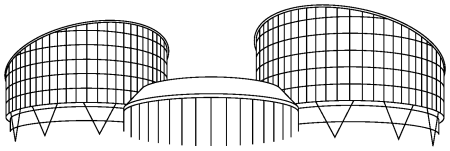

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF MIHHAILOV v. ESTONIA

(Application no. 64418/10)

JUDGMENT

STRASBOURG

30 August 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mihhailov v. Estonia,

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

Işıl Karakaş, *President,*
Julia Laffranque,
Paul Lemmens,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 28 June 2016,

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

PROCEDURE

1. The case originated in an application (no. 64418/10) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a stateless person, Mr Aleksandr Mihhailov ("the applicant"), on 28 October 2010.

2. The applicant was represented by Mr A. Gamazin, a lawyer practising in Narva. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged that the police had used unwarranted violence against him during his arrest and subsequent detention at the police station.

4. On 13 February 2014 the complaint concerning police violence was communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Narva, Estonia.

A. The applicant's arrest

6. On 29 April 2009, some time before 6 p.m., the police emergency call centre received a call about two young men who were at the junction of

Kreenholmi and Kerese streets in Narva, Estonia. The caller reported that one of the men was carrying a knife and that the other was obviously drunk and had difficulty walking. He considered the men to be dangerous to passers-by. At 5.55 p.m. Officers S.B. and E.V., who were on patrol duty, were given instructions to respond to the call. At around 6 p.m. they found the men – the applicant and M.Z. – at a public playground.

7. The applicant's version of events relating to his encounter with the police, as it appears from his application and the documents submitted to the Court, is the following. At around 6 p.m. on 29 April 2009, he and M.Z. were waiting for an acquaintance, Y.B., at a playground. Both the applicant and M.Z. were drunk. Two policemen approached him. He did not behave aggressively or swear at them. The applicant spoke with the officers. He did not remember exactly what they talked about, except that it concerned a knife and that the applicant said that he did not have one. He also recalled that the name of one of the policemen was Andrei (this later turned out to be S.B.). He was then punched on the jaw by S.B. and fell to the ground, his face landing in a hole in the pavement. He momentarily lost consciousness, and when he attempted to get up he received another blow on the back, close to the bottom of his neck. One of the police officers put his knee on his neck and pushed him to the ground. He was handcuffed and then the officers started punching and kicking him all over his body and head. He lost consciousness after the beating and only regained it at the police station.

8. According to the Government, the criminal investigation carried out by the domestic authorities showed that the applicant's arrest had taken place in the following manner. The police officers who found the applicant and M.Z. at the playground had been given information about two men, one of whom was possibly carrying a knife, while the other one was reportedly drunk and walking with difficulty. At the playground, the applicant behaved aggressively and used obscene language. Officer E.V. tried to talk to the applicant, but the applicant acted in an erratic manner, and started waving his hands around and shouting at the officers. Officer E.V. decided to force him to the ground and keep him there until a police patrol vehicle arrived. He handcuffed the applicant with the help of two police officers, S.J. and N.S., who had arrived by car. While he was being kept on the ground, the applicant attempted to get up, kicked out and continued to utter obscenities at the officers. The police officers did not use excessive force against him and did not beat him. The applicant continued to resist the police while he was being put into a police van, which was last to arrive and was carrying Officers S.T. and J.S. Some force therefore had to be used to get the applicant in the van. In the course of that process, the applicant hit his left temple against the door of the van. The applicant also remained aggressive during his transportation. The officers on the front seats of the van heard what sounded like something being pounded against another object from the back compartment.

B. The applicant's detention at the police station and his admission to hospital

9. The applicant's account of the events during his detention, as it appears from his application and the documents submitted to the Court, is the following. When he woke up in a room next to the detention cells in the police station, he saw the two police officers who had been present at the playground in front of him. He was lying on the floor with his hands cuffed. When he attempted to stand up, S.B. kneed him in the area of his left ear. When the applicant tried to sit on a chair, he was knocked off his feet and ordered to sit on the floor. After E.V. left the room, S.B., who had on black leather gloves, started systematically punching and kicking the applicant. The applicant stood up and fell over several times. At one point, he was taken to the toilet, the sink tap was turned on and his head was put under the water. He was then taken back to the detention room. While passing the detention cells, he asked those inside whether they would confirm anything they had seen or heard. In the detention room, the applicant sat on the chair and S.B. punched him again several times. When E.V. returned, the applicant was knocked off the chair and beaten again on every part of his body. S.B. continued beating him after E.V. left the room. The applicant lost consciousness for a while and when he came around he had blood on his face and was eventually put on the chair. His handcuffs were removed and he was allowed to go to the toilet, where he washed himself. He returned to the detention room and was then placed in a cell to sober up. After a while, an ambulance came and he was taken to a hospital in the company of different policemen. He had blood on his clothes, but he threw away the T-shirt, while his mother washed his trousers.

10. According to the Government, the facts as they were established in the subsequent criminal investigation showed the following. The applicant, who was still handcuffed, continued to behave aggressively at the police station. He ran up to detainees in other cells, shouting that he was being beaten by the police. As he did not obey orders to calm down and stay still, physical force had to be used to make him sit or to place him on the floor. When he began to calm down, he was placed on a chair with his hands cuffed. He suddenly lost his balance and fell off the chair face down. The police officers lifted him up and put him back on the chair. Shortly after, the applicant again fell on the floor. In the interests of the applicant's safety, the officers left him sitting on the floor. The police removed the applicant's handcuffs as soon as he calmed down. He was then taken to a cell to sober up. A test showed that the applicant was in a moderate state of alcoholic intoxication.

11. At 7.45 p.m. Officers S.B. and J.S. drafted a report that the applicant had been taken from 10 Kreenholmi Street to recover from alcoholic intoxication. The report stated that the applicant had been in a state of

alcoholic intoxication, had walked with difficulty, had fallen over and had been aggressive. It also stated that the applicant's face had been dirty and that he had had abrasions on his head.

12. At 1.42 a.m. on 30 April 2009 Officer P.S. called an ambulance to the police station at the request of the applicant. According to ambulance registration card no. 1419, the applicant complained of pain in the left part of his head and the right wrist, as well as nausea, vomiting and loss of hearing in the left ear. The findings on examination were that he had haematomas on the left part of the cranium and a swollen right wrist and was in a state of alcoholic intoxication. He was diagnosed with an intracranial injury and a fracture of the right hand and wrist. The applicant was taken to hospital.

13. Later at the hospital, according to patient registration card no. 4460, dated 30 April 2009, the applicant complained about losing consciousness and vomiting. The findings on examination were that he had haematomas and an oedema in the area of the left ear and eye. He was diagnosed with concussion and being in a state of alcoholic intoxication.

14. At 2.15 a.m. on 30 April 2009 other police officers, not those who had allegedly beaten the applicant at the police station, took a statement from him at the hospital. At 2.40 a.m. those officers drafted a misdemeanour report where they stated that the applicant had been drunk in a public place, Kreenholmi Street, and had been brawling, shouting and using obscene language, actions which amounted to a breach of the peace and a disturbance to others.

15. At 6.26 a.m. on 30 April 2009 a computer tomography scan was performed on the applicant. The results showed "temporal extracranial swelling on the left side, no haemorrhage, no intracranial pathology or haemorrhage, ventricular system symmetric, no midline shift, cranial bones intact and paranasal sinuses, middle ear spaces aerated". He was then released from hospital.

16. On 1 May 2009 the applicant, when close to home, called an ambulance. Ambulance registration card no. 1454 shows that he complained of severe headaches, dizziness, nausea, vomiting and pain in the neck. The findings on examination were that he had a haematoma around the left ear, an oedema in the area of the left eye, and was in a state of alcoholic intoxication. He was diagnosed with concussion and taken to hospital. He was examined at the hospital by a traumatology doctor who found paraorbital haematoma and swelling around the left eye, bruises on the neck and upper limbs, a smell of alcohol from the mouth, dysarthria, and that he staggered. He was diagnosed with concussion and being in a state of alcoholic intoxication. The applicant did not wish to stay in hospital.

C. The investigation into the applicant's allegations of ill-treatment

17. On 30 April 2009 the applicant complained to the police of his ill-treatment. He alleged that police officers had beaten him while arresting him, and that this had also happened later, while he was in detention at the police station. The police officer on duty refused to deal with the complaint and said it had to be submitted to a prosecutor's office. The prosecutor also refused to deal with the complaint and said it had to be submitted to the police. When the applicant returned to the police station, a police investigator allowed him to file his complaint.

18. On 5 May 2009 the applicant sent a letter to the prosecutor's office related to the same circumstances. On the same day the police decided to open a criminal investigation based on his complaint. According to the Government, the next day, on 6 May, the police investigator asked the hospital for the applicant's medical records.

19. On 13 May 2009 the applicant made a statement to the police investigator and gave his account of events (see paragraphs 7 and 9 above).

20. On the same day, the investigator took a statement from A.P., who had been held in the police station's sobering-up cell until 9 p.m. on 29 April 2009. He explained that he had looked through the eyehole of his cell door and had seen that a young man, with his hands cuffed behind his back, had been taken to the room in front of the sobering-up cells. Officer S.B., whose name he saw on his nametag, knocked the young man off his feet. He attempted to stand up, but the officer stopped him and ordered him to stay on the floor. Each time the young man attempted to stand up he was again knocked off his feet. Both men used foul language. He also heard someone being slapped on his body and saw how the police officer swung his hands towards the detainee. He understood from these gestures that the young man was being hit. The young man was then taken to a neighbouring room. After that, A.P. heard the man shouting and begging for his beating to stop. According to A.P. there was certainly some kind of fight between the young man and the officers. Subsequently, the man was put in a cell, where he continued to shout and requested a doctor, but he went quiet after a while.

21. On 15 May 2009 the applicant's legal representative sent a letter to the police requesting, among other measures, that the two police officers who had arrested the applicant, taken him to the police department and used force against him at the police station be shown to the applicant for identification. He also wanted the applicant to be taken to the police station so that his statements could be compared with the actual layout of the premises and so he could relate on the spot what happened. He further requested that the applicant's mother to be questioned about the applicant's state of health when he had left home on 29 April and when he had returned on 30 April; that the ambulance doctor and nurse be questioned as

witnesses; and that a forensic medical examination of the applicant's injuries be ordered.

22. On 15 May 2009 the police investigator took a statement from M.S., who had been held at the police station's sobering-up cell on 29 April 2009. He said that while he had heard that somebody in the neighbouring room had at one point shouted for help and that the police officers had shouted back at him, he had not seen police officers beating anybody when he had from time to time looked through the eyehole.

23. On 15 May 2009 the police investigator also took statements from Police Officer S.J., who had arrived in a police car with Officer N.S. at the scene of the applicant's arrest. While still in the police car, they had seen Officer E.V. talking to the applicant and that there had then been a scuffle between the applicant and the officer. S.J. and N.S. ran out of the car, but by the time they reached the scene the applicant had already been placed on the ground. He was aggressive and uttered obscenities at E.V. Officer S.J. kept him on the ground by using his knee to restrict the applicant's movement. Together with N.S., he helped E.V. to cuff the applicant's hands behind his back as the applicant was still putting up physical resistance. The applicant attempted to get up, continued to use indecent language and did not obey orders. The officers therefore kept the applicant on the ground until the police van arrived to transport him to the police station. No other force was used against him. S.J. added that at some point an elderly man had approached them and attempted to give them some money which allegedly belonged to the applicant. He was told that it was not necessary at that time to hand over the money. S.J. further stated that at the time of the events in question Officer S.B. had been in the vicinity talking to another young man who had a knife.

24. On 18 May 2009 the police investigator took a statement from R.L., who had been detained in the police station's sobering-up cell on 29 April 2009. He told the investigator that he had heard through the door how officers had dragged somebody into the room facing the cells. He had heard how the officers provoked that person into using rude language, shouted at him, themselves using foul language, and then started to beat him. R.L. did not remember exactly in what way the officers had hit the person, but thought that it involved punches and kicks. The person had attempted to stand up, but had not been allowed to do so as he had been knocked off his feet. He had then been taken to another room.

25. On 18 May 2009 the police investigator took a statement from M.Z. As to the arrest, he explained that before the events that happened at around 6 p.m. on 29 April 2009, he had had several beers with the applicant. They had just sat down at the playground behind some buildings when three police officers arrived in a police car. One of the officers came to talk to him and two went to the applicant and pushed him over. One of the policemen put his leg on the applicant's neck, while the other attempted to

stand on the applicant's legs. M.Z. was taken to where the applicant had been beaten. The applicant was lying on the asphalt with his face down in some sand as there was a hole in the asphalt. After a while a police van arrived with two police officers. The applicant's hands were put behind his back and he was handcuffed, lifted onto his feet and moved towards the van. In the course of that process, one of the police officers slapped the applicant on the head. He was put in the van and taken to the police station.

26. Regarding the events at the police station, M.Z. explained that the applicant had been taken to a room where the cells were located. M.Z. himself had been left in the corridor which was situated immediately after the detention section. He could see through the open doors how the applicant was put on the floor right in front of the doors and two policemen started to beat him. They hit the applicant with their elbows and kicked him on the back of the head and elsewhere. No other police officers entered the room. The doors were open, as was the door to the duty room, but no one came out of that room. After some time, one of the police officers who had been beating the applicant came to M.Z. and took him to an office to make a statement. He gave a statement against the applicant because he was afraid as he had seen how the police officer had beaten his friend.

27. On 18 May 2009 the police investigator also took a statement from P.S., a police officer on duty at the police station at the time of the applicant's detention. He explained that when he had arrived at work at 8 p.m. on 29 April 2009 Officer E.V. had told him that the person who had been put in a temporary detention cell, that is, the applicant, might request that an ambulance be called and that he should be checked from time to time. During the night, the applicant went by himself to the toilet, complained of pain but declined an offer for an ambulance to be called. When during the night he was about to be released he requested an ambulance and P.S. called it for him. P.S. overheard the applicant telling the doctor and nurse that he had been beaten by police officers. When P.S. asked who had beaten the applicant, he replied that it had been the police officers who had taken him to the police station. When P.S. asked where the applicant had been beaten, he replied that it had happened on the street during his arrest. The ambulance then took him to the hospital.

28. On 27 May 2009 the police investigator took a statement from K.I., who had been on duty at the police station's command centre at the time of the events in question. He said that when he had passed the detention room on his way out, he had seen the applicant sitting on the floor of the detention room with his hands cuffed. He was using offensive language, behaving aggressively and was intoxicated. K.I. said that the applicant had not been beaten in his presence. The applicant had not complained of being beaten or requested an ambulance.

29. On 2 June 2009 the police investigator took a statement from one of the suspects, Police Officer S.B. According to him, when he arrived with

Officer E.V. on foot at the playground between the buildings at 10 Kreenholmi Street and 18 Kerese Street, the applicant was very drunk and was having an argument over some money with another man. As he had gone further on to talk to M.Z., he had not seen what had happened between the applicant and Officer E.V. or how E.V. had forced the applicant to the ground. M.Z. did not have a knife on him, but was wearing a large sheath on his belt. S.B. had no contact with the applicant. However, he saw that the applicant continued to be aggressive after E.V. had put him on the ground, while Officers S.J. and N.S had helped E.V. to handcuff him and kept him on the ground. He also saw what happened when Officers S.T. and J.S. helped to place the applicant in the police van. The applicant was not kicked or punched. On the way to the police station thumps and bangs could be heard from the back compartment of the police van.

30. S.B. also stated that at the police station officers had put the applicant in the room facing the detention cells. The door of the room had stayed open. He was alone in the room with the applicant for about 40 minutes, but did not beat him. The applicant did not obey orders to calm down and stay on the floor. S.B. could not therefore remove his handcuffs and had to use force against the applicant to make him stay on the floor and to calm him down. At one point E.V. had helped him. When the applicant calmed down a little, he was taken to another room to take his statement and was put on a chair with his hands still handcuffed behind his back. While sitting on the chair in the detention room, the applicant suddenly fell face down off the chair. Together with E.V., who had entered the interrogation room at that moment, S.B. put the applicant back on the chair, but he fell off again and was again helped back up onto the chair. When the paperwork had been done, the applicant was taken to a cell to sober up. He did not have any bodily injuries, except for some old scratches on the head, and did not request medical assistance.

31. On 3 June 2009 the police investigator took statements from four children who had seen the applicant's arrest (A.N., D.K., D.B. and E.G.). Three of the children (A.N., D.K., and D.B.) had seen the applicant when he was drunk and having an argument with an elderly man over some money. According to the statements of A.N. and D.K., two police officers arrived and first went to speak with the applicant and the older man. A.N., D.K., and D.B. said one of the officers had then gone further away to deal with the applicant's companion, who was carrying a knife sheath. According to A.N. the applicant started to shout obscenities at the police officer who had stayed with him. A.N., D.K. and D.B. stated that following an exchange with the applicant the police officer forced him to the ground. A.N. and D.K. said that the officer pushed the applicant over. D.K. added that the applicant was put on the ground with his right cheek facing down. Two other officers, who had arrived by car, helped the first police officer to cuff the applicant's hands behind his back. All of the children, including E.G.,

who had arrived after the applicant was put on the ground, confirmed that the officers kept the applicant on the ground by force. According to A.N. and E.G. that was done by standing on his legs, while D.K. and D.B said one officer knelt on the applicant's neck to keep his head down, while the other stood on his legs, close to his heels. All the children said the officers had neither punched nor kicked the applicant. The applicant had attempted to get up off the ground, had continued to swear and said that the officers were hurting him. All of the children confirmed that the applicant resisted being walked over to the police van. The police used force to put the applicant in the van and he had hit his head (the left side of his head, according to D.B. and E.G.) against the door of the van.

32. On 4 June 2009 the police investigator took statements from the ambulance nurse, L.G., and the ambulance doctor, V.K. They had received a call about a man with a head trauma at the police station. The applicant, who was drunk, said that police officers had beaten him at the police station. He did not have any blood on his clothes, and he did not vomit. However, given the nature of his injuries, the doctor decided to take him to the hospital for a further examination.

33. On 8 June 2009 the other suspect, Police Officer E.V., gave a statement. He explained that he had received an order to respond to a call that a man in a state of heavy alcoholic intoxication, possibly carrying a knife, was walking along Kreenholmi Street. He had then immediately gone with his partner, Officer S.B., to where the man was presumed to be. On reaching the building at 10 Kreenholmi Street he saw the applicant was not behaving appropriately as he was waving his hands and staggering. When he approached the men, M.Z. led the applicant by the hand behind the building at 10 Kreenholmi Street. The police officers followed them and found the applicant sitting on a kerbstone with M.Z. and an elderly man, who was standing next to him. When E.V. and S.B. approached, the applicant stood up and staggered towards them. M.Z. went in a different direction. When the applicant reached the officers, E.V. asked him politely to stop. As the applicant did not react and walked past him, E.V. stopped him by taking his elbow and spoke to him again. The applicant reacted quite violently, and started arguing and waving his hands around. E.V. therefore used the radio to call for assistance to have the applicant removed so he could sober up. Meanwhile, the elderly man had approached and told the applicant to calm down because he was dealing with police officers. The applicant replied that he did not care and started throwing money on the ground, telling the man to keep it. The man picked the money up, said he did not need it and put it back in the applicant's pockets. By that time, S.B. had gone after M.Z. E.V. attempted to calm the applicant down, but he continued to walk back and forth, waving his hands around and uttering obscenities. E.V. decided to handcuff the applicant because there were a lot of children around. The applicant was also clearly being aggressive and

might have hurt other people, particularly given the possible presence of a knife. As the applicant did not let E.V. handcuff him, he forced the applicant to the ground, but did not hit him. Officers N.S. and S.J. arrived and helped in handcuffing the applicant and then took him to the police car, which was 10 metres away. The applicant did not have a knife. E.V. had no further contact with the applicant at the playground. While in the police van on the way back to the station the applicant continued his aggressive behaviour and E.V. heard what sounded like the applicant hitting himself against something.

34. E.V. further stated that at the police station the applicant shouted that the police were beating him, while S.B. tried to calm him down and conduct a search. E.V. left the room to interview M.Z. as a witness to the applicant's breach of the peace. When E.V. returned he saw that the applicant had fallen face down off his chair and he helped S.B. to lift him back onto the chair. The applicant fell to the ground for a second time and was then left on the floor. According to E.V., the applicant intentionally tried to injure himself in order to later accuse the police. When he started to behave calmly, the handcuffs were removed. The applicant walked unaided to the sobering-up cell. He did not have any injuries that required immediate medical attention. He had haematomas in the area of his face, but he could have received those during his transportation or when he fell off the chair. The applicant's clothes were dirty but did not have any bloodstains. E.V. informed the applicant that an ambulance would be called for him if he had any complaints about his health.

35. On the same day, 8 June 2009, the investigator took a statement from Officer N.S., who had arrived by police car with Officer S.J. at the scene of the applicant's arrest. When N.S. arrived, Officer E.V. was already holding the applicant down on the ground. When he and S.J. reached them they saw the applicant behaving aggressively and using foul language. N.S. helped E.V. to cuff the applicant's hands behind his back. The applicant was then lifted onto his feet and taken to the police car, but he refused to obey orders to keep still and calm down and started to kick the police car. The officers therefore removed him from the car and put him on the ground. N.S. held his feet and hands, while another officer knelt on the applicant to keep his head down. The applicant constantly resisted the officers, used bad language and behaved aggressively. He was kept down to prevent him from hurting himself and others. The officers did not beat him. The applicant continued to resist the police officers while he was being put in the police van and continued to be aggressive in the van. N.S. added that at some point an elderly man came to them offering to hand over some money which had allegedly belonged to the applicant. He was, however, informed that it was not necessary to hand over the money at that moment.

36. On the same day, 8 June 2009, the police investigator took statements from Officers S.T. and J.S., who had arrived in the police van at

the scene of the applicant's arrest. When J.S. got out of the van, he saw that Officers S.J. and N.S. were holding the applicant down on the ground. The applicant was aggressive, was shouting and swearing and attempting to break free. N.S. and S.J. took the applicant to the police van. J.S. opened the door for them. He did not see the applicant banging into anything, but while he was being transported sounds could be heard from the back compartment which sounded like something being hit. S.T. stated that he did not get out of the van. He did not hear the applicant banging against anything while he was being put in the van. At the police station he and J.S. carried the applicant to the detention room and left him in front of the cells. He did not see any blood on the applicant or his clothes. Nor did he notice any visible injuries on the applicant.

37. That day, 8 June 2009, the police investigator ordered a forensic medical assessment of the injuries on the basis of the available documentary evidence (the ambulance cards, patient registration card and the statements of the applicant, the suspects in the case and two other police officers as witnesses).

38. On 9 June 2009 the police investigator took a statement from D.R., a police officer who had been on duty at the police station on 29 April 2009. He stated that he had arrived at work at 8 p.m. At around 2 a.m. he started to work on the applicant's documents. The applicant told D.R. that he had a bad headache and that his hands were hurting because of the handcuffs. He requested an ambulance. He also said that his head injury had been caused by other police officers. He had no blood on his clothes and did not vomit. When the applicant was taken to hospital, D.R. accompanied him.

39. On 15 June 2009 the applicant's legal representative lodged a complaint against the police with the prosecutor's office. He stated that the police had not taken the investigative measures he had requested on 15 May 2009 (including the presentation of the police officers for identification; a formal confrontation between the applicant and M.Z., who had allegedly witnessed him committing a breach of the peace; a comparison of the applicant's statements with the circumstances at the scene of the alleged offence; a forensic medical examination of the applicant's injuries; and interviews with the children that the applicant's representative had identified and about whom he had informed the police investigator on 27 May 2009). He requested that the prosecutor take measures to secure the collection of evidence. The prosecutor rejected the complaint on 1 July 2009, stating that the applicant had not challenged any acts or orders of an investigative authority.

40. On 17 June 2009 the police investigator showed the applicant photos to identify the possible suspects. According to the record of the meeting, the applicant was shown four lists with an unspecified number of photos of police officers who were similar in appearance. The applicant identified S.B. as the police officer who had beaten him at the police station. He did

not remember whether that police officer had also beaten him during his arrest. The applicant was unsure in his idenfication of E.V. from the photos. Nevertheless, he added that he would be able to identify the other officer on the basis of his features and height if he saw him in person.

41. On 6 July 2009 the police investigator took a statement from V.Z., who was the person who had called the police on 29 April 2009 about the applicant's alleged breach of the peace. He explained that from his car on the crossroads of Kreenholmi and Kerese Street he had seen two young men crossing the street. One of them was carrying a knife. Another young man who was very drunk was walking in front of him, but was having trouble walking. He had called the police after seeing the young men and the knife as he considered them to be clearly dangerous and was worried about the safety of passers-by.

42. On 13 August 2009 the forensic medical expert delivered his opinion about the applicant's injuries. He concluded that the injuries found on the applicant on 30 April and 1 May had been caused by blows with a blunt object or objects. The exact cause of those injuries could not be established as their description in the documents was not sufficiently detailed. Nevertheless, the expert concluded that they had been inflicted shortly before the applicant had seen a doctor, possibly on 29 April 2009. He also noted that as there were no detailed descriptions of the injuries to the upper limbs, it was not possible to conclude whether those injuries had been received in self-defence. None of the documents disclosed any information about the ethanol content in the applicant's blood, but stated simply that the applicant had been in a state of alcoholic intoxication.

43. On 2 September 2009 the forensic expert gave an oral statement to the police investigator about his written opinion. In reply to a question about whether the applicant had had a haematoma in the area of the left eye on both 30 April and 1 May, the expert replied that there was no information about that in the documents of 30 April. He explained that it could not be excluded that the haematoma had been inflicted on 29 April, but it could also have been inflicted on 30 April or 1 May. He also stated in relation to a question about the cause of the injuries that since the documents had not contained detailed descriptions of the injuries, it was not possible to establish the exact nature of the object which had caused the traumas.

44. On 14 September 2009 the police investigator presented photos of officers to M.Z. for him to identify. According to the report of the meeting, M.Z. was shown four lists with an unspecified number of photos of police officers who were similar in appearance. M.Z. identified one of the police officers (E.V.) as the officer who, together with the other officer (S.B.), had beaten the applicant at the police station and had used force against the applicant at the playground. He was not certain in his recognition of S.B. on the photos, but pointed out another officer who, in his words, was very similar to S.B. He also stated that there had been no beating at the

playground, but that the applicant's hands had simply been twisted behind his back and that he had been forced to the ground.

45. On 8 January 2010 the applicant complained to the prosecutor that he had still not been informed of a decision to carry out a forensic medical examination, despite repeated requests. He added that he had still not been examined by an expert, even though he had complained about headaches and a loss of vision after the beating. He requested that he be sent a copy of any expert reports if one had been carried out without his knowledge. He also complained that he had not had a formal confrontation with M.Z. and the suspects in order to eliminate any contradictions in their statements. The prosecutor rejected the complaint on 14 January 2010, stating again that the applicant had not challenged any acts or orders of an investigative authority.

46. On 20 January 2010 the police investigator decided to discontinue the investigation, concluding that there was no evidence that the police officers had committed the criminal offence of abuse of authority. Their use of force had not violated the Police Act, it had been lawful, justified and not excessive. The decision of the police investigator was approved by the prosecutor on 15 February 2010.

47. Regarding the applicant's arrest, the police investigator was of the view that the applicant's allegations about his beating were completely groundless. She concluded in substance that the use of force against the applicant during his arrest had been justified by the applicant's breach of the peace while being in a state of alcoholic intoxication; his refusal to obey the officers' lawful orders; and his attempt to leave the scene without the officers' consent. The physical force used to put the applicant on the ground, put on handcuffs and keep him on the ground had not been excessive.

48. In the decision, it was considered as established that the applicant's arrest had taken place in the following manner. While at the playground in the vicinity of 18 Kerese Street, the applicant had not behaved appropriately, had waved his hands around, used foul language and had been staggering a lot. He had not reacted to the orders given by the police officers. Police Officer E.V. had decided to put handcuffs on the applicant given that children were standing around, that the applicant was clearly of an aggressive state of mind, that he might have injured others and that there was a certain context to the call (the suspicion of carrying a knife). At that moment Officers N.S. and S.J. had arrived and helped to put the handcuffs on. The applicant had not complied with the officers' orders to stay still and calm down, but had started kicking the police vehicle. N.S. and S.J. had kept the applicant on the ground to restrain him. The applicant had continued to resist, use foul language and behave aggressively. Because of his aggressive behaviour, E.V. had been forced to call for a police van to transport the applicant to the police station. The applicant had resisted being put in the police van and had continued to behave aggressively and use foul

language while being transported. Sounds from the transportation compartment made it seem like the applicant had hit himself against something.

49. In arriving at the conclusion that the applicant had not been beaten and that only lawful force had been used, the police investigator relied concretely on the statements of the children, Police Officers N.S., S.J., J.S., S.T., the suspected police officers, S.B. and E.V., and on the statements of M.Z., who had said during the presentation of the identification photos that there had been no beating at the playground, that the applicant's hands had simply been forced behind his back and that he had been forced to the ground.

50. Regarding the events at the police department, the police investigator rejected the statements of M.Z. as unreliable as he could not have seen what was happening to the applicant in the detention room. Though the door of that room had been open, M.Z. had been standing further away. As to the people detained at the police station, the investigator concluded that their statements had not directly confirmed that the applicant had been beaten. The statements of the detainees A.P. and R.L., who had stated that the applicant had been beaten, were dismissed as they contradicted the statements of the third detainee – M.S. – and other evidence. Four other police officers involved in the arrest and the transportation of the applicant, as well as one police officer who had been present at the police station during the applicant's detention, had also stated that the applicant had not been beaten.

51. As to the applicant's injuries, the police investigator cited observations in the report from when the applicant was taken to sober up, and from the ambulance and patient registration cards. Regarding the haematoma around the left eye, first documented at the hospital on 1 May 2009, the investigator referred to the forensic expert's opinion that it could have been caused on 29 April, 30 April or 1 May 2009 and that on the basis of the documents it was impossible to establish its cause. On the basis of that information the investigator concluded that the applicant's allegation that the haematoma around the left eye had been caused during his beating at the police department was unfounded and untrue. Turning to the applicant's allegations that he had vomited and that there had been blood on his clothing, the investigator viewed them as being disproven by the statements of the police officers as well as those of the ambulance doctor and the nurse who had not seen any blood on the applicant's clothes or witnessed any vomiting.

52. The police investigator found in conclusion that while at the police station the applicant had been aggressive, continued to use foul language and ignored orders to keep still. The force that S.B. and E.V. had used against him had been justified and lawful, and had not been excessive.

53. On 15 March 2010 the applicant lodged an appeal against the decision to discontinue the criminal investigation. He submitted among other things that the investigation had not been objective, that the statements of witnesses had been selectively cited and distorted, that some of the witnesses (such as Y.B., who had seen the applicant's arrest, and A.D., who had been detained in the police station at the same time as the applicant) had not been questioned, that he himself had not had a forensic medical examination; and that formal confrontations to eliminate any contradictions in statements in the case had not been arranged.

54. On 23 March 2010 the State Prosecutor's Office rejected the applicant's appeal against the decision to discontinue the investigation as having been lodged out of time. The decision to discontinue the criminal proceedings had stated that the applicant had to lodge an appeal to the State Prosecutor's Office within ten days of the receipt of the relevant decision. The decision had been sent to the applicant's address by ordinary mail on 26 February 2010. Estonian Post had indicated that a standard letter was sent to an addressee on the next working day of the post office. The letter should therefore have reached the applicant on 1 March 2010, so the final day for lodging an appeal had been 11 March 2010. The applicant had lodged his appeal on 15 March 2010. The applicant stated that he had only received the letter on 5 March 2010 after returning home from his job in another city. Though the applicant had not requested the restoration of the time-limit for his appeal, the State Prosecutor's Office stated that in any event there had been no grounds for such a procedure. The State Prosecutor's Office was of the view that the applicant had a duty of diligence regarding his mail because he knew that there were proceedings pending where decisions concerning his situation might be made. The applicant had had several options available to him to avoid exceeding the time-limit.

55. On 30 April 2010 the Tartu Court of Appeal upheld the decision of the State Prosecutor's Office. The court agreed with the applicant's counsel that the time-limit for an appeal started to run from the date of actual receipt of the decision and not from the date it should have been received according to calculations based on mail delivery deadlines. It nevertheless considered that the decision to discontinue the criminal proceedings had reached the applicant's mailbox on 1 March 2010, without however explaining on the basis of what evidence this conclusion was reached. The court also stated that there was no need to express an opinion with regard to the restoration of the deadline for the appeal, because the applicant had not believed that he had breached the deadline and had not sought its restoration.

D. Applicant's acquittal of misdemeanour charges

56. On 25 May 2009 the East Police Prefecture found the applicant guilty of the misdemeanour of committing a breach of the peace at

Kreenholmi Street and ordered him to pay a fine. The applicant lodged an appeal against that decision with the Viru County Court.

57. On 17 November 2010 the Viru County Court, having held a public hearing on 4 November, acquitted the applicant of the charges. The court considered that there was no evidence to prove that his behaviour had constituted a misdemeanour.

58. The court, pointing to the fact that it was unlawfully obtained evidence, set aside the applicant's statements given on 30 April 2009 at 2.15 a.m. in the hospital, and which had been contained in the misdemeanour report drafted the same night at 2.40 a.m. It noted that the evidence had been gathered more than eight hours after the offence had allegedly been committed and after the person had in the meantime been taken to sober up, at 7.45 p.m.

59. The court considered that the witness M.Z. had given reliable testimony at the court hearing on 4 November 2010 when he had said that the police had unduly influenced him to give evidence against the applicant by letting him hear the applicant being beaten. The court considered that statement to be corroborated by the fact that the applicant had been taken to the hospital and had been interrogated there.

60. The court concluded that the evidence in the misdemeanour proceedings had been collected in an unlawful manner which infringed the applicant's honour and dignity and endangered his health. That conclusion was based on the statements of the applicant, M.Z., information from the hospital and the place and time of the drafting of the misdemeanour report.

61. The court further stated that there had been a material violation of the provisions governing misdemeanour proceedings because the applicant had been arrested at 5.40 p.m. and transported immediately to the police station, but had not been taken to sober up until 7.45 p.m.; also, his statement had only been taken at the hospital at 2.15 a.m. and the misdemeanour report not drafted at the hospital until 2.40 a.m.

62. The East Police Prefecture did not appeal against that judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

63. Section 13(1)(1) of the Police Act (*Politseiseadus*), as in force at the material time, provided that the police had the right to demand that individuals and officials maintain public order and terminate any violations thereof, as well as the right to apply coercive measures prescribed by law against offenders.

64. Section 14(2) of the Police Act, as in force at the material time, set out that before the application of coercive measures the police had to warn the person with regard to whom they were planning to apply such measures. In addition, it provided that a warning could only be dispensed with if it was impossible to issue one owing to an urgent need to terminate an offence.

65. Section 14(2)(1) of the Police Act, as in force at the material time, set out that a police officer could use physical force if it was not possible, by means of any other administrative coercive measure, to secure the performance of an obligation imposed by a valid administrative act for the purposes of establishing or countering a threat or eliminating an offence.

66. Article 291 of the Penal Code (*Karistusseadustik*), entitled "Abuse of authority", as in force at the material time, provided that unlawful use of a weapon, special equipment or physical force by an official in the performance of his or her official duties was punishable by a fine or by one to five years' imprisonment.

67. Article 77 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) provides that persons may be confronted if a contradiction contained in their statements cannot be eliminated otherwise. During the confrontation, the relationship between the persons confronted is ascertained and questions concerning the contradicting facts are posed to them in series. Previous statements of a person confronted may be disclosed and other evidence may be submitted. With the permission of an official of the investigative body, the persons confronted may pose questions to each other through the official concerning the contradictions contained in their statements.

68. Article 81 § 4 of the Code of Criminal Procedure provides that a photograph, film or audio or video recording of a person, thing or other object may be used for identification purposes if necessary.

69. Article 195 of the Code of Criminal Procedure states that a report of a criminal offence may be submitted to an investigative authority or to a Prosecutor's Office either orally or in writing. Under the same article, a report made at the premises of an investigative authority or Prosecutor's Office has to be recorded in writing, and a report of a criminal offence communicated by telephone has to be recorded in writing or by an audio recording.

70. Article 207, entitled "Appeal to the Public Prosecutor's Office against a refusal to commence or a decision to discontinue criminal proceedings", as in force at the material time, provided that a victim's appeal against a decision to discontinue criminal proceedings had to be lodged with the State Prosecutor's Office within ten days of receipt of such a decision.

71. Because the Code of Criminal Procedure did not contain provisions on the service of documents, general provisions of the Administrative Procedure Act (*Haldusmenetluse seadus*) were applicable by way of analogy. These were interpreted by the Supreme Court to mean that when a document was sent by ordinary mail, in violation of the general requirement under section 26 of the Administrative Procedure Act to send it by registered mail, the burden of proof was on the authorities to establish that

the person concerned had received the letter (see Supreme Court decision of 9 May 2005 in case no. 3-3-1-28-05, §§ 13 and 14).

72. In a judgment of 20 October 2010 (case no. 3-1-1-87-10, §§ 6 and 9) the Supreme Court dealt with the interpretation and application of the same wording as in Article 207 § 3 of the Code of Criminal Procedure, though used in Article 208 in the context of lodging an appeal with a court of appeal against a decision of the State Prosecutor's Office. In that case, the Supreme Court rejected the argument that just because the postal service promises to deliver a letter sent by ordinary mail the next working day, the complainant could not have received the decision of the State Prosecutor's Office almost a month after it had been posted by ordinary mail. The Supreme Court found that receipt of the decision, which is the starting point of the deadline to lodge a complaint, had not been established.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

73. The applicant complained that the police had beaten him during his arrest and while he was detained at the police station and that the authorities had not carried out an effective investigation into his allegations of ill-treatment. 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."

74. The Government contested that complaint.

A. Admissibility

75. The Government submitted that the applicant had failed to exhaust domestic remedies because, firstly, he had not challenged the decision to discontinue the criminal proceedings within the time-limit laid down in domestic law and, in any event, he had failed to request the restoration of the time-limit. Secondly, the Government argued that the applicant had not instituted administrative court proceedings for compensation for the damage allegedly caused by the use of force, although it had been open to him to do that.

76. The applicant contested those arguments.

77. With regard to the first objection, the Court notes that the applicant submitted his appeal against the decision to discontinue the criminal proceedings in accordance with the clear and unambiguous wording of the law as it was reproduced in the decision sent to him. The relevant provision

provided that the applicant had to lodge an appeal with the State Prosecutor's Office "within ten days of receipt" of the decision. The Government have not called into question the clarity of that wording. The Court observes that because the Code of Criminal Procedure did not contain provisions on the service of documents, the general provisions of the Administrative Procedure Act applied by way of analogy. Those were interpreted by the Supreme Court to mean that when a document is sent by ordinary mail, in breach of the general requirement to send it by registered mail, the public authority has to prove that the person concerned has received the letter; it is not enough for the public authority to show that it has posted the letter (see paragraph 71 above). In the present case the authorities sent the decision to the applicant by ordinary mail and failed to prove that the applicant received it before the date the applicant claimed he did. The Court also notes that the same arguments and interpretation of the law as the State Prosecutor's Office and the Court of Appeal used in the applicant's case were shortly after dismissed by the Supreme Court in another case (see paragraph 72 above).

78. The Court is unable to agree with the Government that the applicant's case was materially different from the one decided subsequently by the Supreme Court. The Government argued that in the applicant's case it had been proven that his mother, at whose address the applicant was living, had received the letter containing the decision before the date the applicant claimed to have received it himself. In the Court's view, in both cases the issue was whether the authorities had proven that a decision had been received on a certain date, which would serve as the starting point for the calculation of the time-limit for submitting an appeal. Before the Supreme Court the authorities sought to prove their case by relying on calculations based on the deadlines for mail delivery as declared by the postal service operator, but the court rejected that argument. The prosecutor's office put forward the same arguments in the applicant's case. In that context it is irrelevant whether they were used to support the conclusion that the applicant's mother had received the letter before a certain date or that the applicant himself ought to have received it before that date. What counts is that the prosecutors were not able to prove the exact date the applicant received the decision in a situation where they had not served the decision by registered mail, as they were required to do, and where the applicant denied having received it on the date suggested by the authorities. The failure to serve the decision by registered mail made it in practice impossible for the authorities to challenge the applicant's statement that he received the decision on 5 March 2010.

79. The Court is also unable to agree with the Government that the applicant should have sought the restoration of the time-limit for appealing against the decision. The Court repeats that the applicant acted in accordance with the clear and unambiguous wording of the relevant

provision, relying on an understanding of the law that was subsequently confirmed by the Supreme Court. He had therefore no reason to believe that he had not submitted the appeal on time and needed to seek the restoration of the time-limit. In any event, the Court considers that it would have been futile to request that the time-limit be restored. According to the domestic case-law which the Government themselves referred to, the time-limit could only have been restored if the person had not been able to submit the appeal owing to external circumstances beyond his or her control, or because of some extraordinary personal circumstance, such as serious illness, temporary mental disorder and so forth. The decision of the State Prosecutor's Office confirms that the applicant could not have relied on any of those grounds (see paragraph 54 above).

80. The Court therefore considers that the applicant did everything that could reasonably have been expected of him to comply with the time-limits laid down in domestic law and, thus, to exhaust the remedies available to him within the domestic criminal justice system (see, among others, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, where the Court restated that the complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and be in compliance with the formal requirements and time-limits laid down in domestic law; see also *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII, where the Court reiterated that it must examine whether, in all the circumstances of the case, the applicant had done everything that could reasonably be expected of him or her to exhaust domestic remedies).

81. As to the Government's second objection, the Court considers, in line with its consistent case-law, that as the applicant had exhausted the remedies available to him within the criminal justice system, he was not required to attempt to obtain compensation by instituting separate administrative court proceedings (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 86, *Reports of Judgments and Decisions* 1998-VIII; *Julin v. Estonia*, nos. 16563/08, 40841/08, 8192/10 and 18656/10, §§ 114-115, 29 May 2012; and *Korobov and Others v. Estonia*, no. 10195/08, §§ 88-89, 28 March 2013, where the Court held that the applicants were not required to embark on a separate set of proceedings before the administrative courts when they served substantially the same purpose as complaining to the prosecuting authorities about their ill-treatment under the Penal Code).

82. It follows that the applicant did not fail to exhaust domestic remedies in respect of his complaint of ill-treatment. Thus, the Government's objections as to non-exhaustion of domestic remedies must be dismissed.

83. The Court also notes that this 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. The parties' submissions

(a) The applicant

84. The applicant argued that the police had used excessive force on him during his arrest. He had not been committing a breach of the peace while at the playground. Before the arrival of the police officers, he had been neither aggressive nor violent towards anybody. He had not been in possession of any dangerous object. It had not therefore been necessary to force him to the ground or keep him there by force and handcuff him tightly. The applicant accepted that he had used obscene language and had resisted the police. However, he had done so only after the police officers had used force on him, as a natural reaction to express his indignation about such behaviour.

85. The applicant argued that his version of what happened during his detention (see paragraph 9 above) had been confirmed by the statements of A.P., M.S., R.L., M.Z., the ambulance nurse and doctor, as well as the medical documents collected in the criminal investigation (see paragraphs 12, 13, 15, 16, 20, 22, 24, 26 and 42 above). He considered that the police investigator's assessment of that evidence had lacked impartiality, and had been incomplete and incorrect and that she had therefore come to the wrong conclusion.

86. The applicant added that he could not have behaved aggressively or resisted the police in the police station as he had been handcuffed. He also pointed out that Officers S.B. and E.V., who had ill-treated him, were patrol officers. It was therefore unclear why they had stayed at the police station after the applicant had been transported there and what work-related duties they could have carried out there. The applicant's beating had also been confirmed in the judgment acquitting him of the misdemeanour charges (see paragraph 60 above).

87. His concussion, external haematomas, the oedema of the left ear, left temple and left eye and the haematomas on the upper limbs had been consistent with the battery of a person who could not protect himself with his hands. The beating had been deliberately carried out with just enough force so as not to leave any serious marks. The injuries on his wrists confirmed that he had been handcuffed in a particularly painful manner. As to the haematoma of the left eye, which had been recorded only on 1 May 2009, it could be explained by the fact that he had not complained about it on 30 April 2009 and that haematomas on the soft and hard parts of the body appeared at different times. In addition, the applicant had not been examined by forensic medical experts but only by ordinary duty doctors. The applicant also contended that the beating had resulted in a partial loss of vision in his left eye.

88. The applicant considered that the investigation which the authorities carried out had not been effective, as required under Article 3 of the Convention.

89. Both the police and the prosecutor had initially refused to deal with the applicant's complaint. Although the police eventually allowed it to be submitted on 30 April 2009, they had only opened an official investigation on 5 May 2009, after the applicant had lodged another complaint with the prosecutor's office.

90. Several important investigative measures had never been taken or had been taken too late to provide any useful evidence. In particular, the police had never ordered a medical examination of the applicant to determine the nature and causes of his injuries. Instead, and only after the applicant had insisted on it, had the police ordered a forensic medical examination on the basis of documentary evidence. The police had interviewed the applicant on 13 May 2009, almost two weeks after the events. They had interviewed the suspects on 2 June and 8 June 2009, which was more than a month after the events. That delay had given the suspects and their colleagues ample time to coordinate their statements. The people who had seen the arrest and the events at the police station had not been identified by the police but by the applicant himself. The police had thus interviewed them at the applicant's request, though it would have been easy for the police to identify and interview them on their own initiative. Two witnesses (Y.B., who had witnessed the arrest, and A.D., who had been present at the police station) had never been interviewed, despite the fact that the applicant had on several occasions explained to the police that they had seen the events. The police had not held formal confrontations between the applicant and the suspects to examine the significant differences in their statements. Nor had the investigator examined the police station's security camera recordings.

91. Lastly, the applicant argued that the investigation could not have been independent because it had been carried out by a police officer from the same police prefecture as the suspects. He added that the prosecutor had not effectively supervised the investigation.

(b) The Government

92. The Government denied any ill-treatment of the applicant during his arrest and thereafter. The Government submitted that their version of events (see paragraph 10 above) was based on the evidence gathered in the criminal proceedings and assessed in the decision to discontinue the investigation. They added that the use of force and handcuffs at the playground had been necessary also because the applicant had been a danger to himself. Likewise, the use of force and handcuffs at the police station had ultimately helped to ensure the applicant's own safety. The Government noted that the handcuffs had been removed as soon as the

applicant had calmed down. The Government also highlighted the contradictions in the applicant's statements and in his behaviour to show that he himself did not have a clear picture of what had happened to him. Regarding the applicant's subsequent acquittal of the misdemeanour charges, the Government contended that that did not alter the fact that at the time of the application of force and the use of handcuffs the applicant had been a danger to himself and others. As to the activities of the patrol officers at the police station, their tasks also included drafting reports about the incidents they were involved in while on patrol.

93. Regarding the injuries the applicant had sustained, the inevitable use of proportionate force and handcuffing had regrettably caused him some bodily harm which could not have been avoided. That had been due to the applicant's active resistance to his arrest, being placed in the police vehicle and his refusal to obey orders at the police station. Notably, the haematoma and oedema on the left temple could have been caused when the applicant had hit his head against the door of the police van when he had resisted being transported to the police station, when he had hit himself against the internal walls of the police van during his transportation or when he had fallen off the chair at the police station. The oedema of the right wrist could be explained by his resistance to the police while being handcuffed. However, the bodily harm in question was minor and of a temporary nature. Regarding the haematoma around the left eye and the haematomas on the upper limbs recorded for the first time on 1 May 2009, their origin remained unclear. It could not be excluded that the applicant had hurt himself after being released from the police station, especially because he had also been in a state of intoxication the day after his release. In any event, the applicant's injuries were inconsistent with his allegation that the police officers had punched and kicked him all over his body for several hours. Some weight should also be given to Officer E.V.'s opinion that the applicant had intentionally caused the injuries in order later to accuse the police. Health issues discovered later could not be presumed to have been caused by the police.

94. As to the investigation, the Government were of the opinion that it had been effective.

95. It had been opened promptly and carried out with sufficient expedition. The delay of five days from the applicant submitting his complaint had been due to the fact that the day of its submission had been followed by a public holiday, Friday, 1 May 2009, and by a weekend. The police had opened the investigation on Tuesday, 5 May which had been one day after the registration of the complaint on Monday, 4 May. Investigative measures had been taken between 13 May 2009 and 14 September 2009.

96. The investigation had been thorough. The police had taken all the relevant and reasonable investigative measures to collect evidence without delay and had acted on their own initiative. In particular, they had

questioned the applicant, eighteen witnesses and the two suspects. They had ordered a forensic medical assessment of the applicant's injuries and had held an interview with the expert. They had also presented photographs of suspects for identification to the applicant and one of the witnesses. The reasons why some statements had not been considered credible or reliable had been set out in the decision to discontinue the criminal proceedings. In adopting that decision the authorities had not assessed the evidence in an arbitrary manner.

97. As to the independence of the investigation, the criminal proceedings had been discontinued with the prosecutor's approval. Thus it had not been the Police Prefecture alone which had decided the case.

2. The Court's assessment

(a) General principles

98. As the Court has stated on many occasions, Article 3 of the Convention enshrines one of the core values of democratic societies (see, among many others, *Selmouni*, cited above, § 95, and *Bouyid*, cited above, § 81).

99. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among others, *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25; *Labita*, cited above, § 121; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 117, ECHR 2006-IX; *Gäfgen v. Germany* [GC], no. 22978/05, § 92, ECHR 2010; and *Bouyid*, cited above, § 82).

100. On that 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 people within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Bouyid*, cited above, § 83, and the case-law cited therein). In particular, where an individual, when taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241‑A, and *Selmouni*, cited above, § 87). In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government (see,

among other authorities, *El-Masri*, cited above, § 152). That is justified by the fact that people in custody are in a vulnerable position and the authorities are under a duty to protect them (see, among other authorities, *Salman*, cited above, § 99).

101. The Court also pointed out in *El-Masri* (cited above, § 155) that although it recognised that it must be cautious in taking on the role of a first-instance tribunal of fact where this was not made unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000), it had to apply a "particularly thorough scrutiny" where allegations were made under Article 3 of the Convention (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Georgiy Bykov v. Russia*, no. 24271/03, § 51, 14 October 2010), even if certain domestic proceedings and investigations had already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007). In other words, in such a context the Court is prepared to conduct a thorough examination of the findings of the national courts. In examining them it may take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (see *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 83, 12 February 2009).

102. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, cited above, § 162; *Jalloh*, cited above, § 67; *Gäfgen*, cited above, § 88; *El-Masri*, cited above, § 196; *Korobov and Others*, cited above, § 92; and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 114, ECHR 2014 (extracts)). Further factors include the purpose for which the ill-treatment was inflicted, together with the intention or motivation behind it (compare, *inter alia*, *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports* 1996-VI; *Egmez v. Cyprus*, no. 30873/96, § 78, ECHR 2000-XII; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004; see also, among other authorities, *Gäfgen*, cited above, § 88; and *El-Masri*, cited above, § 196), although the absence of an intention to humiliate or debase the victim cannot conclusively rule out a finding of a violation of Article 3 (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Svinarenko and Slyadnev*, cited above, § 114). Regard must also be had to the context in which the ill-treatment was inflicted, such as an atmosphere of heightened tension and emotions (compare, for example, *Selmouni*, cited above, § 104; *Egmez*, cited above, § 78; see also, among other authorities, *Gäfgen*, cited above, § 88).

103. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering.

However, even in the absence of those aspects, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition set forth in Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011; *Gäfgen*, cited above, § 89; *Svinarenko and Slyadnev*, cited above, § 114; and *Georgia v. Russia* (I) [GC], no. 13255/07, § 192, ECHR 2014 (extracts)). It should also be pointed out that it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others (see, among other authorities, *Tyrer v. the United Kingdom*, 25 April 1978, § 32, Series A no. 26, and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 220, ECHR 2011).

104. The Court notes that Article 3 does not prohibit the use of force in certain well-defined circumstances. However, such force may be used only if indispensable and must not be excessive (see *Anzhelo Georgiev and Others v. Bulgaria*, no. 51284/09, § 66, 30 September 2014; see also *Klaas v. Germany*, judgment of 22 September 1993, § 30, Series A no. 269; *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII).

105. In respect of a person who is deprived of his liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement of the right set forth in Article 3 (see, among other authorities, *Ribitsch*, cited above, § 38; *Mete and Others*, cited above, § 106; *El-Masri*, cited above, § 207; and *Bouyid*, cited above, § 100). The Court has recently emphasised in *Bouyid* (ibid., § 101) that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the minimum severity threshold has not been attained. Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question.

106. When an individual makes a credible assertion that he 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 (see *Assenov and Others*, cited above, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards of effectiveness, as defined in the Court's case-law, were

recapitulated, *inter alia*, in *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 182-185, ECHR 2012; *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 316-326, ECHR 2014 (extracts); and *Bouyid v. Belgium* [GC], no. 23380/09, §§ 115-123, ECHR 2015).

107. Generally speaking, for an investigation to be effective, the persons responsible for carrying it out must be independent from those targeted by it. This means not only a lack of hierarchical or institutional connection but also independence in practice (see, among others, *Đurđević v. Croatia*, no. 52442/09, § 85, ECHR 2011 (extracts); *Mocanu and Others*, cited above, § 320; and, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 219-234, 14 April 2015).

108. The investigation must be prompt and reasonably expeditious (see, among many others, *Mocanu and Others*, cited above, § 323). The Court assesses whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, §§ 133-135). Consideration is given to the starting of investigations and delays in taking statements (see *Virabyan v. Armenia*, no. 40094/05, § 163, 2 October 2012).

109. Any investigation of serious allegations of ill-treatment must be thorough. This means that the authorities must 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 for their decisions (see *Assenov*, cited above, § 103 et seq., and *Korobov and Others*, cited above, § 113). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and so on (see *Korobov and Others*, cited above, § 113). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006; *El-Masri*, cited above, § 183; and *Korobov and Others*, cited above, § 113). The mere fact that appropriate steps were not taken to reduce the risk of collusion between alleged perpetrators amounts to a significant shortcoming in the adequacy of the investigation (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-II; *mutatis mutandis*, *Jaloud v. the Netherlands* [GC], no. 47708/08, § 208, ECHR 2014; and *Lyalyakin v. Russia*, no. 31305/09, § 84, 12 March 2015).

(b) Application of the principles to the present case

110. The Court notes at the outset that the parties were in agreement that the police used force against the applicant and that the applicant sustained certain injuries as a result. The disagreement between the parties concerned, firstly, the issue of whether recourse to physical force both during his arrest and subsequently at the police station was made strictly necessary by the

applicant's own conduct; secondly, the type and intensity of force used (including the issue of whether he was beaten); and, thirdly, the exact nature and causes of the applicant's injuries.

111. Having regard to those disputed issues, the Court considers that the burden rests on the Government to provide a satisfactory and convincing explanation as to how the applicant's injuries could have been caused as well as regarding the issues of whether the force was strictly necessary and not excessive (see *Bouyid*, cited above, § 83, as well as *Rehbock*, cited above, § 72).

112. The Court observes that the Government's position regarding the disputed issues is based exclusively on the findings and conclusions of the domestic investigation. The Court accepts that the explanation required from the Government can be said to have been provided when it is proved to the Court's satisfaction by the Government that their national authorities have conducted an effective investigation capable of establishing the circumstances and the nature of the force used (see *Cemal Yılmaz v. Turkey*, no. 31298/05, § 32, 7 February 2012).

113. The Court notes at the outset that in compliance with the procedural obligation, arising from Article 3 of the Convention, the authorities opened and carried out a criminal investigation into the applicant's allegations. However, for the reasons that follow, the Court is not satisfied that the investigation was effective so as to meet the requirements of Article 3 of the Convention.

114. The Court considers that the authorities did not open an investigation promptly upon receipt of the applicant's complaint. In that regard, the Court notes that the initial refusal of the police officer and the prosecutor to allow the applicant to submit his complaint, as well as their directing the applicant to the other authority (see paragraph 17 above), was unlawful under domestic law, which provides that a report of a criminal offence may be submitted to an investigative body or a prosecutor's office either orally or in writing (see paragraph 69 above). Even after the complaint was finally accepted for submission, the police did not formally open an investigation into the incident until 5 May 2009, when six days had gone by (see paragraph 18 above). The Government justified that delay by saying that the complaint had been lodged the day before a public holiday and just before the weekend. The Court considers that weekends and public holidays cannot serve as an excuse for unacceptable delays in carrying out an effective investigation, as required under Article 3 of the Convention. In any event, there is no evidence in the case file of any investigative activity between 6 May 2009 when, according to the Government, the police asked the hospital to provide the applicant's medical records, and 13 May 2009 when the applicant gave a statement as a victim two weeks after the complaint had been lodged.

115. The Court considers that the delay of almost one month between opening the investigation and taking statements from the alleged perpetrators, and the delay of 10 days to more than a month between opening the investigation and questioning other police officers hampered the effectiveness of the investigation. The Court has noted that delays in questioning the potential perpetrators of a crime constitute a serious challenge to the effectiveness of an investigation, especially when there is a risk of justice being obstructed through collusion, which is particularly acute in a situation of hierarchical subordination and common service, such as that of police officers (see *Antayev and Others v. Russia*, no. 37966/07, § 108, 3 July 2014). In the past the Court has found a violation of the Convention where the alleged perpetrators were not kept separate after the incident, and were not questioned for nearly three days, notwithstanding the fact that no evidence indicated any collusion among them or with their colleagues. As indicated above (§ 108), the Court found that the mere fact that appropriate steps were not taken to reduce the risk of such collusion amounted to a significant shortcoming in the adequacy of the investigation. In the present case, the Court is unaware of any measure taken by the authorities to reduce the risk of collusion among the alleged perpetrators or with the other police officers. The delays in taking statements from the police officers therefore greatly increased the risk of collusion between the suspects and among other police officers who served as witnesses.

116. The Court also finds that the authorities did not take all reasonable steps available to collect the necessary evidence. In particular, the authorities never ordered a forensic medical examination of the applicant in person to determine the exact nature and causes of his injuries. Even the assessment of the applicant's medical records and certain other documents by a forensic medical expert was ordered more than a month and delivered more than three months after the criminal proceedings were opened (see paragraphs 37 and 42 above). The Court emphasises that a forensic medical examination should have been ordered as soon as the applicant had alleged ill-treatment. The failure to do so made it almost impossible to determine exactly what injuries the applicant had sustained and how he had got them and whether his complaint about the loss of vision in his left eye (see paragraph 87 above) was related to his alleged ill-treatment.

117. The Court also points out in this context that it is hard to understand why the police did not inform the applicant about the decision to request a forensic medical expert to assess the applicant's relevant medical records and other documents or immediately send the report of that assessment to the applicant. The Court considers that that hindered the possibility for the applicant to substantiate his claims of ill-treatment and comment on the findings of the assessment. Turning to the content of the expert's opinion, the expert insisted both in writing and subsequently in his oral statements that the haematoma around the left eye could have been

caused between 29 April and 1 May 2009. On the basis of that information the police investigator concluded that the applicant's allegation that the haematoma had resulted from the incident at the police station on 29 April was completely baseless and did not conform to reality. However, in the Court's view the investigator's conclusion, as based on the expert's opinion, seems unjustifiably categorical.

118. In addition, despite repeated statements by the applicant the police never took statements from Y.B., who allegedly witnessed the applicant's arrest, or from A.D., who was detained in the police station at the same time as the applicant. The authorities' failure to interview witnesses who could have had relevant information about the course of events, without giving any reasons, is regrettable. It is all the more so given the investigator's questioning of all the police officers who were involved in or otherwise incidentally witnessed some of the events. The Court also observes that the documents submitted to it do not reveal any efforts on the part of the authorities to find the elderly man present during the applicant's arrest (see paragraph 31 above), who could have been a valuable and impartial source of evidence.

119. Further, the authorities did not hold any face-to-face formal confrontations between the applicant and any of the witnesses or the suspects, as suggested by the applicant, to eliminate contradictions in their statements. The Court does not comprehend why that investigative measure, which was provided for under domestic law (see paragraph 67 above), was not used in a situation where it was appropriate and there were no practical obstacles to it (compare *Bouyid*, cited above, § 128, and *Velikanov v. Russia*, no. 4124/08, § 63, 30 January 2014, where the Court considered it relevant for the purposes of assessing the effectiveness of an investigation under Article 3 that the authorities failed to hold or arrange for a face-to-face confrontation which might have helped establish the facts; and *Perrillat-Bottonet v. Switzerland*, no. 66773/13, §§ 21, 65 and 66, 20 November 2014, where the Court considered it relevant that the authorities had held a confrontation under similar circumstances as in the present case).

120. The police investigator also did not try to clarify facts by other means (for example, by taking additional statements or putting detailed questions to the applicant, suspects and witnesses about specific aspects of the events). For instance, the investigator did not seek to establish whether the applicant was given any clear orders before the police had recourse to force in order to arrest him, whether he was warned about the consequences of failing to obey such orders, or whether the situation was tense to the point of allowing the police to dispense with those obligations. However, those aspects were of material importance for deciding whether the use of force was lawful and not an offence of abuse of authority (see paragraph 66 above).

121. The Court also points out that the investigation did not attempt to explain the discrepancy between the statements made by M.Z. during the presentation of photographs for the identification of suspects (see paragraph 44 above) and his earlier statements (see paragraph 26 above). Nor does the decision to discontinue the criminal proceedings explain why the police investigator preferred the later statements to the earlier ones.

122. Similarly, the decision does not explain why the statements about the alleged beating in the police station given by one of the persons detained there (see paragraph 22 above) were considered more credible than the conflicting statements of two other detainees who testified in the applicant's favour (see paragraphs 24 and 20 above). That is all the more incomprehensible in view of the fact that one of the detainees was not interviewed at all (see paragraph 118 above).

123. The Court also notes that the police investigator found the applicant's statements contradictory and therefore not credible. The applicant asserted twice that the same officer had beaten him at the playground, but then on the third occasion, during the presentation of the photographs for identification, he said that he did not remember whether that officer had beaten him at the playground. In the Court's view, this can hardly be characterised as the kind of contradiction which would serve to support the conclusion that the applicant's statements as a whole were not credible. The applicant's allegations have been consistent throughout the proceedings. He stated from the beginning that the police officers had beaten him at the playground and at the police station. The applicant's later statements do not contradict that position. In any event, the alleged contradiction does not at all concern the statements about the beating at the police station.

124. Moreover, those differences may, in the Court's opinion, be attributable to the time and manner in which the police investigator organised the presentation of suspects for identification by the applicant and by M.Z. In the first place, it is not evident why an attempt at identification was made at all at that stage of the investigation. By the time the photographs were presented for identification there was no longer any doubt about the identity of the possible suspects. It was clear that E.V. and S.B. were the officers who had responded to the call about an alleged breach of the peace. It was equally clear that the applicant and M.Z. accused those officers of beating the applicant at the scene of the arrest and later in the police station and, even more importantly, the suspects themselves never denied that they had been the ones who had used force on the applicant. Be that as it may, the time between the incident and the identification might have affected the results of the identification process. The outcome might have also been influenced by the fact that the investigator presented photographs for the identification of the suspects instead of holding an identification parade with real people. Notably, the applicant stated during

the identification procedure that he would have been able to recognise the officer in person, based on his features and height.

125. As regards the applicant's criticism that the authorities did not examine recordings of the police station's security cameras (see paragraph 90 above), the Government have not contested this and have not submitted any reports to the Court about any examination of those recordings. The Court is unable to understand why they were not duly examined.

126. The Court points out that the police did not immediately identify the children who were present during the applicant's arrest or the people present at the police station and then question them as witnesses. The Government have not disputed the fact that they were only heard as witnesses after the applicant had himself identified those people. The Court reiterates that the authorities must act of their own motion once a matter of importance has come to their attention and that they cannot leave it to the initiative of the person concerned to request particular investigative procedures (see, *mutatis mutandis*, *İlhan*, cited above, § 63, and *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 111, ECHR 2005-VII). In the present context the Court notes, nevertheless, that most of those people were eventually interviewed.

127. Lastly, the Court considers that the investigation did not conform to the requirement of independence.

128. The Court observes that the police officer in charge of the investigation was a police investigator from the internal control bureau of the East Police Prefecture. In that capacity she was part of the same regional substructure (the prefecture) of the police force as the suspects and other police officers implicated in the events. In essence, she was investigating the activities of her colleagues. The investigation therefore lacked the necessary appearance of independence as it was carried out by a police officer institutionally linked to those targeted by it (compare, among others, *Đurđević v. Croatia*, cited above, § 87; *Grimailovs v. Latvia*, no. 6087/03, § 112, 25 June 2013; and *Kummer v. the Czech Republic*, no. 32133/11, §§ 85 and 86, 25 July 2013, where the Court found that the standards of an independent investigation had not been respected when, in substance, the police had been charged with investigating allegations relating to their own officers).

129. The Court notes that by the time the police investigator signed the decision to discontinue the proceedings on 20 January 2010, her position within the police force had changed. Following a merger and reform of the Police Board and the Border Guard Board on 1 January 2010, her job title had changed to senior disciplinary officer of the III department of the internal control bureau of the Police and Border Guard Board. That meant that the police investigator's post in the organisational structure had been transferred from a regional level to the central administration. However, by that time the investigative measures had already been taken and the

investigation had in substance been finished. Simply changing the police investigator's position within the organisational structure could not therefore have influenced the potential undermining of the independence of the present investigation.

130. The Court has taken note of the Government's argument that the prosecutor's acceptance of the decision to discontinue the criminal proceedings guaranteed the independence of the investigation. It is true that the Court has found that shortcomings in the independence of those carrying out an investigation could, to a certain extent, be counterbalanced by effective supervision of the investigation (see, among others, *Vovruško v. Latvia*, no. 11065/02, § 51, 11 December 2012). However, the Court held in *Kummer* (cited above, § 87) that while the prosecutor was independent from the police, his role as a mere supervisor was not sufficient to make the police investigation comply with the requirement of independence. In the present case there is no evidence of active participation by prosecutors in directing or supervising the investigation which could have counterbalanced shortcomings in its independence. On the contrary, the Court observes that the prosecutors' position was tainted by the unlawful refusal to admit the applicant's initial complaint (see paragraph 114 above). There were also several dismissals by the prosecutor, on purely formal grounds, of the applicant's requests to take certain, apparently justifiable, investigative measures, which in the end were never taken, including a forensic medical examination of the applicant in person (see paragraph 116 above) and an examination of Y.B. and A.D. as witnesses (see paragraph 118 above)). Additionally, the prosecution dismissed the applicant's appeal against the decision to discontinue the criminal proceedings (see paragraph 54 above). The Court therefore cannot accept that the prosecutors' role in the present case guaranteed an independent investigation, as required under its case-law.

131. The Court also considers it relevant that the findings of the investigation were never the object of any judicial scrutiny (see paragraphs 54, 55 and 77-79 above).

132. The cumulative effect of the those shortcomings, which concerned important aspects of the applicant's arrest and detention, is sufficient for the Court to conclude that the domestic authorities failed to carry out an effective investigation into the circumstances surrounding the alleged use of force by the police against the applicant. Thus the Government have failed to discharge their burden of proof of demonstrating that the use of force was strictly necessary and not excessive as well as providing a satisfactory and convincing explanation as to how the applicant's injuries could have been caused.

133. There has, accordingly, been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

134. 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

135. The applicant claimed 17,000 euros (EUR) in respect of non-pecuniary damage. That comprised EUR 10,000 for mental and physical suffering caused by the alleged violations and EUR 7,000 for partial loss of vision in his left eye.

136. The Government considered that the Convention had not been violated and that therefore there was no basis for an award of damages. Should the Court find a violation of the applicant's rights, a finding of a violation would constitute sufficient just satisfaction. Should the Court nevertheless decide to make an award for non-pecuniary damage, the Government called on it to determine a reasonable amount. In so far as the applicant sought damages for partial loss of vision in his left eye, such loss of vision had not been proven. In any event, there was no causal link between the possible violation and the damage alleged.

137. The Court does not consider it established by the evidence submitted to it that the applicant has partially lost vision in his left eye. It therefore rejects the claim in respect of EUR 7,000. The Court accepts however that the applicant suffered some non-pecuniary damage as a result of the violation of Article 3. It considers that such damage cannot be compensated solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

138. The applicant claimed EUR 5,281.80 for costs and expenses incurred in the domestic proceedings and before the Court. The costs and expenses incurred before the domestic authorities and courts included EUR 76.70 for submitting a complaint to the Estonian Internal Security Service; EUR 354.70 for submitting various complaints and requests to the police investigator and prosecutors in the course of the criminal proceedings; EUR 95.90 for legal assistance during the applicant's interview as a victim; and EUR 57.50 for drafting an appeal against the decision of the State Prosecutor's Office. The costs and expenses incurred before the Court

amounted to EUR 3,990 for the services of the applicant's representative and EUR 707 for translation fees.

139. The Government considered the costs incurred in the domestic proceedings as neither necessary nor justified, especially in so far as they concerned the complaint to the Estonian Internal Security Service and other complaints and requests in the course of the criminal investigation.

140. 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. In the present case, the Court agrees with the Government that it was not necessary to submit a complaint to the Estonian Internal Security Service and observes that the applicant has not submitted any documents about the expenses related to lodging an appeal against the decision of the State Prosecutor's Office. Furthermore, the Court considers that in the present case a reduction should be applied to the amount claimed in respect of legal fees and costs on account of the fact that some of the applicants' complaints were declared inadmissible. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,500 covering costs and expenses under all heads.

C. Default interest

141. 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;

3. *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 4,500 (four thousand five 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;

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

Done in English, and notified in writing on 30 August 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Işıl Karakaş
Registrar	President