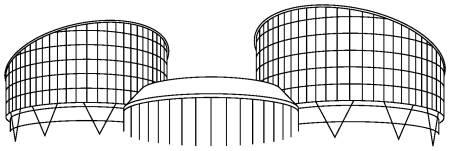

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KOSTECKAS v. LITHUANIA

(Application no. 960/13)

JUDGMENT

STRASBOURG

13 June 2017

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kosteckas v. Lithuania,

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

Nona Tsotsoria, *Acting President,*
András Sajó,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Egidijus Kūris,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Marialena Tsirli, *Section Registrar*

Having deliberated in private on 16 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 960/13) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Raimondas Kosteckas ("the applicant"), on 27 December 2012.

2. The applicant was represented by Mr N. Ulčinas, a lawyer practising in Šiauliai. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged that the authorities had failed to effectively investigate and prosecute the perpetrators of an assault on him. He relied on Articles 6 § 1 and 13 of the Convention.

4. On 10 September 2014 the application was communicated to the Government under Articles 3, 6 § 1 and 13 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Šiauliai.

6. On 17 February 2007, at around 12.30 a.m., the applicant and his friends, J.J., A.D. and D.R., arrived at a petrol station near the town of Skuodas. While they were waiting in line at the petrol station's shop, another group of men, who were not known to them, arrived at the shop and attempted to skip the queue, leading to an argument between the two

groups. After they had all left the shop, some of the men started beating J.J. in the petrol station's parking lot. When the applicant tried to help his friend, the men punched the applicant in the face and head several times, causing him to fall to the ground, where they kicked him in the head. According to the applicant, the assault lasted a couple of minutes and he was hit about ten times.

A. Pre-trial investigation

7. On the day of the incident the Skuodas police (hereinafter "the police") opened a pre-trial investigation, interviewed the applicant and granted him victim status. On unspecified dates J.J., A.D. and D.R. were also granted victim status.

8. On 19 February 2007 the applicant was examined by a court medical expert. The expert found contusions on the applicant's face and head, and determined that they could have been caused by at least four blows with a hard, blunt object. The expert concluded that the injuries corresponded to negligible health impairment (*nežymus sveikatos sutrikdymas*) and that they could have occurred at the time and in the circumstances described by the applicant (see paragraph 6 above).

9. On 13 March 2007 the police identified two suspects, E.G. and R.B., and notified them that they were suspected of disturbing the public order, contrary to Article 284 § 1 of the Criminal Code (see paragraph 25 below). On 13 June 2007 a third suspect, S.G., was identified and notified of the same suspicion.

10. On 20 March 2007 the applicant joined the proceedings as a civil party. He claimed 10,000 Lithuanian litai (LTL – approximately 2,896 euros (EUR)) in pecuniary and non-pecuniary damages jointly from all the suspects.

11. On 7 June 2007 a court medical expert again examined the applicant and his medical file. The expert found that a few days after the incident the applicant's doctor had detected a fracture in the applicant's nose, without any displacement of the bone (*nosies kaulo lūžiai be dislokacijos*), and that the applicant had been granted sick leave from work for four days. The expert concluded that the injury corresponded to negligible health impairment.

12. On 28 December 2007 E.G., R.B. and S.G. were notified that they were also suspected of causing negligible health impairment or physical pain to other persons by violent acts, contrary to Article 140 § 1 of the Criminal Code (see paragraph 25 below).

13. In the course of the pre-trial investigation, the police interviewed twelve witnesses, examined the victims' clothes and other items, obtained a video recording of the incident from the petrol station, and carried out

various other investigative measures. On 16 July 2007 the suspects and the victims were informed that the pre-trial investigation had been completed.

14. On 10 January 2008 the Skuodas District Prosecutor (hereinafter "the prosecutor") issued an indictment against E.G., R.B. and S.G., charging them with the crimes set out in Articles 140 § 1 and 284 § 1 of the Criminal Code.

B. Criminal proceedings before the courts

15. On 12 August 2008 at the applicant's request the Skuodas District Court ordered an additional medical examination of his injuries in order to determine whether there had been any further deterioration of his health. On 18 December 2008 the applicant was examined by a court medical expert. The expert found that although a few months previously the applicant had been diagnosed with inflammation of the auditory nerves, that condition was not related to the injuries sustained during the incident of 17 February 2007.

16. On 17 December 2009 the Skuodas District Court convicted E.G., R.B. and S.G. of the crimes set out in Articles 140 § 1 and 284 § 1 of the Criminal Code. The court considered that the charges had been proven by victim and witness testimony, the confessions of the accused, and the video recording from the petrol station's camera. E.G., R.B. and S.G. were given suspended prison sentences ranging from twelve to eighteen months. The applicant's civil claim was granted in part and he was awarded LTL 6,000 (approximately EUR 1,738) in non-pecuniary damages.

17. The convicted persons and the victims, including the applicant, appealed against the district court's judgment. On 25 February 2010 the Klaipėda Regional Court quashed the judgment because of grave breaches (*esminiai pažeidimai*) of the Code of Criminal Procedure (see paragraphs 28-29 below). The Klaipėda Regional Court held that the district court had not based its judgment on circumstances examined at the hearing but solely on the description of the charges in the indictment. It also held that the district court had not assessed all the testimony and other evidence in detail and had not explained why some evidence had been considered reliable and some not. The Klaipėda Regional Court concluded that such breaches had affected the district court's impartiality. As a result, the case was remitted to the Skuodas District Court for re-examination.

18. On an unspecified date the prosecutor amended the indictment and charged E.G., R.B. and S.G. only with disturbing public order, contrary to Article 284 § 1 of the Criminal Code.

19. On 5 May 2011 a different panel of the Skuodas District Court, after re-examining the case, convicted E.G., R.B. and S.G. of the charges against them and gave them suspended prison sentences ranging from twelve to eighteen months. The applicant's civil claim was granted in part – he was

awarded LTL 124.45 (approximately EUR 36) in pecuniary damages consisting of travel expenses to attend court hearings, LTL 5,000 (approximately EUR 1,448) in non-pecuniary damages and LTL 5,000 in legal costs. The court also held that the applicant had the right to claim further pecuniary damages from the convicted persons in separate civil proceedings.

20. The convicted persons and one of the victims, J.J., appealed against the district court's judgment. On 5 August 2011 the Klaipėda Regional Court quashed the judgment because of grave breaches of the Code of Criminal Procedure (see paragraphs 27 and 29 below). It found that the district court had not made any findings in respect of one of the victims, D.R., and had thereby breached D.R.'s rights and those of the accused. The Klaipėda Regional Court also held that the district court had not examined whether two of the accused, R.B. and S.G., had disturbed public order, as submitted in the amended indictment. Rather, the district court had examined whether R.B. and S.G. had assaulted the victims, thereby *de facto* changing the charges against them and violating their right to defend themselves. The Klaipėda Regional Court concluded that such breaches had affected the district court's objective impartiality, and the case was again remitted to the Skuodas District Court for re-examination.

21. On 26 March 2012 a different panel of the Skuodas District Court held that the five-year statute of limitations (see paragraph 26 below) had expired and discontinued the case as time-barred, leaving the victims' civil claims unexamined. The victims, including the applicant, appealed against that decision, arguing that the court had erred by applying the statute of limitations because the legal classification of the charges had been incorrect. However, on 28 June 2012 the Klaipėda Regional Court dismissed their appeal, finding that the legal classification of charges was the prerogative of the prosecutor and that the Code of Criminal Procedure did not provide for any possibility to continue criminal proceedings after the expiry of the statute of limitations.

C. Civil proceedings

22. After the discontinuation of the criminal proceedings, the applicant submitted a civil claim against E.G., R.B. and S.G. He claimed LTL 12,170 (approximately EUR 3,525) in pecuniary damages, consisting of the salary which he had allegedly lost while attending court hearings in the criminal proceedings, travel expenses to attend those hearings, and legal costs sustained in the criminal proceedings. He also claimed LTL 300,000 (approximately EUR 86,886) in non-pecuniary damages.

23. On 20 February 2013 the Skuodas District Court granted the applicant's civil claim in part. It examined the evidence which had been collected in the criminal proceedings and on that basis concluded that E.G.,

R.B. and S.G. had caused damage to the applicant by their deliberate actions. However, the court considered that the applicant had not proven the pecuniary damage claimed and awarded him LTL 124.45 (approximately EUR 36) under that head on the basis of petrol receipts he had submitted. The court further observed that the applicant's nose had been broken and that he must have suffered a certain amount of inconvenience owing to the need to attend numerous court hearings; however, the injury had not caused him any long-term physical or psychological damage. On those grounds, the court awarded the applicant LTL 7,000 (approximately EUR 2,027) in non-pecuniary damages.

24. The applicant appealed against that judgment, and on 4 July 2013 the Klaipėda Regional Court partly upheld his appeal. It found that the district court had erred in refusing to award the applicant pecuniary damages related to the legal costs which he had incurred in the criminal proceedings, and granted him LTL 5,000 (approximately EUR 1,448) under that head, thereby increasing the total amount of pecuniary damages to LTL 5,124.45 (approximately EUR 1,484). The amount of non-pecuniary damages was left unchanged.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

25. At the material time, the relevant provisions of the Criminal Code read:

Article 140. Causing physical pain or negligible health impairment

"1. A person who, by beating or other violent actions, causes physical pain or negligible health impairment or a short-term illness to another person shall be punished by community service or by restriction of liberty or by detention or by imprisonment for a term of up to one year.

..."

Article 284. Disturbing public order

"1. A person who, in a public place, by aggressive conduct, threats, taunting or acts of vandalism shows disrespect to other persons or to the surroundings and thereby disturbs the public peace or order shall be punished by community service or by a fine or by restriction of liberty or by detention or by imprisonment for a term of up to two years.

..."

26. According to Article 11 § 3, premeditated criminal offences which are punishable by imprisonment for a term of up to five years are classified as minor criminal offences. At the time of the assault (17 February 2007),

Article 95 § 1 (b) provided that the statute of limitations in cases of minor criminal offences was five years.

B. Code of Criminal Procedure

27. At the material time, Article 255 § 1 of the Code of Criminal Procedure provided that a court could examine a case only in respect of those accused and those criminal acts which had been referred to it for examination.

28. At the material time, Article 305 § 1 provided that the descriptive part of a court's judgment had to lay out the circumstances of the criminal offence (its place and time, the manner of its commission, its consequences, and other important circumstances); the evidence on which the court had based its conclusion and the reasons for dismissing any other evidence; the reasons for the legal classification of the criminal offence, and the reasons for choosing a particular sentence.

29. At the material time, Article 326 § 1 (4) provided that a court examining a case on appeal could quash the first-instance judgment and remit the case for re-examination if, *inter alia*, the first-instance court had not been impartial. Article 329 § 4 provided that a judgment of a first-instance court had to be quashed and a new judgment adopted if the first-instance court had committed a grave breach of the Code of Criminal Procedure. Article 369 § 4 provided that grave breaches of the Code of Criminal Procedure were such breaches of the requirements set out in that Code as had restricted the rights of the accused or had prevented the court from examining the case thoroughly and impartially and from adopting a just decision or judgment.

THE LAW

I. ALLEGED VIOLATION OF THE PROCEDURAL LIMB OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained that the authorities had failed to effectively investigate and prosecute the individuals who had assaulted him. He invoked Articles 6 § 1 and 13 of the Convention. The Court, being the master of the characterisation to be given in law to the facts of a case (see, among other authorities, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, 17 September 2009, and *Tarakhel v. Switzerland* [GC], no. 29217/12, § 55, ECHR 2014 (extracts)) considers that this complaint falls to be examined under the procedural limb of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

31. The Government submitted that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, because he had not instituted civil proceedings for damages against the State. They provided examples of domestic court judgments which had awarded compensation for non-pecuniary damage caused by lengthy or ineffective pre-trial investigations.

32. The applicant argued that a civil claim for damages against the State was not an effective remedy and would have only further prolonged the domestic proceedings.

33. The Court observes that the applicant has fully exhausted both the criminal and civil-law avenues in pursuit of his complaint against the individuals accused of assaulting him. Accordingly, it does not share the Government's view that he ought to have used a separate remedy of civil proceedings against the State (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109-111, ECHR 2014 (extracts), and the cases cited therein). The Court also considers that a civil claim against the State in respect of the failure to conduct an effective investigation into the assault on the applicant or to effectively prosecute the alleged perpetrators of that assault could not have provided him with any redress in terms of ensuring the effectiveness of that investigation and prosecution (see *Mircea Pop v. Romania*, no. 43885/13, § 61, 19 July 2016). The Government's argument as to the non-exhaustion of domestic remedies must therefore be dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

35. The applicant submitted that he had been a victim of a violent assault and that the State institutions had failed to protect his rights. He submitted that the case against the alleged perpetrators had not been complex; however, the domestic courts had been incompetent and had made various procedural errors, as a result of which the case had had to be re-examined several times and had eventually become time-barred. The applicant contended that even though his subsequent civil claim had been partly

granted, that had not been sufficient because the individuals who had assaulted him had not been punished in criminal proceedings.

36. In his reply to the Government's submissions the applicant asserted that he had no complaints concerning the investigative measures taken by the police and the prosecutor, but that his rights had been breached by the courts which had examined the criminal case against the alleged perpetrators.

(b) The Government

37. The Government firstly submitted that the obligation to investigate under Article 3 of the Convention was an obligation of means and not of result. In that connection, they submitted that the investigation of the assault against the applicant had been prompt, independent and adequate – the investigating authorities had established all the essential circumstances of the assault and had identified the perpetrators, the applicant had been sufficiently involved in the proceedings as a victim and as a civil party, and there had not been any lengthy periods of delay. The Government argued that the discontinuation of the criminal proceedings due to the expiry of the statute of limitations had not automatically rendered those proceedings ineffective.

38. The Government further submitted that the Convention did not guarantee the right to have third parties prosecuted or sentenced for criminal offences. They contended that even in cases under Article 2 of the Convention, the Court had accepted that the State's procedural obligations may be met by affording victims a civil-law remedy – the Government cited the cases of *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, ECHR 2002-I; *Vo v. France* [GC], no. 53924/00, ECHR 2004-VIII; and *Šilih v. Slovenia* [GC], no. 71463/01, 9 April 2009. In that connection, the Government submitted that the applicant's civil claim had been thoroughly examined by the courts and granted to the extent that the applicant had substantiated his losses, so despite the discontinuation of the criminal proceedings the applicant had received adequate compensation for the assault and any shortcomings in the criminal proceedings had thus been remedied.

2. The Court's assessment

39. The Court notes at the outset that during the assault the applicant sustained multiple contusions on his face and head, his nose was broken, and he was granted four days off work on sick leave (see paragraphs 8 and 11 above). In addition, the assault on the applicant occurred in a public place – a petrol station – with more than ten witnesses present (see paragraphs 6 and 13 above), which was bound to arouse in him feelings of humiliation and helplessness, diminishing his dignity (see, *mutatis mutandis*, *Ceachir v. the Republic of Moldova*, no. 50115/06, § 47, 10 December 2013, and *Basenko v. Ukraine*, no. 24213/08, § 60,

26 November 2015). The Court also notes that the Government did not question the extent of the applicant's injuries, nor did they argue that those injuries had not been sufficiently grave to fall within the scope of Article 3 of the Convention. Accordingly, the Court concludes that the violent treatment to which the applicant was subjected on 17 February 2007 reached the minimum level of severity under Article 3 of the Convention and raised the Government's positive obligations under that provision.

40. In this connection the Court reiterates that Article 3 of the Convention requires that the authorities conduct an effective official investigation into alleged ill-treatment even if such treatment has been inflicted by private individuals (see *O'Keeffe*, cited above, § 172). The procedural obligation under Article 3 of the Convention requires that any investigation should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible for an offence. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, such as by taking witness statements and gathering forensic evidence (see *N.D. v. Slovenia*, no. 16605/09, § 57, 15 January 2015, and the cases cited therein).

41. The Court also reiterates that promptness by the authorities in reacting to complaints is an important factor. In previous judgments the Court has given consideration to matters such as the time taken to open investigations, delays in identifying witnesses or taking statements, and the unjustified protraction of criminal proceedings, resulting in expiry of the statute of limitations (ibid.). Moreover, where the investigation leads to charges being brought before the national courts, the positive obligations under Article 3 of the Convention extend to the trial stage of the proceedings. In such cases the proceedings as a whole, including the trial stage, must meet the requirements enshrined in Article 3. In this respect, the Court reiterates that, regardless of the final outcome of the proceedings, the protection mechanisms available under domestic law should operate in practice in a manner allowing for the examination of the merits of a particular case within a reasonable time (ibid., § 58, and the cases cited therein).

42. Turning to the circumstances of the present case, the Court notes that the case before the domestic authorities does not appear to have been particularly complex: it concerned one incident between two relatively small groups of individuals, the incident had been recorded on the petrol station's camera, and the number of witnesses was not excessive. The investigating authorities established the relevant circumstances and identified three suspects within a few months (see paragraph 9 above). The duration of the pre-trial investigation was less than eleven months (from the applicant's complaint on 17 February 2007 until the issuing of the indictment on 10 January 2008 – see paragraphs 7 and 14 above) and thus

cannot be considered excessive. In addition, the applicant himself explicitly stated that he did not have any complaints concerning the pre-trial investigation (see paragraph 36 above). In those circumstances, the Court sees no reason to find that the pre-trial investigation by the domestic authorities was ineffective.

43. After the indictment was issued, the examination of the criminal case before the domestic courts lasted for more than four years and five months, until it was finally discontinued as time-barred on 28 June 2012 (see paragraph 21 above). Although it cannot be said that the courts were inactive during that period, the delay was mainly caused by re-examination of the case after it had been remitted by a higher court. The Skuodas District Court's judgment of 17 December 2009, which convicted the alleged perpetrators (see paragraph 16 above), was quashed by the higher court on the grounds that the district court had committed grave breaches of the Code of Criminal Procedure – it had not provided sufficient reasons for the conviction but had merely copied the description of the charges from the indictment, it had not assessed all the testimony and other evidence in detail, and had not explained why some evidence had been considered reliable and some not (see paragraph 17 above). After the Skuodas District Court re-examined the case and adopted a new judgment on 5 May 2011 (see paragraph 19 above), the higher court once again quashed the judgment because of grave breaches of the Code of Criminal Procedure – this time it held that the district court had violated the rights of the accused by *de facto* changing the charges against them, and that it had failed to make any findings in respect of one of the victims (see paragraph 20 above). The Court sees no reason to doubt the assessment of the Klaipėda Regional Court that those errors were indeed grave, and considers that they cannot be classified as being of a purely procedural nature. It reiterates that the repetition of orders for remittal within the same set of proceedings, where such orders have been given because of errors committed by the lower courts, may reveal a serious deficiency in the judicial system (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Huseinović v. Slovenia*, no. 75817/01, § 25, 6 April 2006; *Marini v. Albania*, no. 3738/02, § 145, 18 December 2007; and *Kaçiu and Kotorri v. Albania*, nos. 33192/07 and 33194/07, § 154, 25 June 2013; see also *Ceachir*, cited above, § 50). In this particular case the Government have not provided any explanation that would lead the Court to reach a different conclusion.

44. The Court also notes that after the case was remitted for re-examination for the second time on 5 August 2011, less than seven months remained until the expiry of the statute of limitations (see paragraphs 20 and 26 above). In such circumstances the Court considers that the domestic courts should have acted diligently and at a reasonable pace in order to examine the merits of the case and adopt a judgment before the

prosecution became time-barred (see, *mutatis mutandis*, *Velev v. Bulgaria*, no. 43531/08, § 58, 16 April 2013). However, the statute of limitations eventually expired and the criminal proceedings were discontinued, without a final judgment on the merits (see paragraph 21 above). In this connection the Court reiterates that the purpose of providing effective protection against acts of ill-treatment cannot be achieved where the criminal proceedings are discontinued owing to the fact that the prosecution has become time-barred and where this has occurred, as in the present case, as a result of flaws in the actions of the relevant State authorities (see *Valiulienė v. Lithuania*, no. 33234/07, § 85, 26 March 2013).

45. In those circumstances, the Court finds that the examination of the criminal case against the alleged perpetrators of the assault on the applicant before the domestic courts was not consistent with the State's positive obligations under Article 3 of the Convention.

46. The Government also argued that the shortcomings in the criminal proceedings had been remedied by the compensation awarded to the applicant from the alleged perpetrators in subsequent civil proceedings, and cited the Court's case-law under Article 2 of the Convention in which civil-law remedies had been considered sufficient (see paragraph 38 above). However, the Court observes that the cases invoked by the Government (*Calvelli and Ciglio*, *Vo* and *Šilih*, all mentioned above) concerned injuries caused by the negligent acts of private individuals. In contrast, in cases such as the present one, where the applicants were injured by the deliberate, violent acts of other individuals, the Court has repeatedly held that compensation awarded in civil proceedings could not be considered sufficient for the fulfilment of the State's positive obligations under Article 3 of the Convention, as it is aimed at awarding damages rather than identifying and punishing those responsible (see *Biser Kostov v. Bulgaria*, no. 32662/06, § 72, 10 January 2012; *Dimitar Shopov v. Bulgaria*, no. 17253/07, § 39, 16 April 2013; *Aleksandr Nikonenko v. Ukraine*, no. 54755/08, § 41, 14 November 2013; and *Stoev and Others v. Bulgaria*, no. 41717/09, § 50, 11 March 2014). The Court sees no reason to depart from that approach in the present case.

47. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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

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

50. The Government submitted that the domestic courts had awarded the applicant EUR 1,484 in pecuniary damages and EUR 2,027 in non-pecuniary damages (see paragraphs 23-24 above). They argued that that compensation had been adequate and thus the applicant was not entitled to claim any more damages.

51. The Court firstly notes that the domestic courts awarded the applicant compensation at the expense of the individuals who had assaulted him but not at the expense of the State. That award therefore cannot be considered as compensation for the damage which the applicant suffered because of the procedural violation of Article 3 of the Convention found in the present case.

52. The Court further considers that the applicant must have suffered distress and frustration as a result of that violation, which had not been addressed by the compensation awarded to him in the domestic civil proceedings. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed EUR 1,013 for the costs and expenses incurred before the Court. He submitted a copy of a contract with his legal representative and a copy of a bank transfer for that amount.

54. The Government submitted that the amount claimed by the applicant was excessive and unsubstantiated because he had not provided an itemised receipt or the lawyer's hourly rates.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses 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 grants the applicant's claim in full and awards him the sum of EUR 1,013 covering costs and expenses in the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,013 (one thousand and thirteen euros), plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Nona Tsotsoria
Registrar	Acting President