

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

SECOND SECTION

CASE OF SOKOLOVAS v. LITHUANIA

(Application no. 10049/20)

JUDGMENT

STRASBOURG

28 June 2022

This judgment is final but it may be subject to editorial revision.



In the case of Sokolovas v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Committee composed of:

Pauliine Koskelo, *President,*
Egidijus Kūris,
Gilberto Felici, *judges,*
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 10049/20) 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") on 14 February 2020 by a Lithuanian national, Mr Artur Sokolovas, born in 1985 and living in the Vilnius region ("the applicant"), who was represented by Ms G. Leškevičienė, a lawyer practising in Vilnius;

the decision to give notice of the application to the Lithuanian Government ("the Government"), represented by their Agent, Ms K. Bubnytė-Širmenė;

the parties' observations;

Having deliberated in private on 7 June 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the use of an electroshock device by the police against the applicant and the investigation into his allegations of ill-treatment.

2. On 17 July 2018 the applicant received a telephone call from the Vilnius City First Police Station. He was informed that a complaint had been lodged against him and was asked to come to the police station to give an explanation. The complaint in question had been lodged by the applicant's brother and concerned a debt which the applicant had allegedly failed to pay. The applicant arrived at the police station; however, he refused to answer any questions without a lawyer. He began to make a video-recording of the premises and the officers with his mobile telephone. The officers told him that he had no right to make video-recordings at the police station and ordered him to stop, but the applicant did not obey. He was then informed that he was under arrest for refusing to comply with lawful orders of the police and was ordered to hand over all of his personal belongings for inspection. The applicant refused and continued arguing with the officers.

3. As can be seen in a video-recording from the police station security camera, four officers were present in the room with the applicant. They informed him that if he refused to comply with their orders, physical force would be used against him. One of the officers, L.A., approached the applicant and attempted to search his pockets, but the applicant kept squirming, moving his arms and covering his pockets with his hands. Then another officer, M.K., used an electroshock device against him. The applicant

fell onto the floor and M.K. used the device again. L.A. and M.K. turned the applicant onto his stomach and handcuffed his hands behind his back. The other two officers did not intervene in the attempts to restrain the applicant.

4. The applicant was taken to a detention cell. Soon afterwards he complained that he was feeling unwell. An ambulance was called and he was taken to hospital. He was released on the same day.

5. The following day the applicant was examined by a medical expert, who found bruises and scratches on his neck, arms, chest and stomach, which had likely been caused by blows with a hard, blunt object and were classified as negligible injuries.

6. In reports submitted on the day of the applicant's arrest, the four officers stated that he had been aggressive and had physically resisted them. M.K. submitted that the applicant had pushed him and L.A., and that the electroshock device had been used to prevent the applicant from hurting himself or others.

7. According to a report submitted by the officers on the use of the electroshock device, it had been used against the applicant twice: once on his chest and once on his right arm.

8. In December 2018 the administrative courts fined the applicant 110 euros (EUR) for disobeying lawful orders of the police.

9. The applicant lodged a complaint against the police, submitting that the electroshock device had been used unlawfully in view of the fact that his actions had not posed any real threat to the officers' life or limb.

10. In August 2018 the Vilnius Police Department refused to open a pre-trial investigation, finding that the officers had acted in accordance with the law and within their remit; that decision was upheld by the Vilnius Regional Prosecutor's Office and the Vilnius District Court. However, in November 2018 the Vilnius Regional Court quashed those decisions. It found that the investigating authorities had not taken certain necessary measures: they had not questioned the applicant and the officers and had not properly examined the video-recording from the police station camera. The court observed that, from that video-recording, it did not appear that the applicant's actions had posed a real threat.

11. In November 2018 the Vilnius Regional Prosecutor's Office opened a pre-trial investigation concerning allegations of abuse of office. The applicant was granted victim status.

12. When questioned during the investigation, officer L.A. stated that, after the applicant had refused to let him search his pockets, L.A. was going to twist his arm in order to restrain him, but at that moment M.K. had used the electroshock device. M.K. stated that the use of the device had been necessary because the applicant had actively resisted the officers, pushed them and posed a threat. According to M.K., it might have been possible to restrain the applicant by other means, but those means could have had more serious consequences. M.K. stated that he had been carrying an expandable

baton and a gas dispenser, but it would not have been expedient to use them inside the premises. Another officer who had been present, R.Z., stated that the applicant had not posed any threat but that the use of the electroshock device had been necessary in order to avoid further resistance and that, in the circumstances, it had been the measure with the least serious consequences.

13. In February 2019 a prosecutor of the Vilnius Regional Prosecutor's Office discontinued the investigation, and in May 2019 a senior prosecutor upheld that decision on the grounds that the officers' actions had been a lawful and proportionate response to the applicant's resistance. Those decisions were upheld by the Vilnius District Court in June 2019.

14. In August 2019 the Vilnius Regional Court, in a final decision, held that discontinuing the investigation had been justified. It stated that the applicant's actions had not posed a threat to the officers' lives; however, as the confrontation between them had lasted a rather long time, and as the applicant had resisted the officers' attempts to search and handcuff him by behaving aggressively, it could not be ruled out that a threat to the officers' physical integrity may have arisen. Moreover, after the electroshock device had been used once, the applicant had continued resisting, and that had justified its being used again. Lastly, the court held that, even if the officers' actions had been unlawful, that would not have warranted their criminal liability, but only disciplinary liability.

15. The applicant complained under Article 3 of the Convention that the recourse to physical force against him had not been justified because he had not posed any threat to the officers. He also complained that the investigation had been ineffective because it had failed to adequately assess the necessity and proportionality of the use of the electroshock device.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

A. Substantive limb: alleged inhuman and degrading treatment

17. The general principles concerning ill-treatment at the hands of law-enforcement officers have been summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90, ECHR 2015, and the cases cited therein).

18. The Court has previously found that subjecting a person to electric shocks is a particularly serious form of ill-treatment capable of provoking severe pain and cruel suffering (see *Grigoryev v. Ukraine*, no. 51671/07, § 90, 15 May 2012; *Anzhelo Georgiev and Others v. Bulgaria*, no. 51284/09,

§§ 75-76, 30 September 2014; and *Kanciał v. Poland*, no. 37023/13, § 78, 23 May 2019; see also the 20th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in 2010, cited in *Znakovas v. Lithuania* [Committee], no. 32715/17, § 33, 19 November 2019).

19. In the present case, it has been established that an electroshock device was used against the applicant twice and that he sustained injuries (see paragraphs 5 and 7 above). There is no dispute that he argued with the officers, made a video-recording of the police station without permission and refused to allow them to search him. However, the Court is unable to find that the applicant's actions posed a real threat to the officers' life or limb such as to warrant the use of the electroshock device against him. The fact that he had not posed such a threat was acknowledged by the Vilnius Regional Court in the final domestic decision (see paragraph 14 above). The Court observes that the applicant was on the premises of the police station, alone with four trained officers, and the reasons for his arrest did not suggest that he might be particularly dangerous (see paragraph 2 above; compare *Tali v. Estonia*, no. 66393/10, § 76, 13 February 2014). Indeed, the officers acknowledged that it might have been possible to restrain him by other means (see paragraph 12 above). While they considered that the use of other means of restraint would have had "more serious consequences", they did not provide any further explanation in this regard either in their reports or when questioned during the investigation. In such circumstances, the Court is not convinced that it was essential for four officers to use an electroshock device in order to make the applicant more cooperative (see, *mutatis mutandis*, *Gedrimas v. Lithuania*, no. 21048/12, § 73, 12 July 2016).

20. Lastly, the material in the Court's possession demonstrates that, although the applicant was warned that physical force might be used against him, he was not warned specifically about the possible use of an electroshock device (see paragraph 3 above), which would have provided him with an opportunity to voluntarily comply with the officers' orders. It was not suggested during the domestic proceedings or before the Court that giving such a warning had not been possible or that it would have caused danger to the officers (see, for a similar situation, *Znakovas*, cited above, § 48).

21. Accordingly, the Court finds that the electroshock device was used against the applicant for the sole purpose of securing his compliance with the police officers' orders and that its use had not been made strictly necessary by his own conduct.

22. Therefore, irrespective of the minor severity of the injuries sustained by the applicant, there has been a violation of Article 3 of the Convention under its substantive limb.

B. Procedural limb: alleged lack of an effective investigation

23. The general principles concerning the effectiveness of an investigation into allegations of ill-treatment have been summarised in *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 314-26, ECHR 2014 (extracts), and the cases cited therein).

24. In particular, the Court reiterates that the investigation must be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation (ibid., § 325).

25. In the present case, both the applicant and the Government in their submissions to the Court cited relevant provisions of domestic law which laid down detailed conditions for when physical force and restraining measures, including an electroshock device, could be used by law-enforcement officers. However, during the pre-trial investigation it was not assessed whether those conditions had been fulfilled, in particular, whether the applicant's actions had attained the requisite level of dangerousness to justify the use of an electroshock device (see, *mutatis mutandis*, *Kanciał*, cited above, §§ 92-93). Moreover, there is no indication that the police officers were asked to explain in any detail why they had considered less coercive measures to be insufficient to restrain the applicant (see paragraph 12 above). Lastly, the authorities failed to examine whether the applicant had been given an advance warning about the use of an electroshock device, and if not, whether dispensing with a warning had been justified (see, *mutatis mutandis*, *Znakovas*, cited above, § 60). In such circumstances, the Court is unable to find that the investigation into the applicant's allegations of ill-treatment was thorough.

26. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 5,018 in respect of costs and expenses incurred before the Court: EUR 4,200 for the lawyer's fees and EUR 818 for the translation of documents from English into Lithuanian and from Lithuanian into English. He provided copies of relevant receipts.

28. The Government submitted that the applicant's claim in respect of non-pecuniary damage was excessive and unsubstantiated. They also submitted that the translation expenses had not been necessarily incurred, because according to the official curriculum vitae of the applicant's lawyer, she spoke English.

29. The Court considers it appropriate to award the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

30. As to the costs and expenses, regard being had to its case-law (see *Tarvydas v. Lithuania*, no. 36098/19, § 63, 23 November 2021, and the case-law cited therein), the Court rejects the part of the claim concerning translation costs. As to the lawyers' fees, the Court considers that they were actually and necessarily incurred and are reasonable as to quantum. It therefore awards the applicant EUR 4,200, plus any tax that may be chargeable to him, under this head.

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, the following amounts:
      (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,200 (four thousand two hundred 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;

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

Done in English, and notified in writing on 28 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Pauliine Koskelo President