948, the Preamble to which states that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", and Article 1 of which provides that "all human beings are born free and equal in dignity and rights".

46. Many subsequent international human rights texts and instruments refer to this concept, including:

(a) the UN Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963, which "solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and

respect for the dignity of the human person", and the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (ratified by Belgium), the Preamble to which refers to that Declaration;

(b) the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 (both ratified by Belgium), the Preamble to which states that the equal and inalienable rights of all members of the human family "derive from the inherent dignity of the human person". Furthermore, Article 10 of the former provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person", and Article 13 of the latter states that the "States Parties ... recognize the right of everyone to education ... [and] agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms ...";

(c) the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (ratified by Belgium), the Preamble to which emphasises in particular that discrimination against women "violates the principles of equality of rights and respect for human dignity";

(d) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (ratified by Belgium), the Preamble to which points out that the "equal and inalienable rights of all members of the human family ... derive from the inherent dignity of the human person";

(e) the Convention on the Rights of the Child of 20 November 1989 (ratified by Belgium), the Preamble to which states that "the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the UN Charter, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity" (see also Articles 23 § 1, 28 § 2, 37, 39 and 40 § 1);

(f) the International Convention for the Protection of All Persons from Enforced Disappearance (Articles 19 § 2 and 24 § 5 (c)) (ratified by Belgium);

(g) the Convention on the Rights of Persons with Disabilities (ratified by Belgium), the Preamble to which states that "discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person", and the aims of which include promoting respect for the "inherent dignity" of persons with disabilities (Article 1), this being also one of its general principles (Article 3 (a)) (see also Articles 8 (a), 16 § 4, 24 § 1 and 25);

(h) the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty of 15 December 1989 (ratified by Belgium), the Preamble to which expresses the conviction

that "abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights";

(i) the Optional Protocol to the Convention on the Rights of the Child on a communications procedure of 19 December 2011 (ratified by Belgium), the Preamble to which reaffirms "the status of the child as a subject of rights and as a human being with dignity and with evolving capacities";

(j) the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights of 10 December 2008 (ratified by Belgium) and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 6 October 1999 (ratified by Belgium).

47. Several regional human rights texts and instruments also refer to the concept of dignity, including the following:

(a) the American Convention on Human Rights of 22 November 1969 (Articles 5 § 2, 6 § 2 and 11 § 1);

(b) the Final Act of the Helsinki Conference on Security and Cooperation in Europe of 1 August 1975, which stipulates that the States "will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development" (Principle VII);

(c) the African Charter on Human and Peoples' Rights of 27 June 1981, Article 5 of which lays down that "[e]very individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status";

(d) the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine of 4 April 1997 (which Belgium has not signed), the Preamble to which affirms, *inter alia*, "the need to respect the human being both as an individual and as a member of the human species and ... the importance of ensuring [his] dignity";

(e) the Charter of Fundamental Rights of the European Union of 7 December 2000, the Preamble to which affirms that being "[c]onscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity", and Article 1 of which states that "[h]uman dignity is inviolable [and] must be respected and protected" (see also Article 31 on "Fair and just working conditions");

(f) Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances of 3 May 2002 (ratified by Belgium), the Preamble to which points out that the abolition of the death penalty is essential for the protection of everyone's right to life and for the full recognition of the "inherent dignity of all human beings";

(g) the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005 (ratified by Belgium), the Preamble to which emphasises that "trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being" (see also Articles 6 and 16).

B. Documents of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

48. In a document entitled "CPT standards" (CPT/Inf/E (2002) 1 – Rev. 2015), the CPT stated the following.

> "97. Bearing in mind its preventive mandate, the CPT's priority during visits is to seek to establish whether juveniles deprived of their liberty have been subjected to ill-treatment. Regrettably, deliberate ill-treatment of juveniles by law-enforcement officials has by no means been eradicated and remains a real concern in a number of European countries. CPT delegations continue to receive credible allegations of detained juveniles being ill-treated. The allegations often concern kicks, slaps, punches or blows with batons at the time of apprehension (even after the juvenile concerned has been brought under control), during transportation or subsequent questioning in law-enforcement establishments. It is also not uncommon for juveniles to become victims of threats or verbal abuse (including of a racist nature) whilst in the hands of law-enforcement agencies.
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> ...
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> 126. ... In a number of [juvenile detention centres] visited by the CPT, it was not uncommon for staff to administer a so-called 'pedagogic slap' or other forms of physical chastisement to juveniles who misbehaved. In this regard, the CPT recalls that corporal punishment is likely to amount to ill-treatment and must be strictly prohibited."

The CPT also noted the following in its ninth general activity report (CPT/Inf (99) 12), dated 30 August 1999:

> "24. In a number of other establishments visited [where juveniles were deprived of their liberty], CPT delegations have been told that it was not uncommon for staff to administer the occasional 'pedagogic slap' to juveniles who misbehaved. The Committee considers that, in the interests of the prevention of ill-treatment, all forms of physical chastisement must be both formally prohibited and avoided in practice. Inmates who misbehave should be dealt with only in accordance with prescribed disciplinary procedures."

49. In its report to the Belgian Government on its visit to Belgium from 18 to 27 April 2005 (CPT/Inf (2006) 15, 20 April 2006) the CPT stated, among other things.

> "11. On the basis of all the information obtained during the visit, the CPT has come to the conclusion – as it did following its first three visits to Belgium – that the risk of a person being ill-treated by law-enforcement officers while in detention cannot be dismissed. Accordingly, the CPT recommends that the Belgian authorities continue to

be vigilant in this area and make a special effort in the case of juveniles who have been deprived of their liberty.

The CPT further recommends that law-enforcement officers be given an appropriate reminder at regular intervals that any form of ill-treatment of persons deprived of their liberty – including insults – is unacceptable, that any information regarding alleged ill-treatment will be properly investigated, and that anyone responsible for such treatment will be severely punished.

12. More specifically, concerning allegations of ill-treatment by law-enforcement officers when arresting a suspect, the CPT has repeatedly noted that this process undeniably represents a difficult and dangerous task at times, in particular when the person concerned resists or the law-enforcement officers have good reason to believe that the person poses an imminent threat. However, the use of force when making an arrest must be kept to what is strictly necessary; furthermore, there can never be any justification for striking apprehended persons once they have been brought under control."

The CPT's report on its visit to Belgium from 28 September to 7 October 2009 (CPT/Inf (2010) 24, 23 July 2010) contains the following passage in particular:

"13. In the course of its visits to police stations, the CPT delegation met only a few people who were deprived of their liberty. Nevertheless, while visiting prisons, it met a large number of people who had recently been in police custody.

The majority of the detainees who spoke to the delegation did not report any instances of deliberate physical ill-treatment during their time in police custody. However, the delegation heard a limited number of allegations of excessive use of force (such as blows inflicted after the person had been brought under control, or excessively tight handcuffing) in the course of an arrest (particularly in Brussels, Charleroi and Marcinelle). As the CPT has often acknowledged, arresting a suspect is undeniably a difficult and dangerous task at times, in particular when the person concerned resists or the police have good reason to believe that the person poses an imminent threat. Nevertheless, the CPT recommends that police officers be reminded that when making an arrest, the use of force must be kept to what is strictly necessary; furthermore, there can never be any justification for striking apprehended persons once they have been brought under control."

C. The European Code of Police Ethics

50. In its Recommendation Rec(2001)10 on the European Code of Police Ethics adopted on 19 September 2001, the Committee of Ministers of the Council of Europe stated its conviction that

"public confidence in the police is closely related to their attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined, in particular, in the European Convention on Human Rights".

It recommended that the governments of member States be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the European Code of Police Ethics appended to the

Recommendation, with a view to their progressive implementation and the widest possible circulation of the text.

51. The Code states in particular that one of the main purposes of the police is to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the Convention (paragraph 1). In the section on "Guidelines for police action/intervention" it stipulates that "[t]he police shall not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances" (paragraph 36) and that they "may use force only when strictly necessary and only to the extent required to obtain a legitimate objective" (paragraph 37). Furthermore, "in carrying out their activities, [they] shall always bear in mind everyone's fundamental rights" (paragraph 43) and "police personnel shall act with integrity and respect towards the public and with particular consideration for the situation of individuals belonging to especially vulnerable groups" (paragraph 44).

D. Vulnerability of minors

52. The Preamble to the International Convention on the Rights of the Child ("child" being defined in Article 1 as being "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier") of 20 November 1989 (ratified by Belgium) refers to the above-mentioned declarations and emphasises that the need to afford special protection to the child has been recognised in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (particularly in Articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights (particularly in Article 10) and the relevant statutes and instruments of the specialised institutions and international organisations concerned with child welfare.

53. Several subsequent international and regional texts are based on recognition of the need to take account of the vulnerability of minors. For instance, the Preamble to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 (ratified by Belgium) states that "every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the State", the child being defined as "any person under the age of 18 years" (Article 3 (a)). Reference might also be made to Recommendation CM/Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures and Recommendation CM/Rec(2009)10 on integrated national strategies for the protection of children from violence, adopted by the Committee of Ministers of the Council of Europe on 5 November 2008 and 18 November 2009 respectively. The former instrument emphasises the extreme vulnerability of juveniles deprived of their liberty (Appendix to the

Recommendation, § 52.1).The latter emphasises that "children's fragility and vulnerability and their dependence on adults for the[ir] growth and development call for greater investment in the prevention of violence and protection of children on the part of families, society and the State". Very recently the CPT highlighted the particular vulnerability of juveniles in the context of detention (24th General Report of the CPT, 2013-2014 (CPT/Inf (2015) 1), January 2015 – see paragraph 3 and, under "Juveniles deprived of their liberty under criminal legislation", paragraphs 98 and 99).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicants alleged that police officers had slapped them in the face while they were in the Saint-Josse-ten-Noode police station. They claimed to have been victims of degrading treatment. They further complained that the investigation into their complaints had been ineffective, incomplete, biased and excessively long. They relied on Articles 3, 6 § 1 and 13 of the Convention, the first of which reads as follows:

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

55. Reiterating that the Court was master of the characterisation to be given in law to the facts of the case and finding that these complaints covered the same ground, the Chamber found it appropriate to examine the applicants' allegations solely under Article 3 of the Convention. The Grand Chamber agrees with this approach. It will therefore proceed in the same manner.

A. The Chamber judgment

56. In its judgment the Chamber referred to the principles emerging from the Court's case-law on Article 3 of the Convention. It referred in particular to the principle that where the events in issue lay wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact would arise in respect of injuries occurring during such detention. It was then for the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. The Chamber also referred to the principle that where an individual was deprived of liberty or, more generally, was confronted with law-enforcement officers, any recourse to

physical force which had not been made strictly necessary by the person's own conduct diminished human dignity and was in principle an infringement of the right set forth in Article 3. It further referred to the principle that in order for ill-treatment to fall within the scope of Article 3 it had to attain a minimum level of severity. Furthermore, some forms of violence, although they might be condemned on moral grounds and also very broadly under the domestic law of the Contracting States, would not fall within Article 3. The Chamber further noted that the Government had disputed the fact that the applicants had been slapped by police officers, and had submitted that the medical certificates provided did not establish that the injuries recorded had been caused by such slaps. It nevertheless found it pointless to rule on the veracity or otherwise of the applicants' allegations, considering that, even supposing that they were proved, the acts complained of by the applicants would not, in the circumstances of the case, constitute treatment in breach of Article 3 of the Convention. The Chamber concluded as follows (§ 51):

> "... [E]ven supposing that the slapping took place, in both cases it was an isolated slap inflicted thoughtlessly by a police officer who was exasperated by the applicants' disrespectful or provocative conduct, without seeking to make them confess. Moreover, there was apparently an atmosphere of tension between the members of the applicants' family and police officers in their neighbourhood. In those circumstances, even though one of the applicants was only 17 at the time and whilst it is comprehensible that, if the events really took place as the applicants described, they must have felt deep resentment, the Court cannot ignore the fact that these were one-off occurrences in a situation of nervous tension and without any serious or long-term effect. It takes the view that acts of this type, though unacceptable, cannot be regarded as generating a sufficient degree of humiliation or debasement for a breach of Article 3 of the Convention to be established. In other words, in any event, the above-mentioned threshold of severity has not been reached in the present case, such that no question of a violation of that provision, under either its substantive or its procedural head, arises."

B. The parties' submissions

1. The applicants

57. As regards the substantive aspect of Article 3, the applicants complained that the Chamber had departed from the principles established by the Grand Chamber. They submitted that the Chamber had omitted to apply the presumptions of causality and severity involved in cases of violence against persons who had been deprived of their liberty or were under the control of the police. In such cases there was a presumption of a causal link between the marks left by blows and their imputability to the police, which could be rebutted by reasonable explanations from the alleged perpetrators. If that was not the case, the second presumption came into play where the victim was deprived of his or her liberty: since the use of physical

force inherently infringed human dignity, any such act was presumed to be serious and incompatible with Article 3, although the alleged perpetrator could rebut that presumption by arguing that the use of force had been strictly necessary in the light of the victim's behaviour. The applicants submitted that the Court could only examine the severity of the act "on a subsidiary basis" in determining whether it should be classified as "torture" or "inhuman or degrading treatment".

58. The applicants stressed that medical certificates drawn up shortly after the material time showed that they had displayed traces of blows on leaving the police station. They inferred from this that the presumption of causality applied and noted that the Government, like the police services at the domestic level, had provided no explanations capable of rebutting that presumption, confining themselves to denying that there had ever been any slaps. Furthermore, the use of force against them had been neither necessary nor proportionate. The applicants pointed out that no traces of blows had been found on the police officers who had slapped them, that they themselves had not put up any active physical resistance, that the police and the Belgian State – having always denied slapping the applicants – were unable to establish that the slaps had been necessary, and that consideration should be given to the context of police violence in Belgium. Moreover, the atmosphere of nervousness and disrespect and the conflict between the neighbourhood police and the Bouyid family were insufficient to establish the need for using force. The first applicant added that the identity check for which he had been stopped by the police had been unjustified, that the reasons for the check were obscure, that his jacket had been ripped during the incident, that he had been much more slightly built than the police officer who had slapped him, that he had been a minor at the material time, that the slap had left him in a state of shock, that his feelings of fear and stress had been increased by the fact that he had already had an eardrum perforated four years previously as a result of a blow inflicted by a police officer, and that he had been faced with the silence and corporatist spirit of the police. The second applicant added that he had been seated, posing no direct threat, when he had been slapped.

59. The applicants submitted that police violence was a topical issue in Belgium: the press had reported many such cases, and in its 2012 annual report the Standing Committee for the oversight of police services ("Committee P") had noted an increase in the number of complaints of police violence (468 in 2010 and 576 in 2012). Furthermore, in its report on its visit to Belgium from 18 to 27 April 2005, the CPT had pointed out that "the risk of a person being ill-treated by law-enforcement officers while in detention cannot be dismissed" (cited above, § 11). Moreover, in its final comments on the third periodic report of Belgium, the UN Committee against Torture and Inhuman and Degrading Treatment had noted with concern the persistent allegations of unlawful use of violence by law-

enforcement officials and recommended "thorough", "independent" and "impartial" investigations (CAT/C/BEL/CO/3, 28 October-22 November 2013, § 13). The applicants also submitted that four complaints of police violence were posted every week on the website of the Observatory of Police Violence (OBSPOL) set up by the French-language section of the Belgian Human Rights League. They also had the impression that police officers systematically filed a complaint as soon as a complaint was filed against them, and that even where cases did come before a court, judgment was deferred more frequently than for the average member of the public. This caused the general public to feel that there was a climate of impunity, and many victims were reluctant to file complaints.

60. As regards the procedural aspect of Article 3, the applicants submitted that the investigation conducted into their case did not meet the requirements of the Court's case-law.

61. Firstly, the investigation had been principally based on screening of the family's behaviour, drawing on records prepared by the police station at which the officers of whom the applicants had complained were based. The fact that the summary report set out in detail the complaints lodged by members of their family against police officers from this station and stated that no action had been taken on them, yet did not provide any information on the reports drawn up by police officers in respect of members of their family – in most of which cases no file existed or the proceedings had been discontinued – showed that the investigation had been conducted with a view to exonerating the police officers. The applicants further observed that the investigation had shed no light on the circumstances surrounding the police intervention.

62. Secondly, they argued that there had been serious shortcomings in the investigation: contrary to the investigating judge's instructions, the applicants had at no stage been interviewed by the investigators; the file on the incident involving scratches to the car belonging to an officer from the police station in 1999 had not been included in its entirety in the case file; and the investigating judge had not been informed of the action taken on the various cases opened against members of the Bouyid family (some of the cases mentioned in the summary report did not actually exist or were in fact cases in which they had claimed to be the victims). The applicants pointed out that when they had noted these shortcomings they had applied to the investigating judge for twenty additional investigative measures, of which only two had been accepted: the inclusion of an email in the case file and the interview of a police officer whom the first applicant was alleged to have insulted on 8 December 2003 (moreover, the applicants had not been given access to these pieces of evidence).

63. Thirdly, the legal provisions on interviewing under-age victims of a criminal offence had not been complied with (they referred to Articles 91 *bis* and 92 of the Code of Criminal Procedure, which entitled such persons

to be accompanied by an adult at their interview with the judicial authority and permitted the interview to be recorded).

64. Fourthly, the investigating judge could have requested of his own motion that the following further investigative measures be implemented: interviewing the first applicant's friend who had been with him when he had been stopped and questioned; including in the case file the images from the cameras at the entry to and exit from the police station; ordering a second medical opinion; and organising a face-to-face confrontation.

65. The applicants therefore submitted that it was on the basis of an ineffective investigation conducted with an eye to exonerating the police officers in question that the investigating authorities had decided that the offences had not been made out and that there were no grounds for prosecuting them.

2. The Government

66. The Government stated that they agreed with the applicants' analysis to the effect that if a person was in police custody at the material time there was a presumption of a causal link between the traces of injuries and the imputability of the injuries to the police, which presumption could be rebutted by a reasonable explanation. They also accepted that the act in question was presumed to be serious where the person concerned was in custody, in which case the Court accepted *de facto* that the person's dignity was undermined, although that presumption could be rebutted by proving that the use of force had been strictly necessary in the light of the victim's conduct. The Government stressed that they had never intended to disregard those presumptions, but that they considered it legitimate not to call the police officers' assertions into question if the thorough, exhaustive investigation carried out in the present case disclosed nothing that could reasonably allow those assertions to be contradicted.

67. The Government took the view that the judicial authorities had to reconcile the presumption of causality with the equally fundamental principle of the presumption of innocence of the State agents implicated: the judicial authorities could not depart from the principle that they should convict an accused person only when certain beyond all reasonable doubt that he had committed acts constituting degrading treatment against the complainant.

68. The Government emphasised that in the present case, although the applicants had submitted medical certificates attesting to injuries that might be compatible with the events of which they complained, it was only the applicants' statements that suggested that those injuries were the consequence of a slap and that the slaps in question had been inflicted on both applicants by police officers. Furthermore, the officers in question had always vehemently denied having committed such acts, and none of the evidence gathered during the investigation had refuted their statements. The

Government also observed that members of the Bouyid family had lodged several other complaints against officers from their local police station, each time against the background of a confrontation with the police after they had been stopped and questioned. They concluded that, in view of the behaviour of the Bouyid family, it was conceivable that the applicants' complaints had been intended to discredit the police officers concerned even though no blow had been inflicted. At the hearing the Government mentioned the hypothesis that the applicants had slapped themselves in order to make a case against their municipal police force, with whom they had been having difficulties for many years. In the Government's view the tensions had been so great that such an outcome had not been unimaginable.

69. There was therefore in the present case "more than a reasonable doubt as to the establishment of the alleged facts".

70. The Government submitted that the latter statement did not contradict the principle that when an individual was deprived of liberty or dealing with law-enforcement officials, any recourse to physical force that was not made necessary by the person's own conduct diminished human dignity and would in principle constitute a violation of Article 3.

71. The Government also submitted that the applicants had had access to an effective official investigation which had analysed all the available data in terms of reports, records and testimony. They added, however, that the investigation had not established that the facts alleged by the applicants had actually occurred and had accordingly been unable to identify one or more possible perpetrators.

72. Lastly, the Government stated that they could not accept that the present case should serve as a standard in the fight against police violence, since the facts were not reasonably established.

B. The third-party interveners' observations

1. Human Rights Centre of the University of Ghent

73. This third-party intervener noted that, in concluding that the severity threshold of Article 3 had not been reached, the Chamber had taken account of the applicants' allegedly disrespectful or provocative conduct, the tense climate which had prevailed between the members of the applicants' family and their local police officers, and the facts that the slaps had not been intended to extract confessions and that they had been isolated acts without any serious or long-term effects. It considered that in the light of the Court's case-law, the first three of these four factors were irrelevant. Although it deemed the fourth factor valid, it submitted that there was one criterion to which cardinal importance must be attached in determining whether the severity threshold had been reached in relation to an act committed against a person deprived of his liberty by the police, namely the fact of the police

officers abusing their power *vis-à-vis* persons who were completely under their control. In such cases the severity threshold should be lowered. With reference to *Salman v. Turkey* ([GC], no. 21986/93, ECHR 2000-VII), *Denis Vasilyev v. Russia* (no. 32704/04, 17 December 2009) and *Valiulienė v. Lithuania* (no. 33234/07, 26 March 2013), the third-party intervener pointed out that the Court considered that persons in police custody were in a vulnerable position and that Article 3 imposed a duty on States to protect the physical well-being of persons who were in such a position, and that it took account of the victim's feeling of fear and helplessness in assessing whether the Article 3 threshold had been reached. The third-party intervener took the view that the same applied even more so to minors deprived of their liberty, given their particular vulnerability. In this context, a mere slap could have serious psychological repercussions which were incompatible with the requirements of Article 3, especially as such a slap could be taken as a threat of more severe violence in the event of refusal to cooperate, or even as a punishment.

74. The third-party intervener invited the Court to take account of the fact that in its 2006 and 2010 reports on Belgium (cited above) the CPT had recommended that the Belgian authorities remind "police officers ... that when making an arrest, the use of force must be kept to what is strictly necessary [, and that] there can never be any justification for striking apprehended persons once they have been brought under control".

75. The third-party intervener then pointed out that in *Davydov and Others v. Ukraine* (nos. 17674/02 and 39081/02, § 268, 1 July 2010), the Court had held that Article 3 required States to train law-enforcement officials in such a way as to give them a high level of competence in their professional conduct, such that no one could be subjected to treatment contrary to that provision.

76. Lastly, the third-party intervener highlighted the fact that the use of violence by the police was not unusual in Belgium. Like the applicants, it referred to the statistics published by Committee P and OBSPOL. It added that the Belgian police force had been involved in several cases of police violence in recent years, and that in some police stations in the Brussels region, flat-hand slapping (in order to leave as few marks as possible) had been found to constitute virtually a routine occurrence.

2. REDRESS

77. This third-party intervener stressed that international human rights law only allowed the use of physical force by law-enforcement officials to the extent that it was necessary and proportionate to a legitimate aim. It referred to Article 10 of the International Covenant on Civil and Political Rights, General Comment No. 20 of the UN Human Rights Committee, the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,

the European Code of Police Ethics (cited above) and the European Prison Rules (to which the Court and the CPT referred in their work), as well as the Organization for Security and Co-operation in Europe's Guidebook on Democratic Policing. It derived the following principles from those texts: everyone had the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment specified that these terms should be interpreted so as to extend the widest possible protection against abuses; non-violent means should be attempted first; force should be used only when strictly necessary, and solely for lawful law-enforcement purposes; in their relations with persons in detention, law-enforcement officials should not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety was threatened; no exceptions or excuses should be allowed for unlawful use of force; the use of force was always to be proportionate to lawful objectives; restraint should be exercised in the use of force; damage and injury should be minimised; a range of means for differentiated use of force should be made available; all law-enforcement officials should be trained in the use of the various means for differentiated use of force; and all officers should be trained in the use of non-violent means.

78. The third-party intervener stated that the principle established by the Court to the effect that any recourse to force by a State agent against a person deprived of his liberty which had not been made strictly necessary by that person's conduct diminished human dignity and was in principle an infringement of the right set forth in Article 3. This principle was also enshrined in the case-law of the Inter-American Court of Human Rights (it referred to *Loayza-Tamayo v. Peru* (merits), judgment of 17 September 1997, § 57, Series C No. 33). Furthermore, the Court had specified that where the absence of such strict necessity had been established, there was no need to assess the severity of the suffering caused in order to find a violation of Article 3 (it referred to *Keenan v. the United Kingdom*, no. 27229/95, § 113, ECHR 2001-III); where such necessity had been established, all the decisive factors were taken into account, including the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim, as well as his or her particular vulnerability; and detained persons were vulnerable because they were under the absolute control of the police or prison staff. The third-party intervener added that in a judgment of 2 June 2010 (no. 543/2010) the Spanish Supreme Court, taking into account this vulnerability, had ruled that a slap administered by a police officer to a detainee had been humiliating and degrading despite the lack of any visible injury. This approach had also been adopted by the previous Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms

while Countering Terrorism, the CPT and the UN Human Rights Committee.

79. The third-party intervener stressed that child detainees were doubly vulnerable, as pointed out by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With reference to the UN Rules for the Protection of Juveniles Deprived of their Liberty and the work of the UN Committee on the Rights of the Child, the third-party intervener added that it was well established that the use of force against children was prohibited save for a very limited number of purposes. That applied to all forms of violence, including non-physical or unintentional violence, whatever their frequency or severity, and even where they were not motivated by intent to harm. Like the CPT in its ninth general activity report, it condemned in particular the "pedagogical use of force" (especially "pedagogical slaps"), which consisted in using force in response to a refusal to cooperate or bad behaviour, while the CPT also noted that police stations were the places where young people ran the greatest risk of deliberate ill-treatment.

80. Lastly, the third-party intervener pointed out that national legal systems reflected international and regional standards. The prohibition of the use of force except where it was strictly necessary was also enshrined in the United Kingdom, Sweden, Australia, Canada and the United States.

C. The Court's assessment

1. The substantive aspect of the complaint

(a) General principles

81. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; *Gäfgen v. Germany* [GC], no. 22978/05, § 87, ECHR 2010; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 195, ECHR 2012; and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 315, ECHR 2014). Indeed the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity.

Unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Mocanu and Others*, cited above, § 315). Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct

of the person concerned (see, among other authorities, *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V, and *Labita*, *Gäfgen* and *El-Masri*, all cited above; see also *Georgia v. Russia (I)* [GC], no. 13255/07, § 192, ECHR 2014, and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 113, ECHR 2014).

82. Allegations of ill-treatment contrary to Article 3 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 (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25; *Labita*, cited above, § 121; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 117, ECHR 2006-IX; and *Gäfgen*, cited above, § 92).

83. On this latter point the Court has explained that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Salman*, cited above, § 100; *Rivas v. France*, no. 59584/00, § 38, 1 April 2004; and also, among other authorities, *Turan Cakir v. Belgium*, no. 44256/06, § 54, 10 March 2009; *Mete and Others v. Turkey*, no. 294/08, § 112, 4 October 2011; *Gäfgen*, cited above, § 92; and *El-Masri*, cited above, § 152). In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see, among other authorities, *El-Masri*, cited above, § 152). That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (see, among other authorities, *Salman*, cited above, § 99).

84. The Chamber found in the present case that the same principle held true in the context of an identity check in a police station (as in the case of the first applicant) or a mere interview on such premises (as in the case of the second applicant). The Grand Chamber agrees, emphasising that the principle set forth in paragraph 83 above applies to all cases in which a person is under the control of the police or a similar authority.

85. The Court also pointed out in the *El-Masri* judgment (cited above, § 155) that, although it recognised that it must be cautious in taking on the role of a first-instance tribunal of fact where this was not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000), it had to apply a "particularly thorough scrutiny" where allegations were made under Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*,

4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010), even if certain domestic proceedings and investigations had already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007). 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 *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 83, 12 February 2009).

86. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, § 162; *Jalloh*, § 67; *Gäfgen*, § 88; *El-Masri*, § 196; and *Svinarenko and Slyadnev*, § 114, all cited above). Further factors include the purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it (compare, *inter alia*, *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports* 1996-VI; *Egmez v. Cyprus*, no. 30873/96, § 78, ECHR 2000-XII; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004; see also, among other authorities, *Gäfgen*, § 88, and *El-Masri*, § 196, both cited above), although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Svinarenko and Slyadnev*, cited above, § 114). Regard must also be had to the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions (compare, for example, *Selmouni*, § 104, and *Egmez*, § 78, both cited above; see also, among other authorities, *Gäfgen*, cited above, § 88).

87. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011; *Gäfgen*, cited above, § 89; *Svinarenko and Slyadnev*, cited above, § 114; and *Georgia v. Russia (I)*, cited above, § 192). It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others (see, among other authorities, *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26, and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 220, ECHR 2011).

88. Furthermore, in view of the facts of the case, the Court considers it particularly important to point out that, in respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see, among other authorities, *Ribitsch*, § 38; *Mete and Others*, § 106; and *El-Masri*, § 207, all cited above).

89. The word "dignity" appears in many international and regional texts and instruments (see paragraphs 45-47 above). Although the Convention does not mention that concept – which nevertheless appears in the Preamble to Protocol No. 13 to the Convention, concerning the abolition of the death penalty in all circumstances – the Court has emphasised that respect for human dignity forms part of the very essence of the Convention (see *Svinarenko and Slyadnev*, cited above, § 118), alongside human freedom (see *C.R. v. the United Kingdom*, 22 November 1995, § 42, Series A no. 335-C, and *S.W. v. the United Kingdom*, 22 November 1995, § 44, Series A no. 335-B; see also, among other authorities, *Pretty v. the United Kingdom*, no. 2346/02, § 65, ECHR 2002-III).

90. Moreover, there is a particularly strong link between the concepts of "degrading" treatment or punishment within the meaning of Article 3 of the Convention and respect for "dignity". In 1973 the European Commission of Human Rights stressed that in the context of Article 3 of the Convention the expression "degrading treatment" showed that the general purpose of that provision was to prevent particularly serious interferences with human dignity (see *East African Asians v. the United Kingdom*, nos. 4403/70 and 30 others, Commission's report of 14 December 1973, Decisions and Reports 78-A, p. 56, § 192). The Court, for its part, made its first explicit reference to this concept in the judgment in *Tyrer* (cited above), concerning not "degrading treatment" but "degrading punishment". In finding that the punishment in question was degrading within the meaning of Article 3 of the Convention, the Court had regard to the fact that "although the applicant did not suffer any severe or long-lasting physical effects, his punishment – whereby he was treated as an object in the power of the authorities – constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity" (ibid., § 33). Many subsequent judgments have highlighted the close link between the concepts of "degrading treatment" and respect for "dignity" (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; *Yankov v. Bulgaria*, no. 39084/97, § 114, ECHR 2003-XII; and *Svinarenko and Slyadnev*, cited above, § 138).

(b) Application to the present case

(i) Establishment of the facts

91. The Government did not contest the above-mentioned principle that where an individual displayed traces of blows after being under the control of the police and complained that those traces were the result of ill-treatment, there was a – rebuttable – presumption that this was indeed the case (see paragraphs 83-84 above). They also accepted that that principle applied in the instant case. However, they submitted that the medical certificates produced by the applicants established neither that the injuries mentioned had resulted from a slap nor that the latter had been inflicted by police officers, particularly since the police officers in question had always denied such acts. They added that none of the evidence gathered during the investigation contradicted their denial.

92. The Court observes that in order to benefit from the presumption in question, individuals claiming to be the victims of a violation of Article 3 of the Convention must demonstrate that they display traces of ill-treatment after being under the control of the police or a similar authority. Many of the cases with which the Court has dealt show that such persons usually provide medical certificates for that purpose, describing injuries or traces of blows, to which the Court attaches substantial evidential weight.

93. The Court further notes that the medical certificates produced in the present case – the authenticity of which is not contested – mention, in the case of the first applicant, his "state of shock", "erythema on the left cheek (disappearing)" and "erythema on the left-side external auditory canal" (see paragraph 12 above) and, in the case of the second applicant, "bruising [on the] left cheek" (see paragraph 16 above). These are the possible consequences of slaps to the face.

94. The Court also observes that the certificates were issued on the day of the events, shortly after the applicants had left the Saint-Josse-ten-Noode police station, which strengthens their evidential value. The certificate concerning the first applicant was issued on 8 December 2003 at 7.20 p.m., the first applicant having been in the police station from 4 p.m. to 5.30 p.m. (see paragraphs 12 and 14 above). The certificate for the second applicant is dated 23 February 2004 and was drawn up before 11.20 a.m. – when it was presented to Committee P (see paragraph 25 above) – the second applicant having been in the police station between 9.44 a.m. and 10.20 a.m. (see paragraphs 15-16 above).

95. The Court notes that it has not been disputed that the applicants did not display any such marks on entering the Saint-Josse-ten-Noode police station.

96. Lastly, throughout the domestic proceedings the police officers in question consistently denied having slapped the applicants. However, the applicants claimed the opposite just as consistently. Moreover, given that

there were major shortcomings in the investigation (see paragraphs 124-34 below), it is impossible to conclude that the officers' statements were accurate from the mere fact that the investigation failed to provide any evidence to the contrary.

97. As to the hypothesis mentioned by the Government at the hearing to the effect that the applicants had slapped their own faces in order to make a case against the police (see paragraph 68 above), the Court notes that there is no evidence to corroborate it. Furthermore, having regard to the evidence produced by the parties, the hypothesis in question would not appear to have been mentioned in the domestic courts.

98. In the light of the foregoing the Court deems it sufficiently established that the erythema described in the certificates produced by the applicants occurred while they were under police control in the Saint-Josse-ten-Noode station. It also notes that the Government failed to produce any evidence likely to cast doubt on the applicants' submissions to the effect that the erythema had resulted from a slap inflicted by a police officer. The Court therefore considers that fact proven.

99. It remains to be determined whether the applicants are justified in claiming that the treatment of which they complain was in breach of Article 3 of the Convention.

(ii) Classification of the treatment inflicted on the applicants

100. As the Court has pointed out previously (see paragraph 88 above), where an individual 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 the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.

101. The Court emphasises that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the above-mentioned severity threshold (see paragraphs 86-87 above) has not been attained. Any interference with human dignity strikes at the very essence of the Convention (see paragraph 89 above). For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question.

102. In the present case the Government did not claim that the slaps of which the two applicants complained had corresponded to recourse to physical force which had been made strictly necessary by their conduct; they simply denied that any slaps had ever been administered. In fact, it appears from the case file that each slap was an impulsive act in response to an attitude perceived as disrespectful, which is certainly insufficient to

establish such necessity. The Court consequently finds that the applicants' dignity was undermined and that there has therefore been a violation of Article 3 of the Convention.

103. In any event, the Court emphasises that a slap inflicted by a law-enforcement officer on an individual who is entirely under his control constitutes a serious attack on the individual's dignity.

104. A slap has a considerable impact on the person receiving it. A slap to the face affects the part of the person's body which expresses his individuality, manifests his social identity and constitutes the centre of his senses – sight, speech and hearing – which are used for communication with others. Indeed, the Court has already had occasion to note the role played by the face in social interaction (see *S.A.S. v. France* [GC], no. 43835/11, §§ 122 and 141, ECHR 2014, concerning the ban on wearing clothing intended to conceal the face in public places). It has also had regard to the specificity of that part of the body in the context of Article 3 of the Convention, holding that "particularly because of its location", a blow to an individual's head during his arrest, which had caused a swelling and a 2 cm bruise on his forehead, was sufficiently serious to raise an issue under Article 3 (see *Samüt Karabulut v. Turkey*, no. 16999/04, § 41, 27 January 2009).

105. The Court reiterates that it may well suffice that the victim is humiliated in his own eyes for there to be degrading treatment within the meaning of Article 3 of the Convention (see paragraph 87 above). Indeed, it does not doubt that even one unpremeditated slap devoid of any serious or long-term effect on the person receiving it may be perceived as humiliating by that person.

106. That is particularly true when the slap is inflicted by law-enforcement officers on persons under their control, because it highlights the superiority and inferiority which by definition characterise the relationship between the former and the latter in such circumstances. The fact that the victims know that such an act is unlawful, constituting a breach of moral and professional ethics by those officers and – as the Chamber rightly emphasised in its judgment – also being unacceptable, may furthermore arouse in them a feeling of arbitrary treatment, injustice and powerlessness (for consideration of this kind of feeling in the context of Article 3 of the Convention, see, for example, *Petyo Petkov v. Bulgaria*, no. 32130/03, §§ 42 and 47, 7 January 2010).

107. Moreover, persons who are held in police custody or are even simply taken or summoned to a police station for an identity check or questioning – as in the applicants' cases – and more broadly all persons under the control of the police or a similar authority, are in a situation of vulnerability. The authorities are consequently under a duty to protect them (see paragraphs 83-84 above). In inflicting the humiliation of being slapped by one of their officers they are clearly disregarding this duty.

108. The fact that the slap may have been administered thoughtlessly by an officer who was exasperated by the victim's disrespectful or provocative conduct is irrelevant here. The Grand Chamber therefore departs from the Chamber's approach on this point. As the Court has previously pointed out, even under the most difficult circumstances, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see paragraph 81 above). In a democratic society ill-treatment is never an appropriate response to problems facing the authorities. The police, specifically, must "not inflict, instigate or tolerate any act of torture or inhuman or degrading treatment or punishment under any circumstances" (European Code of Police Ethics, § 36; see paragraph 51 above). Furthermore, Article 3 of the Convention establishes a positive obligation on the State to train its law-enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no one is subjected to torture or treatment that runs counter to that provision (see *Davydov and Others*, cited above, § 268).

109. Lastly, the Court notes, as a secondary consideration, that the first applicant was born on 22 August 1986 and was thus 17 years old on 8 December 2003. He was therefore a minor at the material time. Ill-treatment is liable to have a greater impact – especially in psychological terms – on a minor (see, for example, *Rivas*, cited above, § 42, and *Darraj v. France*, no. 34588/07, § 44, 4 November 2010) than on an adult. More broadly, the Court has on numerous occasions stressed the vulnerability of minors in the context of Article 3 of the Convention. That was the case, for instance, in *Okkalı v. Turkey* (no. 52067/99, ECHR 2006-XII); *Yazgül Yılmaz v. Turkey* (no. 36369/06, 1 February 2011) and *Iurcu v. the Republic of Moldova* (no. 33759/10, 9 April 2013). The need to take account of the vulnerability of minors has also been clearly affirmed at the international level (see paragraphs 52-53 above).

110. The Court emphasises that it is vital for law-enforcement officers who are in contact with minors in the exercise of their duties to take due account of the vulnerability inherent in their young age (European Code of Police Ethics, § 44; see paragraph 51 above). Police behaviour towards minors may be incompatible with the requirements of Article 3 of the Convention simply because they are minors, whereas it might be deemed acceptable in the case of adults. Therefore, law-enforcement officers must show greater vigilance and self-control when dealing with minors.

111. In conclusion, the slap administered to each of the applicants by the police officers while they were under their control in the Saint-Josse-ten-Noode police station did not correspond to recourse to physical force that had been made strictly necessary by their conduct, and thus diminished their dignity.

112. Given that the applicants referred only to minor bodily injuries and did not demonstrate that they had undergone serious physical or mental suffering, the treatment in question cannot be described as inhuman or, *a fortiori*, torture. The Court therefore finds that the present case involved degrading treatment.

113. Accordingly, there has been a violation of the substantive head of Article 3 in respect of each of the applicants.

2. Procedural aspect of the complaint

(a) General principles

114. The Court refers to the general principles set out, *inter alia*, in *El-Masri* (cited above, §§ 182-85) and *Mocanu and Others* (cited above, §§ 316-26).

115. Those principles indicate that the general prohibition of torture and inhuman or degrading treatment or punishment by agents of the State in particular would be ineffective in practice if no procedure existed for the investigation of allegations of ill-treatment of persons held by them.

116. Thus, having regard to the general duty on the State under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", the provisions of Article 3 require by implication that there should be some form of effective official investigation where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands, *inter alia*, of the police or other similar authorities.

117. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws prohibiting torture and inhuman or degrading treatment or punishment in cases involving State agents or bodies, and to ensure their accountability for ill-treatment occurring under their responsibility.

118. Generally speaking, for an investigation to be effective, the institutions and persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of any hierarchical or institutional connection but also practical independence.

119. Whatever mode is employed, the authorities must act of their own motion. In addition, in order to be effective the investigation must be capable of leading to the identification and punishment of those responsible. It should also be broad enough to permit the investigating authorities to take into consideration not only the actions of the State agents who directly used force but also all the surrounding circumstances.

120. Although this is not an obligation of results to be achieved but of means to be employed, any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the

persons responsible will risk falling foul of the required standard of effectiveness.

121. A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

122. The victim should be able to participate effectively in the investigation.

123. Lastly, the investigation must be thorough, which 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.

(b) Application to the present case

124. The Court considers that the applicants' allegations – as set out in the complaints lodged with the domestic authorities – that they were subjected to treatment breaching Article 3 of the Convention by officers at the Saint-Josse-ten-Noode police station were arguable. Article 3 thus required the authorities to conduct an effective investigation.

125. The Government submitted that the manner in which the investigation was conducted was satisfactory in the light of the criteria established in the case-law, as set out above.

126. The Court does not share the Government's view.

127. It notes that after the applicants had lodged a civil-party complaint, an investigation was initiated and the two police officers implicated by the applicants were charged with using violence against individuals in the course of their duties and, in particular, with intentional wounding or assault, and with engaging in arbitrary acts in breach of the rights and freedoms guaranteed by the Constitution. The investigation was conducted in accordance with statutory requirements, under the authority of an investigating judge. It was therefore under the control of an independent authority. Furthermore, there is nothing to suggest that the applicants were unable to participate in it.

128. Nevertheless, the investigating judge, who would appear not to have ordered any specific investigative measures in person, confined himself to asking the investigation department of Committee P to take note of the applicants' civil-party application, to interview them in order to ascertain the details of their complaint, to draft a report on the conduct of the Bouyid family, to draw up a list of the cases brought against them and complaints filed by them and to explain what action had been taken in that connection. He failed to hold, or arrange for, a face-to-face confrontation

between the police officers in question and the applicants, or to interview or order an interview of the physicians who had drawn up the medical certificates produced by the applicants, or of the person who was with the first applicant when Officer A.Z. had stopped and questioned him in the street on 8 December 2003 (see paragraph 11 above), or of Superintendent K., who had met the second applicant at the latter's home on 23 February 2004, just after he had left the Saint-Josse-ten-Noode police station (see paragraph 26 above). Such measures might, however, have helped establish the facts.

129. The investigation was therefore mainly confined to interviews of the police officers involved in the incidents by other police officers seconded to the investigation department of Committee P and the preparation by those officers of a report summarising the evidence gathered, once again, by police officers (the internal oversight department of the police district covering the applicants' neighbourhood), which mainly described the "general behaviour" of the Bouyid family.

130. Furthermore, no reasons were provided for either the submissions of the Crown Prosecutor or the order by the Committals Division of the Brussels Court of First Instance discontinuing the case. Moreover, in upholding that discontinuance order, the Indictments Division of the Brussels Court of Appeal drew almost exclusively on the above-mentioned report concerning the behaviour of the Bouyid family and the denials of the officers charged, without assessing the credibility and seriousness of the applicants' allegations that they had been slapped by the officers in question. It should also be noted that the Indictment Division's judgment of 9 April 2008, which contains only a very brief reference to the medical certificate produced by the second applicant, makes no mention at all of the certificate produced by the first applicant.

131. These factors tend to indicate that the investigating authorities failed to devote the requisite attention to the applicants' allegations – despite their being substantiated by the medical certificates which they had submitted for inclusion in the case file – or to the nature of the act, involving a law-enforcement officer slapping an individual who was completely under his control.

132. Lastly, the Court notes the unusual length of the investigation, for which the Government provided no explanation. The events occurred on 8 December 2003, in the case of the first applicant, and on 23 February 2004, in the case of the second, and the applicants lodged their complaints with Committee P on 9 December 2003 and 23 February 2004 respectively, before bringing a civil-party application on 17 June 2004. However, the discontinuance order was not made until 27 November 2007. As for the judgments of the Indictments Division of the Brussels Court of Appeal and the Court of Cassation, they were delivered on 8 April 2008 and 29 October 2008 respectively. Therefore, almost five years elapsed between the first

applicant's complaint and the Court of Cassation judgment marking the close of the proceedings, and a period of over four years and eight months elapsed in the second applicant's case.

133. As the Court has emphasised on previous occasions, although there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *McKerr v. the United Kingdom*, no. 28883/95, § 114, ECHR 2001-III, and *Mocanu and Others*, cited above, § 323).

134. In the light of the foregoing, the Court considers that the applicants did not have the benefit of an effective investigation. It consequently finds a violation of the procedural head of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. 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

136. As before the Chamber, the applicants jointly claimed 5,000 euros (EUR) in respect of the non-pecuniary damage resulting from the violation of the substantive head of Article 3 of the Convention, and EUR 43,110 in respect of the non-pecuniary damage resulting from the violation of the procedural head of the same Article. They justified this latter amount by arguing that the frustration they had experienced as a result of the shortcomings in the investigation had begun on 7 March 2006 with the order refusing additional investigative measures and had lasted until 14 November 2012; they considered it appropriate to award each of them a daily amount of EUR 15 covering the period up to 29 October 2008, when the Court of Cassation delivered its judgment (a total of 952 days), and a daily amount of EUR 5 for the subsequent period (a total of 1,455 days).

137. The Government, who did not comment on these claims before the Grand Chamber, had indicated in their observations before the Chamber that they would leave the above-mentioned amount of EUR 5,000 to the Court's discretion. They had also invited it to disregard the applicants' pecuniary assessment of the damage caused by the violation of the procedural head of Article 3, arguing that it was unreasonable and unrealistic. They had added

that if the Court were to consider that the restoration of the applicants' rights as a result of a finding of a violation constituted insufficient redress, the award under that head should be reduced to a fair level.

138. The Court considers it undeniable that the applicants sustained non-pecuniary damage on account of the violation of the substantive and procedural heads of Article 3 of the Convention of which they were the victims. Making its assessment on an equitable basis as required by Article 41 of the Convention, it awards each of them EUR 5,000 under this head.

B. Costs and expenses

139. As before the Chamber, the applicants claimed EUR 4,088.71 in respect of their costs and expenses before the domestic courts. They further claimed EUR 25,167.04 in respect of their costs and expenses relating to the proceedings before the Court, that is to say EUR 7,051.42 in respect of Mr Marchand's fees and EUR 18,115.62 in respect of Mr Chihaoui's fees. They explained that they had agreed hourly rates of EUR 85 and EUR 125 respectively with the two lawyers. Furthermore, Mr Marchand had charged them for thirty-five hours' preparation of their application, approximately thirteen hours' preparation of their request for referral to the Grand Chamber and approximately nine hours' preparation of their memorial before the Grand Chamber, and Mr Chihaoui had charged them fifty-one hours' preparation of their observations before the Chamber, sixty-nine hours' preparation of their request for referral to the Grand Chamber and approximately nine hours' preparation of their memorial before the Grand Chamber. They produced various documents in support of these claims.

140. The Government, who did not comment on these claims before the Grand Chamber, had stated in their observations before the Chamber that they considered the hourly rate of EUR 85 reasonable. On the other hand, they had submitted that consulting a second lawyer charging an hourly rate of EUR 125 seemed unnecessary, and had consequently requested that this part of the claim be rejected or, at the very least, that the same hourly rate of EUR 85 be applied.

141. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 135, 3 October 2014). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 10,000 jointly for the costs and expenses incurred before the domestic courts and before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Holds*, by fourteen votes to three, that there has been a violation of Article 3 of the Convention under its substantive head;

2. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention under its procedural head;

3. *Holds*, by fifteen votes to two,
   (a) that the respondent State is to pay the following amounts within three months:
      (i) EUR 5,000 (five thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, 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;

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

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 28 September 2015.

Johan Callewaert Deputy Registrar	Dean Spielmann President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges De Gaetano, Lemmens and Mahoney is annexed to this judgment.

D.S.
J.C.

JOINT PARTLY DISSENTING OPINION OF JUDGES DE GAETANO, LEMMENS AND MAHONEY

(Translation)

1. We agree with the majority's finding of a violation of the procedural aspect of Article 3 of the Convention. To our regret, however, we are unable to join the majority in finding that there has also been a violation of the substantive aspect of that Article.

2. We wish to make clear at the outset that we endorse the general principles recapitulated by the majority (in paragraphs 81-90 of the present judgment). We are likewise prepared to accept, as the majority did, that by applying the appropriate rules of evidence in the present case, it can be concluded that the applicants were each given a slap while under the control of the police (see paragraphs 91-98 of the judgment).[1]

The issue on which we are unable to concur with the majority is the characterisation under Article 3 of the treatment to which the applicants were subjected (see paragraphs 100-13).

3. We consider, like the Chamber (see paragraph 50 of its judgment) and the majority of the Grand Chamber (see paragraph 106 of the present judgment), that police officers who needlessly strike an individual under their control are committing a breach of professional ethics. Moreover, in a democratic society it is only to be expected that such an act should also constitute a tort and a criminal offence.

We wish to emphasise that a slap by a police officer is unacceptable (see, to similar effect, paragraph 51 of the Chamber judgment). Our dissenting opinion is therefore on no account to be construed as acknowledging any kind of immunity for police officers, or even as tolerating what happened at the Saint-Josse-ten-Noode police station.

However, it is not for the Court to issue opinions on the basis of professional ethics or domestic law. What concerns us here is the narrower issue of whether the unacceptable treatment meted out to the applicants constituted "degrading treatment", and hence a violation not just of the applicants' rights, but of their fundamental rights as safeguarded by the Convention.

4. We are prepared to accept, as the majority did, that where a person is under the control of the police any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity (see paragraphs 88 and 100 of the judgment).

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1. In view of the conclusion we have reached, however, we might have left open the question of the establishment of the facts, as did the Chamber (*Bouyid v. Belgium*, no. 23380/09, § 49, 21 November 2013).

We are able to reach that conclusion without resorting to the detailed observations on human dignity set out both in the part of the judgment dealing with international texts, instruments and documents (paragraphs 45-47) and in the "Law" part (paragraphs 89-90). Indeed, we wonder what practical purpose is served by these observations, given that the majority provide no indication of how the notion of human dignity is to be understood. The observations are presented as though they intend to establish a doctrine, but in reality they do not offer the reader much by way of enlightenment.

5. That said, should it be accepted that any interference with human dignity constitutes degrading treatment and hence a violation of Article 3? Without going that far, the majority appear to be suggesting that any interference with human dignity resulting from the use of force by the police will necessarily breach Article 3.

We consider that in so finding, the majority have departed from the well-established case-law to the effect that, where recourse to physical force diminishes human dignity, it will "in principle" constitute a violation of Article 3. The relevant case-law is in fact referred to twice in the judgment (in paragraph 88, with references to *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Mete and Others v. Turkey*, no. 294/08, § 106, 4 October 2011; and *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 207, ECHR 2012; and in paragraph 100). In our view, the use of the term "in principle" implies that there are exceptions, that is to say, instances of interference with human dignity that nevertheless do not breach Article 3. On this point we would refer to the *Ireland v. the United Kingdom* judgment, in which the Court found that there could be "violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 of the Convention" (see *Ireland v. the United Kingdom*, 18 January 1978, § 167, Series A no. 25).

This is because there are forms of treatment which, while interfering with human dignity, do not attain the minimum level of severity required to fall within the scope of Article 3 (see, for example, *Ireland v. the United Kingdom*, cited above, § 162; and, among recent judgments, *El-Masri*, cited above, § 196; *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 114, ECHR 2014; and *Tarakhel v. Switzerland* [GC], no. 29217/12, § 94, ECHR 2014).

6. The main question arising in the present case is whether this minimum level was attained in respect of the applicants.

The majority begin by pointing out that the assessment of this minimum depends on all the circumstances of the case (see paragraph 86 of the present judgment). Subsequently, however, they show no further concern for the specific circumstances, instead simply adopting an eminently dogmatic position: any conduct by law-enforcement officers which

diminishes human dignity constitutes a violation of Article 3, irrespective of its impact on the person concerned (see paragraph 101).

For our part, we consider that the specific circumstances are of fundamental importance. It is not for the Court to impose general rules of conduct on law-enforcement officers; instead, its task is limited to examining the applicants' individual situation to the extent that they allege that they were personally affected by the treatment complained of (see, *mutatis mutandis*, *Lorsé and Others v. the Netherlands*, no. 52750/99, § 62, 4 February 2003; *Van der Ven v. the Netherlands*, no. 50901/99, § 50, ECHR 2003-II; and *Lindström and Mässeli v. Finland*, no. 24630/10, § 41, 14 January 2014). Certain factors dictate that the seriousness of the violence inflicted on the applicants should be put in perspective. These concern in particular the duration of the treatment, its physical or psychological effects, the intention or motivation behind it, and the context in which it was inflicted (see the aspects held to be relevant in the Court's case-law, as recapitulated in paragraph 86 of the present judgment). As the Chamber noted, both the incidents in the present case involved an isolated slap inflicted thoughtlessly by a police officer who was exasperated by the applicants' disrespectful or provocative conduct, in a context of tension between the members of the applicants' family and police officers in their neighbourhood, and there were no serious or long-term effects (see paragraph 51 of the Chamber judgment). Although the treatment complained of was unacceptable (see paragraph 3 above), we are unable to find that it attained the minimum level of severity to be classified as "degrading treatment" within the meaning of Article 3 of the Convention.

7. We fear that the judgment may impose an unrealistic standard by rendering meaningless the requirement of a minimum level of severity for acts of violence by law-enforcement officers. Police officers may well be required to exercise self-control in all circumstances, regardless of the behaviour of the person they are dealing with (see paragraph 108 of the present judgment), but this will not prevent incidents in which people behave provocatively towards them – as in the present case – and cause them to lose their temper. It will then be for the appropriate domestic courts, where necessary, to determine whether the officers' behaviour may have been excusable. To conclude, as the majority have, that in any such incident the State will be responsible for a violation of the victims' fundamental rights, in particular because of a failure to train officials "in such a manner as to ensure their high level of competence" (ibid.), is in our view a clear underestimation of the various difficulties that may be encountered in real-life situations.

This observation cannot be countered by stating that the prohibition of torture and inhuman or degrading treatment or punishment is absolute, regardless of the conduct of the person concerned (ibid.). We too subscribe to the absolute nature of this prohibition. However, it only applies once it

has been established that a particular instance of treatment has attained the requisite level of severity.

There is also good ground for thinking that the absolute nature of the prohibition set forth in Article 3 is one of the reasons why the Court has found that this Article will be breached only where the level of severity has been attained. The Court regularly reiterates that it is attentive to the seriousness attaching to a ruling that a Contracting State has violated fundamental rights (see, among other authorities, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Mathew v. the Netherlands*, no. 24919/03, § 156, ECHR 2005-IX; and *Georgia v. Russia (I)* [GC], no. 13255/07, § 94, ECHR 2014). This is especially true of a finding of a violation of Article 3, a provision that enshrines "one of the most fundamental values of democratic societies" (see paragraph 81 of the present judgment) and requires an absolute prohibition by States.

Accordingly, we should avoid trivialising findings of a violation of Article 3. The situation complained of in the present case is far less serious than the treatment inflicted by law-enforcement officers in many other cases that the Court has unfortunately had to deal with. What impact, then, does a finding of a violation of Article 3 still have?[2]

8. The victim's vulnerability is a factor that may be taken into account in assessing the seriousness of an interference with human dignity. The majority refer in this connection, admittedly as a secondary consideration, to the fact that the first applicant was a minor at the material time (see paragraphs 109-10 of the judgment).

We consider that the Court does not have enough information to treat the first applicant's age as a truly relevant factor in the present case. This was not his first confrontation with the police. Moreover, he was a member of a family who had had difficult relations with the police for years and who had lodged several criminal complaints against police officers. Referring simply to the first applicant's age as a basis for concluding that he was a vulnerable person towards whom the police officers should have shown "greater vigilance and self-control" (see paragraph 110 of the present judgment) is in our view an overly theoretical approach. The conclusion reached on this point risks being completely at odds with reality.

9. In finding that there has been a violation of the substantive aspect of Article 3, the majority have sought to display zero tolerance towards police officers who resort to physical force that has not been made strictly

2. A question that has not been discussed in the present case but will no doubt arise in the future is whether the strict standard set by the majority should now also be applied in cases concerning the extradition or expulsion of aliens. Would Article 3 stand in the way of the extradition or deportation of an alien to a country where he or she is at risk of being slapped (once)?

necessary by the conduct of the person with whom they are dealing. This in itself is a laudable aim. Police violence is unacceptable.

However, we would have preferred a more nuanced assessment of the facts of the case, with a stronger grounding in reality. For the reasons set out above, we consider that the treatment complained of did not attain the level of severity required to fall within the scope of Article 3.