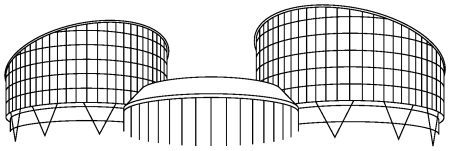

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MAFALANI v. CROATIA

(Application no. 32325/13)

JUDGMENT

STRASBOURG

9 July 2015

FINAL

09/10/2015

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

In the case of Mafalani v. Croatia,

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

Isabelle Berro, *President*,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 16 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 32325/13) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Amir Mafalani ("the applicant"), on 6 May 2013.

2. The applicant was represented by Ms L. Horvat, a lawyer practising in Zagreb. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, ill-treatment during his arrest and police custody, and absence of an effective investigation in that respect.

4. On 8 November 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982 and is currently serving a prison sentence in Lepoglava.

A. Background to the case

6. On 23 October 2008 I.P., a well-known Croatian journalist, and his business associate N.F. were killed by the explosion of an improvised

device placed under I.P.'s car, which was parked in front of his publishing company. The explosion also caused injuries to two employees of the publishing company and considerable material damage on the surrounding buildings and nearby parked cars.

7. On 23 October 2009 the State Attorney's Office for the Suppression of Corruption and Organised Crime (*Ured za suzbijanje korupcije i organiziranog kriminaliteta*; hereinafter: the "State Attorney's Organised Crime Office") indicted several persons in the Zagreb County Court (*Županijski sud u Zagrebu*) on charges of conspiracy to kill I.P. and for putting that into action. The applicant was indicted for having participated in the group by aiding and abetting the direct perpetrators.

8. On 3 November 2010 the Zagreb County Court found the applicant guilty as charged and sentenced him to sixteen years' imprisonment.

9. The applicant's conviction was upheld by the Supreme Court (*Vrhovni sud Republike Hrvatske*) on 8 February 2012.

B. The applicant's alleged ill-treatment by the police

10. Following the attack against I.P. and his publishing company, the intelligence available to the police showed that the applicant and several other persons could be implicated in the events and it was therefore decided to arrest them.

11. The Police Director (*Glavni Ravnatelj Policije*) issued an oral order that the arrests be carried out by an antiterrorist team of the Special Police Forces (*Specijalna policija, Antiteroristička jedinica Lučko*; hereinafter: the "ATJ").

12. On 29 October 2008, at around 6.05 p.m., the ATJ stormed into the applicant's flat, where he was at the moment together with his sister and grandmother.

13. According to the applicant, immediately after breaking into the flat, the AJT officers threw him on the floor and started punching him over the head and body.

14. According to the Government, an ATJ team of six officers broke into the applicant's flat and ordered him to lie down. As he started resisting, the police officers applied the throwing technique of "foot sweep", which made the applicant to lose his balance and while falling on the ground he hit the table with his head. He was immediately offered medical assistance but he refused.

15. A report available to the Court signed by the Commander-in-chief of the Special Police Forces (*Zapovjednik Specijalne Policije*) of 30 October 2008, which is essentially a verbatim of a report of one of the arresting ATJ officers (see paragraph 36 below), in its relevant part concerning the circumstances of the applicant's arrest, reads:

> "... the intervention with a view to arrest [the applicant] started by the ATJ officers forceful breaking the front doors using the [battering ram]. Inside the flat they found the suspect and an older woman to whom they issued several orders: "Police, lie down on the floor". As the suspect resisted, two officers approached him and grabbed him by the arms but he continued to resist. [The officers] then applied the technique of foot sweep and pulled him to the ground. As he was still trying to set himself free he was handcuffed. While he was falling on the ground he hit the table with his face ... Afterwards ... [the officers] offered to the suspect medical assistance but he refused it saying that he felt good."

16. According to the applicant, following his arrest he was blindfolded and taken to a remote place by a river, where he was again beaten up and his head was immersed in the water, forcing him to confess to the murders of I.P. and N.F. and some other crimes. The police officers also continued to beat him up while taking him to the police station.

17. According to the Government, following the applicant's arrest he was taken to the parking area of the police station used by the Organised Crime Unit of the Zagreb Police Department (*Policijska uprava zagrebačka, Sektor kriminalističke policije, Odjel organiziranog kriminaliteta*; hereinafter: the "police") where he was kept in the minivan of the ATJ in the period between 6.45 and 8.30 p.m., awaiting other suspects to be arrested and brought to the police station.

18. The available report of the arresting ATJ officer (see paragraph 36 below) in this respect indicates that the applicant was brought to the parking area of the police station at 7.00 p.m. where he was kept in the minivan of the ATJ until 7.40 p.m. and then surrendered to the police inspectors.

19. Once when he was brought to the police station on 29 October 2008 at around 8.30 p.m. the applicant was placed in a room under the control of two police inspectors M.A. and M.M.

20. According to reports of these two police inspectors dated 18 April and 14 May 2012 respectively, the applicant was for a while guarded by an ATJ officer but then, at unspecified time, they requested that officer to leave the room. The police inspectors also submitted that the applicant had been handcuffed when he was brought to the police station and then, at unspecified time but sometimes soon after his arrival, the handcuffs were taken off. They also acknowledged that they had seen visible injuries on the applicant's head and nose for which he had been allegedly offered medical assistance but he had refused it. The emergency had been called in only after the order of their superiors.

21. The emergency service came to the police station on the same day at 10.55 p.m. The relevant record of the applicant's examination, in so far as legible, reads:

> "Brought to the police station. Visible open injury above the left eye; 1,5 centimetre long. Contusion and haematoma of the nose with the possible fracture. Regular general status. The patient refuses to go to the hospital and further treatment."

22. The applicant stayed in the police station until 30 October 2008 at 8.30 p.m. During that period he was taken to searches of his house and car and he was questioned by the police inspectors M.A. and M.M. in the presence of a lawyer and a Deputy at the State Attorney's Organised Crime Office.

23. According to the applicant, throughout his stay in the police station he was tightly constrained, beaten and threatened that he should make no problems concerning his injuries.

24. According to the Government, during his stay in the police station the applicant was kept in one of the offices ordinarily used by the police officers. Apart from several minutes upon his arrival to the police station, the applicant was not handcuffed. He also had access to the toilet and drinking water. He was obliged to sit on a chair as there were no beds but it was impossible to take him to the detention unit as the investigative actions were still ongoing. In any case, he had an opportunity to ask for a rest and food but he did not make any such request.

25. On 30 October 2008, at around 8.30 p.m., the applicant was taken to the Police Detention and Escort Unit (*Jedinica za zadržavanje i prepratu*; hereinafter: "JZP") for a rest. A report accompanying his transfer, signed by the Chief of the police and dated 30 October 2008 indicated, *inter alia*, that he had no visible injuries.

26. A report signed by the on-duty officer at JZP, dated 30 October 2008, indicated that the applicant was admitted to the detention unit with visible injuries of his face.

27. According to the applicant, during his stay in JZP he was offered a sandwich but he could not eat due to a strong jaw pain.

28. According to the Government, during his stay in JZP the applicant was placed in a room which was equipped with beds and sanitary facility. The room was appropriately heated and ventilated and had access to natural and artificial light. The hygiene and sanitary conditions were good and the applicant was provided with food and water.

29. On 31 October 2008 at 9.15 a.m. the police took the applicant from JZP to participate in a further search of his premises.

30. On the same day, at around 6.45 p.m., the applicant was brought for questioning before an investigating judge of the Zagreb County Court. He decided to remain silent concerning the charges held against him, but with regard to his injuries the applicant stressed:

> "The only thing I would point out is that before I was taken in [to the police station] I fell in my flat and according to the findings of the doctors who were called in to the police station, I sustained a nose fracture, most probably with dislocation. I refused the medical assistance in order to get out from the police station as soon as possible."

31. The investigating judge put no additional questions concerning this matter nor did he take any further actions in that respect.

32. Following the applicant's questioning, an investigation into the explosion was opened in respect of him and several other persons. At the same time, an investigating judge of the Zagreb County Court ordered his pre-trial detention.

33. On 3 November 2008 the applicant was examined in Zagreb Prison Hospital (*Zatvorska bolnica u Zagrebu*) and several medical records were drafted.

34. One medical record available to the Court indicates that the applicant sustained his injuries after a fall on 30 October 2008, whereas two other medical reports refer to several blows on the applicant's head and nose.

35. Based on his medical examination in Zagreb Prison Hospital, the applicant was diagnosed with contusions of head, nose and shoulder and a nose fracture without dislocation, as well as a distortion of a metal implant in his hand related to an old injury. His general medical condition at the time was regular and he had a smaller hematoma on the left side of his head and nose and smaller hematomas below both eyes. He also had a smaller hematoma on the left shoulder and a visible dislocation of the metal implant in his hand but without a fresh fracture. In July 2009 the applicant again saw a doctor who indicated testicular problems.

C. Investigation into the applicant's alleged ill-treatment

36. On 29 October 2008 one of the arresting ATJ officers reported on the applicant's arrest to the Commander of the ATJ. In his report, he indicated that the ATJ had been requested to arrest the applicant in connection with a suspicion of double murder. The report also provides the details of the arrest already observed above (see paragraphs 15 and 18 above).

37. On 30 October 2008 the Commander of the ATJ requested the Commander-in-chief of the Special Police Forces to assess the lawfulness of the ATJ's actions; and the latter forwarded that request to the Police Director.

38. On the same day the Police Director assessed the reports concerning the ATJ actions by indicating the following:

> "This is to inform you that I find the use of force, namely the physical force and the measures of restraint, used by the ATJ team on 29 October 2008 during the arrest of Amir Mafalani ... lawful within the meaning of sections 54, 55 and 57 of the Police Act and sections 30, 31, 32 and 35 of the By-law on the police conduct."

39. In October 2011 the applicant, through lawyers, requested Zagreb Prison Hospital and the emergency services to provide him the relevant medical records concerning the injuries he had sustained during his arrest on 29 October 2008. He also requested the police to provide him the relevant documents related to his arrest.

40. On 2 November 2011 the police replied that all relevant reports were confidential and could not be disclosed. This reply was forwarded for information to the State Attorney's Organised Crime Office.

41. On 11 November 2011, after receiving the reply, the applicant complained to the State Attorney's Organised Crime Office asking why an effective investigation, within the meaning of Article 3 of the Convention, had not been conducted.

42. The State Attorney's Organised Crime Office replied on 16 November 2011, indicating that the applicant should consult the relevant domestic law on the use of police force and that, in case of any complaint to that effect, he could always lodge a criminal complaint with the competent State Attorney's Office.

43. In the meantime, the applicant obtained the requested medical records.

44. On 15 February 2012 the applicant lodged a criminal complaint with the Zagreb Municipal State Attorney's Office (*Općinsko državno odvjetništvo u Zagrebu*) against unidentified perpetrators alleging ill-treatment during his arrest and stay in the police station.

45. On 20 February 2012 the Zagreb Municipal State Attorney's Office informed the applicant that his criminal complaint had been forwarded to the Zagreb County State Attorney's Office (*Županijsko državno odvjetništvo u Zagrebu*) for further examination.

46. On 3 March 2014 the Zagreb County State Attorney's Office rejected the applicant's criminal complaint on the grounds that there was no reasonable suspicion that a criminal offence had been committed. It relied on a written report of the Police Director and written reports of the police inspectors M.A. and M.M. It also observed the applicant's medical documentation and search and seizure records as well as the interrogation records in the criminal proceedings against him.

D. The applicant's civil proceedings against the State

47. On 31 January 2012 the applicant instituted civil proceedings in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*) against the State claiming damages in connection with his alleged ill-treatment by the police during his arrest and stay in the police station.

48. The Zagreb Municipal State Attorney's Office, representing the State, challenged the applicant's civil action on the grounds that the police had acted in accordance with the law and that their use of force had been caused by the applicant's conduct.

49. During the proceedings, the Zagreb Municipal Civil Court heard the applicant and several witnesses, including the applicant's sister and grandmother, one of the applicant's co-suspects and the police inspectors M.A. and M.M. , as well as the Police Director.

50. The applicant's grandmother testified that she had seen the police officers immediately attacking and hitting the applicant as they had entered the flat, and his sister confirmed that she had heard him screaming and had also seen him being dragged around by the police.

51. The applicant's co-suspect in his testimony submitted that he had seen the applicant seriously injured in the police station, while the police inspectors M.A. and M.M. denied any ill-treatment, as did the Police Director who also stated that the police had monopoly of the use of force.

52. In his statement of 14 January 2015 the applicant contended that during his arrest he had been severely beaten by the ATJ officers all over his head and body. Afterwards he had been taken near a river and again beaten, subjected to mock execution and immersed in the water. When he was finally brought to the police station, the uniformed police officers continued to beat him with the acquiescence of the police inspectors M.A. and M.M. He was also tightly constrained to a chair and at one point, while he was dragged from one office to another, he felt strong pain in his shoulder. Later on, during his transfer to the investigating judge, two uniformed police officers who escorted him said that he should say nothing about the ill-treatment and that he would soon go home. In the ensuing period, he started feeling various health problems related to the ill-treatment and has been seeing doctors regularly.

53. The civil proceedings are still pending.

II. RELEVANT DOMESTIC LAW

A. Constitution

54. The relevant provisions of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010 and 85/2010) read as follows:

Article 23

"No one shall be subjected to any form of ill-treatment ..."

Article 25

"All detainees and convicted persons shall be treated in a humane manner and with respect for their dignity."

B. Criminal Code

55. The relevant provisions of the Criminal Code (*Kazneni zakon*, Official Gazette nos. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001, 111/2003, 190/2003, 105/2004, 84/2005, 71/2006 and 110/2007) provide:

Article 8

"(1) Criminal proceedings in respect of criminal offences shall be instituted by the State Attorney's Office in the interest of the Republic of Croatia and its citizens."

Ill-treatment in the performance of official authority
Article 127

"(1) Official, who in the performance of his or her official or public authority, ill-treats or offends another person or otherwise diminishes his or her dignity, shall be punished by imprisonment between three months and three years."

Torture and other forms of cruel, inhuman or degrading treatment
Article 176

"Official or other person, acting under the incitement or tacit or explicit acquiescence of the official, who inflicts physical or mental pain to another, or causes him or her severe physical or mental suffering in order to illicit from that person or another information or confession, or in order to punish him or her for an offence which he or she or any other person committed or for which he or she is suspected of, or to intimidate him or her or put other form of pressure, or for any other reason related to any form of discrimination, shall be punished by imprisonment between one and eight years."

C. Code of Criminal Procedure

56. The relevant provisions of the Code of Criminal Procedure (*Zakon o kaznenom postupku*, Official Gazette nos. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002 and 62/2003) at the material time provided:

Article 2

"(1) Criminal proceedings shall only be instituted and conducted upon the order of a qualified prosecutor. ...

(2) In respect of criminal offences subject to public prosecution the qualified prosecutor shall be the State Attorney and in respect of criminal offences that may be prosecuted privately the qualified prosecutor shall be a private prosecutor.

(3) Unless otherwise provided by law, the State Attorney shall undertake a criminal prosecution where there is a reasonable suspicion that an identified person has committed a criminal offence subject to public prosecution and where there are no legal impediments to the prosecution of that person.

..."

Article 171

"(1) All state bodies and legal entities shall report any criminal offence that is subject to official prosecution about which they have been informed or about which they have otherwise learnt.

..."

Article 173

"(1) Criminal complaints shall be submitted to the competent State Attorney in writing or orally.

...

(3) If a criminal complaint has been submitted before a court, the police or a State Attorney who is not competent to deal with the matter, they shall forward the criminal complaint to the competent State Attorney."

57. On 18 December 2008 a new Code of Criminal Procedure was enacted (Official Gazette, nos. 152/2008, 76/2009, 80/2011, 121/2011, 91/2012, 143/2012, 56/2013, 145/2013 and 152/2014). It fully came into force on 1 September 2011 but provided no substantial amendments with regard to the provisions relevant for the case at issue.

D. Police Act

58. The relevant provisions of the Police Act (*Zakon o policiji*, Official Gazette, nos. 129/2000 and 41/2008) read:

Use of force
Section 54

"The use of force within the meaning of this Act shall be the use of: physical force, ... measures of restraint ...

The force may be used to protect human lives, surmounting resistance, to prevent escape or resist an attack, when warnings and orders are insufficient.

A police officer shall use the minimum force necessary to achieve the desired result.

An individual, in respect of whom force may be used, shall not be warned if the warning could jeopardise the performance of the official action."

Use of physical force
Section 55

"Physical force within the meaning of this Act shall be the use of martial arts techniques or similar actions on the body of a person, which are taken for the purpose of resisting an attack or surmounting the resistance by causing minimum harm."

Measures of restraint
Section 57

"Measures of restraint may be used:

1. to surmount the resistance or to resist the attack against a police officer,

2. to prevent the escape of a person,

3. to prevent self-injury or injury to another person."

E. By-law on the police conduct

59. The relevant provisions of the By-law on the police conduct (*Pravilnik o načinu policijskog postupanja*, Official Gazette no. 81/2003) provide:

Use of force
General provisions
Section 30

"Police officer may use force for one of the reasons provided for in the Police Act if warning and orders are insufficient to achieve the desired result.

The police officer, in cases referred to in paragraph 1 of this section, shall use the measure of force which, by causing minimum consequences to the person in respect of whom the measure is taken, guarantees success of the police action."

Section 31

"Police officer shall without any delay provide and secure medical assistance to a person with visible injuries in respect of whom force has been used."

Use of physical force
Section 32

"Police officer has the right to use physical force in order to surmount resistance of a person breaching the public peace and order, or in respect of a person who should be brought in [before the competent authority], confined or arrested, or in order to resist attack against [the police officer] or another person or object or premises under his control.

The use of physical force shall mean the use of ... other techniques of defence or attack capable to secure obedience of the person who, with his or her conduct, obstructs the enforcement of a police action or carries out an attack ...

The police officer shall terminate the use of physical force once when the attack or resistance has ceased."

Measures of restraint
Section 35

"The use of measures of restraint is restriction of the freedom of movement ...

The measure under paragraph 1 of this section shall be used in a manner securing that it does not cause unnecessary physical injuries to the person restrained. "

F. Decree on the internal organisation of the Ministry of the Interior

60. The provisions of the relevant Decree on the internal organisation of the Ministry of the Interior (*Uredba o unutarnjem ustrojstvu Ministarstva unutarnjih poslova*; of 14 December 2000 with further amendments published in the Official Gazette no. 17/2011) read:

Section 9

"...

(2) The Police Directorate shall consist of the following units:

...

6. Command Centre of the Special Police Forces,

...

(3) The Police Directorate shall be managed by the Police Director ...

Section 59

"The Command Centre of the Special Police Forces commands and manages ... the ATJ ...

...

The Command Centre of the Special Police Forces shall be commanded by the Commander-in-chief who is responsible to the Police Director."

G. Civil Obligations Act

61. The relevant part of the Civil Obligations Act (*Zakon o obveznim odnosima*, Official Gazette nos. 35/2005 and 41/2008), reads as follows:

Section 1046

"Damage is ... infringement of the right to respect for one's personal dignity (non-pecuniary damage)."

H. State Administration System Act

62. The relevant provision of the State Administration System Act (*Zakon o sustavu državne uprave*, Official Gazette no. 150/2011), reads as follows:

Section 14

"Damage caused to a citizen, legal entity or any other party by an illegal or improper act on the part of a State administration body, local administration body or any legal entity with public powers in the exercise of its authority shall be redressed by the Republic of Croatia."

III. RELEVANT INTERNATIONAL MATERIAL

A. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visit to Croatia in 2007

63. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") visited Croatia from 4 to 14 May 2007. The relevant part of its report CPT/Inf (2008) 29 of 9 October 2008 reads:

"**2. Ill-treatment**

13. At the outset of the 2007 visit, the CPT's delegation was informed of various measures taken by the Ministry of the Interior with a view to putting an end to ill-treatment by the police. In particular, instructions had been adopted aimed at ensuring that police staff strictly observe the relevant legislation and regulations when dealing with persons in custody. Efforts had also been made to step up professional training in order to improve the attitude of police officers towards detained persons. Nevertheless, the information gathered during the visit suggests that continued determined action is needed to combat ill-treatment by the police. **The CPT recommends that a clear message of "zero tolerance" of ill-treatment (whether of a physical or verbal nature) be delivered, from the highest level and through ongoing training activities, to all police officers. Police staff should also be reminded that no more force than is strictly necessary should be used when bringing persons presenting violent and/or agitated behaviour under control, be it at the time of apprehension or in a detention facility; once such persons have been brought under control, there can never be any justification for their being struck.**

14. It is equally important to promote a culture respectful of the law, where it is regarded as unprofessional – and unsafe from a career path standpoint – to work and associate with colleagues who have resort to ill-treatment. This implies the existence of a clear reporting line, including the adoption of effective safeguards for protecting whistle-blowers. Police officers interviewed on this matter during the 2007 visit generally indicated that if they had reason to believe that colleagues had ill-treated a detained person, they would inform the head of the police station where the possible ill-treatment had occurred, despite the existence of special investigation teams whose task was to inquire into such cases. **The CPT recommends that the Croatian authorities establish, within the police, a clear reporting line for information indicative of ill-treatment (which implies the obligation for staff to immediately forward such information to the competent authorities and services).**

15. The CPT must also stress that, if the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can perpetrate such acts with impunity.

From the information collected during the 2007 visit, it would appear that judges and prosecutors do not always pay sufficient attention to allegations of ill-treatment and frequently fail to take action. At best, the head of the police station where the person making the allegation had been detained would be asked to provide information concerning the alleged ill-treatment. **The CPT recommends that**

whenever a detained person brought before a judge alleges ill-treatment by police officers, these allegations be recorded in writing, a forensic medical examination be immediately ordered, and the necessary steps be taken to ensure that the allegations are properly investigated. Such a procedure should be followed whether or not the person concerned bears visible external injuries. Moreover, even in the absence of an express allegation of ill-treatment, judges and prosecutors should adopt a proactive attitude; for instance, whenever there are other grounds to believe that a person could have been the victim of ill-treatment, a forensic medical examination should be requested. If necessary, the law should be amended to reflect these principles."

B. The CPT visit to Croatia in 2012

64. The CPT visited Croatia from 19 to 27 September 2012. The relevant part of the report CPT/Inf (2014) 9 of 18 March 2014 provides:

"**2. Ill-treatment**

The Committee recommends that the Croatian authorities reiterate the message that all forms of ill-treatment (be they at the time of apprehension or transportation or during subsequent questioning) are absolutely prohibited, and that the perpetrators of ill-treatment and those encouraging or condoning such acts will be punished accordingly.

4. Conditions of detention

23. With the entry into force of the CCP in 2009, the Detention and Escort Units are now the primary facilities for holding criminal suspects overnight and for stays of more than 24 hours. The detention and escort unit of Oranice served as the main law enforcement holding facility for the County of Zagreb and offered accommodation of a good standard. Each of the ten cells measured around 30 m2 and was designed to accommodate up to six persons. For this purpose, they were equipped with two long plinths and mattresses/blankets. The cells had access to natural light, sufficient artificial lighting and ventilation and possessed a functioning call-bell. All cells were under CCTV supervision. Detained persons were provided with basic hygiene items and could access a shower room and toilets upon demand. However, there was no outdoor exercise facility, although it would be feasible to create one given that the detention unit is located within a large, secure police compound. **The CPT recommends that the Croatian authorities take the necessary steps to offer outdoor exercise to all persons held in police custody for longer than 24 hours.**

24. As already indicated above, persons deprived of their liberty by law enforcement officials are usually detained in police stations in temporary detention cells (smještaj za zadržavanje) before being transferred to the competent detention and escort unit or administrative detention centre. The temporary detention cells visited by the delegation displayed a number of shortcomings such as limited access to natural light and poor artificial lighting (at Zagreb VIII and Petrinja Police Stations respectively) and inadequate ventilation (at Zagreb VIII, VII, IV and Petrinja Police Stations). **Steps should be taken to remedy these deficiencies.**

Each of the cells was equipped with a small wooden bench and a plastic chair and could be considered as acceptable for stays of a few hours. However, some of the temporary detention cells were inadequate for use as overnight accommodation due to their limited size (e.g. a mere 4m2 at Zagreb VIII and Petrinja Police Stations).

Despite this, it was clear from custody registers that persons were on occasion held overnight in such cells.

The CPT recommends that the Croatian authorities take the necessary steps to ensure that temporary detention cells of less than 5m² are never used for overnight accommodation and that persons held overnight in larger temporary detention cells are provided with a mattress and blankets.

25. A number of persons met by the delegation who had recently been held in different police stations complained that they had received no food despite being held in these places for several hours. The CPT notes that in accordance with the relevant Rulebook, detained persons are offered three meals a day once they have been transferred to a detention and escort unit. Nevertheless, persons may be kept in police stations for up to 24 hours (or 48 hours in the case of foreign nationals staying irregularly), during which time they should be offered something to eat and drink at regular intervals. **The CPT recommends that the Croatian authorities take the necessary steps to ensure that persons detained in police stations for more than a few hours are provided with food.**"

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

65. The applicant complained of ill-treatment during his arrest and police custody, and of the absence of an effective investigation in that respect. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Applicability of Article 3 of the Convention

(a) The parties' arguments

66. The Government submitted that the injuries which the applicant had sustained during his arrest on 29 October 2008 did not reach the minimum level of severity to fall within the scope of Article 3 of the Convention. In particular, the Government stressed that the applicant was a young and strong man and he had already been injured several times in his life, which should have certainly made him more tolerant to pain. Accordingly, the injuries which he had sustained during the arrest, for which he had received prompt medical assistance, could not have caused him suffering reaching the minimum level of severity to fall under Article 3 of the Convention.

67. The applicant contended that he had been seriously ill-treated by the police and that he had sustained numerous injuries on his head and body. He

therefore considered that the Government's arguments were fully inappropriate and misplaced.

(b) The Court's assessment

68. The Court reiterates that 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 is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

69. Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance driving them to act against their will or conscience (see, for example, *Stanev v. Bulgaria* [GC], no. 36760/06, § 203, ECHR 2012).

70. Where a person is injured while in detention or otherwise under the control of the police, any such injury will lead to a strong presumption that the person was subjected to ill-treatment, which gives rise to an issue under Article 3 of the Convention (see, *inter alia*, *Butolen v. Slovenia*, no. 41356/08, § 84, 26 April 2012).

71. The Court notes that it is undisputed that the applicant actually sustained injuries during his encounter with the police in the context of his arrest. These injuries, supported by available medical evidence, in particular include contusions of head, nose and shoulder and a nose fracture (see paragraphs 21 and 34 above). The Court finds them sufficiently serious to fall within the scope of Article 3 of the Convention (compare, for example, *Assenov and Others v. Bulgaria*, 28 October 1998, § 95, *Reports of Judgments and Decisions* 1998-VIII; and *Nikiforov v. Russia*, no. 42837/04, § 46, 1 July 2010).

72. Accordingly, the Court rejects the Government's objection.

2. Compliance with the six-month time-limit

(a) The parties' arguments

73. The Government pointed out that the applicant had for the first time complained before the domestic authorities in January 2012 concerning his alleged ill-treatment by the police in the period between 29 and 31 October 2008. Moreover, in the course of the subsequent investigation into his

complaints he had never inquired about the status of the case and had lodged his application with the Court one and a half year later following the opening of the investigation into his complaints.

74. The applicant argued that it was incumbent on the domestic authorities to institute an official investigation into the circumstances surrounding his case irrespective of any official complaint on his part. He also stressed that throughout the period following his arrest and the alleged ill-treatment he had been under the control of the domestic authorities. In these circumstances he had nevertheless lodged an official criminal complaint within the time-limits provided under the relevant domestic law. In the applicant's view, no issue could arise with regard to the six-month time-limit given that the investigation at the domestic level had finally ended by the rejection of his criminal complaint on 3 March 2014.

(b) The Court's assessment

75. The Court reiterates that the six-month time-limit provided for by Article 35 § 1 of the Convention has a number of aims. Its primary purpose is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 39, 29 June 2012; and *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, § 135, ECHR 2012).

76. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date on which the applicant first became or ought to have become aware of those circumstances (see *Keenan v. the United Kingdom* (dec.), no. 27229/95, 22 May 1998, and *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001; and *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 259-260, ECHR 2014 (extracts)).

77. The Court has already held that, in cases concerning an investigation into ill-treatment, the obligation of diligence incumbent on applicants contains two distinct but closely linked aspects: on the one hand, the applicants must contact the domestic authorities promptly concerning progress in the investigation – which implies the need to apply to them with

diligence, since any delay risks compromising the effectiveness of the investigation – and, on the other, they must lodge their application promptly with the Court as soon as they become aware or should have become aware that the investigation is not effective (see *Mocanu and Others*, cited above, § 264).

78. The first aspect of the duty of diligence – that is, the obligation to apply promptly to the domestic authorities – must be assessed in the light of the circumstances of the case. In this regard, the Court has held that applicants' delay in lodging a complaint is not decisive where the authorities ought to have been aware that an individual could have been subjected to ill-treatment – particularly in the case of assault which occurs in the presence of police officers – as the authorities' duty to investigate arises even in the absence of an express complaint (see *Velev v. Bulgaria*, no. 43531/08, §§ 59-60, 16 April 2013). Nor does such a delay affect the admissibility of the application where the applicant was in a particularly vulnerable situation, having regard to the complexity of the case and the nature of the alleged human rights violations at stake, and where it was reasonable for the applicant to wait for developments that could have resolved crucial factual or legal issues (see *El Masri*, cited above, § 142).

79. With regard to the second aspect of this duty of diligence – that is, the duty on the applicant to lodge an application with the Court as soon as he realises, or ought to have realised, that the investigation is not effective – the Court has stated that the issue of identifying the exact point in time that this stage occurs necessarily depends on the circumstances of the case and that it is difficult to determine it with precision (see *Nasirkhayeva v. Russia* (dec.), no. 1721/07, 31 May 2011). In particular, the Court has considered it indispensable that persons who wish to bring a complaint about the ineffectiveness or lack of an investigation before the Court do not delay unduly in lodging their application. However, so long as there is some meaningful contact with the authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures, considerations of undue delay by the applicants will not generally arise (see *Mocanu and Others*, cited above, § 269).

80. The Court notes in the case at issue that following the applicant's arrest there were clear indications of the possibility that violence had been used against him. In particular, the authorities must have been alerted of such a possibility on the basis of the applicant's medical examination in the police station on 29 October 2008 (see paragraph 21 above) as well as the applicant's statement to the investigating judge on 30 October 2008 where he complained that he was injured and stated that he had refused medical assistance in order to get out from the police station as soon as possible (see paragraph 30 above). Similarly, the findings of the applicant's medical examination in Zagreb Prison Hospital on 3 November 2008 should have

alerted the authorities of the possibility of use of violence against the applicant (see paragraphs 33-34 above).

81. In these circumstances, even without an express complaint from the applicant, a duty to investigate had already arisen at that early stage. This is so because Article 3 of the Convention requires an official investigation in cases where there are sufficiently clear indications that ill-treatment might have occurred (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007; and *Hassan v. the United Kingdom* [GC], no. 29750/09, § 62, ECHR 2014). See further, *J.L. v. Latvia* (no. 23893/06, §§ 11-13 and 73-75, 17 April 2012) where the obligation to investigate arose, *inter alia*, on the basis of facts implied in the applicant's complaints made during the criminal proceedings against him; and *Pădureţ v. Moldova* (no. 33134/03, §§ 63-64, 5 January 2010) where a duty of a prompt investigation arose on the basis of the applicant's medical examination revealing the possibility of ill-treatment.

82. Accordingly, although it is true that the applicant started inquiring about the measures taken with regard to his alleged ill-treatment by the police in October 2011 and then lodged an official criminal complaint in February 2012, the Court does not find this delay decisive given that the domestic authorities were sufficiently aware of the possibility that he could have been subjected to ill-treatment and were under a duty to investigate his possible ill-treatment (see *Velev*, cited above, § 59; and *Mocanu and Others*, cited above, § 265). In this connection the Court has already acknowledged that the psychological effects of ill-treatment inflicted by State agents may also undermine victims' capacity to complain about treatment inflicted on them, and may thus constitute a significant impediment to the right to redress of victims of torture and other ill-treatment. Such factors may have the effect of rendering the victim incapable of taking the necessary steps to bring proceedings against the perpetrator without delay (see *Mocanu and Others*, cited above, § 274).

83. The Court further notes that in February 2012, soon after he learnt that the authorities had failed to institute an investigation into his alleged ill-treatment, the applicant lodged an official criminal complaint (see paragraph 44 above). These plausible allegations of ill-treatment triggering the authorities' further investigation into the applicant's case and thus reviving their procedural obligation under Article 3 of the Convention (see *Brecknell v. the United Kingdom*, no. 32457/04, §§ 70-71, 27 November 2007; and, by contrast, *Finozhenok v. Russia* (dec.), no. 3025/06, 31 May 2011). At that point there were sufficiently tangible indications that the investigation was progressing given that the applicant was on 20 February 2012 informed of the ongoing investigation during which several investigative measures were being taken (see paragraphs 45 and 46 above). Indeed, the final decision concerning the applicant's official complaint was

adopted on 3 March 2014 (see paragraph 46 above), while he had already on 6 May 2013 lodged an application with the Court.

84. In these circumstances, the Court considers that the application has not been lodged out of time. The Government's objection must therefore be dismissed.

3. Exhaustion of domestic remedies

(a) The parties' arguments

85. The Government submitted that the application was premature given that the applicant's civil proceedings for damages against the State, in relation to his alleged ill-treatment by the police, were still pending.

86. The applicant argued, pointing out that the domestic authorities had been under a duty to conduct an official effective investigation into his allegations of ill-treatment, that the pending civil proceedings had no bearing on the admissibility of his application.

(b) The Court's assessment

87. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. However, in cases of wilful ill-treatment by State agents in breach of Article 3, the Court has found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010; and *Razzakov v. Russia*, no. 57519/09, § 50, 5 February 2015).

88. In cases of wilful ill-treatment by State agents, a breach of Article 3 cannot be remedied only by an award of compensation to the victim because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see *Gäfgen*, cited above, § 119; *Vladimir Romanov v. Russia*, no. 41461/02, § 78, 24 July 2008; and *Razzakov*, cited above, § 50).

89. In these circumstances, the Court considers that the applicant's civil proceedings do not have a decisive effect on the admissibility of his application to the Court.

90. The Court thus rejects the Government's objection.

4. Conclusion

91. The Court notes that the applicant's 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. Procedural aspect of Article 3 of the Convention

(a) The parties' arguments

(i) The applicant

92. The applicant contended that there had been no effective investigation into his alleged ill-treatment by the police on 29 and 30 October 2008. In particular, he had been totally excluded from the investigative process and in fact there was no evidence that any effective measures had been taken to investigate his complaints. In the applicant's view this was obvious from the fact that the Zagreb County State Attorney's Office had rejected his criminal complaint solely on the basis of written material, which had been obtained without his knowledge and involvement. At the same time, no witnesses were questioned and no further investigative actions were taken. Similarly, in view of the very nature of the internal police assessment of lawfulness of the use of force it could not be said that such procedure aimed at the identification and punishment of those responsible, as required under the procedural aspect of Article 3 of the Convention.

(ii) The Government

93. The Government submitted that the use of force against the applicant during his arrest had been promptly, effectively and independently assessed by the competent authorities; namely the Commander-in-chief of the Special Police Forces and the Police Director. Moreover, the Zagreb County State Attorney's Office also conducted an effective investigation into his allegations of ill-treatment and found that no criminal offence had been committed against him.

(b) The Court's assessment

(i) General principles

94. When there is an arguable claim or credible assertion that an individual has been seriously ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction

the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, amongst many others, *Gäfgen*, cited above, § 117; and *El-Masri*, cited above, § 182; and *Mocanu and Others*, cited above, § 317).

95. An obligation to investigate is not an obligation of result, but of means (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II). However, for an investigation to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004; and *Gharibashvili v. Georgia*, no. 11830/03, § 61, 29 July 2008). This means not only a lack of hierarchical or institutional connection but also practical independence (see *Mocanu and Others*, cited above, § 320; and, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 177, 14 April 2015).

96. The investigation must also be 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 otherwise base their decisions (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006; and *Đurđević v. Croatia*, no. 52442/09, § 84, ECHR 2011). The investigation must be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *El-Masri*, cited above, § 183; *Mocanu and Others*, cited above, § 322; and, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç*, cited above, §§ 172-174).

(ii) Application of these principles to the present case

97. The Court has already found that the circumstances of the applicant's case gave rise to an obligation to investigate his alleged ill-treatment by the police (see paragraphs 71, 80-81 above).

98. The Court notes that initially the only investigation into the use of force by the ATJ team during the applicant's arrest was conducted within the Special Police Forces chain of command. In particular, one of the

arresting ATJ officers reported on the matter to his superior, the Commander of the ATJ (see paragraph 36 above); and the latter reported further on the matter to his superior, the Commander-in-chief of the Special Police Forces (see paragraph 37 above). Final assessment of the lawfulness of use of force was made by the Police Director on the basis of these reports (see paragraph 38 above). However, the Police Director was the highest supervising police officer in the internal police hierarchy of the Special Police Forces (see paragraph 60 above) and, acting in that capacity, he gave the order for deployment of the ATJ team for the applicant's arrest (see paragraph 11 above).

99. It thus follows that the initial investigative measures were conducted solely within the chain of command of the same police unit which had been implicated in the incident, without securing an external impartial assessment (compare, for example, *Rehbock v. Slovenia*, no. 29462/95, § 74, ECHR 2000-XII; and *Eremiášová and Pechová v. the Czech Republic*, no. 23944/04, § 155, 16 February 2012). Such investigation thus failed to meet the requirements of hierarchical, institutional and practical independence of those carrying out the investigation from those implicated in the events (see paragraph 95 above; compare *Scavuzzo-Hager and Others v. Switzerland*, no. 41773/98, §§ 81-82, 7 February 2006).

100. The Court further observes that under the relevant domestic law it was ultimately the responsibility of the competent State Attorney's Office to conduct an official effective investigation into the circumstances of the applicant's alleged ill-treatment (see paragraphs 55 and 56 above). It was thus incumbent on the Zagreb County State Attorney's Office, as the competent authority in the case, to ensure that an effective investigation was carried out and that the necessary evidence, such as identification of the alleged perpetrators, was obtained.

101. However, the Court finds in the instant case that the Zagreb County State Attorney's Office also lacked the necessary transparency and appearance of independence (see, for example, *Matko v. Slovenia*, no. 43393/98, § 90, 2 November 2006). In this respect, the Court notes that the central platform for its decision to reject the applicant's criminal complaint were the reports submitted by the Police Director and written reports submitted by the police inspectors M.A. and M.M., who were also implicated in the applicant's alleged ill-treatment during his stay in the police station (see paragraph 46 above; and compare *Eremiášová and Pechová*, cited above, § 159).

102. At the same time, the Zagreb County State Attorney's Office did not undertake any independent steps; such as, for example, attempting to identify the ATJ officers involved in the arrest, and interviewing the applicant and the police officers involved. Nor did it consider interviewing the doctors who had examined the applicant at the material time and ordering an independent and thorough medical examination of the

applicant's injuries. Instead, it limited its enquiry to reading the applicant's medical documentation and the documents from the criminal proceedings against him, which was evidently insufficient to elucidate all the relevant circumstances of the applicant's ill-treatment (compare *Gharibashvili*, cited above, § 73).

103. Against the above background, it can be concluded that there are no indications that the domestic authorities were prepared in any way to genuinely and independently investigate the circumstances of the applicant's alleged ill-treatment by the police (see *Matko*, cited above, § 90).

104. The Court therefore finds that the investigation into the applicant's allegations of police ill-treatment did not comply with the Convention requirements of independence and effectiveness.

105. There has therefore been a violation of the procedural aspect of Article 3 of the Convention.

2. Substantive aspect of Article 3 of the Convention

(a) The parties' arguments

(i) The applicant

106. The applicant contended that there was no doubt that he had been severely ill-treated by the police during his arrest on 29 October 2008 and his subsequent stay in the police custody. This was confirmed by the available medical evidence and several witnesses who had given their oral statements during the civil proceedings which he had instituted against the State. It also followed form photographs taken by the media at the material time, as well as the fact that his clothes had been soaked in blood after his arrest.

107. In the applicant's view, there was no reason to deploy the ATJ team for his arrest as he had been under the constant police surveillance and the police had been well aware of his routine. It was therefore unnecessary for the ATJ team to storm into his flat as it also seriously disturbed his grandmother and sister. There was also no pressing urgency for the Police Director to issue an oral order for his arrest. In overall, in the applicant's view, the conduct of the police disclosed badly prepared and managed action of his arrest.

108. The applicant stressed that the official version of his injuries, according to which he had hit a table with his face while being apprehended by the ATJ officers, was fully incoherent and implausible. This is because he sustained injuries which ordinarily arose after beating but, due to the absence of a criminal investigation into his complaints, he was unable to obtain a forensic expert report to conclusively confirm it. In any case, he was in good health before the intervention of the police, which suggested

that he had sustained his injuries in the course of the arrest. The applicant explained that it was true that he had said to the investigating judge that he had fallen but this was only because he had been instructed by the police officers to say so if he wished to be released from detention. However, it was fully illogical that the ATJ officers would struggle with him or apply some throwing techniques when they had all carried automatic rifles in their hands. Moreover, the arresting ATJ officer submitted in his report that the applicant had been pulled to the ground and not that he had himself fallen.

109. Furthermore, the applicant submitted that it was implausible that he had been held in a minivan on the parking of the police station in the period between 6.45 p.m. and 8.30 p.m. In fact, he had been taken near a river and ill-treated, which was confirmed by the fact that the police could by no means account for this period of his confinement. Once when in the police station, he had been forced to sit on a chair for twenty-four hours and he had not been given any opportunity to rest nor had he been provided any food or drink. In fact, the only food he had received was a sandwich given in JZP but at the time he had had a strong jaw pain and could not eat. The applicant also contended that inside the police station he had been beaten and he had been tightly constrained to a chair which had also caused him certain injuries. In this respect, he stressed that the medical examinations at the material time did not note all his injuries, such as the testicular injuries which he had also sustained during the ill-treatment.

(ii) The Government

110. The Government argued that the applicant's allegations of ill-treatment by the police were fully unfounded and unsubstantiated. These allegations had no basis in the available evidence. In particular, the available photographs of the applicant's clothes depicted only several blood stains and did not suggest that his clothes had been soaked in blood. Similarly, the statement of the applicant's co-accused in the civil proceedings was unfounded and contradictory as it was highly improbable that he could have seen the applicant in the police station.

111. The Government considered that it was justified to deploy the ATJ officers to carry out the applicant's arrest as the intelligence available at the time suggested that he was associated with a highly dangerous group of international criminals. In these circumstances, it was reasonable to act promptly and to carry out the arrest on the basis of an oral order without a written plan of action.

112. As to the injuries the applicant sustained during his arrest, the Government submitted that these injuries were the result of an accident which had occurred by his fall on the ground during which he had hit the table with his head. Although the relevant documents concerning the ATJ's deployment in the applicant's arrest were confidential, the Government considered that the disclosed material sufficiently showed that the fall had

been the result of the application of technique of "foot sweep" by the ATJ officers, which was provoked by the applicant's resistance to the arrest.

113. In the Government's view, the applicant's allegations of ill-treatment by the ATJ officers during his transfer to the police station were implausible given that neither the police inspectors nor the doctor who had examined the applicant in the police station noted that he was wet from the alleged immersing in the water. In any case, the ATJ officers were merely arresting forces and not crime investigators so that they would not need to force the applicant to confess to some crimes.

114. Furthermore, the Government argued that there was no evidence that the applicant had been ill-treated by the police in the police station. It also followed from the fact that the police had requested the intervention of emergency service, which they certainly would not have done in case they had actually ill-treated the applicant as he alleged. Moreover, inside the police station the applicant was kept in appropriate facilities. Although it was true that he had not been taken to the detention unit to rest for a period of twenty-four hours, it was not done with an intention to ill-treat him. The sole reason for that was the fact that at the material time the investigation had been ongoing and his presence in the police station had been needed. Moreover, throughout his stay in the police station he had made no complaints or particular requests and had only once or twice used the toilet.

115. The Government considered that the applicant's statement given to the investigating judge that he had wanted to leave the police station as soon as possible was illogical since it would be reasonably expected of somebody who had sustained such serious injuries as those alleged by the applicant to request medical treatment. However, when examined by a doctor in the police station the applicant had explicitly refused further medical treatment, although the police officers would have allowed his transfer to the hospital as that was their moral and legal obligation.

116. The Government also submitted that the applicant had been provided rest, food and water in JZP and it was solely the question of his own choice if he had decided not to eat.

(b) The Court's assessment

(i) General principles

117. Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 115, ECHR 2006-IX).

118. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions and no

derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Labita*, cited above, § 119; *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V; and *El-Masri*, cited above, § 195). Torture and inhuman or degrading treatment or punishment are prohibited in absolute terms, irrespective of the conduct of the person concerned (see *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V). The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (see *Indelicato v. Italy*, no. 31143/96, § 30, 18 October 2001; *Gäfgen*, cited above, § 87, and cases cited therein).

119. The Court reiterates that where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see, among other authorities, *Selmouni*, cited above, § 87). The same principle applies to alleged ill-treatment resulting in injury which takes place in the course of an applicant's arrest (see *Klaas v. Germany*, 22 September 1993, §§ 23-24, Series A no. 269; *Rehbock*, cited above, §§ 68-78; and *Mikiashvili v. Georgia*, no. 18996/06, § 69, 9 October 2012).

120. Article 3 does not prohibit the use of force by police officers during an arrest. Nevertheless, the use of force must be proportionate and absolutely necessary in the circumstances of the case (see, among many other authorities, *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001). In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence (see *Raninen v. Finland*, 16 December 1997, § 56, Reports 1997 VIII; and *Gutsanovi v. Bulgaria*, no. 34529/10, § 126, ECHR 2013 (extracts)). However, any recourse by agents of the State to physical force against a person which has not been made strictly necessary by his or her own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Rachwalski and Ferenc v. Poland*, no. 47709/99, § 59, 28 July 2009). This strict proportionality test has also been applied by the Court in situations where the individuals concerned were already in the hands of the law enforcement agencies (see, for example, *Gladović v. Croatia*, no. 28847/08, § 37, 10 May 2011).

121. Furthermore, where it can be assumed that some of an applicant's injuries were caused at the time of his arrest, the Court must determine whether they were the result of force strictly necessary to subdue him. The burden to show that this was the case is on the Government (see *Lenev*, cited above, § 113, and cases cited therein).

(ii) Application of these principles to the present case

122. The Court notes that there is no dispute between the parties that before the applicant's arrest he had been in good health and that he

sustained injuries in the context of his arrest. Their versions, however, differ with regard to the extent of these injuries and the manner in which they were caused.

123. According to the Government, the only force used against the applicant by the authorities was the technique of "foot sweep", which forced the applicant to the ground so he could be restrained and apprehended. Allegedly, the sole reason for the use of such force was to overcome the applicant's resistance to the arrest and it was in the course of the application of the technique of "foot sweep" that the applicant fell and hit the table with his head which caused his injuries. The applicant, however, contended that his injuries were caused in the course of his arrest and subsequent ill-treatment by the ATJ officers and the police officers in the police station.

124. The Court observes that there is objective medical evidence showing that at the time of his arrest the applicant sustained several injuries of his head; in particular a visible 1,5 centimetre long open injury above the left eye and contusion and hematoma of the nose with a possible fracture (see paragraph 21 above). Several days later, when examined in Zagreb Prison Hospital, the applicant was diagnosed with contusions of head, nose and shoulder and a nose fracture without dislocation, as well as a distortion of a metal implant in his hand related to an old injury. At the time he still bore a smaller hematoma on the left side of his head and nose and smaller hematomas below both eyes. He also had smaller hematoma on the left shoulder and a visible dislocation of the metal implant in his hand (see paragraph 35 above).

125. In view of the above, the Court finds it unconvincing that several injuries on different parts of the applicant's body could have resulted in the manner advanced by the Government. It notes that while no conclusive evidence was provided by the parties concerning the exact nature and degree of force resulting in the applicant's injuries, viewed cumulatively, the medical evidence, the nature of the applicant's injuries, as well as the lack of plausible and detailed explanation on the part of the Government as to the cause of the injuries, give rise to a strong adverse inference that the applicant was subjected to excessive and disproportionate force by the state agents.

126. Moreover, given the failure of the domestic investigation to establish in detail the exact circumstances of the applicant's arrest and his subsequent treatment by the police, and in particular whether the extent and nature of the use of force by the ATJ officers was strictly necessary to affect the applicant's arrest (see paragraphs 103-105 above), the Court concludes that the Government failed to discharge the burden satisfactorily to disprove the applicant's allegations of police ill-treatment (see, for example, *Anzhelo Georgiev and Others v. Bulgaria*, no. 51284/09, § 78, 30 September 2014).

127. The Court therefore finds that there has been a violation of the substantive aspect of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

130. The Government considered the applicant's claim excessive, unfounded and unsubstantiated.

131. 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 16,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

B. Costs and expenses

132. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

133. The Government considered the applicant's claim unsubstantiated and unfounded.

134. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 plus any tax that may be chargeable covering costs under all heads.

C. Default interest

135. 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

1. *Declares* the application admissible;

2. *Holds* that there has been a violation the procedural aspect of Article 3 of the Convention;

3. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Croatian kunas (HRK) at the rate applicable at the date of settlement:
      (i) EUR 16,500 (sixteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro
Registrar	President