



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

THIRD SECTION

**CASE OF KHANI KABBARA v. CYPRUS**

*(Application no. 24459/12)*

JUDGMENT

STRASBOURG

5 June 2018

**FINAL**

**05/09/2018**

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



**In the case of Khani Kabbara v. Cyprus,**

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

Helena Jäderblom, *President*,

Branko Lubarda,

Helen Keller,

Pere Pastor Vilanova,

Alena Poláčková,

Georgios A. Serghides,

Jolien Schukking, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 15 May 2018,

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

**PROCEDURE**

1. The case originated in an application (no. 24459/12) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Canadian national, Mr Hani Abdul Khani Kabbara (“the applicant”), on 29 March 2012.

2. The applicant was represented by Mr L. Loucaides, a lawyer practising in Nicosia. The Cypriot Government (“the Government”) were initially represented by their Agent, Mr P. Clerides, Attorney General of the Republic of Cyprus, and subsequently by Mr C. Clerides, his successor as Attorney General.

3. The applicant complained that he had been subjected to treatment in violation of Article 3 of the Convention by police officers during his detention at Limassol central police station (“the police station”) and that no effective investigation had been carried out by the authorities into his complaint.

4. On 7 November 2012 the above complaints were communicated to the Government.

5. On 10 July 2014 the President of the Section to which the case had been allocated decided under Rule 54 § 2 (a) and (c) of the Rules of Court to request the parties to submit additional factual information and further written observations on the admissibility and merits of the application.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1984 and lives in Canada.

#### **A. The applicant's arrest, detention and alleged ill-treatment**

##### *1. The applicant's version of events*

7. The applicant's version of events relating to his encounter with the police, as set out in his application form, is the following.

8. On 27 February 2011, while in front of an automated teller machine ("ATM"), the applicant was attacked from behind by a police officer and was illegally arrested without a warrant. He was then taken to the police station where he was detained for six hours. Throughout his detention his hands were handcuffed behind his back.

9. During this period he was tortured by members of the police with the aim of forcing him to confess to the offence of theft through the use of a forged credit card. The applicant was repeatedly beaten with a wooden stick all over his body and his head until he lost consciousness, beaten with a metallic chair while lying on the floor, punched on the body and face and kicked and punched on the head, nose and mouth, causing one of his teeth to break. He also received blows to the region that the police officers had been informed he had been operated on (the applicant does not give any clarifications in this respect). The above acts were accompanied by death threats. The officers refused to give him his asthma medicine. They also refused to take him to hospital until his lawyer at the time, C.H., intervened.

10. At around 3.30 p.m. the same day, following C.H.'s request, the applicant was taken to hospital because of his injuries. He overheard the police officers telling the doctor that he had fallen to the ground. One of the police officers then took the doctor aside and started talking to him in private. The applicant was not given painkillers by the doctor until the Honorary Consul of Canada in Cyprus ("the Canadian Consul") visited him. The Canadian Consul asked the attending doctor the reasons for which the applicant had ended up in hospital and was in such a bad condition. The doctor informed her that there was nothing wrong with the applicant and that he had simply examined his pancreas. No other explanation was given.

##### *2. The Government's version of events derived from the investigation files*

11. On 27 February 2011 the police were informed by a card payment and processing company of illegal withdrawals with a fake credit card from an ATM of a bank in Limassol. Special Constable G.S. from the police

traffic department, who was on motorcycle patrol in the area, arrived at the scene and spotted the applicant in front of the ATM. G.S. was in uniform and wearing a helmet. According to G.S.'s account of the events, he approached the applicant from behind and touched his left shoulder. He then said "police" and asked him, both in Greek and in English, to identify himself. The applicant did not reply but hit him on the head and stomach and then ran away. G.S. chased the applicant, who at some point fell on the pavement and hit his head. A struggle ensued. G.S. did not hit the applicant but merely tried to handcuff him by holding him with his hands and by pushing him. Special Constable P.K. arrived at the scene and assisted G.S. in arresting the applicant. The applicant was arrested for the flagrant criminal offences of assaulting a police officer and resisting lawful arrest (sections 244 (a) and (b) of the Criminal Code, Cap. 154). Two officers of the Crime Prevention Squad (*Ουλαμός Πρόληψης Εγκλημάτων* – "the CPS"), Special Constable C.S. and Senior Constable S.M., arrived at the scene. According to them, when they arrived they found the applicant and G.S. on the ground. The fake credit card had been retained by the ATM and was subsequently retrieved.

12. After the applicant was handcuffed, he was handed over to C.S. and S.M., who drove the applicant to the police station.

13. Upon arrival at the police station around 9.30 a.m. the above officers handed over the applicant to Constable P.P., who carried out a body search and confiscated objects found on him, including the amount of 10,000 euros (EUR) in EUR 50 notes. The applicant was then transferred to the Economic Crime Investigations Office (*Γραφείο Διερεύνησης Οικονομικού Εγκλήματος* – "the ECID") where P.P. passed everything he had found on the applicant on to Constable E.L. The applicant was handed over to Constable F.O., who also carried out a body search. At 10 a.m. F.O. handed over the applicant to Inspector I.S., the head of the ECID. At 11.30 a.m. F.O. returned and kept the applicant under his supervision. At 11.45 a.m. the applicant was allowed to call his lawyer, C.H. At 12 noon F.O. handed over the applicant to Constable M.P., who had been appointed as investigator in the case.

14. Between 1 p.m. and 1.30 p.m. the applicant was interviewed by M.P. with the assistance of an interpreter, S.K. During the interview, only one other officer entered the interview room, Constable A.P.

15. At the end of the interview, around 1.35 p.m., the applicant was taken to the detention facilities in the station where Constable C.T. carried out a body search. He recorded injuries in the applicant's prisoner record. These were: abrasions on the left part of the applicant's forehead (*αριστερή μετωπιαία χώρα*) and left shoulder blade (*ωμοπλάτη*). The applicant was taken to a cell at approximately 1.45 p.m.

16. The applicant was visited by his lawyer, C.H., from 3.05 p.m. until 3.30 p.m. Before leaving the station, C.H. complained to the head of the

detention facility, Sergeant P.H., that the applicant had been ill-treated during his arrest, transfer to the station and questioning.

17. At approximately 3.50 p.m. the applicant was taken to Limassol General Hospital by Constable C.K. and Special Constable D.Y.

18. In the meantime, at 3.30 p.m., the District Court of Limassol issued an arrest warrant on the grounds that there was a reasonable suspicion based on evidence that the applicant had been involved in a number of offences, including, *inter alia*, various forgery and theft-related offences, assault occasioning actual bodily harm and resisting lawful arrest. At approximately 4.45 p.m. while the applicant was at the hospital he was presented with the arrest warrant and was detained on that basis. The applicant was guarded by officers at the hospital.

19. The applicant was discharged from hospital at 11.20 p.m. and was taken back to the detention facilities at the police station.

20. The next day the applicant was taken to the District Court of Limassol, which ordered his detention on remand for eight days. The court ordered that during his detention the applicant be provided with medical care and treatment and, if need be, that he be taken to hospital.

21. On 8 March 2011 the court extended the applicant's detention on remand by a further eight days.

22. On 16 March 2011 the court ordered his detention pending trial (see paragraph 64 below).

## **B. Medical examinations and reports**

### *1. The applicant*

#### **(a) Examinations at Limassol General Hospital on the day of his arrest**

23. On the day of his arrest, at approximately 4 p.m., the applicant was examined by a pathologist, Dr A.K., at the Emergency Department of Limassol General Hospital. The applicant complained of loss of consciousness after being beaten, dizziness, nausea, a severe headache, neck pain, and a pain in his knee. The pathologist carried out a physical examination. He found that the applicant had a cephalohaematoma (*κεφαλαιμάτωμα*) in the right temporal region; abrasions in the parietal area; abrasions and mild oedema on his nose; bruising of his lower lip; a broken upper incisor (*σπασμένο/διατομή πρόσθιου άνω τομέα οδόντος*); a bruise on the left hemithorax with sensitivity and a few abrasions; oedema and abrasions on both wrists (*πηχεοκαρπικές αμφώ*); a few abrasions on the knees, with no evidence of inflammation; pain during the examination of the movement of the right knee; sensitivity of the upper thoracic vertebra and the upper lumbar spine. The CT scans of the brain, the facial bones and the cervical spine showed no injuries or fractures. There was only loss of neck curve (*ευθειασμός αυχένα*). Furthermore, the X-ray of the thorax and the

right knee did not reveal any fractures or fluid in the thorax or the pneumothorax. A splint was placed on the applicant's right knee and he was prescribed analgesics. The doctor's final diagnosis was cranio-cerebral injury (*κρανιοεγκεφαλική κάκωση*), neck strain (*θλάση αυχένα*), bruising on the thorax (*κάκωση θώρακα*), bruising on his knee (*κάκωση γονάτου*), and a broken tooth (*διατομή οδόντος*).

24. The applicant was also examined by a general surgeon, Dr C.T. The applicant complained of neck and chest pain, a headache and pain in the thoracic spine. The doctor observed that the physical examination (*η αντικειμενική εξέταση*) was within physiological limits (*εντός φυσιολογικών ορίων*). The surgeon ascertained that the applicant had marks from blows, mainly on his chest and face.

**(b) Subsequent medical examinations**

*(i) Limassol General Hospital*

25. On 1 March 2011 the applicant was taken to the Emergency Department of Limassol General Hospital owing to vomiting and dizziness. He was examined by Dr Y.I., who observed that the applicant's external injuries were still there. The results of the physical and clinical examinations were normal. In his report the doctor stated that the applicant had been discharged from hospital at 7 p.m. "feeling very well". He referred the applicant for an orthopaedic examination the next day.

26. On 2 March 2011 the applicant was taken back to the hospital for examination by an orthopaedic surgeon, Dr. P.T. The applicant complained that he had been hit; he also complained of pain in the lumbar spine and an injury to the right knee. Dr P.T. did not ascertain any bone damage or neurological symptomatology (*νευρολογική σημειολογία*). He suggested rest and prescribed analgesics.

*(ii) Medical examination by a private practitioner*

27. On 7 March 2011, following a request by the Canadian Consul, a private practitioner, Dr. S.J – a traumatologist orthopaedic surgeon – visited the applicant at the police station and carried out a medical examination. In his report dated 10 May 2011 he stated, in the original English, as follows:

"I visited the patient on the 7<sup>th</sup> of March 2011 in the central police station of Limassol. He was complaining of multiple injuries causing him severe pain which did not allow him to come to rest especially at night.

During my clinical examination carried out on that day, the patient had restriction in motion due to pain especially during maximal flexion and extension of the lower back. He had pain sensation during the palpation of the soft tissue without any external injuries observed. Further he had a bruise measuring 10 x 5 cm at the left side of the chest at the auxiliary line height which gave him pain during palpation, compression and maximal inspiration.

Mr Kabbara further had restriction of motion and muscular tension at the cervical spine region without any pathologic neurologic observation. The patient had a loss of half the left upper incisor tooth with no mobility dysfunction of the jaw.

Due to the above injury, Mr Kabbara described severe pain especially in the evening which did not allow him to sleep. I prescribed him anti-inflammatory pain killers on a regular basis. If there was no response to the medication I advised him to contact me again.”

## 2. *Special Constable G.S.*

28. On 27 February 2011 Special Constable G.S. also went to Limassol General Hospital, where he was examined by a general practitioner, Dr V.D. He complained that, while he had been trying to arrest someone, he had received a punch on the head. As, however, he had been wearing a helmet there had been no bruising. He also complained that he had been kicked in the stomach, had fallen backwards to the ground and hit the right side of his hip. X-rays, scans and tests were carried out and he was diagnosed with a strain (*θλάση*) of his lumbar spine. The doctor also found that his kidney was not in its normal position. She instructed that G.S. be examined by an orthopaedic specialist and a nephrologist. G.S. was prescribed nine days’ sick leave.

## C. Administrative investigation

29. On 1 March 2011 the applicant reported the alleged ill-treatment to the High Commission of Canada.

30. On the same day the Canadian Consul visited the applicant while at the hospital with her assistant. The applicant told her that he had been ill-treated. Her assistant took a written statement from the applicant which reads, in the original English, as follows:

“TO CANADIAN AUTHORITIES

On Sunday Feb 27 at approx. 9.20 am, I was attacked from a policeman from behind and trying to protect myself, my elbow hit him at Athinon street. Then a number of the policemen (3-4) started kicking me on the head and immobilized me and hand-cuffed me. I passed out (first time), woke up in a police car and all the way to the Police Station I asked to contact my lawyer and the Canadian Consulate but they refused and they hit me more. At the police station, Mr [G] hit me. They took me upstairs to the Financial Crime Department. I asked again to contact my Consulate or my lawyer and they refused. I was then taken to another room where Mr [M] was. Four policemen walked in and hit me. They took a chair and broke it over my right leg. They also hit me on the head with the chair several times. I fell down and then I was asked where I live. I said I don’t want to say anything without my lawyer. They hit me again and broke my tooth. I was tortured and my human rights were violated. I was also threatened to be killed by high-leveled people. I am now afraid of my life. This continued for about 4 hours until finally I got in touch with my lawyer and sent to the hospital.”

31. On 2 March 2011, in the light of the applicant's lawyer's complaint (see 16 paragraph above), the Limassol police appointed an investigating officer, Police Chief Inspector M.M., who was in charge of the Ayios Ioannis police station in Limassol, to conduct an administrative investigation into the applicant's complaint.

32. On 3 March 2011 the Canadian High Commissioner in Cyprus sent a *note verbale* reporting the ill-treatment of the applicant to the Ministry of Foreign Affairs and requesting that the applicant's complaint be investigated.

33. An investigation was conducted by M.M. and a report was prepared. M.M. secured copies of written statements contained in the criminal file gathered for the purposes of the criminal proceedings against the applicant (see paragraph 64 below) as well as statements from all the officers who had come into contact with the applicant, directly and indirectly, during his arrest and detention. The statements were not question and answer statements.

34. The applicant refused to provide a written statement claiming that he could not trust the police and informed M.M. that his lawyer and the Canadian Consul had been informed of the details of his ill-treatment.

35. Special Constable G.S., in his statement of 27 February 2011, stated that on that day at around 9.13 a.m. while he had been on motorcycle patrol he had received a message concerning an illegal cash withdrawal from an ATM. He had immediately gone to the bank concerned. On arrival he had spotted an unknown person who had appeared to be withdrawing money from the ATM and putting it in the left pocket of his tracksuit top. G.S. had got off the motorcycle. He had approached the applicant from behind and touched his left shoulder, had said "police" and had then asked the applicant both in Greek and in English to give him his identity card so he would be able to ascertain his identity. The applicant had not replied but instead had turned towards him and attacked him by pushing him backwards with both hands. G.S. had tried to immobilise him. The applicant had then punched his police helmet with his right hand and kicked him in the stomach, causing G.S. to lose his balance. G.S. had fallen backwards on the pavement. The applicant had fled and G.S. had chased him. The applicant, while running, had lost his balance and had fallen to the ground, hitting his face. G.S. had tried to immobilise him and a struggle had ensued between the two. Attempting to resist arrest, the applicant had pushed G.S. and hit him with his hands. Special Constable P.K had arrived at the scene. With his help, and using proportionate force in the circumstances, G.S. had arrested and handcuffed the applicant. He had drawn the applicant's attention to the law but the applicant had not replied. Two members of the CPS had arrived and he had handed over the applicant to them. G.S. had then gone to the Emergency Department of Limassol General Hospital, where he had been examined by Dr V.D.

36. The most relevant written statements of other officers read as follows:

(i) Constable P.P., who had been the first to receive the applicant at the police station, in his statement of 27 February 2011 stated that he had carried out a body search and described what he had found on the applicant, which included EUR 10,000. He did not mention any injuries in his statement.

(ii) Constable E.L., who had seen the applicant when Officer P.P. had entered her office to give her the applicant's possessions, in her statement of 27 February 2011 stated that the applicant had had wounds on his face, his clothes had been messy and his tracksuit trousers had been torn.

(iii) Special Constable P.K. who had been on traffic patrol on the day of the events, in his statement of 27 February 2011 stated that when he had arrived at the scene G.S. had been on the ground with an unknown man. G.S. had asked him to pass him the handcuffs so he could handcuff the applicant as he had been resisting arrest. Then he had gone to the ATM and found five withdrawal receipts of EUR 2,000 each, which he had subsequently given to Constable P.P. when they had arrived at the station. He did not mention any injuries in his statement.

(iv) Constable C.T., who had received the applicant at 1.35 pm. at the detention centre at the station to put him in his cell, in his statement of 3 March 2011 stated that he had carried out a body search and had noted that the applicant had had an abrasion on the left frontal area (*αριστερή μετωπιαία χώρα*) and behind the left shoulder. He had locked the applicant in the cell at 1.45 p.m.

(v) Sergeant P.H. in his statement of 3 March 2011 stated that he had seen the applicant at 1.35 p.m. when M.P. had brought him to the station's detention facilities and he had then given instructions to Constable C.T. to carry out a body search. The applicant's lawyer, C.H, had visited the applicant and at 3.05 p.m. had informed P.H. that the applicant had complained to him that he had been beaten by police officers during his arrest and questioning and had wanted the complaint to be reported. He had also requested that the applicant be sent to the hospital. P.H. had immediately given instructions to this effect and within little time the applicant had been taken to the hospital and the complaint of ill-treatment had been reported. He did not mention any injuries in his statement.

(vi) Inspector I.S. in his statement of 11 March 2011 stated that he had noticed that when the applicant had arrived at the station he had had injuries on the face which according to Officer G.S. had been caused when he had tried to arrest the applicant. He had also noticed that the applicant's clothes had been messy and his tracksuit trousers had been torn. The applicant had not complained to him that he had been hit nor had he been hit by anyone.

(vii) Senior Constable S.M. in his statement of 12 March 2011 stated that when he had arrived at the scene G.S. had already arrested the applicant

and handcuffed him. S.M. then took the applicant along with Special Constable C.S. in the police car to the police station where at 9.30 a.m. he handed him over to Constable P.P. The applicant had minor abrasions and bruises and his clothes were messy.

(viii) Special Constable C.S., who had accompanied the applicant to the police station with Senior Constable S.M., in his statement of 12 March 2011 stated that when he had arrived at the scene G.S. had already arrested the applicant and handcuffed him. He did not mention any injuries in his statement.

(ix) Constable A.P., who had seen the applicant during his interview with M.P., in his statement of 14 March 2011 stated that the applicant had had abrasions on his face and that he had been informed by M.P. that this had been caused during his arrest.

(x) Constable F.O. in his statement of 15 March 2011 stated that he had carried out a body search and had not found anything suspect (*επιλήψιμο*) on the applicant. He also stated that the applicant had had wounds on his face and had told him that he had been hit by an officer. Furthermore, his clothes had been messy and his tracksuit bottoms torn.

(xi) Constable M.P., who had interviewed the applicant at the station, in his statement of 17 March 2011 stated that the applicant had had abrasions on the face and when he had asked the applicant how the latter had got them, the applicant had told him that he had been hit during his arrest. During the interview, constable A.P. had entered in the room and M.P. had informed him of the applicant's statement and his injuries. At 1.35 p.m. M.P. had taken the applicant to the detention facilities.

37. According to the findings of the investigator in his report of 26 April 2011, the applicant had been uncooperative from the beginning of his detention and refused to provide a written statement and answer any questions during his interview. He had also refused to cooperate with the investigator himself and to give a statement concerning his ill-treatment allegations. He had told the investigator that he did not trust the police. In view of the above, it could not be excluded that the complaint had been made to further the applicant's own interests. According to Inspector I.S., who had supervised the applicant's questioning in relation to the criminal case against him, no member of the police had ill-treated or used any kind of violence against the applicant during his detention and questioning. The only contact the applicant had had with a member of the police had been during his struggle with the police officers when attempting to flee arrest. In his report, the investigator noted that Special Constable G.S. had been injured while trying to arrest the applicant and that he had been put on sick leave by the doctor who had examined him at the hospital.

38. The report concluded that none of the applicant's allegations regarding ill-treatment had been proven and that the case should be closed.

39. The Limassol divisional police headquarters and the Chief of Police agreed with the conclusions.

40. On 26 May 2011 the Ministry of Foreign affairs informed the High Commissioner of Canada of the findings of the investigation.

**D. First investigation by the Independent Authority for the Investigation of Allegations and Complaints against the Police (“the IAIACAP”)**

41. By a letter dated 14 July 2011 the applicant’s lawyer complained to the Attorney General, requesting that an independent investigation be conducted into his client’s complaint and that the officers responsible be brought to justice. The next day the Attorney General referred the applicant’s complaint to the president of the IAIACAP ordering an investigation.

*1. Investigation*

42. On 20 July 2011 the IAIACAP appointed a lawyer, Mr A.S., as investigator.

43. On 10 October 2011 the investigator prepared a report with a summary of the statements obtained and his findings.

44. In the course of the investigation, the investigator singled out four police officers as suspects. These were G.S., P.K., S.M. and C.S. Statements in the form of questions and answers were obtained from these officers. He also took statements from the applicant and twenty-four other persons, including the officers who had been in touch with or seen the applicant on the day of the alleged ill-treatment, the interpreter, the doctor who had examined G.S., Dr V.D. (see paragraph 28 above) and three of the doctors who had examined the applicant, namely, Dr A.K. and Dr C.T. from Limassol General Hospital and Dr S.J., the private practitioner (see paragraphs 23, 24 and 27 above).

45. The applicant gave a statement to the investigator on 23 August 2011, adopting the content of a handwritten statement he had prepared in June 2011 for his lawyer. In his written statement the applicant alleged that on 27 February 2011 at 9.15 a.m. he had been trying to familiarise himself with the ATM in case he would ever need to use his own cards and check the balance of his account. He had, *inter alia*, a credit card in his name on him and EUR 10,000, which had been given to him by his lawyer at the time, C.H. This was the cash bail that had been returned from the court in another case against him. At 9.20 a.m. he had been suddenly attacked from behind by someone who had been wearing a helmet and who he had not recognised. This person had not identified himself. The applicant had thought that it had been a robbery. This person had choked him from behind. The applicant had been scared and had defended himself. He had

then been attacked by a second person in civilian attire. They had started hitting the applicant on the head and the back with a small wooden stick. The applicant had fallen to the ground and lost consciousness. The officers had woken him up by throwing water on his face. He had woken up in a brown jeep, handcuffed. He had then realised that he had been intercepted by the police. The officers had slapped and punched him on the face and body all the way to the police station. They had been asking him about money and credit cards but had not asked him to identify himself. Nor had they shown him any documents in respect of his arrest and informed him of his rights. They had taken everything he had had on him including his asthma inhalers. They had refused to allow him to talk to his lawyer or with an official from the Canadian embassy. He had been taken to the station at approximately 10 a.m. He had been received by the head of the police, "Mr Y.", an officer acting as an interviewer, "Mr M.", and two other officers "Mr P." and "Mr A.". In the interview room there had been officers of the CPS and another officer, "V.". Officer M. had asked him questions. The applicant had refused to reply, saying that he would do so only in the presence of his lawyer. At that point the officer who had attacked him at the ATM had started beating and "torturing" him while he had been unable to defend himself, as he had still been in handcuffs. He had kept asking them to stop and let him contact his lawyer. They had continued to punch and beat him using the same small wooden stick used before (he clarified that this had been a small baseball bat). He had asked for his asthma inhalers and tried to tell them that he had had back surgery. He had been very scared and had started breathing heavily. They had hit him on the back and on his right knee with a metallic chair with blue handles. They had beaten him with that chair and kicked him savagely on the head while asking him questions. The applicant stated that he had lost consciousness for a while and he had woken up after water had been thrown on his face.

46. At approximately 1 p.m. the applicant had called his lawyer; before that they had warned him not to tell him anything. The applicant had spoken to his lawyer and had informed him of the ill-treatment. He had then been taken back to the interview room where the officers had continued to beat him. He had fallen to the floor again with his hands behind his back. One of the officers had stood on his handcuffs while another one had kicked him. Because of the kicks to the head the applicant had become very dizzy, bleeding from his face, nose and mouth. His front tooth had broken from the punches. He had also had a small asthma attack. Although Officer M. had not physically abused him he had not intervened to stop the ill-treatment. Two female officers of the ECID had also witnessed his ill-treatment. The applicant said that he had asked the head of the police to take him to hospital but he had refused. At around 3 p.m. they had taken him to the detention facility in the station. His lawyer had come to visit him and when he had seen the state of him he had made a complaint of ill-treatment to the

officers and asked that the applicant be taken immediately to hospital. During his transfer to the hospital the applicant had been punched by one of the two police officers who had been escorting him. The officer had also threatened that his boss Mr Y. would put him in prison if he did not withdraw his complaint. When he had arrived at the hospital at 3.30 pm. one of the officers had lied to the doctor and had told him that he had fallen on his face. The other police officer had then taken the doctor aside and talked to him alone. The doctor had refused to give him painkillers. He had only given those when the Canadian Consul had come to visit him.

47. The applicant alleged that he could identify the individuals responsible for his ill-treatment.

48. In their statements provided to the criminal investigator, the police officers denied ill-treatment and maintained their original version of events. Some of the officers could not remember whether the applicant had had injuries or what type of injuries he had had and therefore were not able to answer the investigator's questions in this connection. The most relevant statements were as follows:

(i) Sergeant P.H., who had made no mention of the applicant's appearance in his previous statement, in his statement of 26 August 2011 stated that when the applicant had been brought to the detention facilities he had noticed that he had been upset (*αναστατωμένος*) and red in the face. He had not noticed whether his clothes had been torn.

(ii) Constable A.P in his statement of 29 August 2011 stated that he could not remember what type of wounds the applicant had had on his face or whether his clothes had been torn.

(iii) Constable P.P., who had not made any mention of the applicant's appearance in his previous statement, in his statement of 31 August 2011 stated that:

“... there were areas which indicated that [the applicant] had fought with someone, without however bearing any external injuries. He had dishevelled hair, his clothes were creased, but not torn, and he was red owing to tiredness, but not owing to blows.”

(iv) Constable C.T. in his statement of 31 August 2011 stated that the applicant had had an abrasion on part of left frontal area and on the left shoulder blade. He could not remember if any of the applicant's clothing had been torn.

(v) Constable M.N., who had guarded the applicant from 7.40 p.m. to 10.30 p.m. at the hospital, in his statement of 31 August 2011 stated that he had noticed that the applicant had had various injuries (*χτυπήματα*) but he could not remember whether they had been on the face or the body.

(vi) Constable I.K., who had guarded the applicant from 7.40 p.m. to 10.30 p.m. at the hospital, in his statement of 1 September 2011 stated that the applicant had been in a wheelchair at one point because he had claimed he had not been able to walk and that he had, with the assistance of the other

officer guarding him, helped him onto a bed. He had noted that the applicant had had some small scratches on his face and one of the hands.

(vii) Constable F.O. in his statement of 5 September 2011 stated that owing to the passage of time he could not remember what type of wounds the applicant had had nor where the tracksuit had been torn.

(viii) The interpreter S.K. in her statement of 12 September 2011 stated that she had arrived before 1 p.m. and had translated from 1 p.m.-1.30 p.m. and that the applicant had had a bruise on his face near his eye and his trousers had been torn. In her presence no officer had hit or threatened him.

(ix) Inspector I.S. in his statement of 13 September 2011 stated that:

“[I]t was like when someone’s face is rubbed against the ground. I think that he had something similar on his hands.”

(x) Special Constable P.K. in his statement of 15 September 2017, when asked about whether he had noticed injuries stated that the time of the events, stated that he had been concentrating on helping handcuff the applicant and had not noticed.

(xi) Constable M.P. in his statement of 18 September 2011 stated that he could not remember the applicant’s teeth or what type of scratches the applicant had had on his face.

(xii) Senior Constable S.M. in his statement of 20 September 2011 stated that:

“[The applicant’s] face was red as if he had been running and [he] was short of breath. With regard to the minor-abrasions and bruises, these were definitely not black marks but mild redness.”

(xiii) Special Constable C.S., who had previously made no mention of the applicant’s appearance, in his statement of 20 September 2011 stated that:

“[The applicant] was to begin with, unkempt, messy as to his clothes, his hair was also tousled (*ανακατωμένα*) and his face was red. He did not have bruising (*μαύρισμα*) however, nor did I see scratches.”

## 2. *Investigator’s findings*

49. In his report dated 10 October 2011 the investigator found, taking into account the evidence at hand, that the applicant’s testimony had been unconvincing in many respects and contradicted solid evidence:

- his assertions as to what he had been doing at the ATM and why he had had EUR 10,000 in his possession were very difficult to believe.

- based on the police officers’ testimony, the investigator noted that on the day of the arrest, the officers who had arrested the applicant had been in uniform and had not had batons as they had been simple traffic officers.

- the applicant had been taken to the police station in a white saloon police car; the Limassol CPS did not have brown jeeps.

- the applicant had stated that they had taken everything from him in the car yet according to the evidence given by Constable P.P. everything had been taken from the applicant at the station.

- the applicant had described a savage beating but had stated that during an interval he had spoken to his lawyer, C.H.. The investigator considered it odd that the officers, knowing that the applicant had spoken to his lawyer, would have continued to beat him after the call as he had alleged. C.H. had refused to give a statement.

- all of the police officers denied having ill-treated the applicant, and the interpreter, an independent witness, had stated that during her presence the applicant had not been ill-treated.

- the applicant had alleged that the ill-treatment had continued until 3 p.m., but in his prisoner record it had been recorded that he had been taken to a cell in the detention facilities of the station at approximately 1.45 p.m.

- the applicant had claimed that the doctor at the hospital had refused to give him painkillers but this had been refuted by Dr A.K. and was in contradiction with the hospital records of Dr C.T.

50. The investigator considered it unlikely that officers of the CPS would have interrogated a suspect for offences under the authority of the another unit, the ECID, and that they would have ill-treated the applicant in the car given the close distance between the scene of arrest and the police station, which was only about 1 to 1.5 km. Furthermore, the description of certain people given by the applicant did not correspond to the officers working for the CPS. On this basis the investigator concluded there had not been police officers from the CPS in the interview room.

51. The investigator also noted that the allegation that the applicant had been beaten and threatened by one of the two officers escorting him to the hospital was surreal as those officers had not been aware of the applicant's ill-treatment complaint.

52. The investigator pointed out that Special Constable G.S. had not denied the use of force against the applicant: following the applicant's violent reaction he had pushed the applicant with his hand somewhere between his chest and neck and had also used some wrestling holds (*λαβές πάλης*) in order to turn him round and handcuff him. Furthermore, when the applicant had tried to flee he had fallen to the ground, hitting his face. This version of events could justify the injuries on the applicant's face and his right knee but the investigator stated the he could not accept it easily. He stated that he was puzzled by the fact that Constable P.P., who had seen the applicant just before he had been led to the offices of the ECID, had noticed no exterior wounds other than the fact that the applicant was red. This was in line with G.S.'s statement that he had not hit the applicant.

53. Bearing in mind the above, the investigator concluded that G.S. had not used excessive force to arrest the applicant and that neither criminal nor disciplinary proceedings against him were merited.

54. The investigator pointed out that this did not mean that he accepted the facts as described by all the officers as, on the basis of their version of the events, one would expect that the applicant would have had fewer injuries. At the same time, he did not accept the applicant's version of the facts as on the basis of his version, it would have been expected that he would have had more injuries.

55. The report concluded that there was no concrete evidence justifying criminal or disciplinary charges against any of the officers. The investigator noted that although he had been troubled by the case, the applicant had not helped him in his task, as his account had been full of inconsistencies and improbabilities (*απιθανότητες*).

### *3. Report of the president of the IAIACAP*

56. The investigator transmitted his report and findings to the president of the IAIACAP. The latter prepared a report dated 16 November 2011 adopting the investigator's findings. He noted, however, that he did not accept the evidence that had been given stating that the applicant did not bear exterior injuries or abrasions, as this was contrary to the findings of the doctors; nor did he accept that the applicant was merely red due to tiredness but not due to blows. Nonetheless, he observed that on the basis of these injuries it could not be concluded that the force used had been disproportionate under the circumstances. He therefore could not suggest that criminal or disciplinary action be taken against the four officers in question. He also considered that even if an identity parade had been held, he doubted that it would have made a difference to the outcome of the investigation, in view of the applicant's conduct. The struggle between officer G.S and the applicant had been expected (*αναμενόμενη*) in order for the applicant to avoid arrest at the moment he had been appropriating a large sum of money.

57. The president of the IAIACAP concluded that despite the fact that the quality of the evidence at hand had not been satisfactory, the commission of neither disciplinary nor criminal offences had been established.

58. Both reports and the file of the case were submitted to the Attorney General for a decision.

### *4. Decision taken by the Attorney General*

59. On 13 February 2012 the Attorney General concluded that although a certain degree of force had been used against the applicant, this had been necessary under the circumstances in order to prevent him from fleeing arrest. He concluded on this basis that the prosecution of any member of the police was not warranted and instructed that the file be closed.

60. In his decision he stated that it appeared from the evidence that Special Constable G.S. had asked the applicant, who at the time had been at the ATM machine, for his particulars. The applicant had reacted and had hit the police officer in an attempt to flee. The applicant had explained his behaviour by stating that he had thought it had been a robbery. Special Constable G.S. had, however, been in uniform as had been the officer who had subsequently come to help.

61. The Attorney General further observed that the applicant's explanations concerning his attempt to flee and the money found in his possession as well as his allegations as to the injuries sustained and his alleged ill-treatment going to and at the police station did not correspond to the reality. Furthermore, his allegation that the doctor who had examined him at the hospital had refused to give him painkillers had been refuted by the doctor. Most of the applicant's statement appeared to be imprecise and untrue. Special Constable G.S. had not denied the use of force: following the applicant's violent reaction he had used proportionate force in the circumstances in order to prevent him from fleeing until help arrived. As a result not only had the applicant been injured but the officer himself, who had also had to go to hospital, had been. In addition, the applicant had claimed that he had been tortured by members of the police during his transfer to the police station and before the arrival of his lawyer, C.H. The latter, however, had refused to give a statement. The applicant's allegations had been disputed by all the members of the police involved.

62. By a letter dated 16 February 2012 the Attorney General informed the applicant of his decision.

63. By a letter dated 7 March 2012 to the Attorney General, the applicant's lawyer expressed his disappointment concerning the conclusions of the investigation and pointed out that no explanation had been given, at least in respect of the ill-treatment the applicant had been subjected to at the police station while handcuffed and as a result of which he had ended up in hospital. He noted in this connection that the Canadian Consul had ascertained the applicant's condition whilst the independent medical report by the private practitioner corroborated the applicant's allegations. Lastly, he informed the Attorney General of his intention to lodge an application with the Court on behalf of the applicant.

## **E. Criminal proceedings**

### *1. First-instance proceedings*

64. In the meantime, the applicant was charged with 439 counts of different offences and criminal proceedings were instituted against him before the District Court of Limassol (case no. 4474/11). The charges were subsequently reduced to three, namely theft, assault occasioning actual

bodily harm (to Special Constable G.S.) and resisting lawful arrest (sections 20, 255 (1)-(3), 262, 243 and 244 (a) of the Criminal Code, Cap. 154).

65. On 14 September 2012 the court held that the prosecution had proved its case beyond reasonable doubt and found the applicant guilty on all counts. On 19 September 2012 it imposed sentences of imprisonment of one year, one month and two months respectively for each offence to run concurrently. The time the applicant had already been in detention counted towards the sentence.

66. The court found that the applicant's testimony had been completely unreliable and unconvincing and that he had made a poor impression as a witness both in terms of the quality of his testimony and his credibility. He had made serious contradictions; his allegations were unsubstantiated, lacked logic and were contrary to hard evidence. It therefore dismissed his evidence as being false. The court also noted that the defence had made claims concerning certain of the prosecution witnesses which, however, it had not put to the witnesses themselves during cross-examination in order to give them the opportunity to at least comment. Similarly, although allegations had been made by the defence against some of the prosecution witnesses, it did not itself provide any evidence in this connection.

67. With regard to the allegations of ill-treatment raised by the applicant, the court pointed out, *inter alia*, that the applicant had failed to submit a medical report with reference to his alleged injuries and had only produced a receipt for the medical examination by Dr S.J. He had also failed to call Dr S.J. as a witness. His allegations therefore remained completely unsubstantiated. Furthermore, the court pointed out that the CCTV footage contradicted his allegation that he had been attacked at the ATM and that he had not seen that G.S. had been a police officer. The footage showed the applicant in front of the ATM with his body and head turned towards officer G.S., who was also looking at him. G.S. had been in police motorcycle uniform and the word "police" in capitals was on his uniform across his chest.

## *2. Appeal proceedings*

68. On 27 September 2012 the applicant lodged an appeal with the Supreme Court (appeal no. 197/2012) against his conviction. This was dismissed on 19 February 2013.

69. With regard to the applicant's grounds of appeal concerning his alleged ill-treatment, the Supreme Court upheld the findings of the first-instance court pointing to the complete lack of medical evidence on the part of the defence. It also noted that the Canadian Consul who had visited the applicant in hospital had not been called by the defence as a witness.

## **F. The applicant's departure from Cyprus**

70. Following the dismissal of his appeal, the applicant was deported from Cyprus and was put on the authorities' "stop list" (a register of individuals whose entry into and exit from Cyprus is banned or subject to monitoring).

## **G. Second investigation by the IAIACAP**

### *1. Investigation*

71. On 9 April 2013 the Attorney General appointed two new investigators to reinvestigate the applicant's complaints. The Attorney General's office, upon re-examination of the file, spotted gaps in the investigation and particular omissions and inconsistencies in the reports. Furthermore, his office had been informed by the investigator A.S. that after the conclusion of the investigation, he had had an informal conversation with Inspector I.S, the head of the ECID of the Limassol CPS, who had confided in him that the applicant had been ill-treated while at the police station.

72. The investigators singled out nine officers as suspects: Inspector I.S., Senior Constable S.M., Special Constables G.S., C.S. and P.K, and Constables M.P., A.P., F.O. and E.L. In the course of the investigation, the investigators took statements from forty-nine persons in addition to the nine abovementioned officers. This included all the individuals that had been interviewed by A.S. in the previous investigation, all the doctors that had examined by the applicant, a number of other officers and various individuals who either had personal knowledge of the facts or were suspected of having such knowledge, such as the Canadian Consul and her assistant. They were not able to get into contact with the applicant despite getting in touch with his lawyer. According to the investigators, the applicant's previous lawyer, C.H., had asked for documents and witness statements in order to give a statement but the investigators considered that this would jeopardise the investigation and the ascertainment of the truth. The investigators did not assent and as a result he did not give a statement. The investigators also obtained documentary and other evidence related to the applicant's case. These included, *inter alia*, photographs from the area near the ATM, CCTV footage from the bank relating to the day of the alleged ill-treatment, copies from police diaries kept at the police station and the record of the criminal proceedings before the District Court of Limassol and the Supreme Court.

73. In her statement of 22 April 2013 to the investigators the Canadian Consul submitted that when she had arrived at the hospital on 1 March 2011 the applicant had been in a wheelchair and on a drip and had been in the process of being moved to a bed. She had seen a big bruise on his left

shoulder and other bruises on his body. He had had a broken tooth, his right leg had been bandaged and he had not been able to walk. He had had a head injury (*χτύπημα*) and bruises on the face. The applicant had informed her that he had been ill-treated by police officers during his transfer to and for four hours at the police station in order to force him confess to a crime he had not committed. She had asked to speak to a doctor. The doctor had informed her that there had been nothing wrong with the applicant and that he had been responsible only for examining the applicant's pancreas. She would have to talk to the doctors who had examined him earlier for further information. She had also asked her assistant to take a statement from him.

74. The Consul's assistant, in her statement of 3 June 2013 to the investigators, stated that when they had arrived at the hospital the applicant had been in a wheelchair and on a drip. He had then been moved to a bed. He had had injuries on the face and looked injured, but she could not remember the exact injuries and she had not taken notes at the time. One of his front teeth had been half broken and he had had a bandage on his right knee. He had also been on a drip. The applicant had said he had been ill-treated by the police. The doctor had told the Consul that the applicant had had no severe internal injuries, but had not been able to give her more information as he had only been responsible for examining the applicant's pancreas. She had taken a statement from the applicant on the Consul's instructions.

75. A number of the officers interviewed refused to provide answers to the investigators, reconfirmed their previous statements or stated that they could not recall the events. Inspector I.S. denied the occurrence of a discussion between him and the investigator A.S.

76. At the end of their investigation the investigators prepared a lengthy report on the investigation procedure and their findings

## *2. Investigators' findings*

### **(a) With regard to the investigations that had already been conducted**

77. In their report the investigators pinpointed a number of deficiencies in the investigation of the case from the very beginning on the part of the police and the first investigation by the IAIACAP. In particular, they noted the following.

78. First of all, Inspector I.S., who had at the time been in charge of the ECID, ought to have given instructions that the applicant's injuries be photographed when he had arrived at the station. This had not been done. Nor had the applicant's clothes been taken as evidence. If these steps had been carried out, it would have been possible to determine what had really happened.

79. With regard to the administrative investigation, the investigators first of all stressed that such investigations by the police themselves, following

complaints that could on the face of it constitute criminal offences, were problematic and that such complaints should be from the very beginning transferred to the IAIACAP. In addition, they observed that there had been a number of omissions in the context of this investigation: the investigator M.M. had failed to ask the officers about the applicant's injuries and how they had happened; nor had he asked constable P.P., who had been the first officer to receive the applicant at the police station at 9.30 a.m., if the applicant had had any injuries on him at the time; he had merely filed (*αρχαιοθέτησε*) P.P.'s statement; he had also not taken any investigative steps with regard to the applicant's injuries – he had filed the medical report of the pathologist Dr A.K., which referred to the applicant's injuries and had not sought to obtain a medical report by Dr S.J., who had visited the applicant in hospital. Lastly, he had not asked for a medical report from Dr V.D., who had examined special constable G.S.

80. In so far as the first investigation by the IAIACAP was concerned the investigators noted that investigator A.S. should have tried to elucidate significant inconsistencies in the applicant's allegations and statements when he had had the opportunity to do so and when the events had still been fresh. Furthermore, in view of the content of the applicant's statements, the investigators considered that an identity parade had been called for and, in fact, both the investigator A.S. and the IAIACAP had been under a legal obligation to conduct an identity parade whatever the result. The failure to do so had led to the possible loss of important evidence

81. According to the investigators, the CCTV footage ought to have also been closely examined by investigator A.S. as it showed that the facts as described by Special Constable G.S. as to the way he had approached the applicant at the ATM had been true, thus contradicting the applicant's version of events up to that point. In the footage G.S. can be seen approaching the applicant from behind; the applicant then turned his head and saw him. G.S. can be seen touching the applicant's left shoulder with his hand. The applicant almost immediately pushed him. The CCTV did not record the rest.

82. Lastly, the investigators expressed their concern about the fact that the investigator A.S. had kept the I.S.'s admission to himself and had not informed the IAIACAP or the Attorney General immediately. He had therefore withheld important evidence.

**(b) With regard to applicant's ill-treatment allegations**

83. The investigators first noted the difficulties they had encountered in their investigation of the case which were mainly attributed to the passage of time as well as the fact that they had been unable to interview the applicant in order to receive further clarifications.

84. After assessing the evidence before them, they concluded that the force used during the applicant's arrest had not been excessive and had been

reasonable and necessary and that it had caused certain injuries especially to the applicant's face and knee.

85. With regard to the evidence before them, they noted *inter alia*, the differences between certain of the officers' statements concerning the state of the applicant and the existence or degree of his injuries. They also pointed out that the doctors who had later examined the applicant at the hospital had found greater injuries than those described by the officers. The doctors had not, however, recorded wounds on the left shoulder blade as had been recorded in the prisoner record by Constable C.T. (see paragraph 15 above and compare to paragraphs 23-25 and 27 above). Furthermore, the Canadian Consul in her statement had described injuries which had not corresponded to those in the medical report of Dr Y.I., who had seen the applicant on the same day as her.

86. The investigators considered that the presumption of ill-treatment under section 6 of Law no. 235/1990 (see paragraph 98 below) was applicable in the case: it was presumed that the person responsible for ill-treatment was the person in charge of the police station and the questioning for the investigation of the case in relation to which an arrest and/or detention was made unless an explanation was given for the cause of the injuries. Thus, according to the investigators there was sufficient evidence allowing the criminal prosecution of Inspector I.S. The same applied in respect of Constable M.P., who had been accused by the applicant of having been present during his ill-treatment but of not having done anything to stop it and of having ignored his request to be taken to hospital.

87. The investigators did not suggest the criminal prosecution of other members of the police owing to insufficient evidence. They also noted in this connection that some of the officers in question, namely Constables A.P., E.L. and P.P. and Special Constables G.S. and P.K., had given evidence before the District Court and had not been accused of ill-treating the applicant by the defence in the context of these proceedings despite the applicant's allegations in this connection. Although they considered that disciplinary offences had been committed by various members of the police they had been appointed to carry out a criminal investigation into the case and thus could not deal with these.

88. Lastly, they referred to the findings of the domestic courts in the criminal proceedings against the applicant noting that the applicant had not substantiated his ill-treatment allegations in the proceedings and pointed to the serious inconsistencies in his evidence and the failings by the applicant's defence counsel. They considered that this fact had to be taken into account when deciding on whether the applicant should be summoned as a witness for the prosecution if it were decided to prosecute any of the officers.

### *3. Further steps ordered by the Attorney General*

89. On 9 July 2013 the investigators' report was delivered to the Attorney-General.

90. On 29 November 2013 the file was returned to the investigators with the request that they consult a forensic expert in order to establish how the applicant's injuries had been inflicted. The investigators were also instructed that questions be prepared and forwarded to the prosecuting authorities in Canada to obtain answers from the applicant.

91. On 10 January 2014 the forensic experts who had been contacted by the investigators concluded that they were unable to establish on the basis of the documents and photos how the applicant's injuries had been inflicted – whether they had been inflicted by ill-treatment or from another cause such as falling to the ground. They would have been in a better position if they had been called to examine the applicant on the day he had presented with the injuries.

92. In the meantime, on 3 January 2014, the investigators prepared a request for legal assistance by the Canadian authorities, asking that a statement be provided by the applicant. Their questions to the applicant were included in writing. An email exchange followed between the applicant's lawyer and the Attorney General's office. It transpires from this that the applicant's lawyer refused to provide the authorities with the applicant's address and telephone number, which were necessary for the purposes of the request for legal assistance. He insisted instead that the Cypriot authorities pay for the applicant's expenses to travel to Cyprus to provide a statement or that the Cypriot authorities go to Canada to see him. As such, the request for legal assistance was not submitted and the applicant was subsequently not called to Cyprus.

### *4. Decision taken by the Attorney General*

93. On 11 June 2014 the Attorney General concluded that the possibility that the applicant's injuries had been caused by the reasonable force during the applicant's arrest and/or by the applicant's fall could not be excluded. Similarly, it could not be excluded that they had been caused by ill-treatment at the police station. He disagreed with the investigators' suggestion that the presumption of ill-treatment under section 6 of Law no. 235/1990 (see paragraphs 86 above and 98 below) was applicable as in the circumstances of the case it had not been established that the injuries the applicant had had after his transfer to the police station, had not been present before and/or had not been caused during his arrest. From an examination of all the evidence in the case the Attorney General ascertained that the applicant's credibility had been irreversibly damaged. He referred, in particular, to the fact that the applicant's allegations of ill-treatment had been dismissed by the Limassol District Court in the criminal case against

him. His grounds of appeal had also been rejected by the Supreme Court, including the ground challenging the first-instance court's findings on this point. In addition, the Attorney General pointed out that the applicant's version of events had been refuted by other independent and credible evidence.

94. In so far as the investigator in the first investigation had informed the second investigator of the admission of Inspector I.S., this did not have any bearing on the Attorney General's opinion that the applicant was an unreliable witness. This, in combination with the fact that it had not been clarified which of the officers had allegedly ill-treated him, led to the conclusion that it was extremely difficult to establish the commission of any offences by any of the officers.

95. Based on the above, the Attorney General concluded that the criminal prosecution of any individual was not justified.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### **A. Independent Authority for the Investigation of Allegations and Complaints against the Police ("the IAIACAP")**

96. The relevant domestic law concerning the IAIACAP is set out in detail in *Thuo v. Cyprus* (no. 3869/07, §§ 99-104, 4 April 2017).

### **B. Law no. 235/1990: The [United Nations] Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Ratification) Law of 1990**

97. Law no. 235/1990 ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and came into force on 26 June 1987. The Law criminalised acts of torture, and inhuman or degrading treatment or punishment.

98. Section 6 of the above law, as amended by Amending Law 36(III)/2002, provided as follows at the material time:

"1. For the purposes of sections 3 and 5, a person who was arrested or was otherwise detained is presumed to have been ill-treated by a member of the police at the police station where he was detained, where it is established by a medical examination which is carried out at any time prior to his or her release or immediately after his or her release from the police station, that he or she has external injuries which he or she did not have at the time of ... admission to the police station.

2. In a case where the presumption under section 1 is applied, it is to be further presumed that the person in charge of the police station and the person responsible for possible interviews for the investigation of the case in relation to which the arrest and detention took place, shall be responsible for the ill-treatment unless he or she provides a reasonable explanation for the infliction of the injuries in a way other than that of ill-treatment by a member of the police."

99. Under section 6(3)(a)-(c) if responsibility for ill-treatment is found on the basis of the presumption under section 6(1), this is punishable with two to four years' imprisonment.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

100. The applicant complained that he had been subjected to treatment in violation of Article 3 of the Convention during his detention at the police station on 27 February 2011 and that no effective investigation had been carried out in this connection. Article 3 reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

101. The Government contested that argument.

#### A. Admissibility

102. The Court 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**

###### (i) *Substantive aspect of the complaint*

103. The applicant argued that there had been sufficient evidence establishing that he had been tortured by the police in violation of Article 3 of the Convention. All the medical evidence indicated that he had had very serious injuries, a fact that had been corroborated by the Canadian Consul. The applicant submitted that in Cyprus there was general solidarity between the doctors in State-run hospitals and the police concerning detainees taken for treatment in connection with injuries resulting from ill-treatment inflicted by the police. Unfortunately, there had been no independent witnesses during his ill-treatment.

104. The applicant noted that where an individual was taken into police custody in good health but was found to be injured at the time of release, it

was incumbent on the State to provide a plausible explanation of how these injuries had been caused, failing which a clear issue arose under Article 3 of the Convention. In this case no such explanation had been given.

*(ii) Procedural aspect of the complaint*

105. The applicant submitted that the investigation carried out into his complaint failed to comply with the standards established under Article 3 of the Convention and hence, that there had been also been a violation of the procedural limb of that provision.

106. At the outset, the applicant pointed out that there had been significant delay in commencing the investigation despite the fact that the applicant had complained of ill-treatment through his first lawyer on the day of his arrest and there had been enough evidence to corroborate his account. This included the medical report prepared by the general surgeon Dr C.T. which had recorded injuries on the applicant's chest and face caused by blows; the medical report prepared by the pathologist Dr A.K., who had first examined the applicant and the relevant injuries recorded therein; the medical report prepared by the private practitioner, Dr S.J.; and, lastly, the testimonies of the Canadian Consul and her assistant, who had witnessed the applicant's injuries and bruises when they had visited him at the hospital. The authorities, however, had remained inactive until the applicant's second lawyer had sent a letter of complaint on 14 June 2011 to the Attorney General.

107. In addition, both in the first and second IAIACAP investigations, the investigators had failed to attach the appropriate importance to the statements of the Canadian Consul and her assistant and had ignored the fact that the head of the ECID had admitted that the applicant had been ill-treated. Instead they had focused on the alleged lack of credibility of the applicant.

108. In so far as the first investigation carried out by the IAIACAP was concerned, the applicant submitted that the investigator had failed to enquire into the causes of the applicant's injuries by seeking the opinion of a forensic expert or other medical practitioners, and had failed to provide a plausible explanation for the injuries. Furthermore, the investigator had admitted himself that he had not investigated the case fully as he had not ordered an identity parade and had not conducted further interviews, instead confining himself to collecting the statements of certain police officers and the statement provided by the applicant. He had failed to interview the applicant's second lawyer, L.L., who had referred the case to the IAIACAP, as well as the Canadian Consul and her assistant who had visited the applicant in hospital. Most importantly, he had failed to interview the applicant himself. In this connection the applicant submitted that the Government's claim that the applicant had refused to be interviewed had been false. In addition, although the investigator had claimed that the

applicant's first lawyer, C.H., had refused to cooperate, he had not explored other means of securing his testimony.

109. The applicant submitted that the IAIACAP in its first investigation had relied on unconvincing evidence and based itself on the statements given by the officers denying ill-treatment in order to counter the applicant's claims, turning a blind eye to the medical evidence recording the applicant's injuries. However, the applicant emphasised that some of the officers' statements had been contradictory: some officers had stated that upon arrival at the station the applicant had had red marks or that his face had been red whereas others had stated that at the time he had had injuries on his face. According to the applicant, the police officers, upon realising their mistake had tried to correct their statements by changing their description of the applicant's appearance, either by stating that they could not remember what kind of injuries the applicant had had, by trying to lessen the extent of the injuries by claiming they had been merely red marks, or by changing the description of the injuries to match other accounts that the applicant had hit his face on the floor.

110. The reasoning in the investigator A.S.'s report had been unclear and problematic. Furthermore both the investigator and the president of the IAIACAP had concluded that the applicant's injuries had been caused during his arrest, without substantiating their views by medical or other evidence. Despite this, they had concluded that the applicant's injuries should not lead to the conclusion that the force used during arrest had been excessive. It was therefore clear that the IAIACAP did not wish to incriminate the police.

111. With reference to the second investigation by the IAIACAP, the applicant submitted that it had been conducted with the exclusive aim of remedying the shortcomings of the first investigation following communication of the case by the Court in order to avoid a finding of a violation. The applicant had already given a full account of his ill-treatment and had answered all questions put to him. He had also been available for further interviews while in prison in Cyprus but had never been asked to provide further clarifications. Following his return to Canada he had been available to return to Cyprus for the needs of the investigation as long as his travel expenses had been paid. The Government, however, had sought instead to obtain the applicant's statement through the Canadian authorities, who had had no competence over the case and had not been bound by the Cypriot courts or the Convention. Furthermore, seeking the advice of a forensic expert two years after the ill-treatment complaint had been futile as the forensic expert had no longer been able to establish the cause of the injuries. This should have been done on the day the injuries had been caused.

112. It was the applicant's view that the second investigation had also lacked the required independence. The Attorney General, who had taken the

final decision following the investigators' report, had previously been a Supreme Court judge and had already examined and decided on the case as he had been one of the judges on the appeal bench that had dismissed the applicant's appeal against the judgment of the District Court of Limassol. The Attorney General in his concluding decision not to take action against any of the officers had heavily relied on the findings of the domestic courts as to the applicant's credibility. The applicant maintained that the Attorney General's reasoning in his decision had been flawed. In this connection, he noted that the applicant had not been given the opportunity to identify the officers responsible. In any event, the authorities had been responsible for the applicant's ill-treatment regardless of whether the offenders could be identified. Furthermore, on the basis of the case file the applicant had been taken to hospital with injuries that had been caused during his time in custody.

**(b) The Government**

*(i) Substantive aspect of the complaint*

113. The Government argued that it had not been established beyond reasonable doubt that the applicant had been subjected to treatment contrary to Article 3 of the Convention or that the force that had been used against him had been excessive.

114. The various statements and reports in the investigation file regarding the applicant's condition upon arrival at the police station had been inconclusive. It was not clear whether the injuries had been the result of ill-treatment by the police or whether they could have been caused upon arrest and/or during his detention. None of the medical reports, including that of the private practitioner, had concluded that the applicant's injuries had been caused by ill-treatment or that they could have been inflicted in the manner alleged by the applicant. This left open the possibility that the applicant's injuries had been caused during arrest or even when the applicant had fallen to the ground and in circumstances in which the force used had been reasonable. This had indeed been the conclusion drawn by the president of the IAIACAP in his report of 16 November 2011. It would therefore be presumptive to conclude that the injuries had been the result of ill-treatment or the use of disproportionate force (referring to *Dzeladinov and Others v. the former Yugoslav Republic of Macedonia*, no. 13252/02, §§ 67-68, 10 April 2008). Moreover, apart from the applicant's statement and the medical report recording that the applicant had a broken tooth, none of the witnesses had been able to state whether the applicant's tooth had already been broken on arrival at the police station. In this regard, the Government observed that Special Constable G.S. had stated that the applicant had fallen and hit his face on the ground in his attempt to flee

arrest; therefore the possibility that the applicant's tooth had broken when he had fallen could not be excluded.

115. The Government observed that on the basis of the medical evidence available it could not be said that the applicant's treatment had attained the level of severity required for a breach of Article 3 of the Convention. In this connection, they also pointed out that the applicant, after having been examined in the hospital at 5 p.m., had been discharged a few hours later, at 11.20 p.m. Special Constable G.S. had also gone to hospital and had been given sick leave for nine days.

116. The Government stressed that it was vital to also have regard to the applicant's unsubstantiated claims concerning his alleged ill-treatment, *inter alia*, that he had been taken to the station in a brown jeep, he had been beaten with a wooden object, and his referral to certain individuals as "the perpetrators". In addition, the applicant had refused to be interviewed. His allegations were not supported by appropriate evidence and there were no sufficiently strong, clear and concordant inferences or un rebutted presumptions of fact.

*(ii) Procedural aspect of the complaint*

117. The Government submitted that they had conducted an effective, thorough and prompt investigation into the applicants' allegations in compliance with Article 3 of the Convention. Both investigations had been capable of leading to the identification and punishment of those responsible.

118. With reference to the first investigation of the IAIACAP, the Government submitted it had been carried out by an independent officer supervised by that body. It had been thorough; the investigator had taken statements from everyone who had come into contact with the applicant on 27 February 2011. In total statements had been taken from numerous witnesses, including the four officers the investigator had singled out as suspects, the two doctors who had examined the applicant on 27 February 2011 at the hospital, Dr A.K. and Dr C.T., as well as the private practitioner, Dr.S.J., who had examined the applicant on 7 March 2011. The investigation had examined the medical reports, the police diaries, the applicant's prisoner record, and both the files of the administrative investigation and of the criminal investigation concerning the applicant's alleged criminal activities.

119. The investigator had taken all possible steps to ascertain whether the applicant's allegations were true by questioning witnesses and verifying the details provided by the applicant. This had been a difficult task as the applicant had refused to be interviewed and to reply to questions. He had merely endorsed a written statement which he had prepared beforehand describing his alleged ill-treatment. With reference to the specific allegations of the applicant about having been transferred to the station in a brown jeep, that he had been beaten with a wooden stick and the names of

the officers he had given as those who had allegedly ill-treated him or witnessed his ill-treatment, the investigator managed to collect testimony which rebutted the applicant's allegations casting doubt on his credibility.

120. The second IAIACAP investigation had been carried out by two independent criminal investigators, who had taken all reasonable steps to secure evidence concerning the incident, including eyewitness statements, CCTV footage and medical reports. They had taken statements from all witnesses in the case in order to determine exactly what had happened and they also had had regard to the case file before the domestic courts. Furthermore, they had sought the opinion of forensic experts concerning the applicant's injuries and had prepared a request for legal assistance for the Canadian authorities in order to obtain clarifications concerning certain of the applicant's allegations and inconsistencies therein. The applicant, however, had refused to cooperate. Although the criminal investigators had suggested that there had been enough evidence to prosecute two of the officers on the basis of the presumption under Law no. 235/1990, they had also observed that in deciding whether or not a prosecution should have taken place and whether the applicant should have been called to testify in such proceedings, the fact that the applicant's testimony had been considered as not credible and false by the Limassol District Court had been a serious factor to be taken into account.

121. The Attorney General's decision not to institute criminal proceedings in respect of the applicant's complaints had been based on a number of grounds. First, the Attorney General had disagreed with the investigators' suggestion that the presumption of ill-treatment as expressed in the law had applied in the present case. Second, the Attorney General had considered it almost impossible to support a criminal case before a court of law given that the applicant had already been declared "utterly unreliable" by the Limassol District Court, to which he had already complained of ill-treatment for the same events. Third, the quality of evidence at hand had been insufficient for the purposes of prosecution given that it had been unclear which individuals had been allegedly implicated in the applicant's ill-treatment and whether the injuries had been caused during arrest owing to his resistance. During the second investigation the witnesses had been unable to say whether the applicant had had any injuries upon arrival at the police station, or to describe them. Inspector I.S. had denied making any admission of ill-treatment and the statement of the third person, the investigator A.S., had been vague and had not given any particulars or details as to who had ill-treated the applicant, when and where.

122. The Government stressed that the procedural obligation to investigate under Article 3 was not an obligation of result, but of means: not every investigation should necessarily be successful or come to a conclusion which coincided with the claimant's account of events (relying on *Yerli v. Turkey*, no. 59177/10, § 57, 8 July 2014 and *Stoian v. Romania*,

no. 33038/04, § 75, 8 July 2014). Similarly, not every investigation should necessarily lead to a prosecution irrespective of the evidence which was available (relying on *Gürtekin and Others v. Cyprus*, (dec.) nos. 60441/13 et al., § 29, 11 March 2014 and *Brecknell v. the United Kingdom*, no. 32457/04, § 66, 27 November 2007).

123. Lastly, as to the criminal proceedings against the applicant, the Government emphasised that when examining the applicant's appeal the Supreme Court had not made any findings as to the applicant's credibility. The Attorney General had not been bound by that court's findings. The criminal investigation file in the case had been gathered well before the judgment of the Supreme Court and had not overlapped or constituted part of the evidence before the domestic courts. They had been two completely separate procedures. The fact, however, that the District Court of Limassol had declared the applicant utterly unreliable in respect of the same complaint had become relevant for the purposes of deciding whether to prosecute or not. The Attorney General's decision had been based on an objective assessment of the evidence gathered and on the duty to prosecute the right person for the right offence. It had been taken with the utmost care and there had been nothing to suggest that his decision had been arbitrary, unjustified or partial or that it had been based on hasty or ill-founded conclusions.

## 2. *The Court's assessment*

### (a) **General principles**

124. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Indeed the prohibition of torture and inhuman or degrading treatment or punishment is a value of civilisation closely bound up with respect for human dignity (*Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015, with further references). It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (*ibid.*, § 81).

125. The Court refers to the general principles with respect to the obligation of the High Contracting Parties under Article 3 of the Convention not to submit persons under their jurisdiction to inhuman or degrading treatment or torture in the course of encounters with the police which have been set out in detail in paragraphs 82-90 of its judgment in the case of *Bouyid* (*ibid.*).

126. The Court reiterates, in particular, that 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 un rebutted presumptions of fact (*ibid.*, § 82).

127. On this latter point the Court has explained that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the applicant. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (*ibid.*, § 83).

128. 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 (*ibid.*, § 86).

129. 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 or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (*ibid.*, § 88).

130. Where an individual raises an arguable claim that he or she has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. The minimum standards of effectiveness, as defined in the Court's case-law were recapitulated by the Grand Chamber in, *inter alia*, *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 316-26, ECHR 2014) and *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC], no. 39630/09, §§ 182-85, ECHR 2012, both with further references).

131. 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 a practical independence (see *Mocanu*, cited above, § 320).

132. The investigation must be both prompt and thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions (*ibid.*, §§ 323 and 325, and *El-Masri*, cited above, § 184). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *El-Masri*, cited

above, § 184.). 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 (*ibid.*, § 183).

**(b) Application to the present case**

133. The Court observes that on 27 February 2011 the applicant was arrested and then taken to Limassol police station for questioning. The parties agree that the police used force against the applicant during his arrest. It is also undisputed that the applicant sustained certain injuries which are supported by medical evidence. The applicant was examined by two doctors at Limassol General Hospital, Dr A.K. and Dr C.T., approximately seven hours after his arrest (see paragraphs 23 and 24 above). The medical examination by Dr A.K. detected a cephalohaematoma in the right temporal region; abrasions in the parietal area; abrasions and mild oedema on the nose; bruising of his lower lip; a broken upper incisor; a bruise on the left hemithorax with sensitivity and a few abrasions; oedema and abrasions on both wrists; a few abrasions on the knees and loss of neck curve. The applicant complained of pain during the examination of the movement of his right knee; and sensitivity in the upper thoracic vertebra and the upper lumbar spine (see paragraph 23 above). Dr C.T. ascertained that the applicant had marks from blows mainly on his chest and face (see paragraph 24 above).

134. Neither the Government nor the applicant have contested the findings of those medical examinations. It is also noted that the Government have not questioned the report by the private practitioner, Dr S.J., who had examined the applicant eight days after his arrest (see paragraph 27 above).

135. The Court finds that the applicant's injuries are sufficiently serious to fall within the scope of Article 3 of the Convention.

136. The parties, however, disagree as to the timing of the injuries and the exact circumstances in which the applicant sustained them.

137. According to the Government, on the basis of the evidence in the file, the applicant attacked Special Constable G.S., ran away but fell in the process, hitting his head. A struggle ensued as the applicant resisted arrest. The police used force and the applicant was injured as a result. All the officers denied ill-treatment. There is no evidence that the force used to arrest the applicant was excessive or that the applicant was ill-treated upon arrest or while in custody.

138. According to the applicant, he defended himself at the ATM as he thought he was being attacked. He did not therefore deny that there had been a scuffle with the police. His injuries were sustained owing to beatings and torture by the officers. Although in his application form he complained that this had occurred at the station, in his allegations to the domestic authorities he claimed that he had been subjected to such treatment during his arrest, in the car going to and at the police station.

139. Having regard to the fact that neither the use of force by the police officers nor the applicant's resulting injuries are disputed by the domestic authorities, it is incumbent on the respondent Government to provide a satisfactory and convincing explanation as to how the applicant's injuries could have been caused and whether they were caused by an illegal use of force, in violation of Article 3 of the Convention.

140. The Court observes that the Government's position regarding the disputed issues is based on the findings 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.

141. The Court will thus first examine whether the investigation carried out by the national authorities was effective in the sense that it was capable of showing that the use of force against the applicant had been made strictly necessary by the applicant's conduct and that he had not been subject to ill-treatment afterwards on his way to the police station and at the police station.

142. The authorities carried out three investigations into the applicant's complaint. An administrative investigation by the police itself was launched promptly following the applicant's complaint. Then two investigations were carried out by the IAIACAP.

143. The Court observes that the first two investigations suffered from a number of significant shortcomings. In fact, the authorities themselves were aware of a number of these shortcomings and it appears that, following communication of the application by the Court, a fresh investigation by the IAIACAP was ordered aiming to remedy these shortcomings (see paragraph 71 above).

144. The Court finds that the authorities omitted to take all reasonable measures from the very beginning in order to secure the necessary evidence concerning the applicant's allegation of ill treatment. Most importantly, they did not order a forensic medical examination of the applicant in person to determine the exact nature and causes of his injuries. The Court emphasises in this connection that a forensic medical examination would have given an independent view of the injuries which were still fresh at the time. Although they eventually sought the assessment of the applicant's medical records by forensic medical experts in the context of the second investigation by the IAIACAP, this was a year and nine months after the events (see paragraph 90 above). By then the experts were no longer able to establish the possible causes of the injuries (see paragraph 91 above).

145. In both the first and second investigations, the investigators failed to interview witnesses who could have had relevant information without

giving any reasons for this. These were in particular the Canadian Consul and her assistant, who had visited the applicant in hospital on 1 March 2011.

146. With regard specifically to the administrative investigation, the Court has repeatedly stressed that the procedural obligation under Article 3 requires an investigation to be independent and impartial, both in law and in practice (see paragraph 131 above). The administrative investigation was an internal police investigation ordered by the Limassol divisional police headquarters which appointed a police officer from another police station in Limassol to carry out enquiries into the applicant's complaint (see paragraph 31 above). The officer was therefore part of the same substructure of the police force as the suspects and other police officers implicated in the events. In essence, he was investigating the activities of his colleagues. The final decisions on the case came from the Limassol divisional police headquarters and the Chief of Police (see paragraph 39 above). The investigation therefore lacked the necessary appearance of independence (see, for example, *Mihhailov v. Estonia*, no. 64418/10, § 128, 30 August 2016 with further references). Indeed, the investigators in the second IAIACAP investigation observed in their report that this was problematic and complaints should from the very beginning be transferred to the IAIACAP, which was an independent authority (see paragraph 79 above).

147. Furthermore, although this investigation was meant to look into the applicant's ill-treatment complaint, it was very limited in scope as it was based on statements mainly given for the purposes of the criminal proceedings with no steps being taken to investigate the allegations *per se*. This was also noted by the investigators in the second IAIACAP investigation (see paragraph 79 above). The investigator failed to ask the officers about the applicant's injuries and how they had happened. Thus certain officers made no mention of the state of the applicant or his injuries (see paragraph 36 above). He did not take statements from the interpreter or any of the doctors and did not take into account the relevant medical reports concerning the applicant. In his report, he only mentioned the report of Dr V.D. concerning the injuries suffered by special constable G.S. (see paragraph 37 above).

148. When the first investigation by the IAIACAP was launched, five months had passed since the events (see paragraphs 41-42 above). The Court takes note of the omissions mentioned by the investigators in the second investigation which tainted and undermined that process; these included, *inter alia*, the failure of the investigator A.S. to elucidate significant inconsistencies in the applicant's allegations and statements, to examine the CCTV footage and to conduct an identity parade (see paragraphs 80-82 above). In connection with the latter, even though the applicant in his written statement of June 2011 had claimed that he could

identify the officers who had ill-treated him (see paragraph 45 and 47 above), no identity parade was organised to verify his claim in that regard.

149. The Court further notes that no face-to-face confrontations were held between the police officers in question and the applicant with a view to specifically addressing the applicant's allegations of ill-treatment (see, for example, *Thuo*, cited above, § 131).

150. The second investigation by the IAIACAP was launched following communication of the application by the Court on 9 April 2013 (see paragraph 71 above). However, by that time, more than two years had passed since the events in question. Even though this was a more thorough investigation, the passage of time had undermined its effectiveness and certain essential omissions could no longer be remedied. It was more difficult to gather evidence: many of the witnesses were not able to remember the relevant events and details or had become uncooperative, whereas the applicant had already left the country (see paragraphs 70, 75 and 92 above). The forensic experts were no longer able to establish the possible causes of the injuries (see paragraph 91 above). Nor would an identity parade have served any purpose at this stage as the applicant had already seen many of the officers in the context of the criminal proceedings against him.

151. Although the common finding in all of the investigations was that the force used by Special Constable G.S. had not been excessive (see paragraphs 37, 53, 56, 84, and 93 above), the overall conclusions were tenuous and were based largely on the applicant's lack of credibility. Due to all the shortcomings identified above and the insufficient evidence gathered as result, none of the three investigations managed to shed light on the exact circumstances in which the applicant's injuries were caused.

152. Consequently, the domestic authorities' investigation fell short of the requirements of Article 3 of the Convention.

153. In view of the above the Court does not need to examine the remaining allegations made by the applicant in his observations concerning other deficiencies in the investigation of his complaint.

154. As to the substantive element of Article 3, the Court has taken note of the inconsistencies in his statements highlighted by the domestic authorities in their investigation. Amongst other things, the CCTV footage contradicts his version of events when he was approached at the ATM by Senior Constable G.S., who was in police uniform. Furthermore, the Court is not convinced that the alleged beatings, which according to the applicant were inflicted on him by a number of officers for about four hours, and included hitting him with a metal chair and a wooden bat as well as punching and kicking, would not have left more serious injuries than those described in the medical reports. Nonetheless, the fact remains that the applicant did indeed suffer a number of injuries the existence of which was

not denied by the Government and which were sufficiently serious as to amount to ill-treatment (see paragraphs 133 and 135 above).

155. In view of the deficiencies in the domestic investigation, the Government have not been able to show that the applicant's injuries were actually sustained during his arrest and as a result of his own conduct or the intensity of his resistance. Thus, the Court finds that the Government have failed to discharge their burden of providing a satisfactory and convincing explanation (see paragraphs 139-140 above).

156. In this connection, the Court observes that upon his arrival at the police station the applicant was not taken for a medical examination before being taken into custody. Such an examination would have been appropriate, particularly bearing in mind that there had been a scuffle during the applicant's arrest. This would not only have ensured that he would have been fit for questioning in police custody but would also have enabled the respondent Government to discharge their burden of providing a plausible explanation for those injuries (see, *inter alia*, *Parnov v. Moldova*, no. 35208/06, § 30, 13 July 2010, and *Türkan v. Turkey*, no. 33086/04, § 42, 18 September 2008). In this connection, the Court notes that a medical examination, together with the right of access to a lawyer and the right to inform a third party of the detention, constitute fundamental safeguards against the ill-treatment of detained persons which should apply from the very outset of deprivation of liberty (see the 2nd General Report of the European Committee for Prevention of Torture, CPT/Inf/E (2002) 1 - Rev. 2006, § 36). The Court also points out that the investigators in the second investigation in their report reproached Inspector I.S for not having ordered photographs to be taken of the applicant's injuries upon his arrival at the station (see paragraph 78 above). Indeed, this would have constituted evidence showing whether the injuries had happened before the applicant had been brought to the police station and would have assisted the investigators in examining the veracity of the applicant's allegation that he had also been ill-treated on the way to and at the police station.

157. Accordingly, in view of the foregoing the Court finds that there has been a violation of Article 3 of the Convention both in its procedural and substantive aspects.

## II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

158. The applicant invoked Article 5 of the Convention.

159. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from this complaint.

160. It follows that this complaint must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

161. 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

162. The applicant did not make a claim in respect of pecuniary damage. He claimed EUR 40,000 in respect of non-pecuniary damage for the injuries he had suffered, the circumstances under which these injuries had been caused, the time during which he had remained in detention and had suffered treatment contrary to Article 3 while in the hands of the police and the inadequacy of the investigation that had been conducted into his complaint.

163. The Government contested the applicant’s claim, submitting that it was excessive.

164. Having regard to all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

#### B. Costs and expenses

165. The applicant claimed EUR 17,700 for his lawyer’s fees. The applicant submitted an invoice dated 15 April 2013 according to which the above-mentioned amount was broken down as follows: (a) EUR 15,000 as fees incurred for correspondence with the Attorney General concerning the applicant’s ill-treatment and its investigation as well as those costs in respect of the proceedings before the Court; (b) EUR 2,700 for value-added tax (VAT).

166. The Government submitted that the applicant should not recover this amount as it was excessive and not reasonable as to quantum.

167. 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. Rule 60 of the Rules of Court further requires that an applicant submit itemised particulars of all claims, together with any relevant supporting documents. If the applicant fails to comply with the requirements

set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.

168. In the present case, the Court notes that the invoice submitted by the applicant does not contain an itemised breakdown of his claim. That being said, regard being had to Rule 60, the submissions of the applicant's lawyer and the documents in the case-file, the Court considers it reasonable to award the sum of EUR 3,000 under this head.

### **C. Default interest**

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

## **FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the complaints concerning the substantive and procedural limbs of Article 3 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 in both its substantive and procedural aspects;
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 at the rate applicable at the date of settlement:
    - (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable in respect of non-pecuniary damage;
    - (ii) EUR 3,000 (three thousand 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 5 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

Helena Jäderblom  
President