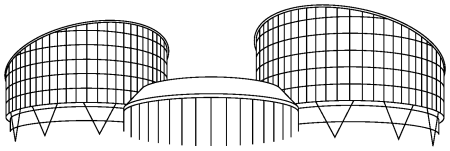

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF YUSIV v. LITHUANIA

(Application no. 55894/13)

JUDGMENT

STRASBOURG

4 October 2016

FINAL

04/01/2017

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

In the case of Yusiv v. Lithuania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 13 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 55894/13) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Maryan Yusiv ("the applicant"), on 26 August 2013.

2. The applicant was represented by Ms D. Višinskienė, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged, in particular, that he had been ill-treated by the police during his arrest on 22 October 2011 and that the authorities had failed to carry out an effective and objective investigation, contrary to Article 3 of the Convention.

4. On 17 September 2014 the complaints concerning Article 3 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. Having been informed of their right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), the Ukrainian Government did not indicate that they wished to exercise that right.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1995 and lives in Kaunas. He is a Ukrainian national and has lived in Lithuania since 2006.

A. The applicant's arrest on 22 October 2011

7. On the evening of 22 October 2011 the Panemunė Police Department of the Kaunas District received a call that a man had been robbed in the street by several young men in the neighbourhood close to the railway station. Several police cars were sent to the area in search of the suspected robbers.

8. That same evening, shortly before midnight, the applicant was walking to see his girlfriend who lived in the same neighbourhood. At that time he was sixteen years old. He was approached by a police car in which there were three officers A.R., Ž.S. and R.A. They asked the applicant to stop and take his hands out of his pockets. As the officers were getting out of the car, the applicant started running away from them. The officers informed other police patrols in the neighbourhood that they were chasing a young man who fitted the description of one of the suspected robbers.

9. The applicant was apprehended by the police near a bus stop close to the railway station. Three police cars were present during his arrest:

(a) the first police patrol, which comprised officers O.K., R.V. and V.F.;

(b) the second police patrol, which comprised officers A.R., Ž.S. and R.A.;

(c) officers of the operational division – driver T.S. and investigator L.L.

10. The applicant was apprehended by T.S., who subsequently handed him over to A.R., Ž.S. and R.A. He was handcuffed, put into a police car, and taken to the Panemunė police station, where a record of an administrative violation was drawn up, charging him with disobeying lawful orders of the police (see paragraph 16 below).

11. The officers telephoned the applicant's mother R., and agreed that she would pick up the applicant from the railway station. Officers A.R., Ž.S. and R.A. drove the applicant to the station and handed him over to his mother around 1 a.m. that same night.

12. Subsequently the applicant and his mother, on the one hand, and the police officers, on the other, presented different accounts surrounding the applicant's arrest.

13. Immediately after the arrest, A.R., Ž.S. and R.A. all submitted identically worded reports to their superior:

> "On 22 October ... around 11.45 p.m. ... we noticed a suspicious young man who corresponded to the description of a youth who had recently fled from the police. After we addressed [him], he stopped; when we were getting out of the car to talk to him, he suddenly started to run. He did not respond to our order to stop ... Soon he was noticed ... close to the railway station ... and he was apprehended. Then he began kicking out, fell to the ground, and resisted being apprehended, so we warned him that physical coercion would be used. The young man ignored this and continued actively resisting and kicking out, so when detaining him we were forced to use physical coercion and restraining measures, namely a truncheon and handcuffs. The young man was arrested and taken to the Panemunė police station ..."

14. On 24 and 26 October 2011 the applicant's mother R. complained to the Kaunas District Police Department and the Kaunas City Prosecutor that her minor son had been beaten by police officers while being apprehended. She claimed that one of the officers had hit the applicant with a truncheon in the police car numerous times, and that afterwards his body had been covered in bruises and he had had difficulties walking.

15. On 24 October 2011 the applicant was examined by a court medical expert. The report on the results of that examination, issued in November 2011, found several contusions on the applicant's body – both shoulders and upper arms, his chest, both thighs and calves and the left knee. It determined that the contusions had been caused by a hard blunt object of cylindrical shape, from eighteen or more blows (*aštuoniolika ar daugiau trauminių poveikių*). The report also found a tear injury (*plėštinė žaizda*) on the applicant's left thumb caused by a hard blunt object, and bruised skin on his left wrist which could have resulted from handcuffing. It concluded that the injuries corresponded to negligible health impairment (*nežymus sveikatos sutrikdymas*) and that they could have occurred at the time and in the circumstances described by the applicant (see paragraph 14 above and paragraph 25 below).

B. Proceedings against the applicant for resisting the police

16. On 23 October 2011 the Panemunė Police Department drew up a record of an administrative violation against the applicant. He was accused of insulting police officers by using swear words and of disobeying their lawful orders, contrary to Article 187 § 2 of the Code of Administrative Violations.

17. On 27 April 2012 the Kaunas District Court held an oral hearing. Police officers A.R., Ž.S. and R.A. all testified that the applicant had run away from them and had not complied with their order to stop. They also stated that while being apprehended near the railway station the applicant had violently resisted, had been kicking out and shouting, and had thrown himself on the ground, as a result of which the police had had to use a truncheon and handcuffs against him.

18. In the hearing the applicant admitted having run away from the officers because he had been afraid that they would beat him. However, he denied that he had resisted being apprehended near the railway station. The applicant's lawyer also pointed out that a medical examination had detected at least eighteen blows from a hard blunt object on the applicant's body (see paragraph 15 above) and argued that the police officers were lying in order to cover up the fact that they had beaten him.

19. On 4 May 2012 the Kaunas District Court found the applicant guilty and fined him 150 Lithuanian litai (LTL, approximately 43 euros (EUR)). The court found no reason to doubt the credibility and impartiality of the police officers, and considered that their consistent testimonies proved that the applicant had violently resisted the police.

20. On 11 July 2012 the Kaunas Regional Court upheld the judgment of the lower court.

C. Preliminary inquiry and pre-trial investigation concerning the applicant's allegations of ill-treatment

21. On 24 October 2011 the Head of the Panemunė Police Department instructed the officers of that department to conduct a preliminary inquiry into the applicant's allegations that he had been ill-treated by the police while being apprehended.

22. The inquiry was conducted by an investigator of the Division of Crimes against the Civil Service and Public Interest of the Criminal Investigation Unit of the Kaunas District Police Department. As submitted by the Government, that division had been established for the specific purpose of investigating crimes allegedly committed by police officers.

23. On 5 November 2011 A.R. was questioned as a witness. The written record of the interview repeated almost identically the wording of his initial report (see paragraph 13 above), and added:

> "We found out that [the applicant] was a minor only at the police station ... Had we known that earlier, we would not have used physical coercion and restraining measures against him ... At the time of the arrest, there was blood on [the applicant's] hand. I don't know how he hurt it. He didn't complain about anything, so we didn't take him to a doctor ... We delivered [the applicant] to his mother ... She began scolding her son and even thanked us for bringing him to her. She complained to us that she had problems with her son because he wasn't obeying her and was skipping school."

On the same day the officer Ž.S. was also questioned as a witness and the written record of his interview was almost identical to that of A.R.

24. On 8 November 2011 the investigator examined the jacket the applicant had been wearing during his arrest and found stains on the lower back of the jacket which were "possibly similar to old bloodstains" (*galimai panašios į seno kraujo žymes*).

25. On 15 November 2011 the applicant was questioned as a witness and stated:

> "On 22 October 2011, around midnight I was walking ... I saw a police car ... it stopped, then one of the officers told me, "take your hands out of your pockets". I took my hands out of my pockets, then the officer got out of the car and walked towards me, then I started running away and the police car started chasing me ... I ended up near a bus stop close to the railway station and there I was arrested by the police. Two uniformed police officers got out of a car, one of them (the driver) asked me why I was out of breath. I said that I was trying to catch the trolleybus. [That officer] said through the portable radio, "we've got one". Then two other officers in uniform arrived on foot; one of them had a shaved head. Soon another police car arrived in which there were two uniformed officers. I knew one of the officers, A.R., because he was my classmate's father. The officers who had come on foot approached me and the one with the shaved head told me that I would "pay for running away from them" (*dabar aš gausiu, kad bėgau nuo jų*), and with A.R. they swore at me ... Then A.R. handcuffed me behind my back and put me into a police car, in the back, and told me to sit there. Soon the officer with the shaved head got into the car and sat down in front of me. He took out a truncheon and began to hit me on various parts of the body. He hit me about fifteen times on the legs, about seventeen times on the arms, once on the back, once kicked me in the stomach, and once punched me in the face. I was made to lie down on the floor of the car and the officer with the shaved head told me to pray. I was praying and they were laughing at me. I also remember that on the way to the police station one of the officers told me that I would take the blame for somebody else's robbery. I said nothing. There were three officers in the car, one of them was A.R., the other was the one with the shaved head who was sitting next to me, and the third was about 172 cm tall; this one had a large build and short dark hair ...
>
> In the police station A.R. took me to another room where he told me that if I didn't defend his daughter, next time it would be worse. I told him that I would defend his daughter so that nobody beat her. I gave them my mother's telephone number, and the officers called her and took me to her ... The officer with the shaved head handed me over to my mother and said "I don't know how you will react but the officers have given him a little lesson to not run away from them the next time."

26. On 22 November 2011 the investigator examined twenty-two photographs of the applicant which had been taken by his mother on 23, 25 and 29 October 2011. The investigator noted that injuries were visible on the applicant's forehead, arms and legs, upper chest and the left side of his back. Several of the photographs showed a shoe with stains similar to bloodstains.

27. On 23 November 2011 A.R. was questioned again. The written record of the interview was almost identical to his previous statements (see paragraphs 13 and 23 above), and added:

> "... I arrived at the place where [the applicant] had been apprehended ... He was actively resisting: he was kicking out and had fallen on the ground. After being asked to calm down and get into a police car, he continued disobeying those lawful orders and resisted being apprehended, he started biting, so he was warned that physical coercion would be used against him. The young man ignored this and continued actively resisting and kicking, so we were forced to use physical coercion in order to arrest him, namely combat wrestling methods (*kovinių imtynių veiksmai*) and

> restraining measures, namely a truncheon and handcuffing him behind the back. While Ž.S. and R.A. were arresting [the applicant], I took out handcuffs and got ready to put them on him. As I remember, the truncheon was used by Ž.S. in order to arrest [the applicant] ... [The applicant] was acting aggressively and unpredictably. He was put in the back of the police car ... Ž.S. was driving the car, I was sitting next to the driver, and R.A. was in the back with [the applicant]. We asked him why he had fled from the police. He said that he had been afraid. We asked why he had been afraid if he hadn't done anything, but he didn't respond. In the car [the applicant] was calm; no physical coercion or restraining measures were used against him there. We noticed that his finger was injured (bleeding) but he refused to be examined by doctors. He said that he had hurt his finger on the fence or in the bushes while running away from the police. His clothes were dirty and the jacket was torn. [The applicant] had dirtied his clothes and torn his jacket when running away from the police ...
>
> In the police station, when [the applicant's] identity was established I realised that he was my daughter's classmate ... Then I said to him, "God forbid something happens to my daughter". I also said, "I will defend my daughter". I can't remember my exact words, but I let it be known that he must not hurt my daughter. As far as I am aware, this young man is prone to doing such things. In the police station neither I nor other officers hit [the applicant] ... I did not use any swear words and did not humiliate him. I didn't see the other officers acting inappropriately in respect of [the applicant] either."

28. The following day R.A. was questioned as a witness and the written record of his interview was almost identical to that of A.R. (see paragraph 27 above). However, he stated that A.R. had not discussed any personal matters with the applicant and that it did not seem as though A.R. and the applicant knew one another.

29. On 24 November 2011 officer O.K. was questioned as a witness. He confirmed that on the night of 22 October 2011 he had been on duty together with officers R.V. and V.F. He further stated:

> "... After we arrived near the railway station, I saw an arrested young man who was actively resisting arrest, purposely falling on the ground and kicking out at officers, so the officers warned him that if he didn't calm down physical coercion and restraining measures would be used against him. The young man continued behaving in an aggressive manner and actively resisting arrest, so officers used physical coercion, after which the young man was handcuffed and put into a police car ..."

30. On 28 November 2011 the investigator submitted a report to the Head of the Criminal Investigation Unit of the Kaunas District Police Department, suggesting that no pre-trial investigation should be opened. The investigator concluded that the use of physical force by the police officers had been a necessary and proportionate response to the applicant's violent resistance and aggressive behaviour.

On the same day the Head of the Criminal Investigation Unit approved the investigator's conclusion and decided not to open a pre-trial investigation.

31. The applicant's mother appealed against that decision, asking for a pre-trial investigation to be opened and for it to be entrusted to an authority other than the police. On 19 December 2011 the Kaunas City Prosecutor

partly upheld the appeal. The prosecutor opened a pre-trial investigation, noting that the medical examination of the applicant had shown numerous injuries, so it was necessary to assess whether the use of force by the police officers had been within the limits provided in the law (see "Relevant domestic law" below). However, the prosecutor refused to entrust the pre-trial investigation to another authority, finding no reason to doubt the impartiality of the police investigator.

32. On 2 February 2012 officer T.S. was questioned as a witness. He confirmed that on the night of 22 October 2011 he had been on duty with officer L.L., and that following information that a young man had fled from the officers towards the railway station, they had driven there in the police car. T.S. further stated:

> "I drove the police car towards the said young man and asked him to come closer, which he did. He was breathing hard, and, I saw that one of his hands was bleeding ... Soon afterwards three officers arrived on foot and one or two cars arrived ... In order to prevent the young man from fleeing, I held him by one sleeve. When he saw the approaching officers, he began to squirm and tried to get away ... After he was handed over to the officers, I saw that he was actively resisting arrest with his legs and arms, he was squirming and he fell on the ground with full force, making it more difficult to arrest him. The officers, using force, took him to the police car ... I didn't see the officers hit the young man or use any restraining measures such as handcuffs or a truncheon. As I remember, he was taken to the car by possibly two officers, I don't remember exactly because around six officers were present at the scene. Soon afterwards L.L. and I left and I didn't see anything else."

L.L. was questioned on 25 September 2012, and gave essentially the same statement as T.S.

33. On 10 July 2012 the applicant's mother submitted a request to the Kaunas City Prosecutor for the investigation to be transferred to the prosecutor's office on the grounds that the Kaunas police officers could not be considered impartial. She also asked for several investigative actions, such as interviews with her and with the applicant, and for the officers who had allegedly ill-treated the applicant to be identified.

The following day the Kaunas City Prosecutor dismissed the request for the investigation to be transferred to the prosecutor's office, finding no grounds to doubt the impartiality of the police investigator. However, the prosecutor instructed the investigator to carry out the actions requested by the applicant's mother.

It appears that the applicant's mother did not appeal against that decision.

34. On 30 July 2012 officer R.V. was questioned as a witness. He confirmed that on the night of 22 October 2011 he had been on duty together with officers O.K. and V.F. He stated that when they had arrived at the railway station the applicant had already been put into the police car. R.V. stated that he did not see how the applicant was put into the car, nor did he see the officers using any coercive or restraining measures against him.

On 31 July 2012 officer V.F. was questioned as a witness; the written record of his interview was almost identical to that of R.V.

35. On 3 August 2012 the applicant's mother R. was questioned as a witness. She stated that around 1 a.m. on 23 October 2011 police officers had delivered the applicant to her near the railway station. She stated:

> "When [the applicant] got out of the police car, he was limping on one leg ... The officers explained to me that they had caught him ... and that he fitted the description of a robber. When my son approached me, I began scolding him, but the officer Ž.S. told me, "don't scold him, we already gave him a good lesson about running away from the police" ... A.R. asked me, "is there a father or are you raising him alone?", and then said, "that's why they grow up like this". My son and I then left. Around 3 a.m. that night, when we were eating in the trolleybus, my son undressed and I saw that his body was covered in bruises ... My son told me that one of the officers (the one with the shaven head) had beaten him up. As I know now, that was Ž.S.".

36. That same day the applicant was granted victim status and further questioned. He stated that he had initially run away from the police officers because it was dark and he had been afraid that they would beat him up. However, when he reached the railway station he was no longer afraid because the area was well lit and there were other people nearby. The applicant added:

> "One of the officers who had come on foot – the one with the shaved head, as I know now it was Ž.S. – swore at me in Russian, from which I understood that I would be beaten up for running away. Officer A.R., who is my classmate's father, handcuffed me behind my back, put me in the back of a police car and closed the door. Ž.S. came from the other side of the car, opened the door and sat down next to me; he took out a truncheon and started hitting me on various parts of my body, except for the head. He hit me around fifty times. No other officers were in the car at that time. Then Ž.S. got out of the car, talked to the officers and got back in the car, in the driver's seat. A.R. sat next to the driver and the third officer sat next to me ...
>
> At the police station ... A.R. approached me and said, "now I will show you". I asked, "why, I don't bother your daughter, I don't even talk to her". A.R. led me behind a wall, put an electroshock device on the left side of my stomach and threatened to use it if I didn't defend his daughter from my friends; he also said that if he caught me one more time, he would beat me even more. I agreed to defend his daughter ...
>
> I want to add that I injured my left thumb while running away from the officers and it was bleeding; that's why there were bloodstains on my jacket at the spot where my hands were handcuffed. The officers did not provide me with the first aid. All the blows were struck by one officer, Ž.S. I was beaten only in the police car; nobody beat me at the police station ... I suffered physical injuries due to the beating."

The applicant denied having resisted the police officers or having sworn at them. He also said that he had fallen down while running towards the railway station but not while being apprehended.

37. In September 2012 a court medical expert carried out an additional examination of the applicant's medical file. The report on the results of that examination confirmed the findings of the previous medical report (see

paragraph 15 above). It also specified that the applicant's injuries were not likely to have been caused by falling down (*sužalojimų visuma griuvimui nebūdinga*), nor by punching or kicking, but that they had most likely been caused by a hard blunt object of a cylindrical shape.

38. On 5 October 2012 confrontations were arranged between the applicant and each of the officers A.R., Ž.S. and R.A. separately. All the officers repeated their earlier statements (see paragraphs 13, 23, 27 and 28 above) and the applicant denied them. A.R. confirmed that he had handcuffed the applicant. The officers stated that none of them had used any swear words or threats to the applicant. Meanwhile the applicant insisted that he had not resisted the officers and that he had not been warned about the possible use of restraining measures. He also denied falling to the ground while being apprehended near the railway station.

39. That same day a confrontation was arranged between the applicant and O.K. The officer stated that when he had arrived at the railway station the applicant was already in handcuffs and he was squirming but not actively resisting. He could not remember which officers had put the applicant into the police car.

During a subsequent interview on 8 October 2012 O.K. retracted the statement he had made in his first interview, in which he had said that he had seen the applicant actively resisting the officers (see paragraph 29 above). O.K. stated that he had been mistaken and that his statements made during the confrontation were the correct ones.

40. On 12 December 2012 the Kaunas City Prosecutor discontinued the pre-trial investigation. The prosecutor held that physical force had been used against the applicant only to the extent that was strictly necessary to arrest him, and that the applicant's allegations that he had been beaten up in the police car with a truncheon had not been proven. The Kaunas City Prosecutor also considered that the officers A.R., Ž.S. and R.A. could not have known at the time of the arrest that the applicant was a minor. The prosecutor concluded that the mere fact that the applicant had sustained injuries was insufficient to find that the police officers had acted unlawfully.

41. On 18 March 2013 the Kaunas District Court upheld the prosecutor's decision. The court concluded that there was no "objective and indisputable evidence" that the police officers had exceeded their legal powers. It also referred to the earlier court judgments which had found the applicant guilty of an administrative violation (see paragraphs 19-20 above), concluding that the officers had had the right to use physical coercion in response to the applicant's resistance. The court also considered that the pre-trial investigation had been thorough and comprehensive.

On 11 April 2013 the Kaunas Regional Court upheld that judgment.

42. Subsequently the applicant's mother requested the reopening of the investigation, but her request was dismissed on the grounds that there were no relevant new circumstances.

II. RELEVANT DOMESTIC LAW

A. Use of force by the police

43. The relevant provisions of the Police Activity Act read:

Article 23. Types of coercion and conditions of its use

"1. A police officer shall have the right to use coercion when it is necessary to prevent violations of law, to apprehend individuals who have committed said violations, as well as in other cases when protecting and defending the lawful interests of an individual, the society or the State. Coercion which might cause bodily injuries or death may only be used to the extent which is necessary for the fulfilment of the official duties and only after all possible measures of persuasion or other measures have been used with no effect. The type of coercion and the limits of its use shall be chosen by the police officer, taking into account the particular situation, the nature of the violation of the law and the individual characteristics of the offender. When using coercion, police officers must seek to avoid grave consequences.

2. A police officer may, in the manner and the cases provided by law, use mental or physical coercion, firearms or explosive materials.

3. Mental coercion, within the meaning of this Act, shall be understood as a warning about an intention to use physical coercion, firearms or explosive materials. Demonstration of a firearm and warning shots shall be regarded as mental coercion, however such measures may be used only under the conditions laid down in [this Act].

4. Physical coercion, within the meaning of this Act, shall be understood as:

1) the use of physical force of any kind, as well as combat wrestling methods;

2) the use of special equipment, such as truncheons, handcuffs and restraining devices, gas, police dogs, methods of stopping vehicles by force, as well as other means of active and passive defence permitted by law and approved by an order of the Minister of the Interior.

5. Before using physical coercion or a firearm, a police officer must warn the person of such an intention, providing the said person with an opportunity to comply with the lawful requirements, except in cases when such a delay poses a threat to the life or health of the police officer or another person, or when such a warning is impossible ...

7. A police officer who has used coercion in line with the requirements of this Act and has inflicted damage on the values protected by law shall not be held liable.

8. A prosecutor shall be immediately informed about any use of coercion by a police officer which has caused the death or injury of a person.

9. Police officers must be specially prepared and periodically examined on their ability to act in situations involving the use of physical coercion, firearms or explosive materials.

Article 24. Grounds for the use of physical coercion

1. A police officer is authorised to use physical coercion ...

2) when apprehending a person who has committed a violation of the law and who is actively attempting to avoid arrest; ...

2. It shall be prohibited to use combat wrestling methods and special equipment against women who are visibly pregnant, as well as against individuals who are visibly disabled or minors (if their age is known to the officer or if their appearance corresponds to their age, except for cases when they resist in a manner which is dangerous to life or health, or when a group of such individuals attacks and this attack poses a threat to life or health)."

B. Pre-trial investigation

44. Article 164 § 1 of the Code of Criminal Procedure stipulates that a pre-trial investigation shall be conducted by officers of pre-trial investigation bodies or by a prosecutor, and it shall be organised and supervised by a prosecutor. In line with Article 165 § 1 of the Code of Criminal Procedure, the police is such a pre-trial investigation body.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained that that he had been ill-treated by the police during his arrest on 22 October 2011 and that the authorities had failed to carry out an effective and objective investigation. 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

46. The Government argued that the applicant had failed to exhaust effective domestic remedies because he had not instituted civil proceedings for damages against the State. They cited domestic court judgments which had recognised the civil liability of the State for the acts of law enforcement authorities and which had underlined that such civil liability was not precluded by the mere fact that the disputed acts had been in line with the legal provisions regulating criminal proceedings. The Government also provided an example of a domestic case in which a person had been awarded damages following an inadequate investigation into the circumstances surrounding the deaths of his family members. Accordingly, the Government sought to have the application declared inadmissible for non-exhaustion of domestic remedies, in line with Article 35 § 1 of the Convention.

47. The applicant submitted that the Civil Code did not establish liability for damage resulting from an inadequate pre-trial investigation, so lodging a civil claim could not have been an effective remedy in his case.

48. The Court reiterates that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-111, ECHR 2014 (extracts)), and the cases cited therein). In this connection the Court observes that the applicant and his mother complained to the police and the prosecutor's office, and that a pre-trial investigation was opened at their request. If successful, that investigation would have established the circumstances of the applicant's ill-treatment and the liability of the police officers.

49. The Court also notes that in the present case the applicant was seeking an official acknowledgment of his ill-treatment and the liability of the individuals whom he considered responsible, but not necessarily, at that stage, a monetary compensation. In such circumstances the Court does not consider that a civil claim for damages could have remedied a lack of an effective official investigation into allegations of ill-treatment by the police. Consequently, the Court dismisses the Government's objection.

50. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Substantive limb: alleged inhuman treatment

(a) The parties' submissions

51. The applicant claimed that the police officers had used unlawful and disproportionate physical force against him: they had hit him with a truncheon inside a police car at least eighteen times, as shown by a medical examination, and one of the officers had threatened him with an electroshock device at the police station. The applicant argued that such actions could not have been necessary or proportionate because when he was in the car he was already in handcuffs and did not resist the officers. The applicant insisted that at no point during his arrest did he act violently or insult the officers in any way, and that no officers had reported having sustained any injuries which were due to his alleged kicking and biting. He also submitted that at the time of the arrest he had been a minor and that that must have been known to at least one of the officers, who was his classmate's father at the time.

52. The Government accepted that, in view of the applicant's young age, the use of physical force against him had attained the minimum level of severity in order to fall within the scope of Article 3 of the Convention. Nonetheless, they submitted that the force used by the police had been used not to threaten or humiliate the applicant but that it had been necessary and proportionate owing to the applicant's own actions. They noted that it was not disputed that the applicant had initially refused to comply with the officers' orders and had run away from them. The Government further submitted that several police officers had given consistent statements about the applicant's violent behaviour during his arrest, and that this justified using physical force against him. They lastly submitted that the police officers could not have known that the applicant was a minor at the time because of his mature appearance and because it was dark.

(b) The Court's assessment

(i) Relevant general principles

53. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see, among many other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 87, ECHR 2010, and *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015).

54. 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" and adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV, and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). 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 which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Virabyan v. Armenia*, no. 40094/05, § 151, 2 October 2012; and *Bouyid*, cited above, §§ 83-84; also see, *mutatis mutandis*, *Buntov v. Russia*, no. 27026/10, § 161, 5 June 2012).

55. The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Ill-treatment that attains such a minimum level of severity often involves actual bodily injury

or intense physical or mental suffering. In respect of a person who is deprived of his or her 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, in principle, an infringement of the right set forth in Article 3 (see *Anzhelo Georgiev and Others v. Bulgaria*, no. 51284/09, § 66, 30 September 2014, and *Bouyid*, cited above, §§ 86-88, and the cases cited therein).

56. Lastly, it is not the task of this Court to deal with errors of fact or law allegedly committed by domestic courts, unless and in so far as such errors may have infringed rights and freedoms protected by the Convention. Nonetheless, the Court has to apply a particularly thorough scrutiny where allegations have been made under Article 3 of the Convention, even if certain domestic proceedings and investigations had already taken place. In other words, in such a context the Court is prepared to conduct a thorough examination of the findings of the national courts. In examining them it may take account of the quality of the domestic proceedings and any possible flaws in the decision-making process (ibid., § 85, and the cases cited therein).

(ii) Application of the above principles in the present case

57. In the present case, the applicant was examined by a court medical expert on 24 October 2011, less than two days after his arrest. The medical examination detected several contusions on the applicant's shoulders, upper arms, chest, thighs, calves and one knee, as well as a wound on his left thumb and bruises on his left wrist (see paragraph 15 above). Those findings were later confirmed by another examination of the applicant's medical file (see paragraph 37 above).

58. The Government did not contest the findings of those medical examinations either in the domestic proceedings or before the Court, nor did they argue that any of the applicant's injuries had been sustained before his arrest on 22 October 2011. The applicant admitted that he had hurt his left thumb while running away from the police (see paragraph 36 above). Meanwhile, with respect to the remaining injuries, the applicant consistently alleged, both before the domestic authorities and the Court, that police officer Ž.S. had beaten him in the police car with a truncheon (see paragraphs 25, 36 and 51 above). The doctors who examined the applicant and his medical file considered that the injuries were consistent with the applicant's description of the events.

59. Accordingly, the Court considers it established that the applicant sustained the aforementioned injuries at the hands of the police during his arrest, and thus that it is incumbent on the Government to provide a plausible explanation for the cause of those injuries (see, among many other authorities, *Selmouni*, § 87, and *Virabyan*, § 151, both cited above). It

underlines that any use of physical force by the police which had not been made strictly necessary by the applicant's own conduct will attain the minimum level of severity and thus be incompatible with Article 3 of the Convention (see paragraph 55 above).

60. In the present case, the Government acknowledged that the injuries sustained by the applicant had attained the minimum level of severity in order to fall within the scope of Article 3 (see paragraph 52 above). Nonetheless, they submitted that those injuries had resulted from his own violent resistance to the lawful actions of the officers. The domestic pre-trial investigation concluded that while being apprehended near the railway station the applicant had attempted to avoid the arrest by squirming, kicking, biting, purposely falling on the ground, and swearing at the officers (see paragraphs 40, 41 and 52 above). Although the applicant denied resisting or insulting the officers in any way and claimed that he had been beaten up in the police car, the domestic authorities considered that his allegations had been refuted by the consistent statements of the police officers.

61. In this connection the Court notes that the domestic medical examination concluded that the applicant had sustained at least eighteen blows from a hard blunt object, and that his injuries were unlikely to have been caused by falling down (see paragraphs 15 and 37 above). However, there had not been any assessment as to whether inflicting that number of injuries on the applicant could have been strictly necessary and proportionate in order to suppress his resistance. It further notes the absence of signs of physical injuries to the police officers which would indicate violent actions, such as kicking or biting, on the part of the applicant (see *Iljina and Sarulienė v. Lithuania*, no. 32293/05, § 50, 15 March 2011). The Court also observes that in the present case the applicant was sixteen years old at the time of his arrest, he was alone against eight police officers, and it was not alleged at any stage of the domestic proceedings that he might have been armed. Therefore, even if the applicant had indeed been swearing at the officers, had fallen to the ground, and had attempted to kick or bite them, the Court is not convinced that it was strictly necessary for several trained police officers to resort to physical force of such severity as in the present case – at least eighteen blows – in order to make the applicant more cooperative (see also *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Yavuz Çelik v. Turkey*, no. 34461/07, § 53, 26 July 2011).

62. In the light of the above, the Court is of the view that the Government have not demonstrated that the extent of the physical force used against the applicant had been strictly necessary in the circumstances. Accordingly, it concludes that the applicant has been subjected to inhuman treatment, contrary to Article 3 of the Convention, and there has been a violation of that provision under its substantive limb.

2. Procedural limb: alleged lack of an effective investigation

(a) The parties' submissions

63. The applicant submitted that the pre-trial investigation concerning his allegations of ill-treatment had been ineffective. He complained that the investigation had been carried out by the police and not by an independent institution, that the interviews with the police officers had been superficial and had not clarified the contradictions in their testimonies, that the investigator had not questioned any of the impartial witnesses who had been present near the railway station during his arrest, and that the authorities had not investigated his allegation that he had been threatened with an electroshock device at the police station.

64. The Government submitted that the pre-trial investigation into the applicant's allegations of ill-treatment had been prompt, thorough and independent. They stated that the investigation had been entrusted to a special police unit which had been established to investigate alleged crimes committed by police officers and had practical independence from the officers involved in the applicant's arrest. They also noted that the investigation was supervised by the prosecutor and the final decisions were adopted by courts, so there were no grounds to doubt its independence.

65. The Government further submitted that the investigation had been opened immediately after the applicant's allegations of ill-treatment, that numerous investigative actions had been carried out, such as interviews and confrontations between different witnesses, that all the essential circumstances of the applicant's arrest had been established, that the applicant and his mother had been involved in all the stages of the proceedings, and that there had not been any unreasonable delays. Accordingly, the Government contended that the pre-trial investigation had complied with the procedural requirements of Article 3 of the Convention.

(b) The Court's assessment

(i) Relevant general principles

66. The Court reiterates that 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. Such investigation should be capable of leading to the identification and punishment of those responsible (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 182, ECHR 2012, and the cases cited therein).

67. The investigation into serious allegations of ill-treatment 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. 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 *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, §§ 316-326, ECHR 2014 (extracts), and the cases cited therein).

68. Although the obligation to carry out an effective investigation into allegations of ill-treatment is one of means and not of result, any deficiency in the investigation which undermines its ability to establish the circumstances of the case or the persons responsible will risk falling foul of the required standard of effectiveness (ibid., § 322).

(ii) Application of the above principles in the present case

69. In the present case, the domestic authorities opened a preliminary inquiry on the day of the applicant's mother's complaint, and a pre-trial investigation was opened two months later (see paragraphs 21 and 31 above). The Court sees no reason to regard the authorities as inactive: the investigator carried out several interviews with all the police officers who had been present during the incident, as well as with the applicant and his mother; there had been confrontations between different witnesses in order to eliminate the contradictions in their testimonies; and the applicant's injuries had been examined several times by a court medical expert. Nor can the length of the investigation (from 24 October 2011 until 11 April 2013, thus one year and almost six months) be regarded as excessive. The Court also considers that the applicant and his mother were able to participate in the investigation by submitting evidence and appealing against the principal decisions.

70. The Court notes the applicant's complaint regarding the independence of the investigation, which was based on the fact that it had been carried out by an investigator from a special police unit and not by a prosecutor. However, the Court considers that it is not required to address the issue of hierarchical and institutional independence of the police, given that the investigation, taken as a whole, was ineffective for the following deficiencies.

71. The domestic proceedings concluded that the applicant had sustained injuries while being apprehended near the railway station, before he had been put into the police car. Officers A.R., Ž.S. and R.A. testified that they had used physical coercion against the applicant: Ž.S. had used a truncheon to suppress the applicant's resistance, and A.R. had handcuffed the applicant's hands behind his back and then taken him to the car. They all claimed that no coercion had been used inside the car.

72. In this context the Court notes that the multiple injuries on the applicant's body appeared to have been caused by blows from a truncheon (see paragraphs 15 and 37 above). However, none of the police officers specified, nor were they ever asked to do so during the investigation, under what circumstances and how many times the truncheon had been used against the applicant. The investigation did not attempt to determine the exact origin of all of the applicant's numerous bruises, nor did it assess whether the force used during the applicant's arrest had been strictly necessary and proportionate (see *Şakir Kaçmaz v. Turkey*, no. 8077/08, § 90, 10 November 2015). The Court notes that such an assessment was essential to determine whether the police had acted within the confines of the domestic law (see paragraph 43 above), and, indeed, whether they had breached Article 3 of the Convention (see *Boris Kostadinov v. Bulgaria*, no. 61701/11, §§ 61-62, 21 January 2016).

73. The Court also observes that many of the reports submitted by the officers and the written records of their statements contained practically identical texts (see paragraphs 13, 23, 27, 28 and 34 above), and it has held in its previous cases that this may seriously undermine the credibility of those statements (see *Chmil v. Ukraine*, no. 20806/10, § 89, 29 October 2015, and *Hilal Mammadov v. Azerbaijan*, no. 81553/12, § 96, 4 February 2016). In such circumstances, the Court finds it particularly troubling that the decisions of the domestic authorities to discontinue the pre-trial investigation relied exclusively on the statements of the police officers, and their statements were assessed much less critically than those of the applicant (see, *mutatis mutandis*, *Miclea v. Romania*, no. 69582/12, § 42, 13 October 2015, and *Kapustyak v. Ukraine*, no. 26230/11, § 80, 3 March 2016). The Court also takes note of the applicant's submission that other persons were present in the vicinity of the railway station at the time of the incident but that none of them were identified and questioned.

74. The Court further observes that in his second interview the applicant also alleged that at the police station A.R. had threatened him with an electroshock device if the applicant refused to defend A.R.'s daughter (see paragraph 36 above). A.R. admitted that he had recognised the applicant as his daughter's classmate and had discussed his daughter with the applicant, although another officer, R.A., testified to the contrary (see paragraphs 27-28 above). The Court notes that the events at the police station had not been assessed in any of the decisions to discontinue the pre-trial investigation.

75. The foregoing considerations are sufficient to enable the Court to conclude that the pre-trial investigation into the applicant's allegations of ill-treatment by police officers was not in line with the requirements of Article 3 of the Convention. There has accordingly been a violation of that provision under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

78. The Government submitted that that amount was excessive and unsubstantiated. They noted that in the case of *Iljina and Sarulienė*, cited above, which also concerned violations of the substantive and procedural limbs of Article 3 of the Convention, the Court awarded each applicant EUR 9,000 in respect of non-pecuniary damage.

79. The Court considers that the applicant must have suffered distress and frustration as a result of the substantive and procedural violations of Article 3 of the Convention found in the present case. It therefore grants the applicant's claim for non-pecuniary damage in full and awards him EUR 15,000 under this head.

B. Costs and expenses

80. The applicant claimed EUR 1,448 for legal assistance in the domestic proceedings and the proceedings before the Court, consisting of the following expenses:

(a) EUR 650 for legal consultations and preparation of appeals in the domestic proceedings;

(b) EUR 500 for the preparation of the application to the Court;

(c) EUR 298 for the preparation of the applicant's response to the Government's observations.

The applicant submitted a time sheet indicating the number of hours that his lawyer had spent on each specific task. He also noted that, in the absence of any domestic guidelines as to legal fees in criminal cases, the legal fees had been determined in line with the recommendations of legal fees in civil cases adopted by the Minister of Justice of Lithuania in 2004.

81. The applicant also claimed EUR 424 for the translation of all the documents sent by the Court from English to Lithuanian.

82. The Government submitted that, in the absence of a legal services contract, the applicant had not substantiated most of his legal expenses. As for the domestic proceedings, the Government noted that all the appeals had been submitted by the applicant's mother and not the applicant himself or

his lawyer. As for the proceedings before the Court, the Government noted that the applicant had not demonstrated that he had actually paid his lawyer EUR 500 for preparing his application to the Court, especially since the lawyer had been authorised to represent him before the Court only on 18 November 2014, thus after his application had already been submitted. However, the Government did not dispute the amount of EUR 298 claimed for the preparation of observations to the Court.

83. The Government also submitted that the invoice for the translation costs had been issued not to the applicant but to his lawyer, thereby raising doubts whether those costs had actually been incurred in relation to the applicant's case. They also questioned whether the translation costs had been included in the legal fees paid to the lawyer.

84. 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.

85. 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 1,872 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive head;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,872 (one thousand eight hundred and seventy-two 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.

Done in English, and notified in writing on 4 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

András Sajó
President