

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

THIRD SECTION

CASE OF KRSMANOVIĆ v. SERBIA

(Application no. 19796/14)

JUDGMENT

STRASBOURG

19 December 2017

FINAL

19/03/2018

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



In the case of Krsmanović v. Serbia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Jolien Schukking, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 28 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 19796/14) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Đorđe Krsmanović ("the applicant"), on 5 March 2014.

2. The applicant was represented by Mr A. Cvejić, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their former Agent, Ms V. Rodić, who was more recently substituted by their current Agent, Ms N. Plavšić.

3. The applicant complained of the lack of an effective investigation into the ill-treatment he had allegedly sustained during his arrest and while in police custody. He relied on Articles 3, 6 § 1 and 13 of the Convention.

4. On 1 September 2015 the application was communicated to the Government. The questions were put under the procedural limb of Article 3 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Zemun.

A. Background to the case

6. On 12 March 2003 the Serbian Prime Minister, Mr Zoran Đinđić, was assassinated by members of a criminal group known as the Zemun Clan (*Zemunski klan*).

7. The Prime Minister's assassination prompted the Serbian Government to declare a state of emergency and introduce measures in accordance with the State of Emergency Act 1991 (*Zakon o merama za slučaj vanrednog stanja*, Official Gazette of the Republic of Serbia, no. 19/1991).

8. During that time a large-scale police operation known as Operation Sabre (*Sablja*) took place. Approximately 10,000 people were arrested during the operation and placed in pre-trial detention.

9. The state of emergency lasted until 23 April 2003.

B. The applicant's treatment during his arrest, questioning and subsequent detention

10. The applicant was a member of a criminal group linked to the Zemun Clan. During Operation Sabre all members of the Zemun Clan and groups linked to it were arrested and questioned about the Prime Minister's assassination. Those arrested were also questioned about other crimes such as murders, abductions and drug trafficking.

11. The applicant's arrest took place at around 4 p.m. on 1 April 2003, when five members of the Special Anti-Terrorist Unit broke into the apartment in which he was hiding with five friends.

12. The applicant claims that on the arrival of the Special Anti-Terrorist Unit he was subjected to physical and verbal abuse. Its members immediately started to kick and beat him indiscriminately all over his body and face. They put a pillowcase over his head, verbally abused him and made threats aimed at his family. The maltreatment continued for an hour. On the recording of his arrest, which was broadcast on national television at the beginning of April 2003, he was shown with visible bruises on his face.

13. At around 6 p.m. the applicant and his friends were taken to the police station and left in the corridor. According to the applicant, police officers passing by sporadically hit and kicked him and his friends. He could not identify them as his face was still covered with a pillowcase.

14. At some point two police officers came and took the applicant for questioning. He was taken to an office in which seven to nine people were present. Two or three of them were women.

15. According to the applicant, the maltreatment continued there. He was beaten with baseball bats and police truncheons. He was beaten on the soles of his feet and the palms of his hands. A truncheon was inserted several times into his anus. At one point, a nylon bag was put over the

pillowcase which made him lose consciousness. During all that time the applicant remembered hearing his friends screaming.

16. At around 3.30 a.m. on 2 April 2003 two police officers took him to a solitary confinement cell. He was unable to walk so the officers carried him. In the cell his handcuffs were taken off and a detention order was put before him for signature.

17. As alleged by the applicant, approximately half an hour later two police officers entered the cell. They handcuffed him, put a bag over his head and took him for questioning. During that time he was again beaten, kicked and maltreated. Throughout this time, he was not allowed to drink any water.

18. In the applicant's version of events, after approximately two hours of maltreatment he was returned to the solitary confinement cell. He was kept there for eleven days. During the first five days no food was given to him. Afterwards, he was given one sandwich per day. Throughout that period police officers routinely questioned and ill-treated him in the same way as before.

19. At approximately 10 p.m. on 12 April 2003 the applicant was transferred to Belgrade District Prison (*Okružni zatvor*), where he remained for a year and two months pending the outcome of the criminal proceedings instituted against him.

20. On 15 April 2003 a prison doctor examined him and issued a medical certificate, which contained an extensive list of his injuries. These included large haematomas on the soles of his feet, palms of his hands, face, shoulders and buttocks, as well as conjunctival hyperaemia (redness) on the external parts of his eyes. The certificate also contained a statement that the applicant had been "beaten in the police station".

21. During the first sixty days of his detention in Belgrade District Prison he was placed in a solitary confinement cell and only had contact with the doctors who examined him. After two months he had fully recovered from the ill-treatment he had suffered.

22. On 13 October 2003 the applicant was charged with illegal production and trafficking of drugs (*neovlašćena proizvodnja i stavljanje u promet opojnih droga*), abduction (*otmica*) and unlawful deprivation of liberty (*protivpravno lišenje slobode*). On 22 June 2004 he was sentenced to four years and ten months' imprisonment. He was released from pre-trial detention on 25 June 2004 pending the outcome of appeal proceedings.

C. The investigation concerning the alleged ill-treatment

23. On 18 May 2004 the applicant's mother lodged a complaint with the Inspector General's Service of the Ministry of the Interior (*Generalni inspektorat Ministarstva unutrašnjih poslova*), alleging that her son had been tortured by members of the Special Anti-Terrorist Unit and police

officers working for the Narcotics Department of the Criminal Police Directorate (*Odeljenje za suzbijanje narkomanije Uprave kriminalističke policije,* also known as the Fourth Department) in Belgrade.

24. On 11 May 2005, 26 May 2005, 8 June 2005 and 12 January 2006 the applicant's mother submitted additional information complaining that her son had been ill-treated, and that moveable property had been confiscated from his home.

25. On 24 February 2006 the applicant was invited to the Inspector General's Service to give a statement about his mother's allegations. He confirmed that he had been ill-treated.

26. On 16 March 2006 the Inspector General's Service interviewed D.S., the Deputy District Public Prosecutor (*zamenik Okružnog javnog tužioca*) in Belgrade, who stated that in April 2003 he had been at the police station during the applicant's questioning. D.S. gave the names of several of the police officers involved and stated that he had not seen any injuries on the applicant. On the contrary, the applicant had seemed pleased because he had been informed that he would be charged with lesser offences than expected. D.S. also claimed that the applicant had had no complaints about his treatment.

27. On 13 June 2006 statements were taken from two police officers, R.P. and A.K. Both claimed that they had not participated in the immediate arrest, but had entered the apartment after the members of the Special Anti-Terrorist Unit had already arrested the applicant and his friends. In the apartment they had seen several people dressed in only their underwear, being handcuffed and lying face down. They denied having seen any bruises or injuries on those arrested.

28. On 10 July 2006 the Inspector General's Service interviewed the applicant's wife, who made no complaints about the applicant's treatment during his arrest or while in detention. She only complained about the confiscation of certain movables from their home.

29. On 28 September 2006 the chief of the Fourth Department of the Criminal Police Directorate in Belgrade (*Načelnik četvrtog odeljenja UKP SUP*), Z.K., gave a statement to the Sector for the Internal Control of the Police. He said that he had had no knowledge of the applicant or his friends having been subjected to any ill-treatment.

30. On 21 March 2007 the applicant's mother's complaint of ill-treatment of her son was rejected by the Inspector General's Service for lack of evidence of a crime.

31. On 1 July 2007 the applicant lodged a criminal complaint with the First Municipal Public Prosecutor's Office (*Prvo opštinsko javno tužilaštvo* – "the prosecutor's office") against a number of the unknown perpetrators as well as against three police officers identified only by surname.

32. On 20 July 2007 the prosecutor's office opened an official inquiry with requests for the police to provide evidence and the names of those

involved in the applicant's arrest and questioning, and an investigative judge to question the applicant. He was interviewed on 9 October 2007.

33. On 30 November 2007 the Sector for the Internal Control of the Police identified three police officers, V.M., S.P., and Z.K., in connection with the applicant's arrest and questioning. The officers stated that no violence had ever been used against the applicant. On 27 December 2007 the prosecutor's office dropped the charges against them for lack of evidence.

34. At the same time the case against the unidentified police officers remained open because, according to the prosecutor's office, "it transpired from the evidence gathered that Krsmanović Đorđe had sustained injuries while in detention" (*iz prikupljenih dokaza utvrđeno je da je Krsmanović Đorđe zadobio povrede u periodu dok mu je bio određen pritvor*). It would appear that the case is still open.

35. After learning of that decision, on 23 January 2008 the applicant took over the criminal proceedings as a subsidiary prosecutor (*oštećeni kao tužilac*) by requesting to have an investigation opened against V.M., S.P., and Z.K.

36. On 21 April and 18 November 2008 the investigating judge to whom the case was assigned interviewed three doctors who worked at the prison hospital. On 15 January 2009 he also interviewed the police officers accused of ill-treatment. On 24 March 2009 he refused to open an investigation because there was not enough evidence to prove that the accused had committed the crime they were suspected of. On 23 September 2009 the pre-trial chamber of the First Belgrade Municipal Court upheld the decision of the investigating judge. The applicant appealed. On 13 April 2010 the Belgrade Appellate Court upheld that decision.

37. On 10 July 2010 the applicant lodged an appeal on points of law with the prosecutor's office, which was rejected on 11 October 2010.

38. On 11 July 2010 the applicant also lodged a constitutional appeal. He complained principally about the lack of an effective investigation into the events under Articles 21, 25, 27, 29, 32, 33 and 36 of the Constitution and Articles 3, 6, 13 and 14 of the Convention. On 23 July 2013 his constitutional appeal was rejected by the Constitutional Court, whose decision was served on the applicant on 11 September 2013. The court primarily considered the applicant's complaints under Article 6 of the Convention and found them to be manifestly ill-founded. As to the applicant's complaint under Article 3 of the Convention, the Constitutional Court found it to be outside its temporal jurisdiction in view of the date of entry into force of the Constitution itself. In respect of the other complaints, the Constitutional Court held, *inter alia*, that:

> "it is not enough to allege a violation of one's rights in a constitutional appeal or list the constitutional rights that are considered to be violated and reasons for their violations based on the appellant's subjective estimation or evaluation, but to put each

mentioned reason into a direct relationship with the allegedly violated constitutional right, and a violation or denial of a certain constitutional right has to be caused by an act or action that occurred before the entry into force of the Constitution. This also implies that specific and detailed reasons of the alleged violation of the constitutional right have to be specified in the constitutional appeal, because only a causal link presented in such manner may compel the Court to find a violation or denial of a certain right."

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Serbia (*Ustav Republike Srbije,* published in Official Gazette of the Republic of Serbia no. 98/2006)

39. The relevant provision reads as follows:

Article 25

"Physical and mental integrity is inviolable.

Nobody may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent."

B. Criminal Code 1977 (*Krivični zakon,* published in the Official Gazette of the Socialist Republic of Serbia nos. 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89 and the Official Gazette of the Republic of Serbia nos. 16/90, 21/90, 26/91, 75/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/02, 11/02, 80/02, 39/03 and 67/03)

40. The Criminal Code was in force from 1 July 1977 until 1 January 2006. The relevant provision reads as follows:

Article 66 (Ill-treatment by public officials acting in an official capacity)

"Whoever acting in an official capacity ill-treats or insults another or otherwise treats such person in a humiliating and degrading manner, shall be punished with imprisonment of from three months to three years."

C. Code of Criminal Procedure 2001 (*Zakonik o krivičnom postupku*, published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 70/01, amendments published in OG FRY no. 68/02 and in OG RS nos. 58/04, 85/05, 115/05, 49/07, 122/08, 20/09, 72/09 and 76/10)

41. The Code of Criminal Procedure was in force from 28 March 2002 until 1 October 2013. Articles 19, 20, 46 and 235, read together, provided that formal criminal proceedings (*krivični postupak*) could be instituted at

the request of an authorised prosecutor. For crimes subject to prosecution by the State the authorised prosecutor was the public prosecutor. His or her authority to decide whether to press charges, however, was bound by the principle of legality which required that he or she had to act whenever there was a reasonable suspicion that a crime subject to public prosecution had been committed. It made no difference whether the public prosecutor had learnt of the incident from a criminal complaint filed by the victim or another person, or indeed even if he or she had only heard rumours to that effect.

42. Article 61 provided that if the public prosecutor decided that there were no grounds to press charges, the victim had to be informed of that decision and would then have the right to take over the prosecution of the case him or herself in the capacity of a "subsidiary prosecutor" within eight days of notification.

43. Articles 64 § 1, 239 § 1 and 242, taken together, provided that when the alleged perpetrator of a crime remained unknown a subsidiary prosecutor was entitled to request that the investigating judge undertake specific additional measures aimed at establishing the perpetrator's identity (*pojedine predistražne radnje*) prior to deciding whether or not to apply to have a formal judicial investigation (*pokretanje istrage*) opened. If the investigating judge rejected that request it would, pursuant to Article 243 § 7, be for the pre-trial chamber of the same court to rule on the matter.

44. Article 257 § 2 provided that once a formal judicial investigation had been completed the investigating judge had to provide the public prosecutor with the case file, who would then have fifteen days to decide how to proceed, that is to say whether to ask for additional information from the investigating judge, lodge an indictment with the court, or drop the charges in question.

45. Article 259 § 2 provided, *inter alia*, that the provisions of Article 257 § 2 also applied, *mutatis mutandis*, to a subsidiary prosecutor.

D. Police Act 2005 (*Zakon o policiji*, published in Official Gazette of the Republic of Serbia nos. 101/05, 63/09 – decision of the Constitutional Court, 92/11 and 64/15)

46. The Police Act was in force until 5 February 2016. Section 86 provided that whenever force was used the police officer concerned had to submit a written report to his superior within twenty-four hours. The latter would then establish whether the force used was justified and lawful.

47. Sections 84, 85 and 88 to 109 set out various types of coercive measures and the specific situations in which they could be applied, while emphasising the importance of proportionality in this regard.

E. Inspector General's Service Ordinance 2001 (*Pravilnik o radu Službe generalnog inspektora RJB*, published in an internal gazette of the Ministry of Interior on 12 March 2001)

48. The first Inspector General was appointed in June 2003. The Inspector General's Service was answerable to the Minister of Interior. It could suggest certain measures in cases of misconduct committed by police officers and was later reorganised and renamed to the Sector for the Internal Control of the Police.

III. RELEVANT INTERNATIONAL DOCUMENTS

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

49. In its report to the Government on its visit to Serbia and Montenegro from 16 to 28 September 2004 (CPT/Inf (2006) 18; 18 May 2006) the CPT stated, among other things:

> "30. The CPT delegation heard numerous allegations of deliberate physical ill-treatment of persons deprived of their liberty by the police throughout Serbia. ...
>
> Many detainees interviewed by the delegation alleged that they had been slapped, punched, kicked or beaten with batons during police custody. A certain number of persons interviewed by the delegation alleged that they had been beaten with baseball bats, while forced to wear bullet-proof vests in order to prevent their injuries becoming visible. Some others alleged that they had been handcuffed to a radiator for several hours in painfully contorted positions. A number of allegations received included recent accounts of: beating on the palms of the hands; beating on the soles of the feet (a practice known as 'falaka'); placing a plastic bag over the detainee's head to cause temporary asphyxiation; the infliction of electric shocks on different parts of the body, including the genitals; sleep deprivation for prolonged periods; being forced to eat salt without being offered water to drink for the whole day. The ill-treatment alleged was in several cases of such a severity that it could well be considered to amount to torture. ...
>
> 32. In almost all of the police stations visited in Belgrade, the delegation found baseball bats and other non-standard and unlabelled objects (such as metal bars or wooden sticks) in offices used for interrogation purposes. This lends further credibility to the allegations received that persons deprived of their liberty by the police had been beaten with such objects. ...
>
> 34. The information at the CPT's disposal suggests that persons suspected of a criminal offence run a significant risk of being ill-treated by the police in Serbia at the time of their apprehension and during the first hours of police custody, and that on occasion such persons may be subject to severe ill-treatment (or even torture). The number and severity of allegations of police ill-treatment received and documented by the delegation calls for urgent action by the national authorities; senior officials did not contest that the ill-treatment of persons deprived of their liberty by the police represents a serious problem in Serbia. Constant vigilance will be required if the absolute prohibition of torture and inhuman or degrading treatment is to be upheld."

B. United Nations Human Rights Committee

50. The International Covenant on Civil and Political Rights, adopted under the auspices of the United Nations on 16 December 1966, entered into force in respect of Serbia on 12 March 2001. The relevant part of the "concluding observations" on Serbia of the UN Human Rights Committee, the body of independent experts set up to monitor the implementation of the treaty, reads as follows (document CCPR/CO/81/SEMO of 12 August 2004, § 15):

> "While taking note of the establishment in Serbia of [Inspector General's Service] in June 2003, the Committee is concerned that no independent oversight mechanism exists for investigating complaints of criminal conduct against members of the police, which could contribute to impunity for police officers involved in human rights violations. The State party should establish independent civilian review bodies at the Republic level with authority to receive and investigate all complaints of excessive use of force and other abuse of power by the police."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51. The applicant complained that the authorities had failed to conduct an effective investigation into his allegations of ill-treatment by police officers during his arrest and detention. 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

1. Temporal jurisdiction

(a) The parties' submissions

52. The Government submitted that according to Court's well-established case-law the Court did not have jurisdiction *ratione temporis* in cases where an event happened before 3 March 2004, when the Convention entered into force in respect of the respondent State in question. They argued that those principles were set out in the Grand Chamber judgment *Blečić v. Croatia* ([GC], no. 59532/00, § 77-82, ECHR 2006-III) and were applicable to this case.

53. The applicant argued that the obligation imposed on the respondent Government was set out in *Stanimirović v. Serbia* (no. 26088/06, 18 October 2011), which made it clear that failures of a respondent

Government to provide an effective investigation were not affected by temporal jurisdiction for events and facts before ratification.

(b) The Court's assessment

54. The Court has consistently held that the procedural obligation to investigate under Articles 2 and 3 of the Convention is not a procedure of redress in respect of an alleged violation that may have occurred before the entry into force of the Convention with respect to the State concerned. On the contrary, an obligation to carry out an effective investigation has its own distinct scope of application and operates independently from the substantive limb of Articles 2 and 3 (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 136, ECHR 2009). Throughout the Court's case-law, that obligation has evolved into a separate and autonomous duty, capable of binding the State even when the death or ill-treatment took place before ratification (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009; *Stanimirović*, cited above, §§ 28-29; and *Otašević v. Serbia*, no. 32198/07, § 24, 5 February 2013). The obligation is of a continuing nature, in the sense that it binds the State throughout the period in which the authorities can reasonably be expected to take measures with the aim of elucidating the circumstances of the death or ill-treatment and establishing responsibility for them (see *Šilih*, cited above, § 157).

55. However, having regard to the principle of legal certainty, the Court's temporal jurisdiction as regards compliance with the procedural obligation under Articles 2 and 3 in respect of death or ill-treatment that occurred before ratification is not open-ended (ibid., § 161). Where the impugned events occurred before ratification, only procedural acts and/or omissions occurring after that date can fall within the Court's temporal jurisdiction (ibid., § 162). Furthermore, there must be a genuine connection between the death or ill-treatment and the entry into force of the Convention in respect of the respondent State for the procedural obligations imposed by Articles 2 and 3 to come into effect. For that connection to be established, two cumulative criteria must be met: firstly, the lapse of time between the death or ill-treatment and the entry into force of the Convention must have been reasonably short (not exceeding ten years) and secondly, it must be established that a significant proportion of the procedural steps that were decisive for the course of the investigation were or ought to have been carried out after the ratification of the Convention by the State concerned (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 145-148, ECHR 2013).

56. In the present case, it is to be noted that no significant time elapsed between the alleged ill-treatment of the applicant and the ratification of the Convention by the State. In addition, although no investigation into applicant's allegations was ever initiated by the competent authorities, all of the pre-investigative steps were conducted after the Convention came into

force. As both criteria have been satisfied, the Court dismisses the Government's objection *ratione temporis.*

2. Six-month time-limit

(a) The parties' submissions

57. The Government contended that the applicant's complaint had been lodged out of time. In particular, they argued that a constitutional appeal had not been an effective legal remedy in his case. He should therefore have lodged an application with the Court no later than 13 November 2010, six months after the decision of the Belgrade Appellate Court was served on him.

58. In the alternative, the Government claimed that the applicant had also failed to comply with the six-month rule because he had omitted to promptly inform the domestic authorities of the alleged ill-treatment and so act diligently. He should have lodged the application with the Court as soon as he had become aware that the investigation at domestic level was not effective.

59. The applicant contested these arguments, claiming that he had acted diligently and that at the time when he had lodged his complaints with the Constitutional Court, a constitutional appeal had been an effective legal remedy.

(b) The Court's assessment

60. The Court reiterates that the purpose of the six-month rule is to promote security of the law. It should ensure that it is possible to ascertain the facts of a case before that possibility fades away, making a fair examination of the question in issue next to impossible (see *Stanimirović*, cited above, § 30).

61. The six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. The Court has already held that a constitutional appeal should, in principle, be considered an effective domestic remedy within the meaning of Article 35 § 1 of the Convention in respect of all applications introduced against Serbia after 7 August 2008 (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 84, 25 March 2014, and *Vinčić and Others v. Serbia*, nos. 44698/06 and others, § 51, 1 December 2009). It sees no reason to depart from this practice in the present case. If the applicant had raised a substantive complaint under Article 3 concerning the events in 2003, the complaint would have been (as the Constitutional Court also established) incompatible with the provisions of the Convention *ratione temporis*. However, the applicant's complaint concerns the procedural obligation to conduct an effective investigation. The applicant raised this complaint in his appeal to the Constitutional Court but the reply he received

did not deal with the specific complaint. The Government's contention, that the remedy was not capable of addressing the issues because of the temporal limitation on the Constitutional Court's jurisdiction, is therefore not convincing. No other argument has been made which would suggest that the applicant could not reasonably have expected that the Constitutional Court was able to consider a complaint concerning the procedural obligation, and so the Court accepts that the six month period should be calculated from the moment when the applicant received the decision of the Constitutional Court.

62. As for the Government's objection that the applicant had failed to act diligently at domestic level, and that he should have lodged his application with the Court as soon as he had become or ought to have become aware that the criminal investigation into his ill-treatment was not effective, the Court reiterates that in cases concerning an investigation into ill-treatment, as in those concerning an investigation into the suspicious death of a relative, applicants are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are or should have become aware of the lack of an effective criminal investigation (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 263, ECHR 2014 (extracts); *Bulut and Yavuz* (dec.), cited above; *Bayram and Yıldırım* (dec.), cited above; and *Atallah v. France* (dec.), no. 51987/07, 30 August 2011).

63. The Court has already clarified that the obligation of diligence incumbent on applicants contains two distinct but closely linked aspects: on the one hand, applicants must contact the domestic authorities promptly concerning progress in the investigation and, on the other, they must lodge their application promptly with the Court as soon as they become or should have become aware that the investigation is not effective (see *Mocanu and Others*, § 264, cited above; *Nasirkhayeva v. Russia* (dec.), no. 1721/07, 31 May 2011; *Akhvlediani and Others v. Georgia* (dec.), no. 22026/10, §§ 23-29, 9 April 2013; and *Gusar v. Moldova* (dec.), no. 37204/02, §§ 14-17, 30 April 2013).

64. The first aspect of the duty of diligence – that is, the obligation to apply promptly to the domestic authorities – must be assessed in the light of the circumstances of the case. In this regard, the Court has held that an applicant's delay in lodging a complaint is not decisive where the authorities ought to have been aware that an individual could have been subjected to ill-treatment – particularly in the case of an assault which occurred in the presence of police officers – as the authorities' duty to investigate arises even in the absence of an express complaint (see *Velev v. Bulgaria*, no. 43531/08, §§ 59-60, 16 April 2013). Nor does such a delay affect the admissibility of the application where the applicant was in a particularly vulnerable situation, having regard to the complexity of the case and the nature of the alleged human rights violations at stake, and where it

was reasonable for him or her to wait for developments that could have resolved crucial factual or legal issues (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 142, ECHR 2012).

65. The Court notes that the applicant was kept in solitary confinement, at least until 12 June 2003, during which time he had no contact with anyone apart from the doctors monitoring his state of health. He was released from detention on 25 June 2004, by which time a complaint of ill-treatment had been submitted by his mother (see paragraphs 23 and 24 above).

66. With regard to the second aspect of this duty of diligence – that is, the duty on an applicant to lodge an application with the Court as soon as he or she realises or ought to realise that an investigation is not effective – the Court has stated that the issue of identifying the exact point in time that that stage occurs necessarily depends on the circumstances of the case, and that it is difficult to determine it with precision (see *Nasirkhayeva*, cited above). The Court has rejected as out of time applications where there were excessive or unexplained delays on the part of applicants once they became or ought to have become aware that no investigation had been instigated or that the investigation had lapsed into inaction or become ineffective and, in any of those eventualities, there was no immediate, realistic prospect of an effective investigation being provided in the future (see, among other authorities, *Narin v. Turkey*, no. 18907/02, § 51, 15 December 2009, and *Aydinlar and Others v. Turkey* (dec.), no. 3575/05, 9 March 2010).

67. Turning to the circumstances of the present case, the Court notes that in 2007, after his mother's complaint had been rejected (see paragraph 30 above), the applicant lodged a criminal complaint with the prosecutor's office (see paragraph 31 above). After his criminal complaint was dismissed (see paragraph 33 above), he took over the criminal proceedings as a subsidiary prosecutor (see paragraph 35 above). According to the Court's well established case-law, where a national system allows a victim of ill-treatment to take over the prosecution of the case him or herself in the capacity of a "subsidiary prosecutor", such post-ratification proceedings must also be taken into account (see *Otašević*, cited above, § 25, and *Butolen v. Slovenia*, no. 41356/08, § 70, 26 April 2012). The applicant thus appropriately pursued the legal remedies available to him in challenging the decisions of the judicial bodies regarding his subsidiary criminal prosecution.

68. Having regard to the above considerations, the Court finds that by lodging his application within six months of 11 September 2013 (see paragraph 38 above), the date of service of the Constitutional Court's decision, the applicant complied with the six-month time-limit provided for in Article 35 § 1 of the Convention. The Government's objection is therefore dismissed.

3. Conclusion

The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

69. The applicant complained that the respondent Government had failed to conduct an independent, effective and thorough investigation into his ill-treatment during his arrest and while in detention. He complained that the State authorities had been inefficient and that his complaint had been dismissed on the grounds that the offenders could not be identified. In the applicant's view, the people responsible for his ill-treatment were easily identifiable to the respondent Government.

70. The Government contended that the investigation carried out in the present case had met the procedural requirements of Article 3 of the Convention and had been thorough and effective. They submitted that the allegations raised by the applicant's mother in her initial complaint could not be considered credible as she had learned of them from the applicant's friends and the applicant's wife failed to reaffirm them. They, also, submitted that the effectiveness of a remedy did not depend on the certainty of a favourable outcome for the applicant and that the domestic authorities had carried out all the necessary steps to examine the complaint raised by the applicant's mother; that is: they had examined all the relevant forensic evidence, collected medical documentation and related reports, and conducted interviews with the applicant, his mother, his wife and other witnesses.

71. The Government also indicated that in 2007, after the applicant had lodged his criminal complaint, the relevant authorities had once again examined all the allegations.

72. They lastly submitted that the positive obligation under the procedural limb of Article 3 of the Convention was not an obligation of result, but of means. Their decisions to dismiss the complaints raised by the applicant and his mother had been based on findings that no excessive force had been used against the applicant and that the members of the Special Anti-Terrorist Unit had acted lawfully.

2. The Court's assessment

(a) General principles

73. The Court reiterates that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police or other such agents of the State in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions*, 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Besides, the authorities must take into account the particularly vulnerable situation of victims and the fact that people who have been subjected to serious ill-treatment will often be less ready or willing to make a complaint (see *Stanimirović*, cited above, § 39, and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 133, ECHR 2004-IV).

74. Even though the obligation to investigate is not an obligation of result, but of means, there are several criteria an investigation has to satisfy for the purposes of the procedural obligation under Articles 2 and 3 of the Convention (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 323-346, ECHR 2007-II). Firstly, an effective investigation is one which is adequate, that is an investigation which is capable of leading to the identification and punishment of those responsible (see *Labita* [GC], cited above, § 131; *Boicenco v. Moldova*, no. 41088/05, § 120, 11 July 2006; and *Stanimirović*, cited above, § 40). Secondly, for an investigation to be considered effective it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events, which means not only a lack of hierarchical or institutional connection but also a practical independence (see *Ramsahai and Others* [GC], cited above, § 325; see also *Đurđević v. Croatia*, no. 52442/09, § 85, ECHR 2011 (extracts), and the authorities citied therein). Thirdly, the investigation has to 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 or as the basis of their decisions (see *Assenov and Others*, cited above, §§ 103; see also *Stanimirović*, cited above, § 40). Fourthly, there is an obligation to react promptly and take action as soon as an official complaint has been lodged. Even when strictly speaking no complaint has been made, an investigation must be started if there are sufficiently clear indications that ill-treatment has been used (see *Stanimirović*, cited above, § 39). Fifthly, an effective investigation is one which affords a sufficient element of public scrutiny to

secure accountability. While the degree of public scrutiny may vary, the complainant must be afforded effective access to the investigatory procedure in all cases (see *Đekić and Others v. Serbia*, no. 32277/07, § 33, 29 April 2014).

(b) Application of those principles to the present case

75. Turning to the circumstances of the present case, the Court is mindful that the alleged ill-treatment of the applicant happened in a state of emergency following the assassination of the Serbian Prime Minister in 2003. The Court is aware that the applicant was arrested and detained in the context of Operation Sabre, when a large number of people were arrested and placed in pre-trial detention.

76. When a person raises a credible assertion for the purposes of the positive obligation to investigate under Article 3, a prompt response by the authorities is vital 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 *Šilih*, cited above, § 195, and *Bouyid v. Belgium* [GC], no. 23380/09, § 121, ECHR 2015).

77. As to the question whether such an assertion was raised in the present case, the Court notes that the applicant and his mother lodged complaints with the relevant domestic authorities. The complaints were sufficiently detailed, containing precise dates, locations and the possible perpetrators.

The medical certificate in which numerous injuries on the applicant's body were recorded was also at the disposal of the authorities (see paragraph 20 above).

In addition, there was a video broadcast on national television which showed the applicant with visible bruises on his face (see paragraph 12 above).

78. The complaints submitted by the applicant and his mother, the medical evidence and the video in question justified an "arguable claim" within the meaning of Article 3 of the Convention that the applicant had been subjected to ill-treatment during his arrest and while in detention. That being so, the Serbian authorities were under an obligation to conduct an effective investigation.

79. It has not been disputed by the parties that certain investigative steps into the applicant's alleged ill-treatment were carried out by three different authorities – the Inspector General's Service, the prosecutor's office and an investigative judge.

80. However, all three investigations terminated because of an alleged absence of evidence, either of the ill-treatment or of someone's guilt. The Court notes that the investigations were mainly confined to interviews with several police officers involved in the incident. The applicant and his mother were not allowed to participate effectively in those investigations or

to have the police officers questioned and corroborate their allegations. Besides, little attention was given to the applicant's allegations despite their being substantiated by the medical certificate, and their allegations were not seriously assessed.

81. Whilst it is true that the domestic authorities were presented with sufficient evidence of the applicant's ill-treatment, they failed to identify those involved. The mere fact that no possible eyewitnesses to the applicant's ill-treatment were ever identified amounts to a significant shortcoming in the adequacy of each investigation and all three investigations together. In the Court's view, after being alerted to the applicant's allegations of ill-treatment, the investigative authorities should have conducted interviews with the other people present during his arrest or in the detention facility or corroborated his statement with the statements of those interviewed. However, they failed to do so.

82. The specific measures aimed at establishing the potential perpetrators' identities in all three investigations were carried out by police officers answering to the same chain of command as the officers under investigation.

83. In the final analysis, the fact that the investigations conducted by the State authorities proved incapable of even identifying the State agents who abused the applicant – even though it had been proven that the applicant was subjected to ill-treatment while under the control of the police (see paragraphs 20 and 34 above) – reinforces the Court's doubts as to the effectiveness of the investigation.

84. These findings are enough for the Court to consider that the applicant did not have the benefit of an effective investigation. There has accordingly been a violation of the procedural obligation under Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

85. The applicant also complained that the investigation into his alleged ill-treatment had been unfair and lengthy, and that because of that the people responsible had remained unpunished. He relied on Article 6 § 1 of the Convention, the relevant parts of which read:

Article 6

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

86. The Court reiterates that the Convention does not guarantee the right to have third parties prosecuted, save in certain circumstances not relevant to the present case (compare and contrast *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). The applicant's complaint under Article 6 § 1 is, therefore, *ratione materiae* incompatible with the Convention and must accordingly be declared inadmissible.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

87. The applicant complained that he had not had an effective remedy at his disposal. He relied on Article 13 of the Convention, which reads as follows:

Article 13

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

88. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

89. Since the applicant's complaint relating to Article 13 amounts to a repetition of his complaint under Article 3 and having regard to the finding relating to Article 3 (in paragraph 84 above), it is not necessary to examine whether there has also been a violation of Article 13 in this case.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

92. The Government contested that claim.

93. The Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

94. The applicant also claimed EUR 4,200 for costs and expenses.

95. The Government did not comment.

96. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. 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 sum of EUR 4,200 covering costs and expenses.

C. Default interest

97. 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 complaints concerning Article 3 under its procedural limb and Article 13 of the Convention admissible;

2. *Declares* the complaint under Article 6 § 1 of the Convention inadmissible;

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

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

5. *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 sums, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousands euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,200 (four thousands two hundreds euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President