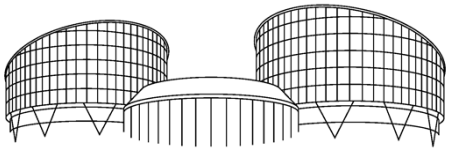

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF R.S. v. HUNGARY

(Application no. 65290/14)

JUDGMENT

STRASBOURG

2 July 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 R.S. v. Hungary,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 7 November 2017, 26 February and 14 May 2019,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 65290/14) 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, R.S. ("the applicant"), on 26 September 2014.

2. On 26 November 2018 the President of the Section acceded to the applicant's request not to have his identity disclosed (Rule 47 § 3 of the Rules of Court). She further decided that documents deposited with the Registry in which the applicant's name appeared or which could otherwise easily lead to his identification should not be accessible to the public (Rule 33 § 1).

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

4. The applicant alleged, in particular, that the forcible taking of a urine sample in order to obtain evidence of a traffic offence had constituted inhuman and degrading treatment and an interference with his physical integrity, prohibited by Articles 3 and 8 of the Convention.

5. On 12 January 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and lives in Püspökladány.

7. On 6 March 2010 the applicant got into a fight in a car park in front of a nightclub in Püspökladány, apparently under the influence of alcohol and drugs. The incident was reported to Püspökladány police station.

8. The applicant asserts that around 3 a.m. he and his girlfriend were sitting in his car, not in traffic, pulled over to the side of the road, when patrolling police officers approached them. According to the file produced in the subsequent criminal proceedings, the applicant refused to take a breathalyser test for alcohol. Following an identity check and a search, he was handcuffed and taken to Püspökladány police station to be held for questioning (*előállítás*), on suspicion of having committed an offence. According to the police reports, the police officers believed that he was under the influence of either alcohol or drugs.

9. At the police station the applicant started to insult the police officers and was handcuffed again. According to the applicant, he was also placed in leg restraints, during which time he suffered injuries. He was then transported to the Püspökladány medical emergency service by four police officers for a blood and urine test.

10. The applicant told a doctor that he was unable to urinate. According to the police reports, the applicant was under the influence of alcohol, "uncooperative, making the insertion of a catheter necessary"; he was also "violent and resisted the procedure". Furthermore, "it was necessary to physically restrain him and have recourse to force" to obtain the necessary urine sample.

11. The doctor on duty proceeded with the applicant's catheterisation while the latter's arms were handcuffed. Afterwards, the doctor cut the applicant's shirt and took a blood sample. He also issued a medical report on the applicant's injuries.

12. On 22 April 2010 the applicant was fined 50,000 Hungarian forints (HUF – approximately 180 euros (EUR)) for the minor offence of failing to comply with lawful police measures. That decision was subsequently overturned, and the proceedings were discontinued by a decision of the Püspökladány District Court of 22 April 2011. The Püspökladány District Court established that the police measure could not be held to be lawful, since the medical intervention had been carried out without the applicant's written consent, required under the Health Care Act.

13. Furthermore, in a judgment of 15 November 2011 the Püspökladány District Court found the applicant guilty of disorderly conduct, drink-driving and violence against a representative of a public authority. He was sentenced to two years and three months' imprisonment. The applicant

challenged the evidence obtained through the urine test, and the court found it established that he had consented to the use of the catheter, as evidenced by five or six witness testimonies, and he had only withdrawn his consent upon realising that the intervention was painful. The judgment stated that, irrespective of the result of urine test, it was clear that the applicant had been under the influence of alcohol at the material time, as observed by the police officers, the witnesses and the doctor on duty. On appeal, the applicant's sentence was reduced to one year and nine months' imprisonment suspended for five years by the Debrecen Regional Court.

14. On 11 March 2010 the applicant lodged a criminal complaint against the police officers involved in the incident, alleging that they had interrogated him by subjecting him to ill-treatment – beating him, using handcuffs and leg restraints, and forcibly taking blood samples from him and urine samples by catheterisation.

15. On 26 November 2010 the investigations division of the Debrecen public prosecutor's office discontinued the criminal proceedings for lack of any conclusive evidence. As to the urinary catheterisation, relying on the witness testimonies of the doctor on duty, a nurse, a driver who was on duty at the medical service at the time and the police officers, the prosecutor's office concluded that the applicant had voluntarily agreed to the sample being taken by catheterisation. Referring to an expert opinion produced by the Medical Expert Division of the Forensic Expert and Research Institute, the prosecutor's office found that urinary catheterisation did not amount to a surgical intervention. In any event, the use of physical restraint had only been necessary as the applicant had become aggressive and tried to resist once the medical intervention had started.

16. The applicant lodged a complaint against the decision, requesting that the investigation into the unlawful use of leg restraints and the catheterisation continue. By a decision of 10 January 2011 the Hajdú Bihar county chief public prosecutor's office dismissed the applicant's complaint, endorsing the findings of the first-instance authority.

17. In a parallel procedure, on 16 March 2010 the applicant lodged a complaint with the Independent Police Complaints Board ("the Board"), the body responsible for inquiring into alleged violations of fundamental rights committed by the police, challenging the use of handcuffs and leg restraints, the fact that he had been held for questioning, his ill-treatment at the hands of the police officers, and the forcible taking of urine and blood samples. The Board inquired with the doctor on duty about the incident, who stated in his reply that the applicant had agreed to the insertion of a catheter before a number of witnesses, and that he had interpreted the fact that the applicant had removed his clothes as consent to the procedure. According to the doctor, the applicant had been cooperative and had only turned violent at a later stage. According to the facts established by the Board, since the

applicant had been unable to produce the urine sample, the police officers had asked the doctor on duty to carry out the catheterisation.

18. The Board commissioned an expert opinion from the chief physician of the Budapest Institute of Forensic Medicine, who stated in an opinion of 4 June 2010 that, although some medical institutions required written consent for catheterisation, this was not the policy of the majority of institutions. In his opinion, such a procedure was not general practice, and recourse to an "emergency" intervention was professionally unreasonable. In any event, according to professional guidelines, if a urine test could not be carried out, a blood test was sufficient.

19. In an opinion of 4 August 2010 the Board found that the use of handcuffs had been legitimate and that the ill-treatment alleged could not be established. However, as regards the catheterisation and the use of leg restraints, the Board concluded that those measures had infringed the applicant's right to dignity, physical integrity, health and a fair trial. It forwarded its opinion to the Commander of the National Police Service.

20. Following the adoption of the Board's opinion, the applicant's complaint was examined by the Commander of the National Police Service under section 92(1) of Act no. XXXIV of 1994 on the Police ("the Police Act"), with a view to establishing whether the police measure had been unlawful. It was dismissed on 26 October 2010**.** The decision established that the applicant had informed the doctor on duty that he had been unable to produce a urine sample and that he would not drink water in order to be able to do it later. He had behaved aggressively and had been uncooperative, but had nonetheless agreed to the catheterisation before witnesses by loudly screaming "do the catheterisation", and had undressed voluntarily. He had only been restrained to prevent him from causing injuries to himself or the doctor, once the procedure had started. Moreover, the forcible taking of a sample was justified in situations where there were grounds to believe that the driver of a vehicle was under the influence of alcohol or drugs.

21. The applicant sought judicial review of the decision, arguing that he had not been heard during the proceedings and the facts had been established solely on the basis of the testimonies of the police officers and the medical staff. He disputed the finding that he had voluntarily undressed for his catheterisation. He emphasised that he had submitted a medical report substantiating his allegations about the use of leg restraints, which had been disregarded by the Commander of the National Police Service.

22. On 7 February 2012 the Budapest Regional Administrative and Labour Court dismissed his action. The court emphasised that, according to the medical expert opinion commissioned by the Board, there was no clear medical approach to catheterisation and the question of whether it was an invasive or non-invasive intervention, thus hospital practice differed in relation to the necessity of consent. If an examination was considered invasive, oral consent was not sufficient. In any case, the procedure could

always be stopped. The medical expert also stated that, in comparison to a blood test, a urine test was not a precise method to establish whether a person was under the influence of drugs. Furthermore, catheterisation was a procedure that could be interrupted at any time.

23. The court concluded that the procedure had been in compliance with the provisions of the Police Act setting out that a police officer could oblige a driver to provide a sample of breath, blood and urine for the purposes of a test. The court also indicated that the question as to whether consent was required for catheterisation, and whether the procedure should or should not have been carried out against the applicant's will, was outside the scope of its examination. It had been up to the doctor and not the police officers to decide on the method by which to take a sample. The court also took note of several witness testimonies and concluded that the use of leg restraints could not be established in the applicant's case.

24. The applicant lodged a petition for review with the *Kúria*, arguing that the Commander of the National Police Service had failed to establish the facts of the case. In particular, the service had not commissioned a medical report capable of substantiating the use of leg restraints, had not heard him in person, and had drawn erroneous conclusions as regards his consent to the catheterisation. The applicant further submitted that the first-instance court had erred in classifying the medical examination, since it had been neither obligatory under the provisions of the Police Act, nor reasonable or proportionate according to medical standards.

25. The *Kúria* upheld the first-instance judgment on 25 March 2014, endorsing its reasoning. The judgment was served on the applicant on 11 July 2014.

II. RELEVANT DOMESTIC LAW

26. Act no. XXXIV of 1994 on the Police provides as follows:

Section 15

Principle of proportionality

"(1) A police measure shall not cause harm which is obviously disproportionate to its legitimate aim.

(2) In the event that there are more appropriate police measures ... available, [the police] should choose the one which, while guaranteeing results, causes the least restriction, injury or harm to the person concerned.

..."

Section 33

"...

(2)The police [have the power to] hold for questioning before the relevant authority

...

(f) any person who is suspected of having committed a crime.

..."

Section 44

"(1) A police officer may, while fulfilling his or her role of managing traffic,

...

(c) ...oblige the driver of a vehicle to give blood, urine or any other sample not classified as a surgical intervention, with the assistance of medical services, in the event that there is a suspicion that the driver has committed a criminal offence, a minor offence, or any traffic-related minor offence punishable by an administrative fine under the influence of substances negatively influencing driving skills or owing to alcohol consumption.

..."

Section 92

"Any person whose fundamental right has been infringed by a violation of [police] obligations, by a police measure, by a failure to take a police measure, or by a coercive measure (hereinafter referred to as a 'measure') can, according to his or her choice:

(a) lodge a complaint with the police body which has taken the measure;

(b) request that – following an examination by the Independent Police Board – his complaint be examined, depending on the police body concerned:

(ba) by the Commander of the National Police Service;

..."

Section 93/A

"...

(6) ... The Independent Police Complaints Board transfers its opinion to the Commander of the National Police Service ...

(7) The Commander of the National Police Service shall decide on the complaint in the course of an administrative procedure (*közigazgatási hatósági eljárás*) within thirty days of receiving the opinion. If the ... decision of the Commander of the National Police Service differs from the opinion of the Board, he or she should provide reasons for it.

...

(9) No ordinary appeal lies against the decision of the Commander of the National Police Service in the course of the administrative procedure, but judicial review [of the decision] can be directly requested.

..."

27. The Code of Civil Procedure (Act no. III of 1952) provided at the material time as follows:

Administrative Actions

Article 339

Article 339/B

"An administrative decision rendered on a discretionary basis shall be deemed lawful if the administrative body [which has made the decision] has appropriately ascertained the relevant facts of the case [and] complied with the relevant rules of procedure, [and if] the discretionary points can be identified and the justification for the decision can be linked to the assessment of the evidence."

28. Act no. CLIV of 1997 on Health Care provides as follows:

Section 3

Definitions

"(m) [*an*] *invasive intervention:* a physical intervention penetrating the patient's body through the skin, mucous membrane or an orifice, excluding interventions which pose negligible risks to the patient from a professional point of view;

..."

Section 10

"(1) The patient's human dignity shall be respected in the course of health care.

(2) Unless otherwise provided for by this Act, only the interventions necessary for the care of the patient may be performed.

(3) In the course of health care, a patient may be restricted in exercising his rights only for the period of time justified by his state of health, and to the extent and in the way provided for by law.

(4) In the course of health care, the patient's personal freedom may be restricted by physical, chemical, biological or psychological methods or procedures exclusively in the event of an emergency, or in the interest of protecting the life, physical safety and health of the patient or others. Restriction of the patient may not be of a punitive nature, and may only last as long as the reason for ordering the restriction exists.

..."

Section 15

Right to self-determination

"(1) The patient shall have a right to self-determination, which may only be restricted in the cases and ways defined by law.

(2) Within the framework of exercising the right to self-determination, the patient is free to decide whether he wishes to use health-care services, and which procedures to consent to or refuse in the course of using such services, taking into account the restrictions set out in section 20.

(3) The patient shall have a right to be involved in the decisions concerning his examination and treatment. Apart from the exceptions defined in this Act, the performance of any procedure relating to health care shall be subject to the patient's

consent thereto, granted on the basis of appropriate information, free from deceit, threats and pressure (hereinafter referred to as 'informed consent').

(4) A patient may give his consent as referred to in subsection (3) verbally, in writing or through implied behaviour, unless otherwise provided for by this Act.

(5) Invasive procedures ... shall be subject to the patient's written consent, or, if the patient is not capable of [giving] this, to his declaration made verbally or in some other way in the joint presence of two witnesses.

(6) A patient may, at any time, withdraw his consent to the performance of a procedure. If, however, the patient withdraws his consent without good cause, he may be obliged to reimburse any justified costs incurred as a result of such a withdrawal."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant claimed that he had been subjected to inhuman and degrading treatment as a result of the forcible taking of a urine sample and that the investigation into his allegations of ill-treatment was inadequate. He relied on Article 3 Convention, which provides:

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

A. Admissibility

1. The parties' submissions

30. The Government submitted that the application was incompatible *ratione materiae* with the provisions of the Convention, since the impugned treatment did not reach the minimum threshold of severity required for Article 3 to come into play. In their view, this was illustrated by the fact that the applicant had not initiated substitute private prosecution proceedings to establish whether, as he alleged, the police officers had subjected him to ill-treatment.

31. They also maintained that the applicant had not exhausted the remedies available to him in domestic law; namely, he should have pursued substitute private prosecution following the discontinuation of the criminal proceedings against the police officers (see paragraph 16 above), as those proceedings would have provided an adequate remedy in the circumstances of the present case. They argued that the Court's interpretation in previous cases of substitute private prosecution as a separate set of proceedings was erroneous, since such proceedings should instead be classified as a complaint or appeal by an applicant within an existing criminal case.

32. In the alternative, the Government requested that the Court declare this complaint inadmissible, since the applicant had failed to lodge his complaint within the six-month time-limit provided for in Article 35 § 1 of the Convention. They submitted that the six-month time-limit had started to run after the termination of the criminal proceedings initiated by the applicant (see paragraph 16 above).

33. The applicant disagreed in general terms.

2. The Court's assessment

(a) The Court's jurisdiction *ratione materiae*

34. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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 *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015). Any interference with human dignity strikes at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question (ibid, §§ 100-101).

35. In the present case, the Court notes that the applicant was subjected to an invasive medical intervention in order to obtain evidence. It also notes that he was physically restrained by police officers in order to overcome his resistance. The Court considers that the intervention must, by its very nature, have given rise to feelings of insecurity, anguish and stress on the part of the applicant. It finds that that treatment, combined with the applicant's feelings mentioned above, was sufficiently serious to attain the minimum level of severity required to bring it within the scope of Article 3, which is therefore applicable to the present case. The Government's related objection of incompatibility *ratione materiae* must consequently be dismissed.

(b) The six-month rule and exhaustion of domestic remedies

36. In assessing whether an applicant has complied with Article 35 § 1 of the Convention, it is important to bear in mind that the requirements contained in that Article concerning the exhaustion of domestic remedies and the six-month period are closely interrelated. The pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the purposes of establishing the date of the "final decision" or calculating the starting point for the running of the six-month rule. It follows that if an applicant has recourse to a remedy which is

doomed to failure from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016, and the cases cited therein).

37. The Court notes that, in the present case, the applicant diligently explored the criminal avenue of redress by lodging a criminal complaint against the police officers allegedly responsible for the specific incident. The focus of the criminal proceedings was establishing whether or not the police officers had acted in breach of the Criminal Code, which prohibited forced interrogation.

38. As regards the Government's objection concerning the applicant's failure to initiate substitute private prosecution proceedings following the termination of the investigation, the Court firstly notes that in a number of cases against Hungary it has rejected the Government's argument that applicants should have recourse to substitute private prosecution proceedings (see, among others, *R.B. v. Hungary*, no. 64602/12, §§ 60-65, 12 April 2016, and *Borbála Kiss v. Hungary*, no. 59214/11, §§ 25-27, 26 June 2012). Furthermore, in the present case, the applicant lodged a criminal complaint against the presumed perpetrators and a further complaint against the discontinuation order obtained at first instance. Those proceedings were capable of leading to the identification and, if appropriate, punishment of those responsible. The Court is therefore satisfied that the applicant was not required to also pursue the matter by way of an appeal in the course of a substitute private prosecution concerning the same event, which would have had the same objective as his criminal complaint (see, *mutatis mutandis*, *Borbála Kiss*, cited above, § 26, 26 June 2012, and *Matko v. Slovenia*, no. 43393/98, § 95, 2 November 2006). The Government's related objection must therefore be dismissed.

39. It remains therefore to be examined whether the applicant's unsuccessful attempts to establish the unlawfulness of the police measure in the course of administrative proceedings amounted to him pursuing unnecessary remedies, which would render his application out of time (see, for example, *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002).

40. In particular, the Court notes that parallel to the lodging of the criminal complaint, the applicant also initiated proceedings before the Board, and subsequent to the negative decision of the Commander of the National Police Service on the Board's opinion, he requested judicial review of that decision. He lodged his application with the Court following the dismissal of his administrative action by the *Kúria*. Admittedly, in relation to this matter, the Court has held that in the area of unlawful use of force by State agents – and not mere fault, omission or negligence –, civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, are not

adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 227, ECHR 2014 (extracts)).

41. Nonetheless, the Court notes that in the present case, the domestic legislation provided for a specific complaint mechanism against allegedly unlawful police measures, under section 92 of the Police Act. The aim of the inquiry conducted by the Board and of the subsequent administrative proceedings was to establish whether the police measures in question had infringed the applicant's fundamental rights. The applicant's complaint to the Board, raising the substance of his complaint before this Court, was in fact successful to the extent that the Board objected to the action taken by the police. It was thus perfectly reasonable for the applicant to await the *Kúria*'s judgment reviewing the administrative decision which had dismissed the Board's opinion.

42. The Court notes in this respect that Article 35 § 1 cannot be interpreted in a manner which would require an applicant to lodge his complaint with the Court before his position in connection with the matter complained of has been finally settled at the domestic level (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009).

43. Furthermore, it cannot be said that the applicant deliberately tried to extend the time-limit set out in Article 35 § 1 by making use of inappropriate procedures which could offer him no effective redress for the complaint in issue under the Convention.

44. Against the above background, the Court considers that in the circumstances of the present case, the running of the six-month time-limit should be calculated from 11 July 2014, the date on which the applicant was informed of the *Kúria*'s position. The present application was lodged on 14 September 2014, within the six-month time-limit provided for in Article 35 § 1 of the Convention. As a result, the Court rejects the Government's related objection.

45. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

46. The applicant submitted that the manner in which he had been forced to undergo the medical intervention had amounted to torture. The taking of

the urine sample had been coercive, and he had never given his consent to the procedure.

47. Even assuming that he had given his agreement before the catheterisation, he should have had the right to withdraw such consent, in accordance with the Health Care Act. He pointed out that, while it remained in dispute as to whether he had given his consent to the sample being taken, the domestic courts had established that this consent had been withdrawn once the intervention had started.

48. Relying on the medical expert opinion, the applicant emphasised that, in accordance with medical practice, taking urine samples through catheterisation was highly risky in situations like the one he had been in. He also pointed out that, according to the expert opinion commissioned in the domestic proceedings, only blood samples would have constituted reliable evidence as to his alleged drug consumption. He also stressed that he had sustained a physical injury as a consequence of the intervention. There had been blood in his urine for weeks after the incident.

49. The applicant also maintained that he had been in leg restraints during the intervention, and the witness testimonies to the contrary could not be regarded as unbiased.

50. The applicant refuted the Government's argument that the alleged shortcomings in the administration of the catheterisation had been the responsibility of the medical staff. There had been no medical necessity for the intervention, which had therefore been carried out solely for the purposes of the police measure, through the use of force by the police officers.

51. He also maintained that the investigation into his claims of ill-treatment had not been effective, since the decisions had not taken into account the medical evidence substantiating his allegations that his legs had been restrained. In his opinion, the investigating and judicial authorities should not have relied on the testimonies of the medical staff and the police officers, who had evidently been biased.

(b) The Government

52. The Government contested the applicant's factual allegations, maintaining that he had voluntarily consented to the medical intervention, had appeared to be cooperative, and had only shown resistance once the procedure had started. Any restraint used by the police, as noted in the police reports, had only been necessary owing to the applicant's aggressive behaviour, and had been exercised only after the intervention had already started, in order to reduce any potential medical risk.

53. The Government also pointed out that catheterisation had a statutory basis and was necessary for the protection of public security and the interests of others. There had been no clear medical practice or regulations concerning the nature of the disputed intervention, and therefore in the

present case it had not been possible to decide what form of consent had been necessary.

54. As to the proportionality of the measure, the Government argued that the catheterisation had entailed negligible risks to the applicant's health, and he had only suffered minor injuries, which in any case had resulted from his own aggressive behaviour rather than the medical intervention. Any humiliation caused by the measure had been due to the fact that the applicant had failed to cooperate, as evidenced by the witness testimonies.

55. As regards the alleged handcuffing, the Government emphasised that the origins of the applicant's injuries on his wrists could not be established in the domestic proceedings. In any event, the applicant had not pursued his complaint about this issue. Similarly, it could not be verified whether the applicant had been in leg restraints during the catheterisation.

2. The Court's assessment

(a) General principles

56. As the Court has held 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 and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

57. Even where it is not motivated by reasons of medical necessity, Article 3 of the Convention does not as such prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him or her evidence of his or her involvement in the commission of a criminal offence. However, any recourse to a forcible medical intervention in order to obtain evidence of a crime must be convincingly justified on the facts of a particular case. This is especially true where the procedure is intended to retrieve from inside the individual's body real evidence of the very crime of which he is suspected. The particularly intrusive nature of such an act requires strict scrutiny of all the surrounding circumstances. In this connection, due regard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into consideration alternative methods of recovering the evidence. Furthermore, the procedure must not entail any risk of lasting detriment to a suspect's health (see *Jalloh v. Germany* [GC], no. 54810/00, §§ 70-71, ECHR 2006-IX).

58. Moreover, the Court has held that the following factors are of particular importance when assessing an interference with a person's physical integrity carried out with the aim of obtaining evidence: the extent to which a forcible medical intervention was necessary to obtain the evidence, the health risks for the suspect, the manner in which the procedure was carried out and the physical pain and mental suffering it caused, the

degree of medical supervision available, and the effects on the suspect's health (ibid., § 76).

59. Having regard to the general duty on the State under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", the provisions of Article 3 require by implication that there should be some form of effective official investigation where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands, *inter alia*, of the police or other similar authorities (see *Bouyid*, cited above, § 116).

(b) Application of these principles to the present case

60. In the instant case, there is no dispute that the applicant underwent catheterisation. The parties disagree about the manner in which the intervention was conducted and whether the applicant consented to it. Thus, the Court firstly needs to decide whether the applicant consented to the medical intervention (see, *mutatis mutandis, Bogumil v. Portugal*, no. 35228/03, §§ 69 and 71, 7 October 2008).

61. The Court notes in this respect that the parties disagree as to whether the applicant initially gave his consent to the catheterisation. The Government pointed out that, after questioning a number of witnesses, the authorities had found it established that the applicant had agreed to the medical procedure. The applicant stated that he had never given his consent to the intervention, and that even the domestic courts had acknowledged that he had resisted the procedure shortly after it had started.

62. The Court reiterates in this respect that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts, and as a general rule it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic courts and remains free to make its own appreciation in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 180, ECHR 2011 (extracts)).

63. The Court firstly notes that there was no well-established domestic practice or regulations concerning the use and method of catheterisation to obtain evidence of a person's involvement in an offence. Neither did the domestic law provide guarantees against the arbitrary or improper taking of urine samples through catheterisation. In particular, there was no consistent approach to the necessary form of consent in such situations (see paragraphs 18 above 22 above).

64. Secondly, the Court acknowledges that, when assessing the issue of consent, the domestic authorities were confronted with two conflicting versions of events. It is true that the authorities were prepared to treat the

applicant's allegations seriously and not dismiss them outright. During the investigations, the applicant was questioned as to his version of the events which had occurred in the police station. The investigating authorities interviewed the persons involved, including the police officers, the driver on duty and the medical staff, assembled the relevant evidence, including the medical reports, and took other steps in order to establish the circumstances of the incident. Thus, it cannot be said that the authorities did not make a genuine attempt to eliminate the discrepancies between the applicant's specific statements and the police officers' statements, but rather that, following the examination, they decided to give preference to the police officers' account of the events.

65. However, they paid no heed to the surrounding circumstances, in particular to the fact that the applicant's alleged consent had been given while he had been under the influence of alcohol (see paragraph 10 above) and under the control of the police officers. The Court also has doubts as to whether the applicant, being in the hands of the authorities and in their complete control, had any option in practice but to undergo the impugned procedure (see, *mutatis mutandis*, *Y.F. v. Turkey*, no. 24209/94, § 34, ECHR 2003-IX). The Court reiterates that with the exception of certain situations not applicable in the present case, the domestic law requires informed consent as a prerequisite of any medical intervention (see paragraph 28 above). It also observes that although the domestic authorities accepted that the applicant had given his consent to the catheterisation, they had no regard to the question whether taking a person's shouting "do the catheterisation" as agreement to a medical intervention while that person was under the influence of alcohol was compatible with the requirement of informed consent laid down in domestic law.

66. In any event, bearing in mind the applicant's right to withdraw his initial consent at any time, as guaranteed under domestic law (see paragraph 28 above), the Court observes that the applicant clearly resisted the intervention, as evidenced by the fact that the police officers had to pin him down in order for the procedure to be completed. In this respect, the Court also notes that, from a medical point of view, there was a possibility to interrupt the catheterisation once it had started (see paragraph 22 above).

67. Taking into account all the above-mentioned facts, the Court cannot conclude that there was free and informed consent by the applicant throughout the intervention.

68. As regards the purpose of the medical intervention at issue, the Court considers, and it is not disputed by the parties, that an order was given for the urine sample to be taken in order to determine whether the applicant had been involved in a traffic-related offence. Thus, it was intended to retrieve real evidence from inside the applicant's body, and was not carried out in response to a potential medical necessity.

69. As to the manner in which the catheterisation was done, the Court considers that, given the intrusive nature of the act, the present case is to be distinguished from situations where an intervention is considered to be of minor importance. Furthermore, although the procedure was carried out by a doctor in a medical emergency service, the police officers restrained the applicant and kept him handcuffed throughout the medical intervention to which he was forcibly subjected.

70. As regards the extent to which the forcible medical intervention was necessary to obtain the evidence, the Court notes that the police officers suspected that the applicant was under the influence of alcohol and drugs. He was subsequently convicted of the offence of drink-driving (see paragraph 13 above). The Court accepts that the police officers deemed it necessary to determine the blood alcohol level of the applicant and to find out whether he was under the influence of drugs, as he was a road user. However, for the Court the recourse to a catheterisation was unnecessary in the light of the fact that the police officers also proceeded with the taking of a blood sample for the same purposes. Moreover, catheterisation was not a generally accepted and applied measure in the context of domestic practice and in comparison to blood tests, there was no clear stance as to the utility of the measure in obtaining evidence of drug-related offences (see paragraphs 18 and 22 above).

71. As to the effects of the impugned measure on the applicant's health, the Court notes that the parties disagree about whether the taking of a sample by catheterisation caused him any physical injury or mental suffering, and whether it entailed any risk to his health. Taking into account the medical expert opinion commissioned in the course of the administrative proceedings, the Court cannot but observe that domestic medical practice also disagreed as to whether the intervention should be considered to be of an invasive nature. Therefore, the methods of carrying out such a procedure also differed. Having regard to the divergent domestic approach on this matter, it cannot be established with certainty that the intervention entailed no possible risk to the applicant's health.

72. The authorities subjected the applicant to a serious interference with his physical and mental integrity, against his will. They forced him to undergo catheterisation, not for therapeutic reasons (for the relevant principles see *Jalloh,* cited above, § 69), but in order to retrieve evidence which they otherwise also obtained by taking the applicant's blood sample. The manner in which the impugned measure was carried out was liable to arouse in the applicant feelings of insecurity, anguish and stress that were capable of humiliating and debasing him. Furthermore, there is no material that would allow the Court to conclude that the officers paid any consideration to the risk the procedure could have entailed for the applicant. Although it cannot be established that this was the intention, the measure was implemented in a way which caused the applicant both physical pain

and mental suffering. He has therefore been subjected to inhuman and degrading treatment contrary to Article 3.

73. Accordingly, the Court concludes that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

74. In the applicant's submission, the taking of a urine sample from him by force also amounted to a disproportionate interference with his right to respect for his private life. He relied on Article 8 of the Convention, the relevant parts of which read:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

75. The Government raised objections on the grounds of victim status and exhaustion of domestic remedies. In any event, in their opinion, there had been no interference with the applicant's private life, since the applicant had voluntarily consented to the medical intervention, had appeared to be cooperative, and had shown resistance only once the procedure had started.

76. The applicant disagreed with the Government's assertions.

77. The Court has already examined the applicant's complaint under Article 3 of the Convention concerning the forcible catheterisation. In view of its conclusion that there has been a violation of that provision, it is not necessary to examine separately either the admissibility or the merits of the complaint raised under Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

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

80. The Government contested this claim.

81. 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. Having regard to the nature of the violations found in the instant case, the Court considers it equitable to award the applicant EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant also claimed EUR 4,080 plus VAT for costs and expenses incurred before the Court. This sum corresponds to twenty-six hours of legal work billed by his lawyer.

83. The Government contested this claim.

84. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed.

C. Default interest

85. 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 complaint concerning Article 3 admissible;

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

3. *Holds* there is no need to examine separately the admissibility or the merits of the complaint under Article 8 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 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 4,080 (four thousand and eighty 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 2 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President