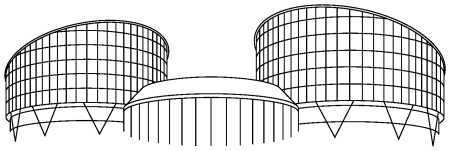

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TERGE v. HUNGARY

(Application no. 3625/15)

JUDGMENT

STRASBOURG

27 February 2018

This judgment is final but it may be subject to editorial revision.

In the case of Terge v. Hungary,

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

Faris Vehabović, *President,*
Carlo Ranzoni,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 6 February 2018,

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

PROCEDURE

1. The case originated in an application (no. 3625/15) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr István Terge ("the applicant"), on 9 January 2015.

2. The applicant was represented by Mr D. Karsai, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent at the Ministry of Justice.

3. On 19 January 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1987 and is detained in Tiszalök.

5. On 19 July 2012 at approximately 9 a.m. the applicant, who had been placed in pre-trial detention in Budapest Prison, was transported to the premises of the Budapest Main Police Department for questioning. He was accompanied by two guards and was handed over for questioning at around 9.20 a.m., when he showed no sign of injuries.

6. The questioning started at approximately 9.55 a.m. and lasted until approximately 11.30 a.m. It was conducted by police officers A and B The applicant chose not to give a statement.

7. On being released after the interrogation, the applicant was handed over to the guards of Budapest Prison who, in the presence of the police officer, asked him whether he had been ill-treated. The applicant declared that he had not been.

8. After being transported back to Budapest Prison, the applicant underwent a medical examination before his readmission during which he claimed that he had been ill-treated by police officer A. Certain injuries were noted on the applicant. A report was drawn up on the incident and photos were taken of the injuries.

9. Right after the medical examination the applicant was again transported to the Budapest Main Police Department for questioning, from where he was taken to the military hospital by the police officer conducting his interrogation and allegedly assaulting him. At the hospital he was examined in the presence of the police officer. The medical report noted bleeding on the lower lip, jaw sensitive to pressure, and bruises on the ribs, all likely to heal within eight days.

10. According to the applicant's submission, following his return to Budapest Prison, he was again subjected to a medical examination.

11. The police report filed by A on 19 July 2012 stated that the applicant had not been ill-treated during questioning. None of the police officers had seen the applicant harming himself but A. had observed him biting his nails and lips. Also, according to the report, the applicant had been left alone for a few minutes at the police station without constant surveillance.

12. On 20 July 2012 the applicant complained of a headache and dizziness and was again examined by medical staff at Budapest Prison. He asserted that he had been ill-treated during his interrogation. The medical report recorded the following injuries: swelling on the right cheek, head sensitive to pressure, bruising on the lower lip, and abrasions on the lower right ribs and on the left shoulder blade.

13. Budapest Prison initiated criminal proceedings on charges of forced interrogation. Furthermore, the applicant's statements given during the medical examination (see paragraph 8 above) were qualified as a criminal complaint by the investigation authorities.

14. In the ensuing criminal investigation conducted by the Central Investigation Office the applicant gave a testimony on 14 November 2012, stating that during his questioning he had refused to make a statement and as a consequence had been punched by one of the police officers several times on his head, neck and back. He had fallen against a chair and when he had tried to get up, he had been slapped four or five times in the face. He had been shown the results of a DNA test, and when he refused to comment on it, had again been beaten by the police officer. The same police officer had also punched him in the mouth when he had failed to recognise a person shown to him in a photograph. He had been pushed against the door and when he again fell over, the police officer had kicked him on his left side.

15. On 24 July 2013 one of the prisoner escort officers, C was questioned, and recalled that the applicant had complained of ill-treatment upon his return to the prison facility, which had surprised him since he had previously asked the applicant whether he had any complaints and had seen

no injuries on the applicant's body. He also stated that he had noted the injuries on the applicant's face following the medical examination at Budapest Prison. He had asked the applicant why he had not complained of his ill-treatment earlier, to which the applicant had replied that he had been afraid of the police officers. According to C, as a general practice, detainees had been transferred in a special prisoner transport vehicle where they had not been constantly monitored and would have had the opportunity to inflict injuries on themselves.

16. On 25 July 2013 D, the other prisoner escort officer who accompanied the applicant to his interrogation, was also heard as a witness. He did not remember either the applicant or the circumstances of his transfer. He had a vague recollection that since there had been some complaints from the applicant's side once they had arrived back at the prison facility, they had had to transfer him back to the police department. He maintained that if they had seen any injury on the applicant's face following interrogation, they would surely have inquired of him whether he had been ill-treated by the police officers. Therefore, in his estimation the applicant could not have shown any visible signs of injury when he was handed back from the interrogation.

17. On 6 October 2013 E, the prison security officer who had taken photos of the applicant's injuries during his readmission was questioned as a witness. He could not give any details of the incident. He could not remember whether he had escorted the applicant to the medical examination, but suggested that the applicant's injuries must have occurred before he had been examined by the medical staff, which was why he had been called on to take photos.

18. On 18 November 2013 F, the nurse on duty at Budapest Prison was questioned, but she did not remember the incident. She could only confirm that if she had seen the applicant's injuries prior to his transfer, she would surely have inquired about their origin. Examining the photos of the applicant, she asserted that the bruises on the applicant's face would have occurred immediately after an impact and that the applicant could have caused them himself.

19. On 5 December 2013 G, the guard on duty at Budapest Prison, was questioned as a witness; he could not remember either the applicant or anything else concerning his complaint. He nonetheless maintained that if he had seen injuries on the applicant as presented to him on a photo, he would surely have inquired about their origin.

20. On 2 January 2014 the Central Investigation Office also heard evidence from H and I, two prison escort officers from Budapest Prison who had been on duty on the day of the incident, and who were responsible for transferring detainees to the healthcare facilities. They did not remember the applicant and could not recall the circumstances of his medical examination or admission to the prison, since, as one of them explained, they were

responsible for escorting thirty to forty prisoners a day. H stated that as a general practice detainees were under constant supervision while waiting for medical examinations, whereas I asserted that there were instances where detainees were left alone when placed in so-called "healthcare waiting rooms". Neither of the witnesses knew with certainty whether this had been the case for the applicant.

21. On the same day, three members of the medical staff of Budapest Prison were also heard as witnesses. Two of them could not recall anything about the incident and did not remember the applicant, mostly because they were responsible for a large number of cases. Another member of the healthcare staff stated that she had a recollection of an incident, but was not sure whether it involved the applicant or another person. As a general rule, the witnesses explained that they would not admit a detainee into the prison if he showed signs of injuries. Examining the photos of the applicant, two of the medical staff stated that because of the bad quality of the photos, they weren't even sure if they showed actual injuries or simply the shape of the applicant's face, while the third asserted that the injury must have been fresh when the photo was taken.

22. The prison doctor was also questioned the same day. She could not identify the applicant, did not remember whether she had met him, had no recollection of the incident and could only recount what she had previously stated in the medical report. However, she stated that if the applicant had been left alone, he could have inflicted the injuries on himself.

23. The Central Investigation Office commissioned a forensic expert opinion. According to the expert assessment, the applicant's account of the origins of his injuries was implausible, since if he had been ill-treated in the way described by him, his injuries would have been of a more serious nature. Furthermore, the location of the injuries had not corresponded to the applicant's description of the incident either. The report stated that it was impossible to establish when the applicant's injuries had occurred. Referring to the witness testimonies and the location of the injuries, it suggested that the applicant could have inflicted them on himself.

24. The investigation was discontinued on 8 May 2014 on the grounds that the applicant's allegations could not be substantiated beyond doubt in the absence of any witness testimony and taking into account the conclusions of the forensic expert opinion. According to the reasoning, the available evidence neither refuted nor proved the applicant's allegations. The applicant complained, seeking the continuation of the investigations. The first-instance decision was upheld by the Chief Prosecutor's Office on 15 July 2014. The decision called the applicant's attention to the possibility of lodging of initiating substitute private prosecution proceedings.

II. RELEVANT DOMESTIC LAW

25. The relevant domestic law is set out in *Borbála Kiss v. Hungary* (no. 59214/11, § 17, 26 June 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

26. The applicant complained that he had been ill-treated by the police and that the authorities had failed to conduct an effective investigation into the ill-treatment, in breach of Article 3 of the Convention, which provides:

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

A. Admissibility

1. The parties' submissions

(a) The Government

27. The Government first objected that the application was inadmissible for failure to exhaust domestic remedies. They submitted that the applicant should have pursued substitute private prosecution proceedings, which could have remedied the alleged violation of the State's procedural obligations – and in particular the obligation incumbent on the prosecution authorities to take the necessary steps to establish the criminal responsibility of alleged perpetrators. They added that if the applicant's motion for private prosecution proceedings had been dismissed by the first-instance court, he could have either appealed against this decision or lodged a constitutional complaint.

28. The Government also submitted that the Court's findings in *Borbála Kiss v. Hungary* (cited above, §§ 25-26) and *Gubacsi v. Hungary* (no. 44686/07, §§ 31-32, 28 June 2011) were not applicable in the present case, since in those cases the reason for dismissing the Government's preliminary objection of non-exhaustion of domestic remedies had been the apparent legal uncertainty concerning substitute private prosecution proceedings. The Government further suggested that the Court should take the same approach as it had in the case of *Horváth and Vadászi v. Hungary* ((dec.) no. 2351/06, 9 November 2010), which was declared inadmissible for non-exhaustion of domestic remedies.

29. The Government also argued that the admittedly low success rate of substitute private prosecution proceedings did not mean that this procedure

was inefficient, since the dismissal of such applications was mainly due to non-compliance with the relevant formal requirements.

(b) The applicant

30. The applicant, for his part, submitted that the Government had not produced any evidence to show that substitute private prosecution proceedings had been an effective remedy in cases similar to his and would therefore constitute a remedy to be exhausted in the circumstances. He argued that he had sought redress through the available national channels by lodging a criminal complaint. The mere fact that his attention had been drawn to the possibility of acting as a substitute private prosecutor had not in itself rendered this legal avenue an effective remedy to be exhausted. He lodged a criminal complaint by which the responsibility to pursue the prosecution of officers accused of ill-treatment lay with the public prosecutor, and there was no reason to require him to have pursued the prosecution of the accused officers of his own motion.

2. The Court's assessment

31. The rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for alleged breaches alleged to have taken place (see *Pyrantienė v. Lithuania*, no. 45092/07, § 26, 12 November 2013). An applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried other remedies that were available but probably no more likely to be successful (see *Hristovi v. Bulgaria*, no. 42697/05, § 52, 11 October 2011 and the cases cited therein).

32. The Court notes that in the present case during his first medical examination the applicant declared that he had been ill-treated by the police (see paragraph 8 above). His statements were qualified as criminal complaints by the investigating authorities (see paragraph 13 above). Subsequently, a criminal investigation was opened against unknown perpetrators for ill-treatment in the course of official proceedings. Following the first-instance decision discontinuing proceedings, the applicant lodged a complaint seeking continuation of the investigations (see paragraph 24 above). There is nothing to indicate that the ensuing proceedings would not in principle have been capable of leading to the identification and, if appropriate, punishment of those responsible.

33. In the Court's view, by virtue of that remedy the State had been afforded an opportunity to put matters right. The applicant must therefore be regarded as having brought the substance of his complaint to the notice of the national authorities and as having sought redress for his complaint through the domestic channels. He was thus not required additionally to

pursue the matter by instituting substitute private prosecution proceedings, which would have had the same objective as his appeal against the discontinuation of the investigation (see, for similar reasoning, *R.B. v. Hungary*, no. 64602/12, § 62, 12 April 2016).

34. In particular, the Court cannot subscribe to the Government's view (see paragraph 28 above) that in the cases of *Borbála Kiss* and *Gubacsi* (both cited above) the applicants were not required to pursue private prosecution proceedings only because of the uncertainty prevailing at that time concerning the effectiveness of that legal avenue. Indeed, an additional important consideration was the fact that the applicants had already lodged a criminal complaint concerning the alleged ill-treatment so that that they could not be expected to have lodged a second, virtually identical complaint mentioning particular individuals by name (see *Borbála Kiss*, cited above, § 26, and *Gubacsi*, cited above, § 32). As to the Government's reference to the *Horváth and Vadászi* decision (cited above), the Court considers that the related conclusions reached in that case are not applicable to the present circumstances, since in that case the Court found that the applicants had not raised the essence of their claim – which was racial discrimination – in their private bill of indictment, which was concerned with endangering minors.

35. It follows that the Government's preliminary objection of non-exhaustion of domestic remedies must be dismissed. Furthermore, the Court notes that the application is not manifestly ill-founded, within the meaning of Article 35 § 3 (a) of the Convention, and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

36. The applicant maintained that he had suffered physical ill-treatment during his interrogation. He further submitted that he could not have inflicted the injuries on himself, since he had been held in a waist restraint belt during his transportation in the special vehicle and had otherwise been held under constant supervision. He argued that the investigating authorities should have obtained evidence in this respect. Furthermore, the domestic authorities had no basis for arriving at the conclusion that his injuries had been caused by his own conduct. He also submitted that in line with the procedural rules concerning readmission to prison, he had undergone a medical check-up for a third time on 19 July 2012 (see paragraph 10 above), but the report drawn up during this examination had not formed part of the investigation carried out by the domestic authorities.

37. The applicant emphasised that in line with the Court's case-law, the burden of proof rested on the Government to show how and when the

injuries of an individual taken into police custody in good health but found to be injured at the time of release had been sustained. The Government, however, had failed plausibly to explain how, when and where the injuries had occurred if not at the police station. He questioned the authority of the witness testimonies, which had been taken more than a year after the incident, concerning the origin of his injuries.

38. The applicant further submitted that the investigation into his allegations had not been adequate for the purpose of Article 3. Most importantly, the investigating authorities had not obtained evidence from the witnesses in due time and the investigation file had not contained all the medical documentation, which could have substantiated his allegation of ill-treatment. They had also failed to question the police officer besides A. who had been present for a brief period during the applicant's interrogation. Moreover, the domestic authorities had based their finding solely on the forensic medical expert opinion, which had not provided a plausible explanation for the cause of the injuries, and had not taken any further investigative steps.

(b) The Government

39. The Government submitted that it could not be established beyond reasonable doubt that the applicant had been ill-treated by the police officer. First, they highlighted the contradictions between the applicant's account of events – namely that he had been beaten for several minutes with great force – and the findings of the forensic expert opinion, according to which the applicant's injuries had been of a minor severity. Furthermore, according to the prosecutor's office the applicant had not been constantly monitored, thus he could have inflicted the injuries on himself. In this respect the Government also emphasised that there was no evidence that the applicant had been restrained during his transportation and the witness testimonies had not shed light on this question either. Moreover, the applicant had only complained of ill-treatment following his transfer back to Budapest Prison and not immediately after his handover from the police to the prison escort officers. The Government lastly pointed to the witness testimony of one of the medical staff who had commented when examining the photograph of the applicant that she could not be certain whether he actually had an injury on his face or merely pronounced cheekbones (see paragraph 21 above).

2. The Court's assessment

(a) Concerning the alleged ill-treatment

40. As the Court has stated on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the conduct of

the person concerned (see *Bouyid v. Belgium* [GC], no. 23380/09, § 81, ECHR 2015, with further references). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 159, ECHR 2016 (extracts)).

41. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Bouyid*, cited above, § 82).

42. 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 then rests with the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw interferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (see, among other authorities, *Bouyid*, cited above, § 83).

43. In the instant case the applicant complained that during his interrogation he was subjected to acts of police brutality. The Court notes that medical reports confirmed that the applicant had suffered bleeding on the lower lip, bruises on the ribs, and sensitivity at his jaw (see paragraph 9 above). The Court considers that in the instant case the injury suffered by the applicant was sufficiently serious to amount to ill-treatment within the scope of Article 3.

44. In the light of the parties' submissions, the witness testimonies and the relevant medical evidence, it is uncontested that the applicant's injuries were sustained while under the control of the state authorities, either during his questioning at the police station or thereafter when he was being transferred or readmitted to the prison (see paragraphs 9 and 15-22 above).The disagreement between the parties concerned the exact nature and causes of the applicant's injuries.

45. The Court observes that the investigation into forced interrogation was discontinued on the grounds that the applicant's statements could not be corroborated by any testimony, in the absence of eye witnesses during questioning (see paragraph 24 above). Moreover, the forensic expert opinion did not confirm the applicant's account of the incident, stating that the nature of the injuries excluded that they could have been caused by the

mechanism described by the applicant. That opinion even assumed, based on the location of the injuries, that they could have been self-inflicted (see paragraph 23 above). This conclusion was also supported by the Government in their submissions (see paragraph 39 above).

46. It is true that no conclusive evidence is available concerning the time at which the injuries occurred and the other circumstances surrounding the incident. In particular, the Court finds no elements which could indicate with sufficient certainty that the injuries sustained by the applicant were inflicted by use of force by the police. Furthermore, there is no evidence in the case file which could call into question the findings of the medical report or could add probative weight to the applicant's allegations.

47. In the light of the foregoing, the Court cannot consider it established beyond reasonable doubt that the applicant was subjected to ill-treatment during his time in police custody.

48. It follows that there has been no violation of Article 3 of the Convention under its substantive aspect.

(b) Concerning the alleged inadequacy of the investigation

49. The Court refers to the general principles set out, among other judgments, in *El-Masri v. the former Yugoslav Republic of Macedonia* ([GC] no. 39630/09, §§ 182-185, ECHR 2012) and *Mocanu and Others v. Romania* ([GC] nos. 10865/09 and 2 others, §§ 316-326, ECHR 2014 (extracts)), among other judgments. Those principles indicate, in particular, that the investigation into serious allegations of ill-treatment must be both prompt and thorough, and authorities must always make a serious attempt to find out what happened and take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

50. In the present case, the Court finds that the applicant's injuries were serious enough (see paragraphs 9 and 43 above) and that his complaint of ill-treatment was "arguable" for the purposes of Article 3, thus requiring the domestic authorities to carry out an effective investigation.

51. The Court observes that in the present case it was established that the applicant had no injuries before the interrogation and that the key element of consideration for the investigation authorities was whether the applicant could have inflicted the injuries on himself, a possibility suggested by the forensic expert opinion (see paragraph 23 above). The only viable means for the Central Investigation Office to obtain certainty on this point would have been to hear the testimony of the police officers present during his questioning (A and B), of the escort officers accompanying the applicant during his transfer in an outside the prison facilities (C, D, E, G, H and I),

and of the medical staff who examined the applicant before his readmission (F, the three members of the medical staff mentioned in paragraph 21 above and the prison doctor).

52. However, the investigating authorities obtained such testimony from the prison escort officers and medical staff only after a certain period of time had lapsed, in some cases more than a year after the incident (see paragraphs 15 to 22 above). At this point most of the witnesses no longer had any recollection whatsoever of the events and could not even recognise the applicant from a photo. Even those officers on duty who had been with the applicant for an extended time could not recall the exact details of his transfer. This was mainly so, according to the witnesses' own assessment, because they had been responsible for the admission, transfer and examination of a large number of detainees on a daily basis, making it impossible to distinguish cases after a certain lapse of time. The witnesses could therefore only reply to the investigation authorities' questions in a general manner or theoretically, without an actual link to the present case. For the Court, the delay in questioning the witnesses significantly tainted the official investigation being pursued by the State authorities, which was not redressed by the fact that they were ultimately heard in the course of the investigations.

53. On the other hand, the Court observes that the names of the persons on duty on the day of the incident must have been easily accessible to the investigation authorities. Moreover, there is nothing in the case file – and the Government did not provide any elements either – indicating that the investigation authorities had been prevented from questioning the witnesses in due time. In the Court's view, the prosecutor's office made no genuine efforts for a considerable length of time to establish how the applicant's injuries could have occurred.

54. The Court further observes that the applicant alleged that he had been ill-treated by police officer A. However, neither he nor B, the other police officer present during the questioning according to the police report (see paragraphs 6 and 11 above) was questioned during the investigation. The unsatisfactory course of action followed by the domestic authorities was unlikely to shed light on the central element of their inquiry, namely whether the police officer used force against the applicant during interrogation.

55. Similarly, no further measures were taken with a view to resolving the discrepancy between the version of events documented in the police report and the allegations of the applicant. A possible investigative measure in this respect could have been to organise a face-to-face confrontation (see, *mutatis mutandis*, *Bouyid*, cited above, § 128) in order to assess the credibility of each side's statements as regards the facts.

56. Given the above, the Court finds that the authorities did not do all that could have been reasonably expected of them to investigate the incident.

57. Accordingly, the Court finds that the domestic authorities failed to carry out an effective investigation into the applicant's complaint and that there has therefore been a violation of Article 3 of the Convention in its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government contested this claim.

61. Taking into account all the circumstances of the present case, the Court accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

62. The applicant also claimed EUR 6,400, plus VAT, for the costs and expenses incurred before the Court. This amount corresponded to thirty-two hours of legal work billable by his lawyer at an hourly rate of EUR 200, plus VAT.

63. The Government contested this claim.

64. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 2,000 for the proceedings before the Court.

C. Default interest

65. 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 no violation of the substantive limb of Article 3 of the Convention;

3. *Hold*s that there has been a violation of the procedural limb of Article 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 February 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Faris Vehabović
Deputy Registrar	President