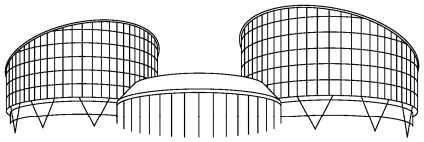

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF JEVTOVIĆ v. SERBIA

(Application no. 29896/14)

JUDGMENT

Art 3 • Inhuman treatment • Ill-treatment of detainee by prison guards • Lack of effective investigation

STRASBOURG

3 December 2019

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

In the case of Jevtović v. Serbia,

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

Jon Fridrik Kjølbro, *President,*
Faris Vehabović,
Branko Lubarda,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 12 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 29896/14) against Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Mališa Jevtović ("the applicant"), on 6 April 2014.

2. The applicant was represented by the Belgrade Centre for Human Rights, a non-governmental organisation based in Serbia. The Serbian Government ("the Government") were represented by their Agent, Ms Nataša Plavšić.

3. The applicant complained of ill-treatment by prison guards on 11 June 2007, 18 December 2009, and 22 and 24 December 2011, as well as the respondent State's subsequent failure to carry out an effective official investigation in that regard.

4. On 25 April 2016 the Government were notified of these complaints and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lived in Belgrade. He is currently serving his sentence in Belgrade-Nova Skela Correctional Institution (*Kazneno-popravni zavod Beograd – Nova Skela*).

A. Criminal proceedings brought against the applicant, his detention and subsequent imprisonment

6. On 18 July 2005 the applicant was arrested on suspicion of having committed acts of sexual violence against a three-year-old girl which had resulted in her death.

7. On 20 July 2005 he was placed in detention pending trial in Belgrade District Prison (*Okružni zatvor u Beogradu*).

8. On 24 November 2009 the Belgrade District Court (*Okružni sud u Beogradu*) found the applicant guilty and sentenced him to forty years' imprisonment.

9. On 24 February 2011 the Belgrade Court of Appeal (*Apelacioni sud u Beograd*) upheld that judgment.

10. On 6 October 2011 the applicant was transferred to Požarevac-Zabela Correctional Institution (*Kazneno-popravni zavod Požarevac – Zabela*).

11. On 24 May 2013 the applicant was again transferred, this time to Belgrade-Nova Skela Correctional Institution.

12. The applicant maintained that he had been ill-treated by prison guards on a continuing basis. He had complained repeatedly of that ill-treatment "but [had] obtained no redress".

B. The applicant's alleged ill-treatment in Belgrade District Prison

13. During the applicant's detention in this facility (from 20 July 2005 until 6 October 2011 – see paragraphs 7 and 10 above) the following incidents took place.

1. Incident of 11 June 2007

14. According to official prison documents, on 11 June 2007 the applicant got into a fight with another prisoner. Punches were exchanged. The reason for the animosity between the two was apparently based on the nature of the crime with which the applicant had been charged. Having unsuccessfully ordered them to stop fighting, a prison guard ultimately resorted to physical force in order to separate the prisoners and then used a rubber truncheon because the resistance continued. Once the situation calmed down, following assistance provided by a second prison guard, the use of coercive measures was discontinued. On the same day the prisoners were taken to the infirmary, where the doctor noted injuries to the applicant's lower back, gluteus, both elbows, left shin and his right knee.

2. Incident of 18 December 2009

15. According to official prison documents, on 18 December 2009 the applicant got into a verbal argument with another prisoner. A prison guard asked him to stop but the applicant then attacked the prison guard physically. The latter used force and a rubber truncheon, since he could not contain the applicant otherwise. This prison guard was subsequently assisted by his colleague and the applicant was subdued. The prison guards informed their supervisor about the events, who ordered that the applicant be taken to a doctor. On 29 December 2009 the applicant was examined by a doctor, who noted injuries to his back, gluteus, right thigh and his left shin.

3. Other related developments

16. The prison guards involved prepared reports and written statements in respect of the two incidents and lodged disciplinary complaints against the applicant. The prison governor subsequently maintained that the injuries sustained by the applicant had been a consequence of the lawful application of coercive measures.

4. The applicant's characterisation of the above incidents

17. The applicant contested the official assessment to the effect that the prison guards had properly and lawfully applied force in order to maintain discipline. In so doing he noted that this finding had relied only on the statements of the prison guards themselves. The participants in the fight and the argument, including the applicant personally, or indeed any other witnesses, were never interviewed. Additionally, no video footage recorded by the security cameras was obtained and no disciplinary proceedings were ever brought against the applicant, despite official complaints having been lodged in this regard. The applicant therefore argued that his ill-treatment had been "unprovoked" and that he had in fact been deliberately and severely abused because of the nature of the crime with which he had been charged.

C. The applicant's alleged ill-treatment in Požarevac-Zabela Correctional Institution

18. During the applicant's imprisonment in this facility (from 6 October 2011 until 24 May 2013 – see paragraphs 10 and 11 above) the following incidents took place.

1. Incident of 22 December 2011

19. According to official documents, on 22 December 2011 the applicant used his phone in the prison yard in breach of regulations. When he was asked to go to a room and prepare a statement in this regard, he refused to do so and started to swear. The prison guard repeated his order, but the applicant again failed to comply and when the guard tried to take him into the room by force he resisted by holding onto a radiator. Two other prison guards assisted their colleague. Physical force and rubber truncheons were used in order to subdue the applicant. On the same day, the applicant was examined by a doctor who noted extensive bruising on his back. The next day, on 23 December 2011, the applicant was examined once again and the same injuries were established. Disciplinary proceedings were subsequently brought against the applicant and he was sentenced to fifteen days' solitary confinement.

20. On 24 December 2011 the applicant lodged a complaint with the Ombudsman (*Zaštitnik građana*).

2. Incident of 24 December 2011, the Ombudsman's report and the developments thereafter

21. On 27 December 2011 the Ombudsman's team visited the applicant and took his statement. The applicant maintained that on 22 and 24 December 2011 he had been severely beaten by the prison guards, having first been ordered to take his shirt off and face the wall. The team also took statements from the prison governor and the doctors, medically examined the applicant and reviewed official documents.

22. In his report of 31 January 2012, the Ombudsman found that, quite apart from the incident of 22 December 2011, the applicant had been subjected to ill-treatment amounting to torture two days later, that is to say on 24 December 2011, and that the injuries which he had sustained on this latter occasion had not been registered in any official documents. The prison governor had also not been informed of the incident and the applicant had not been examined by a doctor. The Ombudsman listed numerous injuries all over the applicant's body, including his head, face, chest, back, shoulders and his limbs, and concluded that the extent of those injuries, as well as the manner in which they had been inflicted, including by means of a rubber truncheon, meant that the applicant had indeed been ill-treated by the prison guards on 24 December 2011, as alleged. The prison doctor, for his part, agreed that the applicant's injuries established during the visit of the Ombudsman's team were more extensive than the ones which he had noted on 22 December 2011. In view of the above, the Ombudsman recommended, *inter alia*, that the prison investigate the events of 24 December 2011 in order to identify and hold responsible the individuals who had abused the applicant.

23. Following these recommendations, the prison governor ordered some enquiries. Time sheets filled out by the prison guards were reviewed and medical reports were inspected, as was the register documenting the application of coercive measures in respect of the prisoners and the register of the prisoners' own complaints. Also, numerous prison guards and inmates were interviewed as part of the investigation and video footage from security cameras was obtained. Ultimately, however, the prison administration was unable to identify "with certainty" how the applicant had been injured and who the alleged perpetrators were. No disciplinary proceedings were thus initiated.

D. Criminal investigation into the incident of 24 December 2011

24. On an unspecified date the applicant lodged a criminal complaint.

25. On 14 March 2012 the Požarevac public prosecutor's office (*Osnovno javno tužilaštvo u Požarevcu*) requested from the investigating judge of the Požarevac Court of First Instance (*Osnovni sud u Požarevcu*) to carry out certain enquires in order to identify individuals who had allegedly ill-treated the applicant.

26. In the course of the preliminary investigation, the applicant, a number of prison guards, the prison doctor and an inmate were all questioned. Also, a forensic report was prepared concerning the type and the severity of the injuries sustained by the applicant, as well as the manner of their infliction. The report found, *inter alia*, that the applicant had been assaulted twice – on 22 and 24 December 2011 – and that the injuries of 24 December 2011 could have been inflicted by one or more individuals. The applicant had been, according to this report, physically and psychologically ill-treated.

27. When giving evidence before the investigating judge, the applicant described the abuse which he had suffered and alleged that he had been beaten, *inter alios*, by a prison guard whose identification number had been 1244. The prison governor, however, subsequently informed the investigating judge that there had been no such guard employed by Požarevac-Zabela Correctional Institution.

28. The investigating judge also requested video footage from the security cameras in front of the applicant's cell, but the prison governor stated that there had been no video-surveillance equipment installed at that time.

29. On 27 February 2013 the Požarevac public prosecutor's office decided that there were no grounds for the instigation of criminal proceedings at that point, but ordered the police to further investigate the matter and to attempt to identify the perpetrators.

30. On 1 April 2013 the investigating judge asked the Požarevac public prosecutor's office to provide her with the case file, since the applicant had

asked for an opportunity to face his possible abusers in person for recognition purposes.

31. On 16 April 2013 the Požarevac public prosecutor's office provided the investigating judge with the case file.

32. On 15 May 2013 the Požarevac public prosecutor's office informed the investigating judge that it had decided that there were no grounds for the institution of a criminal case.

33. On 27 May 2013 the Ministry of Justice and State Administration (*Ministarstvo pravde i državne uprave*) sent a letter to the Chief Public Prosecutor's Office (*Republičko javno tužilaštvo*), requesting a report on the applicant's case. In so doing, it explained that the European Commission had expressed an interest in this regard.

34. On 3 June 2013 the Chief Public Prosecutor's Office provided the ministry with the report as requested.

E. Proceedings before the Constitutional Court (*Ustavni sud*)

35. On 7 September 2011 the applicant lodged a constitutional appeal.

36. On 10 July 2013 the Constitutional Court found a violation of Article 25 of the Constitution (see paragraph 45 below), specifically of the applicant's right to the inviolability of his physical and mental integrity (as regards both its substantive and procedural aspects) in respect of the incidents of 11 June 2007, 18 December 2009, and 22 and 24 December 2011 (see paragraphs 14, 15, 19 and 21-22 above), and awarded him 1,000 euros (EUR) for the non-pecuniary damage suffered in this connection. It further found that the applicant had been subjected to inhuman treatment in respect of all four incidents and that as regards the incidents of 11 June 2007, 18 December 2009 and 22 December 2011, in particular, the force used against him had been justified but excessive. While this treatment, according to the Constitutional Court, had caused the applicant serious suffering, there was no proof that the prison guards had intended to inflict it upon him in order to achieve a certain goal within the meaning of the case-law of the European Court of Human Rights (see, for example, *Aksoy v. Turkey*, 18 December 1996, §§ 63 and 64*, Reports of Judgments and Decisions* 1996-VI, as one of the judgments specifically cited by the Constitutional Court in the general principles part of its decision). The Constitutional Court furthermore held that the relevant authorities had also failed to carry out an effective investigation in respect of the said four incidents. Regarding the incident of 24 December 2011 only, the Constitutional Court ordered that the official investigation be expedited. It further explained that in awarding compensation for the non-pecuniary damage suffered by the applicant it had taken into account its own practice in other similar cases, the case-law of the European Court of Human Rights, the "social circumstances" in Serbia itself, and the "very essence" (*sama*

suština) of "compensation for non-pecuniary harm" as such. Lastly, the Constitutional Court ordered that its decision be published in the Official Gazette of the Republic of Serbia.

37. The applicant's representative was served with the Constitutional Court's decision on 7 October 2013.

F. Further developments in the criminal investigation regarding the incident of 24 December 2011

38. On 19 August 2013 the Court of First Instance dismissed the applicant's motion of 1 April 2013 aimed at the recognition of his abusers (see paragraph 30 above), stating, *inter alia*, that all prison staff carried badges with their names and photographs on them and must therefore have been known to the applicant.

39. On 7 September 2015 the police provided the Požarevac public prosecutor's office with another report on the steps it had additionally taken in order to collect relevant information. Prison guards and inmates had been interviewed and documentation had been reviewed, but the ultimate conclusion remained that the force used against the applicant had been lawful, necessary and proportionate.

40. On 8 September 2015 the Požarevac public prosecutor's office requested that the police re-interview the applicant in order to identify the prison guards in question. They further sought information in respect of any measures taken in response to the Ombudsman's recommendations (see paragraph 22 above).

41. On 22 February 2016 the applicant was interviewed once again, this time in the premises of the Požarevac public prosecutor's office, and repeated the account of his ill-treatment. Specifically that on 24 December 2011, following a visit by his brother who had apparently complained of his earlier abuse, he had been gratuitously assaulted and severely beaten by a number of prison guards and insulted for being a Muslim. The applicant further noted that one of the prison guards who had attacked him had carried identification card no. 1224 rather than 1244 which may have erroneously been attributed to his earlier statement given to the investigating judge (see paragraph 27 above). Lastly, the applicant proposed, *inter alia*, that he should be given an opportunity to face in person all of the prison guards who had been on duty at the relevant time in order to identify his abusers and that an additional witness, an inmate like himself, should also be interviewed in this regard.

42. On 23 February 2016, in response to his earlier request, the applicant received official confirmation that in 2011 and 2012 a prison guard with the identification no. 1224 had been employed by Požarevac-Zabela Correctional Institution.

43. On 5 April 2016 the applicant supplemented his earlier criminal complaints, identifying by forename and surname one of the prison guards who had allegedly beaten him on 24 December 2011. He also referred to the prison guard carrying identification card no. 1224 and repeated that he had likewise taken part in his abuse. The applicant, lastly, repeated his evidentiary request of 22 February 2016 regarding what the next steps in the investigation ought to be (see paragraph 41 above).

44. On 4 July 2016 the witness proposed by the applicant (see paragraph 41 *in fine* above) was interviewed in the Požarevac public prosecutor's office. He stated that both he and the applicant had been severely beaten without provocation on 22 December 2011. As regard the applicant's alleged abuse "post 22 December 2011", the witness, who had been in the cell next to the applicant's at the time, stated that he had not personally observed the assault, "which [had taken] place on a Sunday", but had heard commotion and the applicant's voice and had therefore "concluded that he [had been] beaten".

II. RELEVANT DOMESTIC LAW

A. Constitution of the Republic of Serbia (*Ustav Republike Srbije*, published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/2006)

45. Article 25 of the Constitution reads as follows:

> "Physical and mental integrity is inviolable.
>
> Nobody may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent."

B. Criminal Code (*Krivični zakonik*, published in OG RS no. 85/05, amendments published in OG RS nos. 88/05, 107/05, 72/09 and 111/09)

46. Article 137 of the Criminal Code reads as follows:

> "1. Whoever ill-treats another or treats another in a humiliating and degrading manner shall be punished with imprisonment of up to one year.
>
> 2. Whoever causes severe pain or suffering to another for such purposes as obtaining from him [or her] or a third person a confession, a statement or information, or intimidating or unlawfully punishing him [or her] or a third person ... shall be punished with imprisonment from six months to five years.
>
> 3. If the offence specified in paragraphs 1 and 2 above is committed by an official acting in an official capacity, the official concerned shall be punished for the offence specified in paragraph 1 with imprisonment from three months to three years, and for the offence specified in paragraph 2 with imprisonment from one to eight years."

C. Code of Criminal Procedure (*Zakonik o krivičnom postupku*, published in the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 70/01, amendments published in OG FRY no. 68/02 and in OG RS nos. 58/04, 85/05, 115/05, 49/07, 20/09, 72/09 and 76/10)

47. Read in conjunction, Articles 19, 20, 46 and 235 of the Code of Criminal Procedure provided, *inter alia*, that formal criminal proceedings could be instituted at the request of an authorised prosecutor. In respect of crimes subject to prosecution *ex officio* the authorised prosecutor was the public prosecutor personally. The latter's authority to decide whether to press charges, however, was bound by the principle of legality which required that he or she had to act whenever there was a reasonable suspicion that a crime subject to prosecution *ex officio* had been committed. It made no difference whether the public prosecutor had learnt of the incident from a criminal complaint lodged by the victim or another person, or indeed even if he or she had only heard rumours to that effect.

48. Article 224 provided, *inter alia*, that a criminal complaint could be lodged in writing or orally. It also stated that a court of law, should it receive a complaint of this sort, had to immediately forward it to the competent public prosecutor.

49. Article 61 provided that should the public prosecutor decide that there were no bases on which to press charges, he or she had to inform the victim of this decision, who then had the right to take over the prosecution of the case on his or her own behalf, in the capacity of a "subsidiary prosecutor" (*oštećeni kao tužilac*) within eight days of receiving notification of that decision.

50. Articles 64 § 1, 239 § 1, and 242, taken together, provided that when the alleged perpetrator of a crime remained unknown, a subsidiary prosecutor was entitled to request that the investigating judge undertake specific, additional, measures aimed at the establishment of his or her identity prior to deciding on whether or not to seek the institution of a formal judicial investigation. If the investigating judge rejected this request, it was, pursuant to Article 243 § 7, up to the pre-trial Chamber of the same court to rule on the matter.

51. Article 257 § 2 provided that, once a formal judicial investigation had been completed, the investigating judge had to provide the public prosecutor with the case file. The prosecutor then had to decide on how to proceed within fifteen days, that is to say whether to ask for additional information from the investigating judge, file an indictment with the court, or drop the charges in question.

52. Article 259 § 2 provided, *inter alia*, that the provisions of Article 257 § 2 had also to be applied, *mutatis mutandis*, to a subsidiary prosecutor.

D. Obligations Act (*Zakon o obligacionim odnosima*, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89 and 57/89, as well as in OG FRY no. 31/93)

53. Article 200 of the Obligation Act provides, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of his or her reputation, personal integrity, liberty or of his or her other personal rights (*prava ličnosti*) is entitled to seek financial compensation.

54. Article 172 § 1 provides that a legal entity (*pravno lice*), which includes the State, is liable for any damage caused by one of "its bodies" to a "third person".

III. RELEVANT INTERNATIONAL MATERIAL

A. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) report to the Government of Serbia on its visit to Serbia from 19 until 29 November 2007, made public on 14 January 2009

55. In this report the CPT noted as follows:

> "41. ... As regards Belgrade District Prison, the delegation received only a few allegations of physical ill-treatment by staff. They referred to truncheon blows inflicted by staff working in Unit 312 and by a special group of officers tasked for rapid intervention, as a form of punishment for making requests considered unacceptable by staff or in the context of resolving inter-prisoner conflicts.
>
> In contrast, at Požarevac-Zabela Correctional Institution, the delegation received a number of allegations of recent physical ill-treatment, which referred to truncheon blows, kicks and slaps by custodial staff. Most of those allegations came from prisoners held in Pavilion VII; in particular, it was alleged that staff would take prisoners who had made complaints to the basement of that unit and beat them there. More generally, the delegation gained the clear impression that there was an atmosphere of fear in Pavilion VII; many inmates claimed to have been warned by staff that they would be beaten if caught asleep during the day or in case of complaining ...
>
> Further, credible allegations of physical ill-treatment by staff were heard from prisoners held in the remand section of Požarevac-Zabela Correctional Institution, where the general atmosphere was very tense ...
>
> 42. **The CPT recommends that the management of Požarevac-Zabela Correctional Institution make use of all means at their disposal to decrease tension, in particular at the establishment's high security unit, Pavilion VII and the remand section. In addition to investigating complaints made by prisoners, this will require the regular presence of the establishment's senior managers in the detention areas (including in the remand section), their direct contact with prisoners, and the improvement of prison staff training.**

In this context, the management of Požarevac-Zabela Correctional Institution must deliver the clear message to custodial staff that physical ill-treatment of inmates as well as other forms of disrespectful or provocative behaviour vis-à-vis prisoners are not acceptable and will be dealt with severely. A similar message should be given to staff at Belgrade District Prison.

Further, prison staff ... should be reminded that the force used to control violent and/or recalcitrant prisoners should be no more than necessary and once prisoners have been brought under control, there can be no justification for their being struck.

...

45. During the 2007 visit, the delegation observed that custodial staff in the ... prisons visited were carrying truncheons in full view of inmates. As mentioned in the 2004 report, this is not conducive to developing good relations between staff and prisoners. In their response to this report, the Serbian authorities indicated that truncheons were part of the uniform. The CPT would like to stress that, in its view, prison staff should never carry truncheons in a visible manner inside detention areas; **if it is deemed necessary for staff to carry truncheons, they should be hidden from view**.

Further, the delegation found wooden sticks and iron rods in staff offices located in pavilions at Požarevac-Zabela and Sremska Mitrovica Correctional Institutions. The CPT recommends that these objects be removed from the offices of custodial staff without delay.

46. The CPT is concerned by the manner in which the resort to "coercive means" was being documented at the three establishments visited. As already mentioned ..., at [the] Požarevac Zabela Correctional Institution, staff tried to alter the information in the register of the resort to "coercive means" in respect of the past years. Further, there appeared to be discrepancies between the information in the register and the one kept by health-care services, as well as in the individual reports on the use of "coercive means". In addition, in the establishments visited, neither the registers, nor the reports on the use of "coercive means" gave any information about the type of fixation used or the length of fixation. Finally, in many cases, the description of the incident that led to the resort to "coercive means" was very poor.

In any prison system, prison staff may on occasion have to use force to control violent and/or recalcitrant prisoners. These are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such they call for specific safeguards. In particular, a record should be kept of every instance of resort to "coercive means" against prisoners. Moreover, physical force and means of restraint should never be applied as a punishment. A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. The results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner, who in addition should be entitled, if he so wishes, to undergo a forensic medical examination**. The CPT recommends that the Serbian authorities take steps to bring the practice in line with the above considerations. In this context, it is also important to ensure that prosecutors and the Ministry of Justice's Inspectorate are systematically notified of any use of physical force and "coercive means" by prison staff, and that they be particularly vigilant when examining such cases.**

47. As stressed by the CPT in the report on its 2004 [visit], prison health-care services can make a significant contribution to prevention of ill-treatment of detained persons. The examination of medical records at the three establishments visited revealed that the recording and reporting of injuries observed on newly-arrived prisoners remained a problem ...

It is also noteworthy that, at Požarevac-Zabela Correctional Institution, the delegation was told by the head doctor that an instruction had recently been issued by the Administration for the Enforcement of Penal Sanctions not to record "light traumatic injuries". **The CPT would like to receive clarification of this point from the Serbian authorities**."

B. CPT report to the Government of Serbia on its visit to Serbia from 1 until 11 February 2011, made public on 14 June 2012

56. In this report the CPT noted as follows:

"32. The CPT's delegation carried out follow-up visits to Belgrade District Prison and Požarevac-Zabela Correctional Institution, where it focused its attention on the high security and remand sections, as well as the Special Department. A first-time visit was carried out to the Požarevac Correctional Institution for Women.

...

37. No allegations of physical ill-treatment of prisoners by staff were received at Požarevac Correctional Institution for Women and at the remand section of the Požarevac-Zabela Correctional Institution. As regards the latter establishment, the atmosphere was visibly better than that observed during the 2007 visit.

However, the delegation did receive some allegations of physical ill-treatment of prisoners by staff at Belgrade District Prison, as well as of verbal abuse. In one recent case, an inmate alleged that he had been taken out of his cell, brought in the stairway – where there was no CCTV coverage – and beaten by custodial staff (punched and kicked) because he had refused to separate two of his co-inmates fighting in the cell. The inmate concerned saw the prison doctor on the following day, who recorded the following information: haematomas in the region of the right shoulder (20 cm x 20 cm, and 30 cm x 30 cm), redness and swelling under the right eye (5 cm x 5 cm). However, the medical record did not mention any cause for the injuries. The inmate lodged a complaint concerning this incident, through his mother. **The CPT would like to receive in due course information on the outcome of the investigation carried out following this complaint.**

Many allegations of physical ill-treatment of prisoners by staff were heard in the high security unit (Pavilion VII) of Požarevac-Zabela Correctional Institution; the ill-treatment alleged consisted of truncheon blows and kicks and related to staff responding to minor violations of prison discipline. That said, there seemed to have been a decrease in the number of ill-treatment allegations, coinciding with the appointment of a new prison director and a new head of security department in the spring of 2010.

The Committee recommends that the management of Požarevac-Zabela Correctional Institution deliver a clear reminder to all the custodial staff that the ill-treatment of prisoners, in any form, is unacceptable and that anyone committing, aiding and abetting or tolerating such abuses will be severely punished. The establishment's management should demonstrate increased

vigilance in this area by ensuring the regular presence of prison managers in the detention areas (including the high security unit), their direct contact with prisoners, the investigation of complaints made by prisoners, and improved staff training. Further, in the context of the prevention and investigation of ill-treatment, consideration should be given to more extensive CCTV coverage, coupled with secure recordings and an adequate policy of storage of the recorded data.

A similar reminder should be given to staff at [the] Belgrade District Prison.

38. The CPT has already stressed in its reports on the two previous visits to Serbia that the prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons through the systematic recording of injuries and, if appropriate, the provision of information to the relevant authorities. The examination of medical records at Belgrade District Prison and Požarevac-Zabela Correctional Institution showed that the recording and reporting of injuries observed on prisoners, both upon admission or during their stay in the establishments, continued to leave much to be desired ...

In addition, inmates told the delegation that medical staff at Požarevac-Zabela Correctional Institution was reluctant to record such injuries and react to allegations of ill-treatment. **The CPT recommends that steps be taken to ensure that medical staff at Požarevac-Zabela Correctional Institution are aware of their responsibilities in this respect.**"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

57. The applicant complained of having been ill-treated by prison guards on a continuing basis, and in particular of being tortured on 11 June 2007, 18 December 2009, and 22 and 24 December 2011. He also complained of the respondent State's subsequent failure to conduct an effective official investigation in that regard.

58. Article 3 of the Convention reads as follows:

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

A. Admissibility

1. The applicant's victim status

(a) The parties' observations

59. The Government maintained that the applicant could no longer claim to be a victim of the facts complained of, given the Constitutional Court's decision of 10 July 2013, wherein substantive and procedural violations of his physical and mental integrity had been found, compensation had been awarded, and a proper official investigation had been ordered (see paragraph 36 above). The decision itself had also been published in the Official Gazette of the Republic of Serbia. As regards the size of the

compensation in question, that is to say the EUR 1,000 awarded for the non-pecuniary damage suffered by the applicant, the Government maintained that this sum had been appropriate in view of the reasons given by the Constitutional Court itself, as well as the economic situation and the living standard in Serbia at the time. Indeed, the Government argued that in some cases even a finding of a violation alone might be deemed as sufficient just satisfaction for the applicant.

60. The applicant contested those arguments, stating that despite the fact that he had clearly suffered torture at the hands of Government agents, the Constitutional Court had improperly qualified his abuse as inhuman treatment. Also, there had been no adequate investigation of the incidents in question. In fact the Constitutional Court itself had found as much but had ordered an investigation only in respect of the incident of 24 December 2011. Ultimately, however, even this investigation had not been carried out properly, many years later. Lastly, the applicant maintained that the sum of EUR 1,000 euros, which had been awarded by the Constitutional Court as compensation for the "inhuman treatment" suffered, had been patently inadequate.

(b) The Court's assessment

61. The Court reiterates that the word "victim" in the context of Article 34 of the Convention denotes the person directly affected by the act or omission at issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a "victim". In respect of complaints under Article 3, such as the ones here at issue, the national authorities have to: (i) acknowledge the breach of the Convention, either expressly or in substance (see, among other authorities, *Murray v. the Netherlands* [GC], no. 10511/10, § 83, ECHR 2016, with further references); (ii) afford redress, or at least provide a person with the possibility of applying for and obtaining compensation for the damage sustained as a result of the ill-treatment in question (see *Shestopalov v. Russia*, no. 46248/07, § 56, 28 March 2017, and *Gjini v. Serbia*, no. 1128/16, § 54, 15 January 2019); and (iii) conduct a thorough and effective investigation capable of leading to the identification and punishment of those responsible. A breach of Article 3 cannot therefore, in the Court's view, 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. The general legal prohibition on torture and inhuman and degrading treatment, despite its fundamental importance, would thus be ineffective in practice

(see *Vladimir Romanov v. Russia*, no. 41461/02, § 78, 24 July 2008, and *Gäfgen v. Germany* [GC], no. 22978/05, §§ 116 and 119, ECHR 2010). That is why awarding compensation to the applicant for the damage which he or she sustained as a result of the ill-treatment is only part of the overall action required (see *Cestaro v. Italy*, no. 6884/11, § 231, 7 April 2015). The fact that domestic authorities may not have carried out an effective investigation would, however, be decisive for the purposes of the assessment of an applicant's victim status (ibid., § 229, see also *Shestopalov*, cited above, § 56).

62. Being mindful of the above and turning to the present case, the Court would note that in finding a causal link between the applicant's ill-treatment, characterised as "inhuman treatment", and his mental and physical suffering, the Constitutional Court established the State's responsibility in respect of the events in prison. It did not, however, find that the applicant had been subjected to torture as alleged. Furthermore, the award in the amount of EUR 1,000, in view of the principles set out in the case of *Shestopalov* (cited above, §§ 58-63), and more recently in *Artur Ivanov v. Russia* (no. 62798/09, § 19, 5 June 2018), appears to be substantially less than the award the Court itself would have made, given a finding of a violation of the magnitude claimed (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 202-216, ECHR 2006-V). Finally, the Constitutional Court explicitly found that the relevant authorities had failed to carry out an effective investigation in respect of the said four incidents and ordered – regarding the incident of 24 December 2011 only – that the ongoing official investigation be expedited (see paragraph 36 above).

63. In view of the foregoing, the Court considers that the applicant may still claim to be a "victim" of a breach of his rights under Article 3 of the Convention. The Government's objection in this regard must therefore be dismissed.

2. Exhaustion of domestic remedies

(a) The parties' observations

64. The Government submitted that the applicant had failed to make use of all available and effective domestic remedies, in particular of a civil claim based on Articles 172 and 200 of the Obligations Act, through which he could also have sought compensation for the non-pecuniary damage suffered (see paragraphs 53 and CASE OF above).

65. The applicant maintained that he had complied with the exhaustion requirement, having taken his case all the way to the Constitutional Court. No additional efforts aimed at obtaining redress, according to the applicant, had thus been necessary.

(b) The Court's assessment

66. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to firstly use the remedies provided by the national legal system. Consequently, States are dispensed from answering for their acts before an international body before they have had an opportunity to put matters right domestically (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

67. As regards legal systems which provide constitutional protection for fundamental human rights and freedoms, such as the one in Serbia, it is incumbent on the aggrieved individual to test the extent of that protection (see, *inter alia*, *Vinčić and Others v. Serbia*, nos. 44698/06 and 30 others, § 51, 1 December 2009).

68. An applicant's failure to make use of an available domestic remedy or to make proper use of it (that is to say by bringing a complaint at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law) will result in an application being declared inadmissible before this Court (see *Gäfgen*, cited above, § 142; see also *Vučković*, cited above, § 72).

69. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July 1971, § 89, Series A no. 13, and *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV). It would, for example, be unduly formalistic to require the applicants to exercise a remedy which even the highest court of their country would not oblige them to exhaust (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117 and 118, ECHR 2007-IV). Also, where more than one potentially effective remedy is available, the applicant is only required to use one remedy of his or her own choosing (see, among many other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Nada v. Switzerland* [GC], no. 10593/08, § 142, ECHR 2012; *Göthlin v. Sweden*, no. 8307/11, § 45, 16 October 2014; and *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-111, ECHR 2014 (extracts)).

70. Turning to the present case and in view of the above, the Court notes that the Constitutional Court itself never required the applicant to exhaust the civil claim referred to by the Government before ruling on the applicant's appeal. Furthermore, having already made use of the constitutional appeal procedure, wherein violations could be found and compensation awarded by the Constitutional Court, the applicant was clearly not required to pursue yet another avenue of potential redress, civil or otherwise, after that. In those circumstances, the Court considers that the Government's objection to the effect that the applicant had failed to exhaust

domestic remedies, within the meaning of Article 35 § 1 of the Convention, must be rejected.

3. Conclusion

71. The Court notes that the applicant's complaints are also not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Substantive aspect of Article 3 of the Convention

(a) The parties' observations

72. The applicant reaffirmed his complaints, noting in particular that the abuse in question had amounted to "torture" rather than "inhuman treatment", within the meaning of Article 3 of the Convention. In this connection he reiterated that the Ombudsman's report itself had classified the incident of 24 December 2011 as one involving the former (see paragraph 22 above).

73. The Government restated their arguments made in paragraph 59 above and maintained that the applicant's abuse had amounted to inhuman treatment, not torture, as explained by the Constitutional Court in its decision of 10 July 2013 (see paragraph 36 above). The Government furthermore submitted that coercion as such may be necessary in order to maintain prison discipline and, moreover, that it had in fact always been the applicant who had provoked the use of force on the part of the authorities. While, admittedly, the force used may have been disproportionate, it was difficult to assess the adequate level of coercion needed in order to subdue the applicant, who was a very strong person physically. In any event, the Government maintained that there had never been any intent on the part of the State agents involved to gratuitously abuse the applicant or to punish or harass him. Ultimately, the Serbian legal system had ensured the protection of the applicant's rights, as evidenced by the Constitutional Court's decision and the Ombudsman's report referred to by the applicant.

(b) The Court's assessment

(i) General principles

74. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention, 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, for example, *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V). The Court has confirmed that even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *Chahal v. the United Kingdom*, 15 November 1996, § 79, Reports 1996-V, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The nature of the offence allegedly committed by the applicant is therefore irrelevant for the purposes of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 69, ECHR 1999-IX; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 116, ECHR 2006-IX; *Saadi v. Italy* [GC], no. 37201/06, § 127, ECHR 2008; and *Gäfgen*, cited above, § 87).

75. According to the Court's settled case-law, 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 level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Gäfgen*, cited above, § 88; *Price v. the United Kingdom,* no. 33394/96, § 24, ECHR 2001-VII; and *Jalloh v. Germany* [GC], no. 54810/00, § 67, 11 July 2006). Treatment has been held 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*, cited above, § 120). It 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 (see *Gäfgen*, cited above, § 89). Torture, however, involves deliberate inhuman treatment causing very serious and cruel suffering (see, for example, *Aksoy*, cited above, § 63; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports* 1997-VI; and *Habimi and Others v. Serbia*, no. 19072/08, § 85, 3 June 2014).

76. In the context of detainees, the Court has emphasised that individuals in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see, among other authorities, *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; and *Habimi*, cited above, § 86). Any recourse to physical force in respect of a person deprived of his or her liberty which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the rights set forth in Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100 and 101, ECHR 2015). The Court is, of course, mindful of the potential for violence that exists in penal institutions (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). It

accepts therefore that the use of force may be necessary on occasion to ensure prison security, to maintain order or prevent crime. Nevertheless, such force may be used only if indispensable and must not be excessive (see *Vladimir Romanov v. Russia*, no. 41461/02, § 63, 24 July 2008, and *Habimi*, cited above, § 86).

77. Allegations of ill-treatment have to be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof of "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of individuals within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). Whilst it is not, in principle, the Court's task to substitute its own assessment of the facts for that of the domestic courts, the Court is nevertheless not bound by the domestic courts' findings in this regard (see, for example, *Habimi*, cited above, § 87).

(ii) Application of these principles to the present case

78. The Court observes that on 10 July 2013 the Constitutional Court found a violation of the applicant's right to the inviolability of his physical and mental integrity (as regards both its substantive and procedural aspects), a breach equivalent to a violation of Article 3 of the Convention (see paragraph 45 above), in respect of the incidents of 11 June 2007, 18 December 2009, and 22 and 24 December 2011, and awarded him EUR 1,000 for the non-pecuniary damage suffered (see paragraph 36 above). In these circumstances and in view of the extensively documented facts of the present case the Court finds that it has been established that the applicant had suffered ill-treatment at the hands of State agents, specifically "inhuman treatment" as characterised by the Constitutional Court. Apart from the applicant's own accounts in this regard, however, the Court is of the opinion that there is insufficient evidence for it to conclude that the applicant had indeed been "deliberately" abused in order to cause him "very serious and cruel suffering", which would have amounted to "torture" within the meaning of Article 3 of the Convention. Indeed, the Constitutional Court itself had opined that the use of force against the applicant on 11 June 2007, 18 December 2009 and 22 December 2011 had been justified but excessive. As regards the incident of 24 December 2011, while it is true that the Ombudsman's report of 31 January 2012 had described it as amounting to "torture", the Court cannot but note that this

conclusion was again essentially based on the applicant's own accounts of what had happened and the severity of the injuries sustained by him on that occasion. The Ombudsman's team did not, therefore, manage to uncover other evidence regarding the context, the reasons and/or the intent which may have warranted the initial use of force by the prison guards, however excessive this ultimately turned out to be.

79. In view of the foregoing, the Court finds that as a consequence of the applicant's inhuman treatment there has been a violation of the substantive aspect of Article 3 of the Convention.

2. Procedural aspect of Article 3 of the Convention

(a) The parties' observations

80. The applicant reaffirmed his complaints. He furthermore noted that the Constitutional Court had only ordered an investigation into the incident of 24 December 2011, despite having also found a violation in respect of the other three incidents. In practice, therefore, the relevant authorities only took some steps to investigate the incident of 24 December 2011, but even that was not carried out properly and in the end amounted to no redress at all.

81. The Government maintained that the investigation of the incident which had occurred on 24 December 2011 had been, generally speaking, independent, detailed and prompt, and that it had been the applicant who had often contributed to delays by giving inconsistent or imprecise testimony or even by attempting to influence witnesses. Moreover, the face-to-face recognition of all on-duty prison guards, as proposed by the applicant (see paragraph 41 above), would likewise, absent other evidence, have offered no additional clarification since the applicant would probably have just blamed one or more of the prison guards whom he had disliked. In any event, the Government emphasised that serious efforts had been made in order to establish all relevant facts and identify the perpetrators, but that not every investigation could lead to a conclusion upholding the claims of the person alleging abuse, particularly where there was no video-surveillance equipment installed at the relevant time and no proof beyond a reasonable doubt.

(b) The Court's assessment

82. The Court reiterates that where a person makes a credible assertion that he or she has suffered treatment contrary to Article 3 at the hands of State agents, that provision, read in conjunction with the States' general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official

investigation (see, among many other authorities, *Labita*, cited above, § 131).

83. Whatever the method of investigation, the authorities must act as soon as an official complaint has been lodged. Even when, strictly speaking, no complaint has been made, an investigation must be started if there are sufficiently clear indications that ill-treatment has been used (see *Stanimirović v. Serbia*, no. 26088/06, § 39, 18 October 2011).

84. The Court has also held that the investigation should be capable of leading to the identification and punishment of those responsible (see *Labita*, cited above, § 131). It must likewise be thorough: 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 as the basis of their decisions. Furthermore, the investigation must be prompt and independent. Lastly, it must afford a sufficient element of public scrutiny to secure accountability. While the degree of public scrutiny required may vary, the complainant must be afforded effective access to the investigatory procedure in all cases (see, for example, *Krsmanović v. Serbia*, no. 19796/14, § 74, 19 December 2017, and *Gjini*, cited above, § 95, as well as the authorities cited therein).

85. Turning to the present case, the Court once again notes that on 10 July 2013 the Constitutional Court found a violation of the applicant's right to the inviolability of his physical and mental integrity (as regards both its substantive and procedural aspects), a breach equivalent to a violation of Article 3 of the Convention, in respect of the incidents of 11 June 2007, 18 December 2009, and 22 and 24 December 2011, and awarded the applicant EUR 1,000 for the non-pecuniary damage suffered. In respect of the procedural aspect, it further found that the relevant authorities had failed to carry out an effective investigation in respect of the said four incidents and ordered – albeit regarding the incident of 24 December 2011 only – that the ongoing official investigation be expedited (see paragraph 36 above). There was hence, the Court would agree, never a criminal or another proper official investigation capable of leading to the identification and punishment of the applicant's abusers regarding the incidents of 11 June 2007, 18 December 2009 and 22 December 2011, despite his credible allegations to the effect that he had been ill-treated by State agents. With respect to the incident of 24 December 2011, the Court also sees no reason, in view of the known facts of the case, to disagree with the Constitutional Court's finding of a procedural breach of Article 3, particularly in view of: (i) the notable and unjustifiable lapse of time between some of the investigative steps taken (see, for example, paragraphs 38 and 39 above); (ii) the overall duration of the investigation in question, which started on 14 March 2012 at the latest (see paragraph 25 above) and was still pending as of 4 July 2016 (see paragraph 44 above), having thus lasted, by that time, for a period of some four years and three months in all; (iii) the unnecessarily repetitive nature of

some of the those steps (see paragraphs 23-34 and 38-44 above); (iv) the failure by the relevant authorities to attempt to carry out an exercise to allow the applicant to identify the prison guards despite the applicant's repeated and ostensibly reasonable proposals in that connection (see paragraphs 30, 38, 41 and 43 above); and (v) the lack of transparency in terms of where, when and why video footage may or may not have been available (see and compare the availability of video footage referred to in paragraphs 23 and 28 above). It is lastly the case that the domestic authorities had thus also failed to conduct an effective and meaningful investigation even after the adoption of the Constitutional Court's decision of 10 July 2013 (see paragraphs 38-44 above).

86. In view of the forgoing, the Court finds that there has been a violation of the procedural limb of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

87. The Court notes that, after the respondent Government were notified of the case, the applicant repeated other complaints initially made under Article 3 of the Convention, notably concerning his alleged ill-treatment on a number of other occasions, as well as the subsequent lack of an effective official investigation in this regard.

88. The Court reiterates that on 25 April 2016 the Government were notified of some of the applicant's complaints under Article 3 of the Convention, specifically those concerning the incidents of 11 June 2007, 18 December 2009, and 22 and 24 December 2011, in respect of which violations have now been found in the present judgment, while all remaining complaints were declared inadmissible (see paragraphs 3 and 4 above). That being so, the Court no longer has jurisdiction to examine the latter complaints (see, *mutatis mutandis*, *KIPS DOO and Drekalović v. Montenegro*, no. 28766/06, §§ 138 and 139, 26 June 2018).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

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

91. The Government contested this claim.

92. The Court considers that the applicant has certainly suffered some non-pecuniary damage. Having regard to the nature of the violations found in the present case, bearing in mind that the applicant was already awarded EUR 1,000 by the Constitutional Court (see paragraph 36 above), and making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 4,000 in this connection, plus any tax that may be chargeable on that amount.

B. Costs and expenses

93. The applicant also claimed EUR 2,355 for costs and expenses incurred before the Court.

94. The Government contested this claim.

95. 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 their quantum. In the present case, regard being had to the documents submitted by the parties and the above criteria, the Court considers it reasonable to award the full amount requested by the applicant on account of the costs and expenses incurred in the proceedings before the Court, that being EUR 2,355 plus any tax that may be chargeable to him.

C. Default interest

96. 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 the substantive aspect of Article 3 of the Convention;

3. *Holds* that there has been a violation of the procedural 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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,355 (two thousand three hundred fifty-five 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 3 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Jon Fridrik Kjølbro
President