

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

FOURTH SECTION

CASE OF GEDRIMAS v. LITHUANIA

(Application no. 21048/12)

JUDGMENT

STRASBOURG

12 July 2016

FINAL

12/10/2016

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



In the case of Gedrimas v. Lithuania,

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

András Sajó, *President,*
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 21 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 21048/12) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Aleksandras Gedrimas ("the applicant"), on 26 March 2012.

2. The applicant was represented by Ms V. Bradulskienė, a lawyer practising in Ukmergė. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged, in particular, that he had been ill-treated by the police during his arrest on 23 April 2008 and that the authorities had failed to carry out an effective and objective investigation, contrary to Article 3 of the Convention.

4. On 17 September 2014 the complaints concerning Article 3 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Jonava.

A. The applicant's arrest on 23 April 2008

6. On 23 April 2008, around 2.45 a.m., two officers of the Jonava Police Department, V.B. and J.D., received an alert that there had been a break-in and robbery in a jewellery store. They called a dog handler, N.B., from the Kaunas Police Department who, with the help of a police dog, followed traces from the store to a garage complex on a nearby street and informed V.B. and J.D., who then went to the garage complex.

7. The applicant worked as a guard in that garage complex and on the night of 23 April 2008 he was on duty. It appears that no other employees were present in the garage complex at that time.

8. The officers V.B. and J.D. arrested the applicant and took him to Jonava police station. According to the official police record, the applicant was placed in detention at 4.55 a.m. on 23 April 2008 and released at 7.40 a.m. the same day.

9. Subsequently the applicant and the police officers presented different accounts of the circumstances surrounding the applicant's arrest.

10. On 23 April 2008 the officer V.B. submitted the following report to his superior:

> "On 23 April 2008 I was on duty in Jonava together with officer J.D. At 4.25 a.m. we arrived at the entrance to the garage complex ... where an officer of the Kaunas Police Department, N.B., was waiting for us. He said that a police dog had followed traces to [a car] ... the car was identified as belonging to [the applicant]. We called the guard of the garage and asked him whose car it was, and he said that the car was his. When he was asked to state his name, surname and place of residence, the guard refused and began shouting and jostling (*pradėjo rėkti ir stumdytis*). He said that he did not have to tell us anything about himself. We explained that a crime had been committed and that he was under an obligation to comply with our lawful orders. The guard refused to comply and kept shouting and jostling. A restrictive measure - handcuffs – was used against him. After the man was taken to the Jonava police station, it was identified that he was [the applicant]."

The officer J.D. submitted an identically worded report the same day.

11. That same day the applicant submitted the following statement to the Jonava District Prosecutor (hereinafter "the prosecutor"):

> "On the night of 22-23 April 2008 I was on duty at the garage complex ... Around 4.30 a.m. three police officers came onto the premises. One of them asked me why I had driven drunk and fled. I explained that I was at my workplace, that I had not been drinking and had not gone anywhere (I had arrived at work at 9 p.m.). They checked the car and again began accusing me of being drunk and driving drunk. I told them that I was not drunk and that I had a medium-level disability (*antros grupės neįgalumas*). Then they dragged me into the administrative area, handcuffed me, pushed me to the floor and held me down, and twisted my arms behind my back (*laužė rankas*), it hurt a lot (my hands were handcuffed behind my back); one of them kicked me in the stomach four or five times, and they kept telling me to confess. Since I kept denying it, they took me to the police station and gave me an alcohol test, which gave a reading of zero ..."

12. That same day the applicant was examined by a doctor at a local hospital. The doctor found that the applicant's entire abdominal area was sensitive when touched, although there were no external signs of contusion, and that there was limited and painful movement in the applicant's shoulder joints. The final diagnosis read: "a contusion of the abdomen and a sprain of the shoulder joints" (*pilvo sumušimas, pečių sąnarių raiščių patempimas*).

B. Pre-trial investigation concerning the applicant's allegations of ill-treatment by the police

13. On 23 April 2008 the prosecutor opened a pre-trial investigation concerning the applicant's allegations of ill-treatment by the police officers. The prosecutor requested an additional medical examination of the applicant in order to determine whether there were any injuries on his body, and if so their nature, gravity and possible causes.

14. On 24 April 2008 the applicant was examined by a court medical expert. The report on the results of that examination, issued in June 2008, found a contusion on the applicant's abdomen and indicated that it could have been caused by one blow from a hard blunt object (*vienu trauminiu poveikiu*). It also detected bruised skin on the applicant's left wrist and a sprain of his shoulder joints, noting that they could have resulted from the circumstances described by the applicant, namely from being handcuffed and having his arms twisted behind his back, thus two separate traumas (*dviem trauminiais poveikiais*). The report concluded that the applicant's injuries constituted negligible health impairment (*nežymus sveikatos sutrikdymas*). It also indicated that the applicant's injuries were unlikely to have been caused by deliberate self-harming actions (*nebūdingi tyčiniam savęs žalojimui*) and that they could have resulted from fighting or self-defence.

15. On 30 April 2008 police officer V.B. was questioned as a witness in the investigation. The written record of his interview was almost identical to his initial report (see paragraph 10 above), and added:

> "[The applicant] approached us and said that the car was his. After we asked him to state his name, surname and place of residence, he refused and began shouting and jostling ... After a while [the applicant] said that his documents were in the car and he went to the guard booth to get the car keys. After taking the keys, he turned to me and tried to punch me in the face. At that moment I was standing near the door. The punch missed because I managed to step back. Since he was resisting, I took him by one arm, the officer J.D. took him by the other, and we both handcuffed him. Physical force was used only when putting the handcuffs on him, other forcible actions were not used against him. We called the senior investigating officer L.B. to the scene of the event. He examined [the applicant's car] and did not find any suspicious objects ..."

16. On 2 June 2008 police officer J.D. was questioned as a witness in the investigation; the written record of his interview was almost identical to that of V.B. (see paragraph 15 above).

17. On 17 July 2008 the police dog handler N.B. was questioned as a witness. He stated:

> "On the night of 23 April 2008 ... I went to the jewellery shop in Jonava ... A police dog followed traces to [the garage complex] and lost them by the car ... The car was examined by officers of the Jonava Police Department. It was identified as belonging to [the applicant] who, it emerged later, was a security guard at the garage complex ... He refused to give any statements and refused to go to the police station, so the officers asked him to identify himself, which he also refused to do, and therefore the officers tried to take him into custody and put him into the police car ... [The applicant] resisted the officers, punched one of them in the face, pushed and jostled them to try to avoid being apprehended, used various Russian swear words ... and threatened the officers ... He mentioned that he had friends in high-level positions. The police officers used combat wrestling methods (*kovinių imtynių veiksmus*) and [the applicant] was apprehended, handcuffed and taken to the Jonava police station to clarify the circumstances of the incident."

18. On 30 July 2008 the applicant was granted victim status in the investigation and questioned. He stated:

> "On the night of 22-23 April 2008 ... [soon after 4 a.m.] two police officers entered the premises; they were wearing uniforms; one of them was taller than the other. They asked me if I was the guard. I told them I was. Then they told me to go outside ... The officers pointed to my car and asked me whose it was. I told them it was mine. Then both the officers came closer to me, one from the right and the other from the left, and without saying anything they twisted my arms behind my back (*užlaužė rankas*) ... Then they asked me why I had tried to escape from them and had not obeyed their order to stop. I told them that I had been at my workplace, that I had not gone anywhere and had not tried to escape from anyone. Then the officers started pulling my twisted arms upwards (*užlaužtas rankas kėlė į viršų*) and telling me to confess that I had fled. My arms were hurting ... I told the officers that I could go to the administrative area and get my car keys, so that they could check if my car's engine was hot. The officers stopped twisting my arms, but did not release them and led me inside the premises. The car keys were on the table and the officers picked them up, I told them that my documents were in the car and they could check them ... When we were leaving the premises, I felt the officers handcuff me behind my back. Once I was handcuffed, the shorter officer walked in front of me and the taller officer behind me; and he was pulling up my handcuffed arms. I crouched down because of that and the shorter officer kneed me in the stomach about four times. I started feeling weak and dizzy. I kept asking the officers to release me and to stop torturing me. Then the shorter officer said that they would take me to the police station ... I told them that my documents were in the car, that my identity was known to them, and that I could not leave my workplace. Then the taller officer, who was behind me, took me outside while repeatedly twisting and pulling up my arms ... In about five minutes another officer in a uniform arrived, took my car keys, and tried to open the boot of my car ... The officers examined my car ... Then the shorter and the taller officers put me into their car, still twisting my arms. At the police station I was searched and given an alcohol test ...

> [W]hen the officers arrived at my workplace they did not identify themselves; I knew they were police officers only from their uniforms. They did not tell me why they were there, and did not ask me to identify myself; they only asked me if I worked there and if I was the guard. Before being handcuffed I did not jostle. I did not intend to punch the officers ...”

19. On 5 September 2008 the prosecutor arranged a confrontation between the applicant and police officer J.D. They both essentially reiterated their previous statements (see paragraphs 10, 11, 16 and 18 above). In addition, J.D. stated that the applicant had sworn at the officers when he had been asked to identify himself. J.D. also stated that after the applicant had gone to the guard booth to get his car keys he had attempted to lock himself inside the booth, but the officers had prevented the door from closing and had entered the booth as well. In the booth V.B. had been standing on the applicant’s right side and J.D. on his left. The door was on J.D.’s other side. After taking the car keys, the applicant had attempted to punch V.B. After that J.D. had taken the applicant by one arm and V.B. by the other, and they had cuffed his hands behind his back.

The applicant disagreed with J.D.’s statements. He insisted that the officers had not asked him to identify himself, and that he had answered all their questions. The applicant also stated that J.D. and V.B. had been the only officers present at the scene and that there had not been a third officer with a dog. He denied swearing at the officers. J.D. replied that the dog handler, whose name he did not know, had been present during the entire incident, that he had also asked the applicant some questions, and that it was impossible for the applicant not to have noticed him.

20. On 15 September 2008 senior investigating officer L.B. was questioned as a witness. He stated:

> “I don’t remember the exact date but it could have been 23 April 2008 ... I was called to the garage complex ... When I arrived, there were two police officers, a dog handler with a dog, and another man – as I later found out, it was [the applicant]. The officers told me that the dog had followed traces to one of the cars, so I examined that car. I don’t remember if [the applicant] was handcuffed at the time when I examined the car, I wasn’t paying attention. I don’t remember if [the applicant] was swearing at or insulting the police officers, I didn’t notice whether he was actively resisting. After examining the car I didn’t find anything suspicious. Then I immediately left, whereas the officers, the dog handler and [the applicant] stayed there ... I can confirm that the handler with the dog was present when I arrived, it was impossible for [the applicant] not to have seen him. When I was examining the car, [the applicant] was nearby, I don’t remember if he was saying or doing anything. The officers were also standing nearby, I don’t remember what exactly they were doing.”

21. On 30 September 2008 the prosecutor arranged a confrontation between the applicant and the dog handler N.B. The applicant stated that he had never seen N.B. before and that neither N.B. nor any dog had been present at the time of his arrest. Meanwhile N.B. insisted that he had been present:

> "I was at the scene of the incident, I was with a dog, I saw [the applicant's] arrest and I helped two police officers to twist [the applicant's] arms (*padėjau užlaužti rankas*) ...
>
> I went to the guard booth with the officers. The applicant opened the door of the booth and stepped outside. We explained to him why we were there – that a crime had been committed and that the dog had led us to the cars which were parked nearby. We asked the applicant to identify himself and to tell us whose cars were parked there. The applicant refused, began swearing and insulting us, and said that it was none of our business. Then we explained to him that if he didn't identify himself he would be forcibly taken to the police station. At some point the applicant raised his hand against one of the officers, I don't remember which one, and I didn't see if he hit him or not. Then the officers and I took him by the arms; I don't remember if we twisted them (*suėmėme jam už rankų, ar užlaužėm, neatsimenu*). Then my dog ran towards us; it had been fifteen metres away by the fence or the wall of the garage, I don't remember exactly. I caught the dog and tied it up, possibly to the fence, and then I returned to the officers and the applicant. I helped the officers to hold the applicant's hands and one of them put on handcuffs. I don't remember what time we went to the guard booth. Nothing happened inside the booth."

N.B. further specified that "probably not more than a minute" had passed from the moment the applicant was handcuffed until the moment he was put into the police car. He also stated that he had not seen whether the applicant had been beaten or kicked by the officers. He stated that although the incident had happened during the night, everything was clearly visible.

22. On 30 September 2008 the prosecutor arranged a confrontation between the applicant and police officer V.B. The applicant stated that V.B. and J.D. had twisted his arms outside, next to the guard booth, that they had handcuffed him inside the booth, and that J.D. had then forcibly pulled up his arms, while V.B. had kneed him in the stomach three or four times.

V.B. disagreed with the applicant's statements and denied kneeing him. He stated:

> "When we arrived at the garage complex, the dog handler told us that the dog had followed the traces of the possible criminal to the car. Then I identified whose car it was. Afterwards the applicant came towards me: I didn't see how he got there because at that time I was talking on the portable radio ... After being told that a crime had been committed, the applicant said that he "didn't give a damn" and that he "didn't have to explain anything". When we told the applicant that if he refused to identify himself he would be taken to the police station, he started jostling me and J.D. Then I grabbed him by the wrist and bent it back, and once again told him to identify himself. When a wrist is bent, it doesn't hurt if the person himself doesn't move. Besides, before grabbing the applicant I warned him that if he kept jostling us physical force would be used against him. Then the applicant identified himself to us. Then he said that he would go to the guard booth to get the car keys and documents. He walked to the booth and I, J.D. and the dog handler followed, I don't remember in which order. In the booth the applicant went to the table and I stood by the door. He picked up the documents and then turned round and punched me in the face. His fist barely touched my mouth but didn't cut it (*jo kumštis vos palietė mano lūpą, jos neprakirto*) because I managed to step back. Then I grabbed his arm and twisted it behind his back. J.D. twisted the other arm and the dog handler also helped. Then either I or J.D. handcuffed the applicant. Then I led him outside the booth ... During the arrest the

applicant was swearing; he did not insult me personally and I did not pay attention to the swear words he used."

V.B. further specified that when they went into the guard booth, he was standing closest to the applicant inside the booth, near the door, while J.D. and N.B. were standing behind V.B.'s back.

23. On 4 November 2008 the prosecutor discontinued the pre-trial investigation. The prosecutor held that the applicant had obstructed the police officers in the performance of their duties, had refused to comply with their lawful orders, had jostled and used swear words, had actively resisted the officers, and had attempted to punch V.B. The prosecutor found no grounds to doubt the statements of the officers V.B., J.D. and N.B., because those statements had been "consistent and logical"; the applicant's statements could not however be considered reliable, because he had claimed that he had not seen the dog handler N.B. at the scene of the incident, although it had been established that N.B. was there. The prosecutor further held that the injury to the applicant's abdomen was not sufficient to find that V.B. had kneed him in the stomach, because such an injury could have occurred while the applicant was resisting the officers, as seen from the statements of V.B., J.D. and N.B. In such circumstances, the prosecutor considered that the officers had been justified in using physical force against the applicant, and that they had acted in line with the applicable domestic law.

24. The applicant appealed against the prosecutor's decision. He submitted that V.B. had admitted to having bent his wrist back (see paragraph 22 above) but that that detail had been disregarded during the investigation. He also submitted that the results of the medical examination had clearly indicated injuries on his abdomen which could not have been caused by the officers' lawful actions. The applicant noted that the Police Activity Act allowed the use of physical force in order to prevent crime, arrest individuals who had committed crimes, or in other situations when justified by the public interest (see paragraph 49 below), but not in order to establish a person's identity. He submitted that he was of advanced age (fifty-eight years old at the time of the incident) and had a medium-level disability, so it was illogical that he could have violently resisted two police officers.

The applicant also pointed out several discrepancies between the officers' statements:

(a) V.B. had stated that the applicant had attempted to punch him inside the guard booth (see paragraph 15 above), whereas N.B. had said that nothing had happened inside the booth (see paragraph 21 above).

(b) J.D. had stated that he and V.B. had approached the guard booth and the applicant had stepped outside, and that physical force had been used against the applicant only when handcuffing him and only inside the booth (see paragraph 19 above). However, V.B. had stated that he had been

examining the applicant's car when the applicant had approached him, and that the applicant's arms had been twisted when he was outside in order to make him identify himself (see paragraph 22 above). Meanwhile N.B. had presented yet another version of events: that the applicant had attempted to punch one of the officers outside, then he had been handcuffed, and only then had everybody gone inside the guard booth, where nothing had happened (see paragraph 21 above). Lastly, the senior investigator L.B. had not noticed any active resistance by the applicant (see paragraph 20 above).

(c) J.D. had stated that the applicant had attempted to lock himself inside the booth (see paragraph 19 above), but the booth did not have any mechanism which would allow it to be locked from the inside.

Accordingly, the applicant complained that the pre-trial investigation had not been thorough and had not objectively established the circumstances of his arrest and injury.

25. On 20 March 2009 a senior prosecutor upheld the applicant's appeal and reopened the investigation.

26. In April 2009, at the prosecutor's request, a court medical expert carried out an additional examination of the applicant's medical file. The report on the results of that examination confirmed the findings of the previous medical examination (see paragraph 14 above). The report also specified that the bruises on the applicant's left wrist and the sprain of his shoulder joints could have been caused during a fight (*grumtynių metu*) or by handcuffing or twisting of his arms, and that the contusion on the abdomen could have resulted from a direct blow (*suduodant tiesioginį smūgį*). The report concluded that the applicant's injuries constituted negligible health impairment, and that even though he had subsequently required medical treatment, this had been caused by his defective heart valve and not by the injuries.

27. In April 2009 the prosecutor questioned two other witnesses as requested by the applicant – his acquaintances A. and V. They both stated that they had seen the applicant soon after his arrest and that they had noticed his injuries.

28. On 16 April 2009, at the applicant's request, the Jonava District Court changed the prosecutor in charge of the pre-trial investigation. The court upheld the applicant's arguments that the previous prosecutor, who had decided to discontinue the investigation, could not be seen as impartial, and ordered the Jonava District Prosecutor's office to appoint a different prosecutor.

29. In April and May 2009 the new prosecutor inspected the location of the incident.

30. On 4 May 2009 another witness requested by the applicant, his acquaintance V.V., was questioned. V.V. stated:

> "Around 23 April 2008, I don't remember the exact date, around 4 a.m. I went to [the applicant's] workplace ... to ask him to give me a lift home. At that time it was

still dark. Then I saw two officers approach [the applicant] from both sides and twist his arms. I heard [the applicant] scream and ask who they were and why they were twisting his arms. After twisting his arms the officers led him to [the guard booth]. I heard [the applicant] screaming inside the booth and asking why they were hitting him. Then I saw the two officers lead him outside handcuffed and with twisted arms. Before [the applicant] was taken inside the booth, his hands had not been handcuffed. I didn't see whether [the applicant] had been hit, I only heard him ask why they were hitting him. Then I went to [the applicant's son's house] to inform him about what had happened but nobody answered the door, so I came back alone [to the garage complex] but I didn't find anyone there. I didn't see what happened afterwards. I spoke to [the applicant] a few months later, around January-February 2009, and he mentioned the incident with the officers ..."

31. On 21 May 2009 the prosecutor arranged a confrontation between the officers V.B. and N.B. They were both asked about the place where the applicant had allegedly attempted to punch V.B., and gave the following responses:

"V.B.: [The applicant] punched me inside the premises, that is in the guard booth.

N.B.: I didn't see if [the applicant] had attempted to punch the officer in the booth ... When I was outside, I saw jostling between the officers and [the applicant] (*įvyko susistumdymas*). [The applicant] was jostling the officers, but I can't say exactly if he punched an officer. It was dark, I could have been mistaken."

32. On 1 June 2009 the prosecutor discontinued the pre-trial investigation, relying on essentially the same grounds as the previous prosecutor in his decision (see paragraph 23 above), and a senior prosecutor upheld that decision. However, on 28 August 2009 the Jonava District Court upheld the applicant's appeal and reopened the investigation. The court held that the investigation had not been thorough because it had not determined whether the use of force by the police officers had been within the limits provided by the Police Activity Act (see paragraph 49 below), and it had not established the circumstances surrounding the injury to the applicant's abdomen.

33. In September 2009, at the prosecutor's request, a court medical expert carried out an additional assessment of the applicant's medical file. The report on the results of that assessment confirmed the findings of the previous medical reports (see paragraphs 14 and 26 above). In addition, the report specified that the contusion on the applicant's abdomen could have been caused either by a blow from an object or by bumping into an object (*tiek suduodant, tiek atsimušant*), and that the injuries to the applicant's left wrist and shoulder joints could have resulted from his offering resistance while being apprehended. The report also concluded that the injuries to the applicant's wrist, shoulder joints and abdominal area were not likely to have been caused by falling down (*nebūdingi sužalojimams, padarytiems nugriuvus*). The examination could not determine the exact sequence of the injuries, but noted that they could have all been caused at the same time and that at that time the applicant could have been in various positions.

34. On 28 October 2009 L.B. was questioned again. He confirmed his earlier statements (see paragraph 20 above), and added that on 23 April 2008 he had arrived at the garage complex alone and that he had not been wearing a police uniform at the time. He also stated that at the time of his arrival the handler with a dog had been present at the scene and that it would have been impossible for the applicant not to see them.

35. On 12 November 2009 the prosecutor discontinued the pre-trial investigation. The prosecutor held that officers V.B., J.D. and N.B. had given consistent statements about the incident and there were no grounds to doubt them. On the other hand, the prosecutor considered that the applicant's statements had been inconsistent: during one questioning he had said that the officers had hit him inside the guard booth and during another he had said that they had hit him outside; he had also stated that officer L.B., who had arrived on the scene later, had been wearing a uniform, but L.B. had denied this; lastly, the applicant had claimed that neither N.B. nor a police dog had been present during the incident, but the contrary had been proven by N.B.'s official report and consistent statements of all the officers. The prosecutor also noted that the witness V.V. had not seen the officers hit the applicant. Lastly, the prosecutor held that the injury to the applicant's abdomen was not sufficient to find that he had been kneed by the officers, because the medical examination had shown that such an injury could have been caused either by being hit with an object or by bumping into an object. Accordingly, the prosecutor concluded that the use of physical force by the police officers had been a lawful and proportionate response to the applicant's violent resistance, and to his refusal to comply with their lawful orders.

36. The applicant appealed against the prosecutor's decision. He submitted that the investigation had still not clarified the contradictions between the officers' statements (see paragraph 24 above). He further submitted that V.B.'s and J.D.'s first reports had not mentioned that the applicant had been swearing at the officers or had attempted to punch one of them, and that those allegations had been made only much later, well after the incident. The applicant also noted that, contrary to N.B.'s statements (see paragraph 21 above), he could not have tied his dog to a fence because there was no fence at the garage complex, nor was it possible to tie the dog to the brick wall of the garage.

37. On 2 December 2009 a senior prosecutor dismissed the applicant's appeal, but on 24 December 2009 the Jonava District Court quashed the prosecutor's decision and reopened the investigation.

38. On 28 January 2010 witness V.V. was questioned again. He stated:

> "[W]hen I was on my way to the garage complex, fifteen to twenty metres from the guard booth, I saw a police car and stopped by the corner of the garage wall ... Next to [the applicant's] car there were two officers in police uniforms and [the applicant] ... I heard one of the officers ask [the applicant] to whom the car belonged ... [The

applicant] said that the car was his and that he would get the keys so that the officers could examine the car ... I saw [the applicant] turn round to go to the guard booth and then the larger police officer with a moustache grabbed him by the shoulder ... twisted his arm ... and the other officer twisted his other arm. Everything happened right next to [the car]. The two officers led the applicant, with his arms twisted, to the guard booth. Outside, the officers still held his arms twisted behind his back, but didn't handcuff him ... [the applicant] was not saying anything offensive and was not resisting. When [the applicant's] arms were twisted, he started shouting, "Guys, why are you twisting my arms?". But the officers, without any explanation, led him to the booth with his arms twisted behind his back. At that moment another man got out of the same police car, but I don't know if he was an officer or not because he was in plain clothes. He also went to the booth and was standing in the doorway because the door was open. I heard [the applicant] scream inside the booth, "Guys, why are you hitting me?". The third man did not enter the booth; he stood in the doorway the whole time. I think [the applicant] and the officers were inside the booth about ten or fifteen minutes. Then I saw the man who had been standing in the doorway step aside and the same two officers lead [the applicant] from the booth with his hands handcuffed and twisted behind his back. I think both the officers were pulling up his handcuffed arms. Outside [the applicant] asked the officers, "Guys, why did you hit me in the stomach?"... I didn't see the officers hit [the applicant], I only heard him scream inside the booth ... I saw everything well because the area around the booth was lit. It was still before dawn then. I didn't see a dog near the booth ..."

39. On 8 March 2010 the prosecutor discontinued the pre-trial investigation, relying on essentially the same grounds as in the previous decisions (see paragraphs 23 and 35 above). The applicant appealed against that decision, and on 6 April 2010 a senior prosecutor reopened the investigation.

40. On 21 April 2010 V.B. was questioned again. He essentially repeated his previous statements (see paragraphs 10, 15 and 22 above), but did not mention bending back the applicant's wrist outside. V.B. also stated that when he and J.D. had followed the applicant to the guard booth, N.B. had probably followed them, but V.B. could not remember the exact order in which they had walked.

J.D. was also questioned the same day and the written record of his testimony was almost identical to that of V.B.

41. On 6 May 2010 N.B. was questioned again. He essentially repeated his previous statements (see paragraphs 17 and 21 above), and added:

"I didn't go inside the guard booth, I stayed near the door, and that's why during previous questioning I said that nothing happened inside the booth and that I didn't see if there had been an attempt to punch an officer in the booth, because I couldn't see it from the outside. When [the applicant] was led out of the booth, he was handcuffed ...

My dog was further away the whole time, tied to the garage wall ...

As for the punch ... I can only say that it appeared to me that [the applicant] had attempted to punch an officer. During the first questioning I said that he had punched an officer, but I may have been wrong because I didn't consider this an important circumstance; also, during that questioning I wasn't asked exactly whether there had

been a punch or just an attempt to punch – as I said before, [the applicant] was jostling the officers, so it seemed to me that he had punched an officer."

42. On 7 June 2010 the prosecutor discontinued the pre-trial investigation, relying on essentially the same grounds as in the previous decisions (see paragraphs 23, 35 and 39 above), and a senior prosecutor dismissed the applicant's appeal. However, on 29 July 2010 the Jonava District Court reopened the investigation. The court held that although the investigation concerned criminal activity allegedly committed by V.B. and J.D., these two officers had been questioned as regular witnesses, in violation of the Code of Criminal Procedure (see paragraph 50 below). The court considered that there had been a grave breach of V.B. and J.D.'s defence rights, as they had been denied the special rights of persons who may testify about their own possibly criminal activity – such as the right to have a representative, the right to request to be granted the status of a suspect, and exemption from responsibility for refusing to testify or providing wrongful testimony. As a result, all the procedural actions carried out in their respect – such as interviews and confrontations – had to be declared void. Accordingly, the court concluded that essential investigative actions had not been carried out.

On 6 September 2010 the Kaunas Regional Court upheld that judgment.

43. On 2 November 2010, at the applicant's request, the pre-trial investigation was transferred to the Kaunas District Prosecutor.

44. In May 2011 V.B. and J.D. were questioned as special witnesses who were testifying about their own alleged criminal activity (see paragraph 50 below). They both essentially repeated their earlier statements (see paragraphs 10, 15, 16, 19, 22 and 40 above), emphasising that they could no longer exactly remember all the details, because of the passage of time.

45. On 30 June 2011 the Kaunas District Prosecutor discontinued the investigation. The prosecutor relied on essentially the same grounds as the Jonava District Prosecutor in its earlier decisions (see paragraphs 23, 35, 39 and 42 above), and concluded that the applicant's statements had been inconsistent, whereas the consistent statements of all the police officers had shown that the use of force had been a lawful and proportionate response to the applicant's resistance and his refusal to comply with the officers' lawful orders. On 29 July 2011 a senior prosecutor upheld that decision.

46. On 7 September 2011 the Kaunas District Court and on 25 October 2011 the Kaunas Regional Court dismissed the applicant's appeals. Both courts concluded that the pre-trial investigation had been thorough and its discontinuation had been justified.

C. Other related proceedings

47. On 23 April 2008 the Jonava Police Department charged the applicant with the administrative offence of refusing to comply with lawful orders of police officers and resisting them (Article 187 § 1 of the Code of Administrative Offences). On 9 May 2008 the administrative proceedings against the applicant were adjourned, pending the results of the pre-trial investigation into his allegations of ill-treatment by the police, and were subsequently discontinued as time-barred.

48. According to the material submitted to the Court, the applicant was never suspected or accused, nor did he hold any other status in the proceedings, in the criminal case concerning the robbery of the jewellery shop (see paragraph 6 above). A report by the Jonava Police Department of 8 July 2008 indicated that the applicant's sons E. and A. were being investigated in connection with the robbery, but it appears that neither of them was charged. In 2009 the investigation was suspended without identifying those responsible for the robbery.

II. RELEVANT DOMESTIC LAW

A. Use of force by the police

49. The relevant provisions of the Police Activity Act read:

Article 23. Types of coercion and conditions of its use

"1. A police officer shall have the right to use coercion when it is necessary to prevent violations of law, to apprehend individuals who have committed said violations, as well as in other cases when protecting and defending the lawful interests of an individual, the society or the State. Coercion which might cause bodily injuries or death may only be used to the extent which is necessary for the fulfilment of the official duties and only after all possible measures of persuasion or other measures have been used with no effect. The type of coercion and the limits of its use shall be chosen by the police officer, taking into account the particular situation, the nature of the violation of the law and the individual characteristics of the offender. When using coercion, police officers must seek to avoid grave consequences.

2. A police officer may, in the manner and the cases provided by law, use mental or physical coercion, firearms or explosive materials.

3. Mental coercion, within the meaning of this Act, shall be understood as a warning of an intention to use physical coercion, firearms or explosive materials. Demonstration of a firearm and warning shots shall be regarded as mental coercion, however, such measures may be used only under the conditions laid down in [this Act].

4. Physical coercion, within the meaning of this Act, shall be understood as:

1) the use of physical force of any kind, as well as combat wrestling methods;

2) the use of special equipment, such as truncheons, handcuffs and restraining devices, gas, police dogs, methods of stopping vehicles by force, as well as other means of active and passive defence permitted by law and approved by an order of the Minister of the Interior.

5. Before using physical coercion or a firearm, a police officer must warn the person of such an intention, providing the said person with an opportunity to comply with the lawful requirements, except in cases when such a delay poses a threat to the life or health of the police officer or another person, or when such a warning is impossible ...

7. A police officer who has used coercion in line with the requirements of this Act and has inflicted damage on the values protected by law shall not be held liable.

8. A prosecutor shall be immediately informed of any use of coercion by a police officer which has caused the death or injury of a person.

9. Police officers must be specially prepared and periodically examined on their ability to act in situations involving the use of physical coercion, firearms or explosive materials."

Article 24. Grounds for the use of physical coercion

"1. A police officer is authorised to use physical coercion ...

2) when apprehending a person who has committed a violation of the law and who is actively attempting to avoid arrest ...

2. It shall be prohibited to use combat wrestling methods and special equipment against women who are visibly pregnant, as well as against individuals who are visibly disabled or minors (if their age is known to the officer or if their appearance corresponds to their age, except for cases when they resist in a manner which is dangerous to life or health, or when a group of such individuals attacks and this attack poses a threat to life or health)."

B. Witnesses in criminal proceedings

50. Article 80 § 1 of the Code of Criminal Procedure (hereinafter "the CCP") stipulates that persons who may testify about their own possibly criminal activity cannot be questioned as witnesses unless they agree to be so questioned. Article 82 § 3 and Article 83 §§ 2 and 4 of the CCP establish that when such persons are questioned they have the right to have a representative and to request to be granted the status of a suspect, and are exempt from responsibility for refusing to testify or providing wrongful testimony.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complained that that he had been subjected to inhuman treatment by the police during his arrest on 23 April 2008 and that the authorities had failed to carry out an effective and objective investigation. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

52. The Government argued that the applicant had failed to exhaust effective domestic remedies because he had not instituted civil proceedings for damages against the State. They cited domestic court judgments which had recognised the civil liability of the State for the acts of law enforcement authorities and which had underlined that such civil liability was not precluded by the mere fact that the disputed acts had been in line with the legal provisions regulating criminal proceedings. The Government also provided an example of a domestic case in which a person had been awarded damages following an inadequate investigation into the circumstances surrounding the deaths of his family members. Accordingly, the Government sought to have the application declared inadmissible for non-exhaustion of domestic remedies, in line with Article 35 § 1 of the Convention.

53. The applicant submitted that he had exhausted domestic remedies by appealing against all the decisions of the prosecutors and courts, and that the cases cited by the Government were not relevant to his situation.

54. The Court reiterates that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-111, ECHR 2014 (extracts), and the cases cited therein). In this connection the Court observes that criminal proceedings were instituted at the applicant's request against police officers whom he had accused of ill-treating him. If successful, those proceedings would have established the circumstances of the applicant's ill-treatment and the liability of the officers.

55. The Court also notes that in the present case the applicant was seeking an official acknowledgment of his ill-treatment and the liability of the individuals whom he considered responsible, but not necessarily, at that stage, a monetary compensation. In such circumstances the Court does not consider that a civil claim for damages could have remedied a lack of an

effective official investigation into allegations of ill-treatment by the police. Consequently, the Court dismisses the Government's objection.

56. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Substantive limb: alleged inhuman treatment

(a) The parties' submissions

57. The applicant claimed that the police officers had used unlawful and disproportionate physical force against him: they had bent back his wrist, handcuffed him, twisted his arms and kneed him in the stomach. He argued that such actions could not have been necessary or proportionate because he had been sober, his identity had been established, he had been fifty-eight years old at the time of the incident, and he had a medium-level disability (his capacity for work had been assessed at 35%). The applicant insisted that he had not resisted or insulted the officers.

58. The Government submitted that the injuries alleged by the applicant did not attain the minimum level of severity in order to fall within the scope of Article 3 of the Convention. They referred to a number of domestic medical examinations carried out, which had concluded that the applicant had only suffered negligible health impairment and that he had not required any subsequent treatment or sick leave which was due to those injuries.

59. The Government further noted that the applicant had been injured while being apprehended by the police and not while he was in custody, which meant that he had not been entirely under the control of the police officers. They pointed out that the use of force by the police officers had not been premeditated – the physical force had been used in response to the applicant's own violent actions. The Government emphasised that the applicant's disability had not been obvious and could not have been known to the police officers. They also noted that handcuffing, imposed in the context of a lawful arrest, could not be considered as degrading to the applicant, in particular since it had not been carried out in front of other people.

(b) The Court's assessment

(i) Relevant general principles

60. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see, among many other

authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 87, ECHR 2010, and *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015).

61. 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" and 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 many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV, and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). 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 which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Virabyan v. Armenia*, no. 40094/05, § 151, 2 October 2012; and *Bouyid*, cited above, §§ 83-84; also see, *mutatis mutandis*, *Buntov v. Russia*, no. 27026/10, § 161, 5 June 2012).

62. The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Ill-treatment that attains such a minimum level of severity often involves actual bodily injury or intense physical or mental suffering. In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see *Bouyid*, cited above, §§ 86-88, and the cases cited therein).

63. Lastly, it is not the task of this Court to deal with errors of fact or law allegedly committed by domestic courts, unless and in so far as such errors may have infringed rights and freedoms protected by the Convention. Nonetheless, the Court has to apply a particularly thorough scrutiny where allegations have been made under Article 3 of the Convention, even if certain domestic proceedings and investigations had already taken place. In other words, in such a context the Court is prepared to conduct a thorough examination of the findings of the national courts. In examining them it may take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (ibid., § 85, and the cases cited therein).

(ii) Application of the above principles in the present case

64. In the present case, the applicant was examined by doctors on the day of his arrest by the police, and also on the following day. Both medical examinations detected a sprain of the applicant's shoulder joints and a contusion on his abdomen, and the second examination also found bruised skin on his left wrist (see paragraphs 12 and 14 above). Those findings were confirmed by two subsequent examinations of the applicant's medical file, ordered by the prosecutor (see paragraphs 26 and 33 above).

65. The Government did not contest the findings of those medical examinations, either in the domestic proceedings or before the Court, nor did they argue that any of the applicant's injuries had been sustained before his arrest on 23 April 2008. Meanwhile, the applicant alleged fairly consistently, before both the domestic authorities and the Court, that the police officers had twisted his arms and pulled them upwards several times, both before and after handcuffing him, and that one of the officers had kneed him in the stomach after he had been handcuffed (see paragraphs 11, 18, 22 and 56 above). The doctors who examined the applicant and his medical file considered the injuries consistent with the applicant's description of the events (see paragraphs 14, 26 and 33 above).

66. Accordingly, the Court considers it established that the applicant sustained the aforementioned injuries at the hands of the police during his arrest, and thus that it is incumbent on the Government to provide a plausible explanation for the cause of those injuries. It underlines that any use of physical force by the police which had not been made strictly necessary by the applicant's own conduct will attain the minimum level of severity and thus be incompatible with Article 3 of the Convention (see paragraph 62 above).

67. The Government submitted that the injuries sustained by the applicant had resulted from his own violent resistance to the lawful actions of the officers. The domestic pre-trial investigation concluded that the applicant had sworn at the police officers, had refused to comply with their lawful orders, had attempted to punch one of them in the face, and had otherwise violently resisted their attempts to apprehend him (see paragraphs 23, 35 and 45 above). Although the applicant denied having insulted or resisted the officers in any way, the domestic authorities considered his statements inconsistent and unreliable, most notably because he claimed that he had not seen the dog handler N.B. at the scene of the incident and because he had allegedly provided contradictory statements as to the exact location where the officers had ill-treated him (see paragraph 35 above).

68. While the Court is mindful of its limited role in assessing the findings of fact by domestic authorities (see paragraph 63 above), it considers that in the specific circumstances of the present case there are serious reasons to question some of those findings.

69. The Court is firstly unable to share the domestic authorities' view as to the applicant's credibility. It observes that in his first, rather succinct statement to the prosecutor the applicant only described the incident inside the guard booth, where the officers had allegedly handcuffed him, twisted his arms and kneed him in the stomach (see paragraph 11 above). During later interviews, he provided essentially the same details about the events inside the booth, and added that the officers had also twisted his arms outside (see paragraphs 18, 19 and 22 above). The Court sees those two statements not as contradictory but as complementing one another. While it accepts that the domestic authorities had legitimate reasons to doubt the applicant's claims that N.B. had not been present during his arrest, it nonetheless considers that that does not, in and of itself, make the rest of the applicant's statements unreliable, especially since the incident took place at night and the officers, including N.B. himself, provided conflicting accounts as to N.B.'s role during the applicant's arrest – in particular, whether N.B. had gone inside the booth or stayed outside, whether he had witnessed the applicant's attempt to punch an officer or had been mistaken about it, and whether he had had any role in handcuffing the applicant (see paragraphs 17, 19, 21, 31 and 41 above and paragraph 70 below). The Court also observes that the applicant's version of events was confirmed by witness V.V. (see paragraphs 30 and 38 above). Without addressing the credibility of that testimony, the Court notes that it had not been called into question by the domestic authorities.

70. The Court is also unable to share the view of the domestic authorities that the police officers presented "consistent and logical" statements about the circumstances of the applicant's arrest. It firstly notes that there were several contradictory accounts as to the applicant's allegedly violent actions. In their initial reports the officers V.B. and J.D. stated that the applicant had been "shouting and jostling" but did not mention his use of swear words or an attempt to punch V.B. (see paragraph 10 above). In their later interviews, V.B. and J.D. still did not mention swear words, but they both stated that the applicant had attempted to punch V.B. inside the booth (see paragraphs 15 and 16 above). The applicant's swearing was brought up for the first time by N.B., several months after the arrest (see paragraph 17 above). During the same interview N.B. also stated that the applicant had punched an officer, without specifying the location, but he later retracted that statement, claiming that he "may have been mistaken" about the punching because it had been dark (see paragraph 31 above). In addition, during a confrontation with the applicant N.B. stated that nothing had happened inside the booth, but later he said that he had not gone into the booth and had not seen if anything had happened there (see paragraphs 21 and 41 above).

71. The Court further notes that in some of their interviews V.B. and J.D. stressed that they had not used any physical force against the applicant other than handcuffing him, but later V.B. admitted that he had

also bent back the applicant's wrist and that he and J.D. had twisted the applicant's arms before handcuffing him (see paragraphs 15, 16 and 22 above). Meanwhile, N.B. stated that the police officers had used "combat wrestling methods" against the applicant (see paragraph 17 above).

72. In addition, the Court observes that no explanation whatsoever had been offered for the contusion on the applicant's abdomen. The police officers did not indicate any specific circumstances which may have led to that injury, nor were they asked to do so by the investigating authorities. The decisions to discontinue the pre-trial investigation merely referred to the conclusion of the medical examination that the contusion could have been caused "either by being hit with an object or by bumping into an object", without even attempting to clarify if there had been any such hitting or bumping into any object (see paragraph 35 above).

73. Lastly, the Court notes that when the police officers approached the applicant, he was alone at his workplace, and it was not alleged at any stage of the domestic proceedings that he might have been armed. The Court also notes the absence of any signs of physical injuries to the police officers which would indicate violent resistance on the part of the applicant (see *Iljina and Sarulienė v. Lithuania*, no. 32293/05, § 50, 15 March 2011). Therefore, even if the applicant had indeed been swearing at the officers, refusing to answer their questions and had unsuccessfully attempted to punch one of them, the Court is not convinced that it was essential for several trained police officers to resort to such physical force as in the present case in order to make the applicant more cooperative (see also *Yavuz Çelik v. Turkey*, no. 34461/07, § 53, 26 July 2011). It also underlines that the domestic authorities did not assess at any stage the necessity and proportionality of the use of force against the applicant.

74. In the light of the above, the Court is of the view that the Government have not provided a satisfactory and convincing explanation of the cause of the applicant's injuries and have not demonstrated that the physical force used against the applicant had been strictly necessary in the circumstances.

75. Accordingly, the Court concludes that the applicant has been subjected to inhuman treatment, contrary to Article 3 of the Convention, and that there has been a violation of that provision under its substantive limb.

2. Procedural limb: alleged lack of an effective investigation

(a) The parties' submissions

76. The applicant submitted that the pre-trial investigation concerning his allegations of ill-treatment had been ineffective. He complained that the statements of the police officers had been taken as credible despite their numerous contradictions, that the prosecutors had failed to carry out the investigative actions ordered by the courts, that he had not been duly

informed about the course of the investigation, thereby limiting his ability to submit appeals, and that the investigation had been excessively long.

77. The Government submitted that the pre-trial investigation into the applicant's allegations of ill-treatment had been prompt, thorough and independent. They noted that the investigation had been started on the same day that the applicant had complained about ill-treatment, that numerous investigative actions had been carried out, such as interviews and confrontations between different witnesses, that the witnesses asked for by the applicant had been questioned, that the applicant had been able to submit various appeals and requests and several of those had been successful, and that all the decisions taken in the course of the investigation had been well reasoned. Accordingly, the Government contended that the pre-trial investigation had complied with the procedural requirements of Article 3 of the Convention.

(b) The Court's assessment

(i) Relevant general principles

78. The Court reiterates that where an individual raises an arguable claim that he or she has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 182, ECHR 2012, and the cases cited therein).

79. The investigation into serious allegations of ill-treatment must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 316-326, ECHR 2014 (extracts), and the cases cited therein).

80. Although the obligation to carry out an effective investigation into allegations of ill-treatment is one of means and not of result, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the persons responsible will risk falling foul of the required standard of effectiveness (ibid., § 322).

(ii) Application of the above principles in the present case

81. In the present case, the Jonava District Prosecutor opened a pre-trial investigation on the day of the applicant's complaint (see paragraph 13 above). The Court notes that the parties have not questioned the independence of the investigation. It notes favourably that twice during the investigation the prosecutor in charge and the investigating authority were changed in order to accommodate the applicant's concerns about their impartiality (see paragraphs 28 and 43 above). The Court also considers that the applicant was able to participate in the investigation by submitting various requests, calling witnesses, and appealing against all the principal decisions. Nor could the domestic authorities be regarded as inactive: they carried out several interviews with all the police officers who had been present during the incident, as well as the applicant and the witnesses he had asked for; there had been confrontations between different witnesses in order to eliminate the contradictions in their testimonies; and the applicant's medical file had been examined several times.

82. Nonetheless, the Court has serious doubts as to the thoroughness of the investigation. It has already noted that there were several important discrepancies in the accounts of the incident provided by the police officers (see paragraphs 70-71 above), and the applicant in his appeals to the domestic authorities alleged even more such contradictions (see paragraphs 24 and 36 above). The Court observes that the three officers V.B., J.D. and N.B. during their interviews provided different versions of how they had first approached the applicant, how the applicant had responded to the officers' requests, and how he had resisted, what exact physical actions had been used against him, how many people had been inside the guard booth, in what order they had been standing there, and what exactly had happened inside (see paragraphs 10, 15, 17, 19, 21, 22, 31, 40 and 41 above). Even though additional interviews and confrontations were carried out in order to eliminate those contradictions, none of the domestic decisions established a definitive account of the incident, instead merely declaring that the officers' statements had been "consistent and logical". The contradictions were never explicitly addressed in any of the domestic decisions, and the credibility of the officers – unlike that of the applicant – was never called into question (see also *Miclea v. Romania*, no. 69582/12, § 42, 13 October 2015). In this connection the Court also notes that several of the written statements submitted by the officers and the written records of their testimonies contained practically identical texts (see paragraphs 10, 15, 16 and 40 above), which seriously undermines their credibility (see *Chmil v. Ukraine,* no. 20806/10, § 89, 29 October 2015, and *Hilal Mammadov v. Azerbaijan*, no. 81553/12, § 96, 4 February 2016). In such circumstances, the Court finds it particularly troubling that all the domestic decisions to discontinue the investigation relied exclusively on the statements of the police officers (see paragraphs 23, 32, 35, 39, 42, 45 and 46 above).

Accordingly, the Court is not persuaded that the domestic investigation was thorough and capable of establishing the circumstances of the applicant's injuries and the responsibility of the police officers involved (see *Iljina and Sarulienė*, cited above, § 52).

83. The Court further notes that although the length of the pre-trial investigation (three years and six months) does not appear excessive, during that period the prosecutor discontinued the investigation five times, and four of those decisions were overturned by a senior prosecutor or courts as unfounded. The Court has held on numerous previous occasions that the repetition of such decisions usually discloses a serious deficiency in the proceedings (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Drozd v. Ukraine*, no. 12174/03, § 66, 30 July 2009, and *Kapustyak v. Ukraine,* no. 26230/11, § 78, 3 March 2016).

84. Furthermore, the Court is particularly concerned about the fact that on 29 July 2010 – more than two years after the start of the investigation – the Jonava District Court found that all the investigative actions carried out in respect of the officers V.B. and J.D. had to be declared void because those officers had not been accorded appropriate legal status in the proceedings (see paragraph 42 above). The Court finds it disconcerting that such a procedural error had not been identified at an earlier stage of the proceedings, either by the prosecutors or the courts. Not only did that unnecessarily prolong the duration of the investigation, as the case had to be transferred to another territorial prosecutor's office and the interviews with V.B. and J.D. had to be repeated. It also diminished the investigation's ability to establish the circumstances surrounding the applicant's arrest, because both the officers stressed that they could no longer remember all the details, owing to the passage of time (see paragraph 44 above), while none of their earlier and more precise statements could be used.

85. The foregoing considerations are sufficient to enable the Court to conclude that the pre-trial investigation into the applicant's allegations of ill-treatment by police officers was not in line with the requirements of Article 3 of the Convention. There has accordingly been a violation of that provision under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

88. The Government submitted that the applicant had not substantiated his claim for pecuniary damage. They further submitted that the amount claimed in respect of non-pecuniary damage was excessive and unfounded, and referred to several cases of the Court in which the applicants had been awarded non-pecuniary damages ranging from EUR 2,000 to EUR 5,000 for violations of the substantive and procedural limbs of Article 3 of the Convention.

89. The Court notes that the applicant did not provide any documents proving the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have suffered distress and frustration as a result of the substantive and procedural violations of Article 3 of the Convention found in the present case. It therefore grants the applicant's claim for non-pecuniary damage in full and awards him EUR 10,000 under this head.

B. Costs and expenses

90. The applicant also claimed EUR 10,000 for costs and expenses incurred before the domestic courts and before the Court. He provided documents substantiating the following expenses:

(a) 800 Lithuanian litai (LTL, approximately EUR 232) paid to his legal representative during the domestic pre-trial investigation;

(b) LTL 28.60 (EUR 8.30) paid for an alcohol test at a local hospital on 30 April 2008;

(c) LTL 20 (EUR 5.80) paid for copies of the criminal case from the Jonava District Prosecutor.

91. The Government requested the Court to reject the part of the claim which had not been proved by supporting documents.

92. 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. Therefore, the Court dismisses as unrelated the applicant's claim for the costs of the alcohol test. On the other hand, it considers that the other expenses claimed by the applicant have been necessarily incurred and awards him the sum of EUR 237.80.

C. Default interest

93. 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, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 237.80 (two hundred and thirty-seven euros eighty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 12 July 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	András Sajó
Deputy Registrar	President