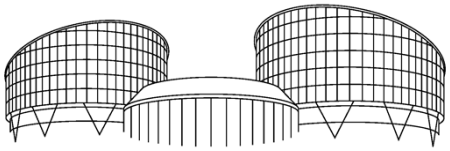

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PANAYOTOPOULOS AND OTHERS v. GREECE

(Application no. 44758/20)

JUDGMENT

Art 3 (procedural) • Ineffective investigation into the allegations of ill-treatment of the three applicants, all of Roma ethnicity, by the police during their arrest, transfer to and detention at the police station • Art 14 (+ Art 3) • Authorities' failure to take all possible steps to investigate whether discrimination might have played a role in the impugned events
Art 3 (substantive) • Inhuman treatment • Excessive force used by the police officers to overcome alleged resistance by the first and third applicants to their arrest • Art 14 (+ Art 3) • Discrimination • Not established that racist attitudes played a role in their ill-treatment
Art 3 (substantive) • Inhuman or degrading treatment • Art 14 (+ Art 3) • Discrimination • Minor abrasions on the second applicant not sufficient to reach required Art 3 threshold • Absence of prima facie evidence capable of shifting the burden of proof on to the respondent Government • Given the lack of an effective investigation, Court unable to conclude whether the second applicant was subjected to ill-treatment

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 January 2025

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 Panayotopoulos and Others v. Greece,

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

Peeter Roosma*, President*,
Ioannis Ktistakis,
Darian Pavli,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 44758/20) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Greek nationals, whose names appear in the annexed list ("the applicants"), on 30 September 2020;

the decision to give notice to the Greek Government ("the Government") of the complaints under Article 3, taken alone and in conjunction with Article 14 of the Convention, and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the European Roma Rights Centre (ERRC), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 17 December 2024,

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

INTRODUCTION

1. The applicants, three Greek nationals belonging to the Roma ethnic group, allege that they were subjected to acts of police brutality amounting to ill-treatment and/or torture during their arrest, transfer to and detention at the police station. They also complain that the relevant authorities failed to carry out an adequate investigation into the incident and that the impugned events were motivated by racial prejudice.

THE FACTS

2. The applicants were born on the respective dates that appear in the appended table. They were represented by Greek Helsinki Monitor, a non-governmental organisation based in Glyka Nera, following the decision of the President of the Section on 18 March 2021 to grant the organisation leave to represent the applicant.

3. The Government were represented by their Agent and their Agent's delegate, Ms N. Marioli and Ms A. Dimitrakopoulou, President and Senior Advisor respectively at the State Legal Council.

4. The facts of the case may be summarised as follows.

I. OUTLINE OF EVENTS

A. The applicants' version

5. The applicants belong to the Roma ethnic group.

6. On 8 October 2016 they were passengers in a car which was being driven by a fourth individual. At a certain point, police started chasing them. The applicants asked the driver to stop the car, but he increased the speed; soon afterwards, the police car came into collision with their car. The driver and the three passengers fled the scene in order to avoid arrest and abandoned the car in Karolou Koun Street in Athens. The three applicants hid on a balcony of flat at 21 Karolou Koun Street. A neighbour who saw them alerted the police. The applicants lay on the ground in order to facilitate their arrest. However, the police officers (among them P.R., C.K. and E.G.) uttered racist insults and employed physical violence during the applicants' arrest, during their transfer by police car to Ano Liosia police station and during their detention – causing them serious injuries.

7. According to the applicants, the police officers employed violence in an unsuccessful effort to force them to confess to having committed criminal offences and in order to extract the name of the driver (who had run away). The first applicant (Mr Athanasios Panayotopoulos) was on 10 October 2016 transferred to the intensive care unit of Thriassio Hospital for ten days with a reported heart attack and wounds to his genitals (see the description of medical documents in paragraphs 11-14 below).

8. On 12 October 2016, Greek Helsinki Monitor, which was alerted to the incident, wrote a letter addressed to the Deputy Minister of Citizen Protection, the Secretary General for Human Rights at the Ministry of Justice, the Athens Public Prosecutor of the Court of First-Instance (henceforth: "the Public Prosecutor"), the Athens Court of First Instance and the Police Division on Racist Violence. The letter described the alleged ill-treatment, and stated that the applicants, at a meeting that they had had with the Public Prosecutor on 9 October 2016 had requested that they be referred to medical forensic examination – a request that had been refused because the Public Prosecutor had informed them that they should first lodge a criminal complaint and pay the relevant court fees before a forensic examination could be ordered. Greek Helsinki Monitor requested that its letter be considered to constitute a criminal complaint, that a forensic examination be ordered for the next day, that a lawyer be appointed to the applicants and that independent authorities carry out a preliminary criminal and administrative investigation.

Following the receipt of the letter, a case file was opened. No forensic examination was ordered.

9. On 18 October 2016, Greek Helsinki Monitor, in a second letter that it addressed to the Athens Prosecutor of Racist Violence, requested that the latter take copies of defence statements given by the applicants on 13 October 2016 in the course of the criminal investigation against them, because in those statements they had described their injuries and had requested that those injuries be subjected to forensic examination. Greek Helsinki Monitor emphasised that – ten days after the events of the case – a forensic examination had still not been conducted and insisted that all three applicants should undergo a medical forensic examination as soon as possible. Hospital documents pertaining to the first applicant and photographs of the other two applicants taken on 13 October 2016 by their representative after they had given defence statements were attached to the letter. In conclusion, Greek Helsinki Monitor requested the prosecution of the police officers involved in what it described as torture that had been motivated by racism.

B. The Government's version

10. The Government disputed the applicants' version of the facts and relied upon the conclusions of the national authorities that had investigated the facts, as described in paragraphs 15-37 and 40-57 below.

II. MEDICAL DOCUMENTS CONCERNING THE FIRST APPLICANT

11. Following the admission of the first applicant to hospital on 10 October 2016, documents were drawn up describing his physical state. According to a note issued by the cardiology department of the hospital, upon the applicant's release on 20 October 2016, the applicant had been admitted to the hospital complaining of heart pain caused by the above-described violence. He was diagnosed with atypical chest pain (*άτυπο θωρακικό άλγος*), and he was carrying signs of open rupturing trauma to the scrotum (*θλαστικό τραύμα στο όσχεο* – that is, external injuries of the soft tissues, characterised by the dissolution of the continuity of the skin). The heart echograph results depicted a non-expandable left ventricle with concentric wall hypertrophy and good overall systolic performance (*μη διατεταμένη ΑΚ με συγκεντρική υπερτροφία τοιχωμάτων και καλή συνολική συστολική απόδοση*).

12. The urologist of the hospital in a note dated 16 October 2016 reported:

> "The patient carries a wound with slight skin loss at the root of the scrotum, on the border with the perineal suture (left); a 10-centimetre-deep one-hole wound (probably from a pointed instrument – *εκ νύσσοντος οργάνου*) emanates from the wound ..."

13. The applicant's hospital release documents stated that the applicant had been admitted on 10 October 2016 and had been released on 20 October 2016. The notes read: "Thoracic pain – [cause] undetermined; percutaneous

coronary interventions, no acute myocardial infarction – no stent implant [inserted]; no co-existing conditions causing complications."

14. Among the documents from the hospital contained in the case file, a document dated 12 October 2016 from the cardiology department addressed to Mandra police station stated:

> "The patient has been admitted to the cardiology department complaining of pain in the thorax and in the epigastrium. The examination has not yet been completed, [and] the patient cannot be released prior to the completion of the examination.
>
> Moreover, the said patient requests [that he undergo] a forensic [medical] examination [in the light of his] reported beating."

III. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

15. The applicants were charged with various offences that they had allegedly committed in September and October 2016 – including for stealing the car in which they had been passengers on the night of their arrest and for resisting arrest that night. In the course of the investigation against the applicants, on 8 October 2016 the police officers P.R., C.K. and E.G. gave witness testimony describing how they had arrested the applicants. The first two officers were part of an OPKE (*Ομάδες Πρόληψης και Καταστολής Εγκληματικότητας*) team – that is to say a Team for the Prevention and Suppression of Crime; the third officer was part of an Immediate Action (*Άμεση Δράση*) team. According to them, the stolen car had been located on the corner of Fylis and Avloniti Streets, where its driver had executed a "U turn" and then driven into the police car, after which the passengers had exited the car and run towards Karolou Koun Street. Then the police officers had started chasing the passengers on foot; they had heard a resident of a flat in 21 Karolou Koun Street calling for help and indicating that three people were on her balcony situated on the first floor (who proved to be the three applicants). The applicants had resisted arrest, and following a fight with the officers on the narrow balcony (during which the applicants had nearly thrown the officers off the balcony) the applicants had been arrested and driven to Ano Liosia police station.

16. On 13 October 2016 the three applicants gave their defence statements in respect of the offences of which they were accused; they all stated that they had been assaulted by the police, and the third applicant (Mr Vasilios Loukas) requested that a forensic medical examination of his injuries be carried out. The first applicant stated that even though he had not resisted arrest, he had been struck by the police officers on the neck, head, left and right leg, chest and stomach and in the genitals. The second applicant (Mr Ioannis Bekos) stated that although his injuries were not visible he was experiencing pain in the chin and bones. The third applicant mentioned that he had been beaten by the police officers, without specifying the injuries sustained thereby.

IV. ADMINISTRATIVE INVESTIGATION

A. Initial preliminary administrative inquiry

17. On 18 October 2016 the Attica General Police Directorate (*Γενική Αστυνομική Διεύθυνση Αττικής*) ordered a preliminary administrative inquiry (*προκαταρκτική διοικητική εξέταση – Π.Δ.Ε.* ("P.D.E.")) following (i) the issuance of a report dated 13 October 2016 by the Attica Security Directorate and (ii) the lodging of a complaint dated 12 October 2016 by Greek Helsinki Monitor that contained allegations made by the applicants that the police officers had subjected them to torture both during and after their arrest. The Attica General Police Directorate's order included a demand that the findings of the reports should contain fully reasoned assessments and conclusions regarding whether or not the police officers' behaviour had been racially motivated.

18. On 7 November 2016 leadership of the inquiry was assigned to Lieutenant G.B. of the Athens Airport Police Directorate, who was tasked with investigating the reported incidents (including whether they had been racially motivated) and with verifying whether disciplinary action should be taken against all police officers who had been involved in the case.

19. In mid-December 2016, the three applicants were summoned to Aspropyrgos police station to give their testimony within the framework of the police administrative inquiry. According to the applicants, they refused to present themselves because the said police station was subordinate to the West Attica Police Division, where the accused police officers were serving. On 17 December 2016 a letter was sent to the Secretary General for Human Rights (attached to the Ministry of Justice) and the Greek Ombudsman (a copy was sent to Aspropyrgos police station). In it, the applicants' representative complained that in the case of two of the three applicants the documents inviting them to testify were served on a relative with whom they did not live. He further complained that the Aspropyrgos police station was subordinate to the West Attica Police Division and that the administrative investigation therefore did not fulfil the condition of impartiality.

20. On 8 May 2017, G.B., the police officer in charge of the preliminary administrative inquiry, issued a report detailing the conclusions reached by the inquiry. In it, he described, *inter alia*, the witness testimony of the police officers. They all testified that upon their attempt to arrest the applicants on the balcony, they had almost fallen from it, as the applicants had pushed them. Moreover, officer P.R. had fallen onto the floor of the balcony, resulting in a light injury to his right hand. The gun case of officer E.G.'s had been damaged in the struggle. G.B. further described the defence statements given by the applicants in the course of the criminal proceedings against them. In that testimony, the applicants had requested that their injuries be subjected to a forensic examination (see paragraph 16 above). G.B. referred to the witness

testimony given on 8 October 2016 by the resident of 21 Karolou Koun Street (on whose balcony of the applicants had been arrested), Ms D.D., who had mentioned that at the time that the applicants had been on the balcony, the police officers had repeatedly identified themselves as police officers, and had repeatedly demanded that the applicants comply with their orders. The latter had obviously not complied, and from the loud noises that had emanated from the balcony and given the balcony's narrow surface area, it had been evident that a physical fight was taking place.

21. It was further mentioned by G.B. that the applicants had not appeared to give testimony within the context of the preliminary administrative inquiry, despite having been summoned. Lieutenant G.B. made reference to the reports submitted to him by the three implicated officers dated 28 March 2017 in which the police officers had generally repeated the respective testimony that they had given within the context of the criminal proceedings against the applicants. In particular, officer E.G. had stated that the applicants had left the car on the corner of Fylis and Avloniti Streets and, after jumping off a bridge, had fled towards Karolou Koun Street. No such mention of a bridge had been made in the reports of the same date submitted by officers P.R. and C.K. Moreover, Lieutenant G.B. also mentioned reports submitted by two police officers, A.G. and N.K., who had been present at Ano Liosia police station. The latter had reported that they had not seen any visible injuries to the applicants, and nor had the applicants mentioned anything relevant. Lastly, G.B. referred to the above-mentioned hospital documents concerning the first applicant.

22. On the basis of the above-noted elements, Lieutenant G.B. concluded that what the applicants alleged had not been verified; on the contrary – it was clear that the police officers had come under heavy attack from the applicants (who had resisted arrest), and the police officers had used the absolute minimum force necessary to lawfully defend themselves. The injuries sustained by the applicants – which in any event had not been visible to the police officers at Ano Liosia police station (who had reported that they had not seen any) – could have been caused by the car crash that they had deliberately caused in order to flee arrest and by their jumping off a bridge after they had abandoned the car. Lieutenant G.B. recommended that the administrative inquiry be suspended pursuant to Article 48 § 3 of Presidential Decree no. 120/2008 for a period of less than a year (in the light of the parallel criminal proceedings) so that any evidence adduced by the latter could be taken into account by the administrative inquiry. The next day the director of the Athens Airport Police Directorate indicated his concurrence with that opinion.

23. On 21 August 2017 the head of the Attica General Police Directorate decided to archive the officers' disciplinary file. By a document dated 22 August 2017, the Attica General Police Directorate informed to this effect

the Western Attica Police Directorate, the Police Personnel Directorate and the Internal Affairs Directorate.

B. Supplementary preliminary administrative inquiry

24. On 20 April 2018, in the light of newly identified elements that had not been properly investigated, the Attica General Police Directorate revoked the decision to consign the case file to the archives and ordered that the preliminary administrative inquiry be reopened and completed, pursuant to Article 31 § 5 of Presidential Decree no. 120/2008.

25. G.B. completed the reopened preliminary administrative inquiry, and in the report on his findings dated 10 August 2018 he clarified that – contrary to the applicants' representative's allegations that the applicants had been summoned by Aspropyrgos police station (which was subordinate to the West Attica Police Division) – the administrative investigation had been conducted by a police unit that was not administratively subordinate to the police officers investigated. The applicants had been requested to reply to specific questions that he (G.B.) had asked, so they had not had to reply to questions posed by officers from Apropyrgos police station. In any event, the second and third applicants had in the end been invited to testify at, respectively, Aitoliko police station and Korinthos police station (they being residents of those areas). As regards the applicants' complaints that summonses to testify had not been served on them, G.B. referred to the receipts for the summonses that had been served on the second and third applicants, who had taken delivery of them themselves. He further noted that as regards the first applicant the relevant invitation had been served on his sister and had then been posted on his front door, as he had not been found in the house – pursuant to the relevant legislation. Lieutenant G.B. again recommended that the disciplinary proceedings be suspended – an opinion with which the Director of the Athens Airport Police Directorate concurred.

C. Sworn administrative inquiry

26. By a decision of 10 May 2019, the Attica General Police Directorate upgraded the preliminary administrative inquiry to the status of sworn administrative inquiry (*ένορκη διοικητική εξέταση – Ε.Δ.Ε.*). The decision provided that the officer that headed the sworn administrative inquiry was obliged to examine, *inter alia*, any racial motive for the actions of the implicated police officers and record in his findings report fully reasoned assessments and conclusions in that regard.

27. On 24 May 2019 the sworn administrative inquiry was assigned to Lieutenant Colonel M.T. of the administrative enquiries subdivision at the Attica General Police Directorate, who conducted the inquiry and took the testimony of witnesses, defendants and the applicants.

28. On 7 June 2019 the Greek Ombudsman, an independent authority acting in its capacity as the National Mechanism for the Investigation of Arbitrary Incidents (*Εθνικός Μηχανισμός Διερεύνησης Περιστατικών Αυθαιρεσίας*), was notified of the opening of the sworn administrative inquiry.

29. On 18 December 2019 Lieutenant Colonel M.T. presented her findings concerning the sworn administrative inquiry. She concluded that the three applicants had been lawfully summoned during the preliminary administrative inquiry. Moreover, she noted that the respective testimony given to her by the three applicants contradicted the testimony that they had given in 2017 in respect of whether they had been assaulted both during their transfer to the police station and at the police station. If the applicants had been beaten as intensely as they alleged, they would have had visible injuries to their faces; however, judging by the photographs taken of them either at the police station a few hours after they got arrested or later by their representative, only the third applicant had had some bruising under his eyes. In any event, even assuming that the applicants had requested that they be subjected to a forensic examination (they had not referred to any such request in the testimony that they had given to the investigating judge; such a request was only referred to in a document from the hospital which noted that the first applicant had asked to be examined – see paragraph 14 above), the applicants could have appointed a forensic medical expert themselves in order that their injuries be recorded. In the light of the above-mentioned observations – and given the fact that no criminal charges had been brought against the police officers because the Prosecutor had proposed that charges not be brought against them M.T. concluded that there was no credible evidence that the police officers had (prompted by a racist motive) ill-treated the applicants. She therefore recommended that the case be archived in respect of the three police officers (P.R., C. K. and E.G.), and that the services to which they were attached be instructed to monitor the progress of the criminal investigation into the case. The director of the administrative enquiries subdivision concurred with that recommendation.

30. On 7 January 2020 the applicants' representative asked the Ombudsman whether the sworn administrative inquiry had been completed and requested copies of the relevant documents in order to be able to lodge an application with the Court. In reply, on 27 January 2020, the Ombudsman stated that the inquiry had not been completed and that the applicants could receive copies only after its completion and under the conditions set out by the relevant legal provisions.

31. Following the completion of the sworn administrative inquiry, the file was forwarded on 21 February 2020 to the Ombudsman so that the latter could decide whether it was necessary to reopen that inquiry in order that it be supplemented.

32. The Ombudsman in a findings report dated 14 October 2020 raised certain points regarding the sworn administrative inquiry. In particular, he noted that the inquiry had been sufficiently independent, as it had been assigned to an officer who had belonged to another police directorate – even though the relevant legislation at the time had not provided for it. The means of summoning the applicants had been sufficiently explained by the investigating officers. One problematic issue identified in the report was the relationship between the preliminary criminal investigation and the disciplinary inquiry. Specifically, the persons conducting the criminal investigation were awaiting the results and conclusions reached by the disciplinary investigation (and *vice versa*), and the preliminary administrative inquiry had twice been suspended pending the conclusion of the criminal investigation and the publication of the findings thereof. Thus, the independence and autonomy of the two respective procedures had not been guaranteed; indeed, each had been fully dependent on the other – especially at the initial preliminary inquiry stage. Moreover, in concluding that no disciplinary offence had been conducted, the sworn administrative inquiry had taken into account the fact that criminal charges had not been brought against the officers. However, at the time of completion of the sworn administrative inquiry, criminal charges had been brought against the police officers and a main investigation had been conducted, at the end of which (i) the Prosecutor had proposed that no court proceedings be opened, and (ii) the relevant decision of the Athens Board of Misdemeanour Judges as to whether court proceedings would be opened had still been pending. Another issue identified by the Ombudsman was the conclusions of the sworn administrative inquiry, according to which it was not certain that the applicants had in fact requested that they undergo a forensic medical examination. However, in the testimony that they had given to the investigating judge on 13 October 2016 all three had stated that they had been assaulted, and the third applicant had requested a forensic medical examination. The Ombudsman further noted, citing the Court's relevant case-law, that such cases required an *ex officio* investigation. The Ombudsman stated that the instant case had not required that a criminal complaint be lodged by the applicants, and criticised the lack of any forensic medical examination. As regards the violence against the applicants, the sworn administrative inquiry had assessed only the applicants' respective testimony, which it had found to be inaccurate as regards the location at which they had been assaulted. The inquiry had not assessed evidence attesting to the existence of any injuries at all (or the reasons for any such injuries); nor had it determined any specific explanation for the visible injuries to the third applicant, as depicted in the above-mentioned photographs, and nor had it uncovered any evidence that those injuries had been the result of necessary force exercised by the police officers. On the contrary: the report had simply stated – without providing any reasoning – that the injuries had been a result

of necessary violence. As regards the bruises on the third applicant specifically – those had been corroborated by (i) his testimony of 23 June 2017 to the effect that during the arrest (when, as was not disputed by anyone, violence had been exercised by the police officers), one police officer had kicked him in his left eye, which had become bruised, and (ii) the above-mentioned photographs, which depicted injuries that could not have reasonably been the result of jumping off a bridge which could have resulted in injuries to the body or the head, but not the eye. His bruises had also been visible when he had been brought to Peristeri police station after his arrest, as reported in the station's incident log. As regards the injuries to the genitals of the first applicant (as described in the hospital documents), the sworn administrative inquiry had not determined any plausible explanation, given that such injuries were unlikely to have been caused by jumping off a bridge or during the arrest. Moreover, there had been no assessment of the medical findings reached and assessments undertaken by the hospital, while the initial preliminary administrative inquiry had merely referred to them without forming any judgment. In addition, the doctor who had certified the first applicant's injuries could have been (but was not) summoned to testify in respect of their possible cause. The Ombudsman further noted that it had not been possible during the sworn administrative inquiry to identify which of the police officers had transferred the applicants to the police stations, given the latter's allegations that they had been beaten up during that transfer. Nevertheless, according to the OPKE logbook entries for 8-9 October 2016 which had been submitted on 5 September 2017 and which were included in the criminal file, it was clear that it had been officers of that team who had transferred the applicants. However, the content of the "same" document that had been adduced during the sworn administrative inquiry had been different. Therefore, it should be investigated which of the two documents was the original and how an altered document had been introduced into the inquiry. In the light of all the above-noted omissions, the Ombudsman stated that the sworn administrative inquiry should be reopened and supplemented.

D. Supplementary sworn administrative inquiry

33. On 5 December 2020 the Attica General Police Directorate ordered the opening of a supplementary sworn administrative inquiry, which was assigned to Lieutenant Colonel A.L. of the administrative enquiries subdivision at the Attica General Police Directorate. In her findings (dated 22 March 2021), A.L. reiterated the findings of the initial sworn administrative inquiry, and referred to the fact that the criminal investigation had been wound up pursuant to the below-mentioned Order no. 4953/2019, concluding that – given that no criminal charges were pending against the officers and that the accusations made against them by the Roma applicants were completely false – the remarks made by the Ombudsman did not require

any further investigation. A.L. recommended that the case be archived, and on 2 April 2021 the director of her Department indicated his concurrence with that recommendation.

34. By a report issued on 3 April 2021 by the administrative enquiries subdivision of the Attica General Police Directorate, the case file was sent to the Uniformed Personnel Department of the Directorate for review. The file was subsequently sent to the Ombudsman on 11 June 2021 so that he could decide whether the inquiry had been sufficiently thorough or whether it needed to be supplemented.

35. On 12 August 2021 the Ombudsman submitted a report. In it, he stated that during the supplementary sworn administrative inquiry the only new action taken by way of supplementing the inquiry had been simply to refer to the conclusions of Order no. 4953/2019. In his initial report, the Ombudsman had made extensive references to Article 48 of Presidential Decree 120/2008 (which concerned the need to keep the disciplinary investigation independent of the criminal investigation) and to the relevant case-law of the Supreme Administrative Court. According to that case-law, (i) disciplinary organs were bound by a final acquittal only as regards the existence or non-existence of the facts that constituted the disciplinary offence in question, but (ii) as regards the remainder of the matters in question, they were free to issue a different decision after taking into account the findings of the criminal decision. The Ombudsman noted that in the instant case, the investigating organs had not undertaken a free assessment of the evidence before them but had rather adhered strictly to what had been accepted in the criminal proceedings. While this had been a possibility available to them, the choice of the administrative organs not to investigate and assess the evidence had constituted a disregard for the independence and the aim of the disciplinary procedure. The Ombudsman, after noting that the criminal and disciplinary proceedings in the instant case had not been independent and autonomous, referred to all the omissions identified in his first report – namely, (i) the failure to order a forensic medical examination of the injuries sustained by the first and third applicants, and (ii) the failure to take into account the relevant photographs and hospital documents, and the OPKE logbook entries (which all formed part of the criminal investigation file). The Ombudsman concluded that there was no margin for further completion of the sworn administrative inquiry.

36. Subsequently, the Attica General Police Director, by a decision of 8 September 2021, concluded that the case should be archived and that no disciplinary action should be taken against the three police officers involved or against any other police officer, because no disciplinary responsibility had been established for any racially motivated torture and violence.

37. On the basis of the above, on 8 September 2021 the Director of the Attica General Police Directorate concluded that police officers P.R., C.K. and E.G. had not committed any disciplinary offence, and that nor had any

disciplinary responsibility been established in respect of any other police officers.

E. Separate Administrative proceedings

38. As noted by the Ombudsman (see paragraph 32 above), the version of the above-mentioned OPKE logbook of 8-9 October 2016 that was submitted on 5 September 2017 within the context of the criminal preliminary investigation was different in its wording from the version of the same document that was submitted on 27 September 2019 to the officer who conducted the sworn administrative inquiry. On 8 September 2021 a separate administrative inquiry was initiated in order to discern whether a non-faithful reproduction of the said document had been submitted intentionally and to identify if the persons involved bore disciplinary responsibilities therefor. On 24 December 2021, a report on the findings of the separate inquiry was issued. The report stated that the 2019 copy of the document was not analytical, but rather referred to an attached testimony. By contrast, the 2017 copy was analytical, detailing numerous elements concerning the incident. According to the testimony given by the officers within the context of the separate administrative proceedings, the officers patrolling on the night in question, for lack of time, had initially been more succinct in their description of the incident; however, just after they had submitted their incident report, they were asked to expand upon it by the service to which they were attached – and they did so. That was further proved by the fact that the logbook entries for 8-9 October 2016 had been submitted in 2017, which meant that it had not been altered afterwards. By mistake, the more succinct version had been submitted to the sworn administrative inquiry in 2019. The person conducting the separate administrative proceedings proposed that the case to be archived – an opinion with which the Police Director indicated his concurrence on 19 January 2022.

39. On 30 June 2022 the applicant's representative lodged a criminal complaint (alleging a breach of duty and abuse of power) against several persons, including the investigating judge, the prosecutor and police officers. The complaint was based on the facts of the present case and the OPKE logbook entries that had been submitted in two different versions during the investigation.

V. CRIMINAL INVESTIGATION

40. On 10 January 2017 the Athens Public Prosecutor at the Court of First Instance ordered that a preliminary investigation be conducted by the Internal Affairs Division of the police in order to verify whether police officers had caused dangerous bodily harm to the applicants jointly and repeatedly. There was no mention of racist motive nor of torture (criminal file no. PR 2016/4).

41. Following a three-month extension requested by the Internal Affairs Division and granted by the Public Prosecutor, the applicants were called to testify on 11 April, 21 May and 23 June 2017 respectively. In their respective testimony, they described in detail the ill-treatment that they had allegedly suffered while being arrested on the above-mentioned balcony, in the police station and during the transfer to the General Police Directorate.

42. In particular, the first applicant (in his testimony of 11 April 2017) stated that in the front of the building on which the balcony stood there had been many police officers, some of whom had gone onto the balcony. They had started assaulting him and the other applicants with kicks and punches to the stomach, the neck, the legs, the face and the whole body. The kicks had been very painful as the police officers had been wearing army boots. He could not remember how long the assault had lasted; he had been only half- conscious after the beating and had vomited blood. Then someone had grabbed him by the hair and had dragged him and the others down the stairs. Then they had taken them to Ano Liosia police station. The same police officers had kicked and punched them in the police station, too, while wearing the special gloves worn by police officers. Other police officers had participated too but he could not say how many, as he had had his head down. From the police station, they had transferred him elsewhere – probably to the Attica General Police Directorate. During the transfer there the police officer sitting with him in the police car had struck him too. The applicants had slept there, and had not been assaulted. The next day they had been taken to be questioned by the investigating judge. While before the investigating judge he had requested to be allowed to go to the toilet where he had noticed that his genitals had a tear from which he was bleeding. The applicants had then been taken to different police stations. The first applicant had asked to be taken to hospital. He had requested both the investigating judge and the hospital staff that he be examined by a forensic expert; however, no such examination had taken place. He was not capable of identifying the police officers who had assaulted him as he had tried to keep his head down in order to protect himself. He no longer wished to see a forensic expert because – given the amount of time that had elapsed since the events in question – such an examination would be pointless.

43. In his testimony of 21 May 2017, the second applicant stated that he had fled the scene with the other applicants; they had jumped off a fence and had found shelter on a balcony. There, three or four police officers had arrested and handcuffed them and then they had started kicking and punching them all over their bodies as they had been lying on the ground, without allowing them to raise their heads. The applicants had not resisted arrest. During the assault, the police officers had shouted threats and insults, including slurs about the applicants' ethnic origin. Then they had grabbed the applicants by the hair and had taken them downstairs. The second applicant had been placed in a police car with the third applicant; next to each of them

had sat a police officer. He had had been bleeding from the mouth and from near his eyebrow. When they had got out of the police car, the police officers had started beating him and the third applicant again all over the body. They had dragged him inside the police station, where he had seen the first applicant sitting in a chair, having apparently been severely beaten and with visible injuries on his face. There the police officers had forced the second applicant to keep his head down and had punched him every time he had not replied to their questions; moreover, with an unidentified object the police officers had struck him on the legs. Then they had started striking the first applicant, after tearing his shirt, in various parts of his body – including on the tattoo he had on his chest. They had taken the first applicant's trousers away from him. The second applicant had again been beaten during the subsequent transfer by car to another police station; that police car had contained him, the third applicant and three police officers. The latter had placed handcuffs on him extremely tightly so as to cause him pain; one police officer had used the cap of a pen to injure him in the back. He could not identify the police officers; nor did he know whether it had been the same persons who had assaulted him on the balcony, in the police station and during the transfer between police stations. The second applicant no longer wished to see a forensic expert because – given the amount of time that had elapsed since the events in question – such an examination would be pointless.

44. In his testimony of 23 June 2017, the third applicant repeated that the applicants had been subjected to kicks and punches during their arrest. He had been injured in his left eye and had felt pain all over the body. During his transfer to Ano Liosia police station, a police officer had used a pen to injure the genitals of the second applicant, Mr Bekos, who had started crying. Then the applicants had been taken to the police station, where different police officers had started beating them in the face and the legs. They had not been transferred elsewhere, but had remained in the police cell after the beating until they had been taken to the investigating judge the next day. According to the third applicant, a female forensic expert had examined them while they had been in the police cell and taken photographs of them. He could not identify the police officers who had arrested them, but he thought that he could identify the policemen who had used the pen as a weapon against the second applicant, as well as the police officers who had beaten them in Ano Liosia police station. He no longer wished to see a forensic expert because – given the amount of time that had elapsed since the events in question – such an examination would be pointless.

45. The three applicants also submitted a joint statement on 11 April 2017. In it they described their version of the facts that had taken place on 8 October 2016, as described above.

46. On 16 August 2017, Mr Panayote Dimitras, as the representative of the applicants (and of the Greek Helsinki Monitor), gave his testimony, also

submitting a supplementary statement in respect of the initial complaint. In it, he stated that the criminal investigation had been unreliable and evidently partial because of the failure to order forensic examinations of the applicants, despite their repeated requests. He referred to a letter dated 18 April 2017 from the Council of Europe Commissioner for Human Rights to the Deputy Minister of the Interior and the Minister of Justice in which reference was made to the applicants' complaint regarding their alleged subjection to torture (see paragraph 68 below).The applicant's representative also stated that he personally felt general concern regarding the widespread violence employed by the country's police forces. He further complained of the absence of any reference to a racist motive in the order to open a preliminary investigation. Lastly, he requested the criminal prosecution of those investigating officers who had refused to order the forensic examination of the applicants, as well as of the prosecutor who had not made any reference to a racist motive when issuing the order for preliminary investigation against the police officers.

47. In the meantime, the Athens Forensic Service sent a letter on 26 May 2017 confirming that the applicants had never been examined by its doctors.

48. On 5 November 2017, police officers P.R. and C.K. submitted statements containing their explanations. They reiterated their version of the events in question, indicating that the stolen car had been spotted on the corner of Fylis and Avloniti Streets, and adding that the applicants' allegations were false and full of contradictions. They further made reference to the conclusions of the preliminary administrative inquiry, which had been archived without any sanctions being imposed on P.R and C.K. In those statements, they attributed the applicants' injuries to the applicants jumping from a bridge of unknown height in their attempt to flee.

49. On 13 November 2017, a police officer who had been supervising the police officers who were patrolling the area that night, noted that he had been informed of the incident involving the stolen car, which had been abandoned at the corner of Fylis and Megalou Alexandrou Streets after it had crashed into the police car. He had further been informed that the applicants had then tried to flee arrest by jumping off the bridge that connected the two streets. He had gone to the bridge and had noted that the said bridge was over three metres high. He had then gone to Ano Liosia police station, where he had remained for half an hour, and had not seen any sign of ill-treatment against the applicants who had been given water and blankets.

50. On 1 December 2017 the third police officer implicated in the events, E.G., submitted his statement of defence, which was almost identical to those submitted by officers P.R. and C.K. on 5 November 2017. However, according to E.G., the car had been abandoned on the corner of Fylis and Avloniti Streets, after which the applicants had jumped off a bridge of unknown height.

51. After the completion of the preliminary investigation, the case file was sent back on 1 December 2017 to the Public Prosecutor, who assigned it to

the Prosecutor for Racist Crimes. On 1 September 2018, the latter instituted criminal proceedings by bringing charges against officers P.R., C.K. and E.G. – and other unidentified person responsible – for committing torture with racist motivation jointly and repeatedly under Article 81A of the Criminal Code, as worded at the time.

52. The main investigation was conducted by the Third Regular Investigating Judge at the Athens Court of First Instance.

53. Mr Panayote Dimitras was summoned to testify on 4 February 2019, when he affirmed the content of the testimony that he had given on 16 August 2017. He indicated that the UN Human Rights Committee and Council of Europe had taken an interest in the case, affirmed the injuries of the second and third applicants (who he had met in person shortly after the incident) and the injuries of the first applicant on the basis of the relevant hospital documents. He affirmed that no forensic examination of the applicants had been carried out despite their repeated requests and stated that in his view, the offence had been prompted by a racist motive. Lastly, he reiterated the case-law on the reversal of the burden of the proof in such cases, and lodged a request for copies of the documentation in the case file in order to be able to submit them to international organisations and to the administrative court before which an action for compensation brought by the first applicant was pending.

54. On 27 February 2019 the three police officers made defence statements. They gave the Fylis Street and Avloniti Street crossroads as the location of the car crash, and said that following the crash the applicants had jumped off a bridge. They reiterated the account of events contained in the defence statements they had given during the preliminary criminal investigation. They also reported that in total around forty people had been involved in the incident (including police officers and local residents) and that the only reason criminal charges had been brought against them was because they had signed the arrest reports. Furthermore, the ethnic origin of any arrestee was never a factor governing their actions as police officers, but only the commission of an offence.

55. On 20 March 2019 and on 1 April 2019, the applicants' representative lodged two requests (with, respectively, the investigating judge and the prosecutor) for copies of the criminal file in order to be able to lodge an application with the Court. He was only given access to the defence statements of the police officers.

56. Following the completion of the main criminal investigation, the Vice-Prosecutor of the Athens Court of Misdemeanour Judges, by a proposal no. 4094 dated 25 September 2019, recommended to the Athens Board of Misdemeanour Judges that no charges be brought against the police officers.

57. On 20 December 2019 the Board, by its Order no. 4953/2019, decided not to open court proceedings against the police officers, to drop the relevant charges, to request the applicants to pay the court costs (amounting to

360 euros (EUR)) and to relieve the representative of Greek Helsinki Monitor of the obligation to pay court costs. In particular, the Board noted that there had been big contradictions between the applicants' respective testimony: the first applicant had stated that the same police officers who had arrested them and assaulted them were the same ones who had transferred them to Ano Liosia police station and assaulted them there too, whereas the third applicant had alleged that at that police station other police officers had assaulted them. The third applicant had submitted that after they had arrived at the police station, all three applicants had been placed in an office, where other police officers had assaulted them; by contrast, the second applicant had submitted that he and the first applicant had been placed in chairs outside the office where police officers had assaulted them and that they had then been taken to a detention cell, where they had seen the third applicant. The third applicant had submitted that during his and the second applicant's transfer to the police station, the second applicant had been injured with a pen in his genitals by a police officer, whereas the second applicant had stated that he had not been assaulted during his transfer to the police station. In any event, if the incidents had taken place as the applicants alleged, they would all have carried injuries for a long time, whereas in fact, no visible injuries on the face of the first applicant had been reported by the hospital. From the police officers' respective testimony, as well as that of the above-mentioned resident of 21 Karolou Koun Street, Ms D.D., it was evident that the applicants had resisted arrest – even though the police officers had identified themselves and had told the applicants not to move. It was also clear that the applicants had attacked the police officers who had risked falling from the balcony and that the latter had used the minimum necessary force to defend themselves and to arrest the applicants. As regards the injuries suffered by the applicants, the first applicant had not suffered a heart attack according to the hospital documents. From the photographs, it was also clear that the third applicant had had lesions under his eyes and that the second applicant had not had any injuries. The injuries sustained could in any event have been a result of the car crash that the applicants had caused or of their jumping off the bridge, or they could have been sustained at another point in their effort to flee arrest.

VI. CIVIL PROCEEDINGS

58. On 18 June 2018 the first applicant brought an action in the Athens Administrative Court of First Instance concerning the events of 8 October 2016, requesting that the State pay him EUR 50,000 in respect of the non-pecuniary damage that he claimed to have suffered. Following a hearing on 21 May 2021, a decision suspending the proceedings was issued in order for the defendant to produce (i) the administrative file that had been created in respect of the police officers and their actions, and (ii) any other relevant piece of evidence concerning certain issues that required clarification. The

first applicant was also invited to produce any other relevant pieces of evidence. The next hearing was scheduled for 10 December 2021. The Administrative Court of First Instance, by its judgment no. 5332/2022, suspended the proceedings and ordered an expert medical report on the first applicant's injuries and their cause. It appointed a medical expert, who submitted his report on 30 November 2022 (for details see paragraphs 59-60 below). A new hearing date was set for 23 September 2023.

59. The medical expert, having reviewed the documents available to him, emphasised that it would have been more correct if a forensic examination of the applicants had been conducted sooner after the incident. He assessed the photographs of the three applicants taken in the police station a few hours after their arrest and mentioned the following:

i) As regards the second applicant, he had been carrying the following wounds: a small abrasion (*εκδορά*) 0.5 cm in length to the right cheekbone; an abrasion to the right area of the cervical spine; and a small abrasion 0.5 cm in length to the left area of the cervical spine. According to the medical expert, the last two wounds had been compatible with the applicant having been seized by the neck or possibly having been placed in a headlock; such wounds were often found in arrested persons who had been immobilised forcibly (against their will). Those simple injuries were compatible with their having been caused by a pointed instrument.

ii) As regards the injuries to the third applicant that were visible in the photographs of him, the medical expert noted the following wounds: a wound 0.5 cm in length, slightly to the left of the centre of the frontal area of the face; an ecchymosis of the right eye 6 cm in diameter; a smaller ecchymosis under the lower left eyelid; four small ecchymoses under the bottom lip. Those simple injuries were compatible with their having been inflicted by a pointed instrument.

iii) Lastly, as regards the first applicant, according to the above-mentioned hospital documents, he had not been suffering from any cardiological damage at the time of his admittance to the hospital, nor had he suffered a heart attack. However, the stress caused by his violent arrest and the pain resulting from the injury to his genitals had given him heart pain. His assertion before the Athens Administrative Court that he was suffering from concentric hypertrophy of the walls of the left ventricle owing to the beatings that he had received from the police officers had had no medical basis, as such a condition took months (or even years) to develop. The injury to the first applicant's genitals had been small in diameter and 10 cm deep and had not caused any harm to the testicles. It had most probably been caused by impalement on the sharp end of a railing while the applicant had been attempting to climb over a fence. Moreover, from the photographs taken after his arrest the following injuries had been visible: an abrasion to the right area of the cervical spine; a small abrasion 1 cm in length to the side and front entrance of the right nostril; and an ecchymosis under the lower left eyelid.

The first of those wounds had been compatible with the applicant having been held by the neck (possibly in a headlock) and was often found in arrested persons who had been immobilised against their will. Those simple injuries had been compatible with having been caused by a pointed instrument.

60. In general, the applicants' injuries could not have been caused by the car crash, or by jumping off a bridge. The first applicant's injury in the genital area could have been caused by the sharp end of a fence railing. The medical expert could not certify whether these injuries could have resulted from his trying to defend himself. The injuries to the first and second applicants' necks had been compatible with their having been put in head locks, and were common to people who had resisted arrest. With the exception of the heart pain and the injury to the genitals of the first applicant, the remainder of the injuries were the ordinary, minor injuries that commonly arose during arrest procedures.

61. On 11 March 2024 the Athens Administrative Court of First Instance delivered its judgment no. 3131/2024, granting partially the first applicant's action. In view of the evidence before it – including (i) the defence statements given by the applicants (which included contradictions as regards certain parts of their alleged ill-treatment, but were consistent as regards other parts), (ii) statements given by two police officers (which referred to abrasions or bruises that the applicants had been carrying upon their arrival at the police station on the night of their arrest), and (iii) most importantly, the photographs of the applicants taken on 9 October 2016 (which showed bruises to the eyes of the third applicant and to the right part of the first applicant's cervical spine), the court held that the applicants had at least an arguable claim that they had been ill-treated. Given that (i) none of the applicants had (unlike the officers) been carrying a gun, (ii) the police officers' had enjoyed an advantageous position at the time of the arrest (they had been inside the house, whereas the applicants had been at risk of falling off the balcony), (iii) the police officers had indicated that they had wrestled with the applicants (but without providing details as regards the applicants' exact behaviour), (iv) the police officers had suffered no injuries (apart from a light injury to the right arm of P.R.), (v) the police officers had outnumbered the applicants, and (vi) the operation had not been planned in advance, but had lasted over an hour (during which time further police officers had arrived), it followed that the circumstances surrounding the applicants' arrest could not justify the recourse to the level of violence indicated by the applicants' injuries. As regards the first applicant's injuries, the court stated that the most unusual of those had been the one to his scrotum. In view of the third applicant's testimony during the preliminary administrative inquiry that the applicants had jumped over a fence in their attempt to flee, the similar testimony given by a police officer, and the medical expert's opinion, the court concluded that that injury had been caused by a sharp end of a fence railing. The first applicant's chest pain had been due to stress caused by his

arrest and the pain in his scrotum, whereas the concentric hypertrophy of the walls of the left ventricle was not relevant to the arrest incident. The abrasions and ecchymoses to his face and neck were compatible with the testimony given by officer C.K. that the applicant had resisted arrest and had attempted to throw him off the balcony. The first applicant's muscular physique and the narrowness of the balcony had made overcoming his resistance even more difficult for C.K. However, in his testimony C.K. had given neither exact details regarding the applicant's resistance nor his own reaction to that resistance. That lack of any explanation on the part of C.K. had resulted in certain injuries – especially the ones to the applicant's face – remaining unexplained. In the absence of any such explanation – and in view of the fact that the applicant had not been carrying a gun – the officer's advantageous position (inside the house, as opposed to that of the applicant, who had been at risk of falling off the balcony) the large number of police officers who had been in the flat and below the balcony, and the obligation for police officers to show professionalism given also their high-level education, the violence exercised on the first applicant had exceeded what was necessary under the circumstances. Moreover, no medical forensic examination had been conducted, despite the applicants' requests. Therefore, the competent organs had also failed to fulfil their positive obligations emanating from Article 3 of the Convention. In light of the above, the first-instance court awarded the first applicant EUR 5,000.

62. The above-mentioned judgment is not yet final.

RELEVANT LEGAL FRAMEWORK

I. THE CONSTITUTION

63. Under Article 7 § 2 of the Constitution, torture, any physical injury, damage to health, or psychological violence – as well as any other violation of human dignity – are prohibited and must be punished in a manner provided by law.

II. PRESIDENTIAL DECREE No. 120/2008 ON DISCIPLINARY LAW FOR POLICE PERSONNEL

64. The relevant provisions of Presidential Decree 120/2008 on "Disciplinary Law for Police Personnel", as in force at the material time, read as follows:

Article 10
Offences giving rise to dismissal penalty

"The disciplinary offences that give rise to the penalty of dismissal are the following ...:

...

(c) Acts constituting torture and other offences against human dignity within the meaning of Article 137 A of the Criminal Code;

..."

Article 11
Misconduct giving rise to the penalty of suspension with dismissal
("*ποινή αργίας με απόλυση*")

"1. The disciplinary offences that give rise to a penalty of suspension with dismissal are the following...

...

ia) Brutal behaviour towards peers, subordinates or citizens, provided that it does not fall under sub-paragraph c of paragraph 1 of Article 10;

..."

Article 24
Preliminary administrative inquiry

"1. A preliminary administrative inquiry (προκαταρκτική *διοικητική εξέταση Π.Δ.Ε.* [P.D.E.] shall be conducted:

a) In the event that there is merely a suspicion or no clear indication that a specific disciplinary offence has been committed, in order to establish whether or not a disciplinary offence has [in fact] been committed.

(b) To ascertain the circumstances of an injury to or causes of sickness of police officers in order to determine whether they are service-related; and

(c) To ascertain incidents or occurrences of interest to the Service.

2. A P.D.E. is secret and is ordered by a superior officer of the person against whom it is directed and is carried out either by the person who ordered it or by another officer superior or more senior [*ανώτερο ή αρχαιότερο*] to the person against whom it is directed. Where it is considered necessary to supplement the P.D.E the provisions of Article 26 § 2 shall apply *mutatis mutandis*.

A P.D.E. that is carried out to establish whether disciplinary offences referred to in Article 10 § 1 (c) and in Article 11 § 1 (ia) [have been committed] shall be assigned to an officer of a directorate (or service equivalent thereto), other than the one to which the police officers involved are administratively attached."

Article 26
Sworn administrative inquiry

"1. A sworn administrative inquiry (E.D.E.) [*Ένορκη Διοικητική Εξέταση (Ε.Δ.Ε.)*] is conducted when the existing evidence gives clear indications of the commission of a specific disciplinary offence that carries a higher disciplinary penalty, in order to establish whether or not it was committed, the circumstances under which it was committed and the possible perpetrator.

2. An E.D.E. ... shall be carried out:

...

c) In respect of other police officers, by an officer superior to the accused at the time of the disciplinary action, who is appointed by the appropriate order (unless the ordering officer considers that it should be carried out by himself). The hierarchically superior services shall be notified of the carrying out of the E.D.E..

If a supplementary E.D.E.is ordered, it shall be assigned either to the officer who carried out [the original E.D.E.] or to another officer above or more senior to him...

...

4. An E.D.E. for disciplinary offences referred to in Article 10 § 1 (c), shall be assigned to an officer of a directorate or (service equivalent thereto), other than the one to which the police officers who are being dismissed are administratively attached.

..."

Article 48
Relationship between disciplinary and criminal proceedings

"1. Disciplinary proceedings are separate and independent of criminal or other proceedings.

2. The disciplinary body shall be bound by the judgment contained in an irrevocable decision of a criminal court or in an irrevocable acquittal order only [in respect of] the existence or non-existence of facts constituting the objective basis for disciplinary offences. In all other cases, the decision of the criminal court shall be taken into account in the disciplinary proceedings, but the disciplinary body may adopt a different decision from that delivered by the criminal court.

3. The criminal trial shall not suspend the disciplinary proceedings, but in the event of the serving of a summons or subpoena in accordance with the provisions of the Code of Criminal Procedure, the persons authorised under Article 22 § 1 to bring disciplinary proceedings and the relevant disciplinary bodies may, by a decision that shall be freely revocable, order (if they deem it necessary) the suspension of the disciplinary proceedings, [whose length] may not exceed one year.

In any event, suspension shall not be authorised where the disciplinary action has caused a public scandal or has seriously undermined the reputation of the service.

The period of suspension shall not count towards the running of the limitation period and shall be independent of the period of suspension provided in Article 7."

III. CIVIL CODE

65. The relevant provisions of the Civil Code provide as follows:

Article 57

"Whoever is unlawfully insulted in his personality ("*Οποιος προσβάλλεται παράνομα στην προσωπικότητά του*") has the right to demand that the insult be removed and not repeated in the future. If the insult refers to the personality of a person who has died, [that person's] spouse, descendants, ancestors, siblings and heirs will have this right; [the possibility to bring] an action for damages under the [legal] provisions on tort is not excluded."

Article 59

"In the cases of the two preceding Articles, the court in its decision, at the request of the offended party and after taking into account the nature of the offence, may also order the offender to afford compensation for the non-pecuniary damage incurred by the offended party. Such satisfaction shall consist of the payment of a sum of money, of a publication, or whatever is required by the circumstances."

66. Article 105 of the Introductory Law to the Civil Code provides as follows:

"The State shall be duty-bound to make good any damage caused by unlawful acts or omissions attributable to its organs in the exercise of public authority, except where such unlawful act or omission was in breach of an existing provision but was intended to serve the public interest. The person responsible and the State shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

IV. CODE OF CRIMINAL PROCEDURE

67. The relevant provisions of the Code of Criminal procedure in the chapter concerning legal remedies against orders read as follows:

APPEAL AGAINST AN ORDER
Article 477
To whom [it] is allowed [to lodge an appeal against an order]

"[The right to] appeal against an order shall be allowed to the accused and to the prosecutor, in the instances provided in the following Articles and in all other cases specifically provided by law."

Article 479
When the prosecutor is allowed [to lodge an appeal against an order]

"The appellate prosecutor may appeal against any order of the Board of Misdemeanour judges."

Article 483
When the Public Prosecutor is allowed to appeal on points of law

"1. The Public Prosecutor of Misdemeanour Judges may request the reversal of an order concerning a felony in the event that the order refers the accused to the court or decides that no charges should be brought, or temporarily or permanently terminates the criminal prosecution or declares it inadmissible.

2. The Prosecutor of the appellate court shall have the same rights in respect of the decisions of the Board of Appeal Judges.

3. The Prosecutor of the Court of Cassation may, if no appeal has already been lodged by the Prosecutor of the Appeals Court, request the revocation of any order (including those that are rendered irrevocably by a declaration to the registrar of the Supreme Court) within the time-limit laid down by Article 480, the second sentence of which shall also apply in this case ..."

V. RELEVANT INTERNATIONAL MATERIAL

A. Council of Europe Commissioner for Human Rights

68. On 18 April 2017, the Council of Europe Commissioner for Human Rights ("the Commissioner") addressed a letter to the Minister of Justice, Transparency and Human Rights and to the Deputy Minister of Interior and Administrative Reconstruction in Greece. In it, he wrote *inter alia*:

> "Dear Ministers,
>
> ...
>
> I am very concerned by the fact that I continue to receive alarming information concerning instances of alleged ill-treatment, including torture, by Greek police officers...
>
> In addition, I received information about the alleged severe beating, amounting to torture, of three Greek nationals of Roma origin who claimed that in October 2016 they were subjected to the above treatment by officers of the Western Attica Police Division, in the course of an interrogation. Reportedly one of the victims was transferred to hospital having suffered a heart attack and serious injuries on his genitals. I understand that a complaint has been lodged with the Athens Special Prosecutor on Racist Violence.
>
> I am afraid that these very serious cases illustrate, once again, the long-standing and systemic problem of law enforcement officials' excessive violence and commitment of serious human rights violations that require determined and systematic action by Greece. I noted with interest the adoption in December 2016 of Law 4443/2016 establishing a national mechanism for investigating incidents of arbitrariness in security forces and in detention facilities. While regretting the fact that the recommendations made by the Greek National Commission for Human Rights and myself, in order to enhance effectiveness, were not followed, I do hope that this new mechanism will contribute to the fight against and the eradication of impunity.
>
> ...".

B. Resolution of the Committee of Ministers of the Council of Europe of 14-16 September 2021

69. In the context of examination of the measures taken by the Greek authorities in certain cases concerning ill-treatment by law enforcement agents, the Committee of Ministers adopted Final Resolution CM/ResDH(2021)190, which in its relevant parts reads as follows:

> "The Deputies
>
> 1. recalling that these cases concern the use of potentially lethal force and ill-treatment by law enforcement agents as well as the lack of effective investigations capable of leading to adequate disciplinary and criminal sanctions;
>
> ...
>
> - Substantive violations of Article 3

8. while welcoming the authorities' determination to address the causes of ill-treatment and change the culture among law enforcement agents noted with serious concern notably the lodging of new similar applications with the Court and the persistence of ill-treatment by police agents evidenced notably by CPT in its 2020 reports and encouraged the authorities to take due account of the CPT's recommendations, notably those concerning regular professional training and safeguards preventing ill-treatment in order to prevent recurrence of substantive violations of Article 3 by all law enforcement agents (police and coast guard).

- Ineffective criminal investigations

...

10. noted however with concern the findings contained in the 2020 CPT report and urged the authorities to redouble their efforts in order to enhance the effectiveness of criminal investigations in line with the CPT recommendations; invited them to provide the Committee by September 2022 with updated statistical and qualitative information about criminal investigations into ill-treatment by law enforcement officers and their outcomes, showing the impact of the measures taken to date;

- Ineffective disciplinary investigations

11. welcomed the authorities' determination and measures taken to enhance the effectiveness of disciplinary investigations, notably: the increased transparency of investigations achieved by the Mechanism's work since it started operating in June 2017; the increasing quality of disciplinary investigations reviewed by the Mechanism; the 2020 legislation reinforcing the Mechanism's investigatory competencies; the 2019 change of the police officers' disciplinary law reinforcing the independence of disciplinary investigations;

12. noted nonetheless with concern the persistence of shortcomings in disciplinary investigations, recorded notably in the Mechanism's 2020 report, and urged the authorities to: continue supporting and reinforcing the Mechanism notably by taking measures to provide it promptly with staff necessary in order to further improve its effectiveness; give effect to the Mechanism's recommendations in order to enhance disciplinary investigations; and provide the Committee by September 2022 with updated statistical and qualitative information about disciplinary investigations into ill-treatment by law enforcement officers and their outcomes showing the impact of the measures taken to date."

C. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT")

70. The CPT's report on its visit to Greece from 28 March to 9 April 2019 (CPT/Inf (2020) 15, 9 April 2020) contains the following passage in particular:

"...

The CPT has been highly critical about the treatment of criminal suspects by elements of the Hellenic Police and remains concerned that, despite overwhelming indications to the contrary, the Greek authorities have to date consistently refused to accept that police ill-treatment is a serious problem in Greece.

The findings of the 2019 visit indicate once again that the infliction of ill-treatment by the police, especially against foreign nationals and persons from the Roma

community, remains a frequent practice throughout Greece. The CPT's delegation received a high number of credible allegations of excessive use of force and unduly tight handcuffing upon apprehension and of physical and psychological ill-treatment of criminal suspects during or in the context of police interviews. Alleged ill-treatment mainly consisted of slaps, punches and kicks as well as blows with truncheons and metal objects to the body and head. It also received some allegations involving blows with a stick to the soles of the feet (*falaka*) and the application of a plastic bag over the head during police interviews, reportedly with the aim of obtaining a confession and a signed statement. None of the persons who alleged ill-treatment had been allowed to make a phone call or to contact a lawyer during their initial questioning by the police. Further, a great number of allegations of verbal abuse of detained persons was received, including of racist/xenophobic remarks by police officers...

In the CPT's view, the current system of investigations into allegations of ill-treatment cannot be considered effective. The establishment of a "National Mechanism for the Investigation of Arbitrary Incidents" within the Ombudsman's Office, operational since June 2017, represents a step in the direction of creating a fully independent police complaints body. However, the CPT has a number of concerns as to whether it is able to be fully effective, particularly as it provides no oversight of the criminal investigation into alleged ill-treatment cases. The CPT recommends that the Mechanism be provided with significantly more resources and be granted supplementary powers.

The Committee's own findings confirm that investigations are still not carried out promptly or expeditiously and often lack thoroughness. Further, the criteria for deciding to investigate cases under the torture provision of Article 137 A of the Criminal Code appear unclear. Consequently, most cases of alleged police ill-treatment are not criminally prosecuted and only very few result in criminal sentences or even disciplinary sanctions. This picture is reinforced by the fact that none of the 21 outstanding cases of alleged serious police ill-treatment raised by the Internal Affairs Directorate of the Hellenic Police in April 2014, including two cases examined *in extenso* by the CPT in 2015, has resulted in a successful prosecution. These flaws in turn undermine any message of zero-tolerance and foster a culture of impunity. It is important that all allegations of ill-treatment by law enforcement officials are investigated effectively, and that the Greek criminal justice system adopts a firm attitude with regard to torture and other forms of ill-treatment.

..."

THE LAW

I. PRELIMINARY OBJECTIONS REGARDING THE APPLICATION AS A WHOLE

A. Victim status

71. The Government raised several grounds of inadmissibility concerning the present application. Firstly, in relation to both the complaint under Article 3 under its substantive head, and to the complaint under Article 14 in conjunction with Article 3 of the Convention in its substantive aspect, the Government argued that the applicants lacked victim status. In particular, in the light of the outcome of the criminal and administrative investigation in respect of the case, it was clear that the police officers had not employed

torture or excessive force during the applicants' arrest or subsequently, and nor had their behaviour been racially motivated. The applicants' injuries had been caused by their own actions or the actions of the driver of the stolen car that had rammed into the patrol car before their arrest as they had been trying to escape and to resist arrest.

72. Moreover, the Government argued that the applicants also lacked victim status in respect of the complaints under Article 3 under its procedural head, and under Article 14 in conjunction with Article 3 of the Convention in its procedural aspect, as the case had been investigated effectively by the domestic authorities which had, moreover, investigated any possible racial motivation for the police officers' alleged actions. The fact that no disciplinary or criminal sanction had been imposed on them did not mean that the investigation conducted had contravened Convention standards.

73. In reply to the allegation concerning their victim status, the applicants argued that if in every case in which the alleged perpetrators of police ill-treatment had been exonerated the applicants had lacked victim status, that would mean that no case before the Court or the UN Human Rights Committee would have been admissible. It was precisely the examination of the question of whether the investigation had been in compliance with the Convention standards that constituted the subject matter of instant case.

74. The Court has recently recapitulated its general principles regarding an applicant's victim status in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC] (no. 53600/20, §§ 458-65, 9 April 2024) and in *Albert and Others v. Hungary* [GC] (no. 5294/14, §§ 120-21, 7 July 2020).

75. Turning to the circumstances of the present case, the Court considers that the issue raised in the Government's objection – whether or not the applicants have victim status in respect of their complaints under the substantive head of Article 3 and Article 14 in conjunction with Article 3 of the Convention in view of the conclusion of the domestic authorities that no torture or excessive force had been used by the police officers – potentially concerns the substance of the applicants' complaints under those Articles but not the victim-status requirement of Article 34 of the Convention. With regard to that requirement, it is sufficient to observe that the applicants were directly affected by the acts and actions complained of in that they were arrested by police officers and during that operation some physical force was exercised against them (compare *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 92-93, 21 November 2019). In those circumstances, the applicants could claim that they were the victims of the alleged violations of the Convention.

76. As regards the Government's objection that the applicants lack victim status in respect of their complaints under the procedural head of Article 3 of the Convention and under Article 14 in conjunction with Article 3 of the Convention, the Court considers that it is closely linked to the merits of their

relevant complaints under those provisions. The Court therefore decides to join this matter to the merits (see paragraphs 118 and 161 below).

B. Exhaustion of domestic remedies

1. The parties' arguments

77. The Government argued that the applicants had failed to exhaust the available domestic remedies, as they had failed to bring an action for compensation under Article 105 of the Introductory Law to the Civil Code and Articles 57 and 59 of the Civil Code. The applicants could have lodged an action for compensation under those provisions on the basis of their alleged ill-treatment, requesting the domestic courts to (i) find a violation of the relevant domestic legal provisions and Article 3 of the Convention, and (ii) accordingly, to award damages. This would have constituted an effective remedy, given previous domestic judgments that had ruled that (i) Law no. 1481/1984 on the status of the Ministry of Public Order (which set out general principles according to which the mandate of the police was in particular to ensure public peace and order and citizens' unhindered (*απρόσκοπτη*) daily life) and (ii) Presidential Decree no. 583/1989 on the rights and obligations of police personnel of the Ministry of Public Order each constituted sufficient legal grounds for bringing an action for compensation against the State under Article 105 of the Introductory Law to the Civil Code. The Government referred to certain cases in which individuals had alleged that they had suffered ill-treatment at the hands of police officers, and had been awarded sums in compensation for non-pecuniary damage caused to them by agents of the State.

78. As regards the present case, the second and third applicants had failed to avail themselves of the above-noted remedy under Article 105 of the Introductory Law to the Civil Code. The first applicant – who had made use of that remedy – had not waited for the outcome of the domestic proceedings but had instead instituted parallel proceedings before the Court. Accordingly, the application should be rejected in respect of all three applicants.

79. The applicants' complaint could have also formed the basis of an action under Articles 57 and 59 of the Civil Code against the police officers seeking compensation for the damage caused to their personality by the actions described in their application.

80. Moreover, the applicants had lodged their application with the Court without waiting for the result of the administrative investigation in respect of the case.

81. Lastly, the Government submitted that the applicants should have lodged an application (under Articles 477, 479, 483 and 484 of the Code of Criminal Procedure) with the competent public prosecutor, asking him or her to lodge an appeal or an appeal on points of law against Order no. 4953/2019

of the Board of Misdemeanour Judges on the grounds of the above-mentioned alleged breaches of the Convention.

82. The applicants contended that the Court had repeatedly held that an application to the public prosecutor seeking the lodging of an appeal against an acquittal order issued by the Board of Misdemeanour Judges did not constitute a remedy that had to be exhausted. Moreover, in respect of the possibility of bringing an action for compensation under Article 105 of the Introductory Law to the Civil Code and Articles 57 and 59 of the Civil Code, the applicants argued that once one remedy had been pursued, then there was no need for another one to be sought thereafter. In any event, they asserted, a compensation remedy did not constitute a remedy capable of leading to the identification and punishment of the alleged perpetrators. Lastly, in respect of the argument that the applicants had not waited for the outcome of the administrative proceedings, the applicants submitted that if they had waited they would not have been able to complain about the outcome of the criminal investigation, as the time-limit of six months for lodging an application with the Court would have elapsed. In any event, the administrative investigation had been pending for very long time and it had only been thanks to the application that they had lodged with the Court that it had been completed.

2. The Court's assessment

(a) On the action for compensation

83. The general principles regarding the exhaustion rule under Article 35 § 1 of the Convention are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC] (nos. 17153/11 and 29 others, §§ 70-77, 25 March 2014, with further references – in particular, to *Akdivar and Others v. Turkey*, 16 September 1996, *Reports* 1996-IV).

84. In respect of the question of the use of unlawful force by State agents – and not mere fault, omission or negligence on the part thereof – the Court has held that civil or administrative proceedings aimed solely at awarding damages (rather than ensuring the identification and punishment of those responsible) do not constitute adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 76, ECHR 2016).

85. That ruling should be read in the light of the well-established principle deriving from the Court's case-law that the Contracting Parties' obligation under Articles 2 and 3 of the Convention to conduct an investigation capable of leading to the identification and – if appropriate – punishment of those responsible in cases of assault is the primary procedural requirement under those provisions. That obligation could be rendered illusory if, in respect of complaints under those Articles, an applicant were required to bring an action leading only to an award of damages (see, for example, *Mocanu and Others*

v. Romania [GC], nos. 10865/09 and 2 others, § 234, ECHR 2014 (extracts); *Salman v. Turkey* [GC], no. 21986/93, § 83, ECHR 2000-VII; and *Isayeva and Others v. Russia*, nos. 57947/00 and 2 others, § 149, 24 February 2005).

86. As regards the obligation to provide sufficient compensation to remedy a breach of Article 3 at national level – the Court has repeatedly held that, in addition to a thorough and effective investigation, it is necessary for the State to have made an award of compensation to the applicant, where appropriate, or at least to have given him or her the possibility of seeking and obtaining compensation for the damage he or she sustained as a result of the ill-treatment in question (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 116 and 118, ECHR 2010).

87. In view of the above-cited case-law, the Court considers that an action for compensation under Article 105 of the Introductory Law to the Civil Code or under Articles 57 and 59 of the Civil Code would not have afforded the applicants sufficient redress. The latter had thus not been obliged to lodge such remedies, and the above objection of the Government should be rejected.

(b) On the appeal against Order no. 4953/2019

88. Turning to the Government's objection that the applicants could have requested the public prosecutor to lodge an appeal or an appeal on points of law against Order no. 4953/2019, the Court reiterates its case-law according to which a hierarchical appeal that does not give the person making it a personal right to the exercise by the State of its supervisory powers cannot be regarded as constituting an effective remedy for the purposes of Article 35 of the Convention (see *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007).

89. Given the circumstances of the present case, the only people who (under Articles 477 and 483 of the Code of Criminal Procedure) had a direct, personal right to lodge an appeal or an appeal on points of law were the accused persons (that is to say the police officers) and the public prosecutor (see paragraph 67 above). Having regard to the fact that the applicants did not have a personal right to lodge an appeal or an appeal on points of law against Order no. 4953/2019 (compare and contrast *Aspiotis v. Greece* (dec.), no. 4561/17, § 52, 1 March 2022), the Court dismisses the Government's objection.

(c) The premature nature of the application

90. Lastly, in respect of the Government's argument that the applicants should have waited for the outcome of the administrative investigation prior to lodging the present application with the Court, the Court notes that, irrespective of whether this remedy could be regarded as an effective one for the purposes of Article 35 § 1 of the Convention, the objection as to non-exhaustion has in any case lost its relevance, because in any event it accepts that the last stage of domestic remedies may be reached after the

application has been lodged but before its admissibility has been determined (see *Molla Sali v. Greece* [GC], no. 20452/14, § 90, 19 December 2018). It therefore dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

91. The applicants complained that they had suffered ill-treatment amounting to torture at the hands of the police during their arrest and during their transfer to and detention at the police station on 8 October 2016. They also complained that the investigative and prosecuting authorities had failed to carry out a comprehensive and effective investigation into the alleged incident. They alleged a breach 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

92. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicants' submissions

93. The applicants submitted that they had suffered torture and ill-treatment at the hands of the police officers who had arrested them and had detained them in the police station until the point at which the first applicant had been transferred to the intensive care unit of the hospital. They referred to their version of facts. They further submitted that in such cases the burden of proof was reversed and that it was thus up to the Government to prove any alternative theories explaining how the applicants had come by their injuries. As regards the testimony given by the resident on the balcony of whose apartment the arrest had been made – in which reference had been made to a struggle between the police officers and the applicants – the applicants pointed out that the resident had not been an eyewitness and that the sounds that she had heard could have been the result of the ill-treatment being administered to the applicants. Lastly, the applicants pointed out that the Government had presented no arguments to challenge their allegations that they had suffered ill-treatment during and after their transfer to Liosia police station.

94. As regards the procedural aspect of Article 3 of the Convention, both the criminal and administrative investigations that had followed the incident had not been efficient, as they had suffered from numerous failings. Firstly,

the applicants pointed to the Ombudsman's conclusions of 14 October 2020, which had listed several points that had not been addressed and requested that a supplementary sworn administrative inquiry be conducted. Moreover, in his report dated 12 August 2021 the Ombudsman had stated (contrary to the Government's allegations) that the police had done very little to address the points raised in the Ombudsman's first report. The applicants submitted that the sworn administrative inquiry had been criticised by the Ombudsman as inadequate and biased, and his recommendations had been ignored by the police.

95. Apart from the points raised by the Ombudsman, the applicants submitted that there had been contradictions in the police officers' respective testimony as regards the exact location where the car in which the applicants had been travelling had been abandoned. In particular, in the two findings reports drawn up in the course of the initial and supplementary preliminary administrative inquiries (dated 8 May 2017 and 10 October 2018 respectively), it had been clearly stated that the stolen car in which the applicants had been passengers had been abandoned in Karolou Koun Street. It had then been stated that the passengers dispersed in the streets around that location and that the three applicants had soon afterwards been found on the balcony of a flat at 21 Karolou Koun Street. It had, however, been stated in both reports that officers G.E. and R.P. had testified that the car had been abandoned at the corner of Fylis and Avloniti Streets. In the sworn administrative inquiry that had followed, the testimony given by different police officers had named the spot at which the car had been abandoned as, variously, Karolou Koun Street, the corner of Fylis and Avloniti Streets and even the corner of Fylis and Megalou Alexandrou Streets. Even more importantly, only in the testimony given and reports issued after 2017 had mention been made of a bridge from which the applicants had supposedly jumped after they had abandoned the stolen car. However, a search on the Internet easily established that there was no bridge between the locations where the applicants had, respectively, abandoned the car and had been arrested – that is to say there was no bridge anywhere between Fylis and Avloniti Streets and Karolou Koun Street. In the applicants' view, the claim regarding the bridge had been invented as a plausible explanation for the injuries caused by the police officers – hence the difference in the streets indicated by different officers as the location where the car had been abandoned. Moreover, Fylis and Megalou Alexandrou Streets were located more than five hundred metres from the initial spot indicated by the police officers. The applicants further noted that there was no explanation in the findings report dated 22 March 2021 issued by the supplementary sworn administrative inquiry as to why the sworn testimony of the police officers of 8 October 2016 (which had been given directly after the incident in question and in which there had been no mention of any bridge) had been excluded from the evidentiary material that had been taken into account.

96. Moreover, the applicants pointed out that, despite their repeated requests, they had never been subjected to forensic medical examinations by a doctor. The medical reports issued in respect of the applicants did not amount to forensic medical examinations which – as established by the Court – could have reliably ascertained the origins of the applicants' injuries.

97. The applicants also argued that they had not been sufficiently involved in the investigation. In particular, they had not been called to testify in the criminal investigation in respect of whether the offence of torture had been committed, and nor had they ever been provided with copies of the administrative-inquiry documentation until the Court had requested copies of the case file material from the Government and forwarded it to the applicants. Even then, the Government had had to be requested by the Court to provide copies of the material concerning the submitted OPKE logbook entries (see paragraphs 38-39 above). The applicants made extensive references to the different versions of the OPKE report.

98. The administrative investigation (which had lasted five years in total), had initially been assigned to an investigating officer serving in a police department falling under the General Athens Police Division, to which also belonged the police units who had been involved in the alleged torture and ill-treatment. Therefore, the administrative investigation had not been "independent" until the Ombudsman had taken over its supervision and the evaluation of its findings – two years after the administrative investigation had started. The applicants maintained that the Ombudsman had deliberately not been informed of the existence of the administrative inquiry prior thereto.

99. Lastly, the applicants submitted, the investigation had not been undertaken promptly: the administrative investigation had been initially concluded in September 2021 and then again in March 2022.

2. The Government's submissions

100. The Government argued that there had been no evidence to indicate that the applicants had suffered ill-treatment. As evidenced by the thorough administrative inquiry and criminal investigation carried out in respect of the case, the applicants had been subjected to no torture. The force used by the police officers had been necessary in order to arrest the applicants who had been offering resistance, and had not been excessive in terms of intensity and duration, given the circumstances of the case (that is to say three adult males had resisted arrest, while the fourth adult – the driver of the stolen car – had fled the scene). Those circumstances had been acknowledged by the applicants, who had stated that after the crash of the car in which they had been passengers, they had run away, hidden on the above-mentioned balcony and fallen to the floor in an attempt to evade arrest. Those circumstances had also been described in the wording of the action for compensation lodged by the first applicant with the administrative courts. That action had further noted that (i) the police officers had asked them to stop and pull over but that the

driver had instead sped up, (ii) after exiting their vehicle they had hidden first on the roof of a building and then on a balcony and (iii) when they had caught sight of the police officers they had fallen to the floor in an effort to evade detection. The fact that there had been a fight between police officers and the applicants (who had resisted arrest) had also been mentioned in D.D.'s sworn administrative inquiry findings report dated 8 October 2016.

101. As noted in Order no. 4953/2019, the applicants' injuries could have been caused either by the crash of the stolen car (in which they had been riding) with the police patrol car, or by their jumping off a bridge in an effort to flee the scene, or at any other point on their escape route. The Government further pointed out that no bodily harm had been proved to have been caused to the second applicant. In any event, due account had to be taken of the difficulties faced by the police in tackling crime in modern society.

3. The Court's assessment

102. The Court observes that the applicants' complaints concern both the substantive and procedural aspects of Article 3 of the Convention. Being sensitive to the subsidiary nature of its task and recognising that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case, the Court considers it appropriate to firstly examine whether the applicants' complaints of ill-treatment were adequately investigated by the authorities (see, for example, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 155 and 181, ECHR 2012; *Kaverzin v. Ukraine*, no. 23893/03, § 107, 15 May 2012; *Baklanov v. Ukraine*, no. 44425/08, §§ 70, 71 and 91, 24 October 2013; *Dzhulay v. Ukraine*, no. 24439/06, § 69, 3 April 2014; *Chinez v. Romania*, no. 2040/12, § 57, 17 March 2015; and *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, § 77, 3 December 2015).

(a) Procedural aspect of Article 3 of the Convention

103. The Court has summarised the general principles concerning the effectiveness of an investigation called for under Article 3 of the Convention in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 114-123, ECHR 2015).

104. More specifically, the Court reiterates that compliance with the procedural requirements of Article 3 is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the victim and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself. These criteria, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to the purpose of an effective investigation that any

partial issues must be assessed (see *R.R. and R.D. v. Slovakia*, no. 20649/18, § 178, 1 September 2020).

105. Accordingly, with a view to assessing the overall effectiveness of the investigation in question, on the facts of the present case the Court considers as crucial the following.

106. The applicants' alleged ill-treatment took place within the context of the operation conducted on 8 October 2016. The Court considers that the medical evidence, the photographs and the applicants' complaints submitted to the relevant domestic authorities together raised at least a reasonable suspicion that their injuries could have been caused by the use of force by the police. That being so, their complaints constituted an arguable claim and the Greek authorities were thus under the obligation to conduct an effective investigation.

107. Following the lodging of a complaint by the applicants' representative, a case file was opened. A preliminary administrative investigation was conducted by the Athens Airport Police Directorate, which issued a findings report dated 8 May 2017 (see paragraph 20 above); that report was subsequently supplemented by the findings report dated 10 August 2017 (see paragraph 25 above). The investigation was then upgraded to a sworn administrative investigation, which was conducted by the administrative enquiries subdivision of the Attica General Police Directorate and was concluded with the issuance of the findings report dated 18 December 2019 (see paragraph 29 above). It was then supplemented, following the issuance of the Ombudsman's observations (see paragraph 32 above), by the findings report dated 22 March 2021 (see paragraph 33 above). In the meantime, a criminal investigation was initiated on 10 January 2017 (see paragraph 40 above) and was concluded by Board of Misdemeanour Judges' Order no. 4953/2019 on 20 December 2019 (see paragraph 57 above).

108. As regards the independence of the investigation, the Court notes that the initial preliminary administrative investigation was conducted by the Athens Airport Police Directorate. The Sworn Administrative Investigation was conducted by administrative enquiries subdivision of the Attica General Police Directorate and was supervised by the Ombudsman. Lastly, the criminal investigation was conducted by the Public Prosecutor's Office and the Third Investigative Judge at the Athens Court of First Instance. In this regard, the Court takes note of the applicants' argument that the preliminary administrative investigation had not been independent because it had been assigned to a service that was attached to the Attica General Police Directorate – the same service in which the accused officers served. The Government did not refute that allegation. In this regard, the Court notes that if the officers conducting the investigation were indeed subordinated to the same chain of command as those officers subject to investigation, then serious

doubts must arise as to their ability to carry out an independent investigation (see *Đurđević v. Croatia*, no. 52442/09, § 87, ECHR 2011 (extracts)).

109. As regards the sworn administrative inquiry, the Court notes that it was conducted by the special department of the police that deals with disciplinary investigations; it was not assigned to a police officer serving in the same police station as the persons that were the subject of the disciplinary investigation. It was further supervised by an independent authority – the Ombudsman. In view of the above-noted factors, the Court acknowledges that this fact constitutes an element that reinforced the level of independence of the inquiry, as the agent conducting it was, in principle, independent of those involved in the events (see *Zelilof v. Greece*, no. 17060/03, § 58, 24 May 2007). Nevertheless, the Court takes issue with the fact that the vast majority of the recommendations included in the first report of the Ombudsman (see paragraph 32 above) were ignored on the grounds that the criminal investigation in question had already been completed (see paragraph 35 above).

110. As regards the criminal investigation, it has not been disputed by the parties that the Public Prosecutor, under whose authority the investigation was conducted, was an independent authority; nor has a specific complaint been made in his regard.

111. Turning to the adequacy of the investigation, the Court finds striking the failure to order a forensic medical examination – even though the applicants repeatedly requested one (either directly in their defence statements of 13 October 2016 or *via* their representative in his letters dated 12 and 18 October 2016 – see paragraphs 16, 8 and 9 above). A request for such an examination was also made by the first applicant during his stay in hospital and was forwarded by it to the relevant authorities. The Court further notes the fact that the authorities' obligation to order a forensic report (in the light of the circumstances of the present case) was triggered irrespective of the applicants' request for such an examination, given (i) their testimony that they had been beaten by policemen and (ii) their clear injuries, as depicted in the photographs taken the day after their arrest. Nevertheless, no forensic expert report was ordered. Moreover, the findings report issued by the sworn administrative inquiry concluded that the applicants had not asked to be subjected to an examination by a medical expert (see paragraph 29 above) – a conclusion that was criticised by the Ombudsman (see paragraph 32 above). The only medical documents in the case file concern the first applicant. They were drawn up upon his release from the hospital and cannot serve as a substitute for a forensic report. This omission was not corrected either at the later stages of the sworn administrative investigation or during the criminal investigation. The Court has repeatedly stressed in cases of this kind that it is all the more important that the arrested person in question be medically examined before being placed in police custody. This would not only ensure that the person is fit to be questioned in police custody but would also enable

the respondent Government to discharge their burden of providing a plausible explanation for those injuries (see *Andersen v. Greece*, no. 42660/11, § 63, 26 April 2018, with further references).

112. Moreover, all the reports drawn up by the domestic authorities – either in the course of the administrative investigation or during the criminal investigation – failed to provide adequate explanations for the applicants' injuries and particularly the injury sustained by the first applicant, which the hospital ascribed to the first applicant having been struck by a "pointed instrument" in the scrotum. In the Court's view, such an injury could not possibly have been sustained by the applicant allegedly jumping off a bridge or by resisting arrest, as indicated in the relevant reports. Those reports merely indicated that the applicants could have been injured in the course of their car crashing, during their attempt to flee the scene of the crash, in jumping off a bridge or in resisting arrest – but without providing explanations or even a description of the injuries in question. It is further noted that the officers at the police stations testified that the applicants had not had any visible injuries (see paragraph 21 above); however, these statements contradict the photographs taken of the second and third applicant by their representative five days after their arrest, which at the very least, show bruising to the third applicant's face (see paragraph 57 above). Accordingly, the Court notes that the credibility of those statements was compromised, but no mention of that was included in the various findings reports.

113. There are further issues that indicate that the effectiveness of the investigation was compromised. In particular, there are obvious contradictions between the respective testimony given by the police officers as regards the point at which the applicants left their car, their escape route, the existence (or non-existence) of a bridge, which was only mentioned for the first time on 28 March 2017 in the report submitted by E.G. to the officer conducting the preliminary administrative inquiry (see paragraph 21 above) and then repeated in the later defence statements (see paragraphs 48 and 50 above). Given these obvious contradictions, a specific investigative measure such as an on-site visit should have been ordered. Apart from the police officer who was supervising the patrol team that night and who visited the area to see the bridge (see paragraph 49 above), it does not appear that the persons conducting the investigation carried out visits to the scene of events, including the balcony where the applicants were arrested. As regards the contradictions (noted in Order no. 4953/2019 and the findings reports of the administrative investigations) contained in the applicants' respective testimony with regard to the exact circumstances under which they had been injured, it appears that no attempt was made to clarify them (for example, by means of cross-examination). Yet, in the Court's view, such measures might have helped to establish the facts. Even though the investigative authorities referred to omissions and contradictions in the applicants' testimony, they

failed to do so in respect of the testimony given by the police officers. In the Court's view, the administrative inquiry applied different standards when assessing the testimony of the applicants compared to that given by the police officers. However, the credibility of the officers' testimony should also have been questioned, as the administrative proceedings had also sought to establish whether they were liable for the offence of ill-treatment on disciplinary grounds (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006). The same goes for the criminal proceedings, as it is clear from Order no. 4953/2019 that the prosecutor and the Board of Misdemeanour Judges relied heavily on the police officers' depositions, without assessing the contradictions contained therein. It follows that the authorities mostly relied on the statements of the alleged perpetrators and other police officers. In the Court's view, this course of action was unlikely to shed light on the veracity of the central element of the applicants' grievance – namely, that they were ill-treated by State agents upon arrest and while in those agents' custody.

114. Moreover, having accepted the version of events that held that the applicants had jumped off a bridge in their effort to escape, the authorities should have shown particular diligence in exploring the terrain on which the events had unfolded and in establishing the exact circumstances surrounding those events (such as the height of the bridge in question). However, the authorities did not establish with sufficient precision (i) where exactly that bridge was located in relation to the site on which the applicants' car had been abandoned and (ii) how high that bridge needed to have been in order to have caused them their injuries (compare *Savitskyy v. Ukraine*, no. 38773/05, § 108, 26 July 2012). It therefore appears that the investigating authorities, without any justification, gave preference to the evidence provided by the police officers and, in doing so, can be said to have lacked the requisite objectivity and independence.

115. In addition, given the applicants' allegations that they had been assaulted during their transfer to the police station and to the General Athens Police Division, the Court notes with concern that it was not possible for the investigation to identify the policemen who had accompanied them to the police station following their arrest (compare *Hristovi v. Bulgaria*, no. 42697/05, § 88, 11 October 2011). As the Ombudsman pointed out, from the relevant depositions and documents, it can be seen that the OPKE team accompanied the applicants to the police station; nevertheless, the OPKE's document bearing date 5 September 2017 was submitted in two different versions to, respectively the criminal investigation and the sworn administrative investigation. The Court takes note of the subsequent administrative investigation aimed at clarifying why two versions of the same document existed – namely, a more analytical one (which was submitted to the criminal investigation) and a shorter one (which was submitted in the administrative investigation). Nevertheless, the Court considers that in

circumstances such as those surrounding the present case, official documents kept in the archives need to be precise and must reflect accurately the incidents in question, in order for such an investigation to be thorough and effective.

116. Moreover, the investigation seems not to have observed the principle of promptness. In particular, the criminal investigation was initiated on 10 January 2017 and concluded on 20 December 2019 – that is to say it lasted for a period of almost three years, large parts of which were marked by complete inactivity (namely, the period between January and April 2017, the period between December 2017 and February 2019, and the period between March and September 2019 – see paragraphs 40-57 above). The administrative proceedings started on 18 October 2016 (see paragraph 17 above) and ended on 8 September 2021 (see paragraph 37 above) – that is to say those proceedings lasted for almost five years. While there was a need to supplement those proceedings (given the failure to undertake any investigative measures and given the fact that the administrative proceedings were solely confined to interviewing the persons involved in the events in question), the Court does not consider its length to have been justified. It also takes note of the fact that the Government did not provide any explanation of or justification for the total length of all stages of the investigation.

117. The applicants complained that they had not been sufficiently involved in the investigation, as they had been refused access to the documents accumulated during the administrative investigation (they had only received them within the context of the present proceedings). In this regard, the Court notes that it can be seen from the material in its possession that the applicants were not involved in the investigation to the extent necessary to safeguard their legitimate interests. The disclosure or publication of police reports and investigative material may involve sensitive issues that may have prejudicial effects for private individuals or other investigations. It cannot therefore be regarded as an automatic requirement that a victim or his or her next-of-kin be granted access to a related investigation as it develops. The requisite access may be provided for in other stages of the available procedures, and the investigating authorities do not have a duty to satisfy every request for a particular investigative measure in the course of an investigation (see *Stevan Petrović v. Serbia*, nos. 6097/16 and 28999/19, § 109, 20 April 2021).

118. In view of the multiple shortcomings at all stages of the investigation, the lack of forensic examination, the discrepancies between the statements of the arresting officers (which cast doubt on the thoroughness of the investigation), and the length of the criminal and the administrative investigations, the Court dismisses the Government's objection as to the applicants' alleged lack of victim status and concludes that there has been a violation of Article 3 of the Convention under its procedural aspect.

(b) Substantive aspect of Article 3 of the Convention

119. The Court summarised the applicable case-law principles in its judgment in the case of *Bouyid* (cited above, §§ 81-90 and 100-101). In particular, where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. The Court has emphasised that the words "in principle" cannot be taken to mean that there might be situations in which such a finding of a violation is not called for, because the above- mentioned severity threshold has not been attained. 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*., §100-01). Moreover, 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, *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25; *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV; *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 117, ECHR 2006-IX; and *Gäfgen*, cited above, § 92).

120. On this latter point the Court has explained that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities (as in the case of persons within their control in custody), strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts that cast doubt on the account of events given by the victim (see *Salman*, cited above, § 100; *Rivas v. France*, no. 59584/00, § 38, 1 April 2004; *Turan Cakir v. Belgium*, no. 44256/06, § 54, 10 March 2009; *Mete and Others v. Turkey*, no. 294/08, § 112, 4 October 2011; *El-Masri*, cited above, § 152; and *Gäfgen*, cited above, § 92). In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government (see, among other authorities, *El-Masri*, cited above, § 152). 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, *Salman*, cited above, § 99). The Court further reiterates in this connection that, in all cases where it is unable to establish the exact circumstances of a case for reasons objectively attributable to the State authorities, it is for the

respondent Government to explain, in a satisfactory and convincing manner, the sequence of events and to exhibit solid evidence that can refute the applicant's allegations (see *Mansuroğlu v. Turkey*, no. 43443/98, § 80, 26 February 2008).

121. In order to benefit from the presumption in question, individuals claiming to be the victims of a violation of Article 3 of the Convention must demonstrate that they display traces of ill-treatment after being under the control of the police or a similar authority. Many of the cases with which the Court has dealt show that such persons usually provide medical certificates for that purpose, describing injuries or traces of blows, to which the Court attaches substantial evidential weight (see *Bouyid,* cited above, § 92).

(i) The first applicant

122. The medical certificates produced in the present case – the authenticity of which is not contested – note that the first applicant was admitted to hospital the day after his arrest because he complained of suffering heart pain following his recent beating. He was diagnosed with atypical chest pain and he was carrying trauma to the scrotum – namely, a 10-centimetre-deep wound (probably from a pointed instrument – see paragraph 12 above). He remained in the intensive care unit of the hospital until 20 October 2016, when he was released (see paragraph 11 above). It has not been contested that the applicant was injured in the events surrounding his arrest on 8 October 2016 – that is to say either during the police operation that resulted in his arrest or while he was in detention. The parties, however, disagreed as to the circumstances in which those injuries had been sustained. In the light of the above-mentioned evidence, the Court considers that a sufficiently strong presumption arises that the first applicant's injuries were in fact caused by the actions of the police officers. In such circumstances the burden of proof was on the Government to provide an alternative explanation as to how and when the injuries of the applicant had been sustained (see *Bouyid*, cited above, § 83).

123. The Government – in support of their position – did no more than refer to the findings of the official domestic investigation. The Court, however, is mindful of its above-noted findings that the investigation in question was ineffective and incapable of producing credible findings (see paragraph 118 above).

124. In view of the above, the Court will necessarily have to examine the injuries that the first applicant bore when he was admitted to hospital and whether the explanations provided by the Government were convincing enough to account for all of them. In performing such an examination, it will have regard not only to the medical documents issued by the hospital during the first applicant's stay there, but also to the expert medical opinion ordered in the course of the civil proceedings (see paragraph 59 above). It will, however, bear in mind that the medical expert's report was drafted years after

the incident and was based solely on the documents and photographs of the applicant taken by the police on the day after his arrest – not on an in-person examination of the applicant.

125. In this regard, the Court notes that according to the hospital documents, the first applicant had a ten-centimetre deep injury to the scrotum. The explanations given in the course of the official investigation – namely, that all of the applicants' injuries had been sustained either as a result of a fall off a bridge or of the car crash or during their attempt to resist arrest – do not seem to be convincing as regards this particular injury (which by its very nature could not have been the result of these circumstances). The Court takes note of the explanation given by the medical expert that the said injury was most probably inflicted by the sharp end of a railing while the applicant had been attempting to climb over a fence. It considers that explanation to be plausible. It further does not lose sight of the fact that the first applicant in his testimony to the authorities did not provide details regarding the exact circumstances of the alleged ill-treatment that had resulted in his being injured (see paragraph 42 above). In this regard, the third applicant stated that the second applicant had been assaulted with a pen during the applicants' transfer to the police station; however, no such claim was made by any of the applicants with respect to the first applicant at any stage of the domestic investigations. It follows that the first applicant has not provided a consistent narrative (containing details of his ill-treatment) and that there are incongruities among the submissions made by the applicants as regards this particular injury. In view of the circumstances, the Court cannot establish beyond reasonable doubt that the said injury had been the result of an ill-treatment on the part of the police officers.

126. As regards the first applicant's chest pain and the underlying heart condition (as described in the above-mentioned medical expert's opinion), such a condition could not have been the result of ill-treatment, as the associated symptoms take several months – or even years – to develop; the Court thus considers the said condition not relevant to the impugned incident.

127. Lastly, as regards the remainder of the first applicant's injuries, as described in the medical expert's opinion, the Court notes that he bore abrasions to the right area of the cervical spine and to the right nostril, as well as an ecchymosis under the lower left eyelid. According to the medical expert, the first injury was compatible with the first applicant having been placed in a headlock (in order to immobilise him). The injuries born by the first applicant on his face are consistent with his own narrative as regards the alleged ill-treatment that he had sustained to his neck and head (among other bodily areas – see paragraph 16 above).

128. The Court takes note of the medical expert's opinion that neither a car crash nor the applicant jumping off a bridge could have caused the said injuries to the first applicant (see paragraph 60 above). As regards the other explanation offered by the Government – namely, that the injuries to the neck

and face of the first applicant could have been the result of violence exercised on him owing to his resisting arrest – the Court considers that explanation to be plausible. It notes though that the applicants strongly disagreed with their having resisted arrest on the balcony (see paragraph 6 above). As regards the Government's submission that the physical force exerted by the police officers was strictly necessary by the conduct of the first applicant, the Court further notes that the domestic investigation failed to clarify the kind and level of force that had been used against all of the applicants (including the first applicant), and failed to address the question of whether the use of force had been strictly necessary under the circumstances in question (see paragraph 118 above). The investigation's conclusions, which were based entirely on the statements given by the police officers (including the alleged perpetrators of violence against the applicants), had failed to determine the exact sequence of events, which specific techniques had been applied, and how they had correlated to the first applicant's particular actions (see *Dinu v. Romania,* no. 64356/14, § 77, 7 February 2017).

129. In the Court's view, while some evidence has been presented suggesting that the applicants might have resisted arrest – namely, the testimony given by Ms D.D., on the balcony of whose apartment the arrest took place (see paragraph 20 above) and the expert medical opinion (see paragraph 59 above) – this is not sufficient to cast doubt on the account given by the applicants. In that regard, the Court notes the absence of signs of physical injuries to the police officers that would have indicated violent actions (such as kicking or biting) on the part of the applicants (see *Yusiv v. Lithuania*, no. 55894/13, § 61, 4 October 2016). Apart from officer P.R. mentioning that he had been lightly injured in his right arm, there were no other signs that physical injuries had been caused to the police officers (see paragraph 20 above). In addition, the Court notes that the applicants were outnumbered by the police officers at the scene of their arrest (see paragraph 61 above). The Court thus concludes that, even if one accepted that the applicants had resisted arrest, there is no evidence that they were particularly dangerous. The Government did not advance any additional argument that would allow the Court to establish that the first applicant's conduct was of such character as to justify recourse to the physical force that, judging by his injuries, must have been employed by the police (see *Dzwonkowski v. Poland*, no. 46702/99, § 55, 12 April 2007).

130. In the Court's view, the absence of such an explanation – either at the domestic-investigation stage or during the proceedings before the Court – gives rise to the strong adverse inference that the force used by the police officers to overcome alleged resistance by the first applicant was excessive and disproportionate. The use of such force resulted in injuries, which undoubtedly caused suffering to the first applicant of a nature amounting to inhuman treatment (see *Kuchta and Mętel v. Poland*, no. 76813/16, § 74, 2 September 2021). The Court thus concludes that there has been a

substantive violation of Article 3 of the Convention in respect of the first applicant.

(ii) The second applicant

131. As regards the second applicant, the Court notes that in the absence of any medical documents, the only evidence before it consists of the photographs of him taken by the applicants' lawyer on the day after the applicants' release – namely, on 13 October 2016 (the authenticity of which has not been refuted by the Government) and the medical expert's report ordered years later in the context of the civil proceedings initiated by the first applicant. It also notes that the photographs taken by the police the day after the applicants' arrest (on the basis of which the medical expert formed his opinion in the course of the civil proceedings) were not made available to the Court in any visible form. The Court will thus, necessarily rely on (i) the photographs that are in its possession, and (ii) on the medical expert's opinion, in its examination of the alleged violation of the substantive limb of Article 3 of the Convention.

132. The Court notes that on the basis of the photographs before it, the second applicant bore no visible injuries. According to the medical expert, he bore a small abrasion 0.5 cm in length on the right cheekbone; an abrasion on the right area of the cervical spine; and a small abrasion 0.5 cm on the left area of the cervical spine – the last two being compatible with the applicant having been held by the neck (possibly in a headlock). Those simple injuries were often found in arrested persons who had been immobilised against their will.

133. The Court considers that the simple injuries described above do not suffice to reach the threshold of severity required under Article 3 of the Convention. In particular, the pictures show no injuries to the second applicant and the medical expert's report describes only some minor abrasions. Without a consistent narrative on the part of the second applicant as regards the way these abrasions were inflicted, the Court considers that they do not constitute *prima facie* evidence capable of shifting the burden of proof onto the respondent Government. Given its above finding that no effective investigation was carried out in respect of the present case, the Court cannot draw a conclusion as to whether or not the second applicant was subjected to ill-treatment by the police officers. The Court thus concludes that there has not been a violation of the substantive limb of Article 3 of the Convention in that connection.

(iii) The third applicant

134. Turning to the third applicant, the Court notes that – as in respect of the second applicant – it will have to rely on the photographs taken of him by his lawyer on 13 October 2016 and on the medical expert's report ordered

years later in the context of the civil proceedings initiated by the first applicant.

135. According to the pictures taken by his representative after his release, the third applicant carried bruises under his eyes. The medical expert noted the following wounds in the pictures taken by the police: a wound 0.5 cm in length a little to the left of the centre of the frontal area of the face; an ecchymosis of the right eye 6 cm in diameter; a smaller ecchymosis under the lower left eyelid; four small ecchymoses under the lower lip (see paragraph 59 above). These injuries – as described above and which appear in the photographs in the Court's possession – constitute *prima facie* evidence capable of shifting onto the respondent Government the burden of providing an alternative explanation as to how and when the injuries of the third applicant were sustained. In this regard, the Government in their submissions refer to the conclusions of the administrative and criminal investigation, which attributed the applicants' injuries either to their attempt to flee by jumping off a bridge, or to the car crash, or to the necessary force used by the police officers in their efforts to arrest the applicants (who had been resisting arrest).

136. The Court takes into account the above-noted explanations provided by the Government. It considers that at least one of them is plausible – namely, that the third applicant sustained his injuries when he allegedly resisted arrest. Nevertheless, for the same reasons as those indicated above in respect of the first applicant, the Government have not cast sufficient doubt on the account given by the applicants of excessive use of force upon their arrest. Accordingly, it concludes that the third applicant has been subjected to inhuman treatment, contrary to Article 3 of the Convention, and that there has accordingly been a violation of that provision under its substantive limb.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

137. The applicants complained that that the ill-treatment that they had suffered, together with the subsequent lack of an effective investigation into the events in question, was attributable to their Roma ethnic origin. They alleged a violation of Article 14 of the Convention, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Admissibility

138. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicants

139. The applicants submitted that the whole police operation had been organised because of racist profiling of Roma, who had been identified (as a group) as responsible for stealing cars in the area. After the applicants had been arrested, the police officers had referred to them in their sworn statements and reports as "Roma" – a descriptive characteristic that had not been noted in any of the applicants' identity papers. As evidence, they referred to the two-page OPKE logbook entries faxed at 7:04 a.m. on 8 October 2016, which had reported the arrest of three Roma. Moreover, the written statement given on 8 October 2016 by D.D., in whose flat the applicants had been arrested, had referred to the arrest of "three unknown persons of Roma origin".

140. The applicants also alleged that there was a pattern of police ill-treatment against Roma, which was indicative of a systemic problem that further added credence to the applicants' version of events. A further indication of generalised ill-treatment against Roma was the fact that the three applicants had been fined EUR 360 for making false complaints against the above-mentioned police officers, while the person who had actually lodged the criminal complaint, Mr Panayote Dimitras (acting as the representative of Greek Helsinki Monitor) had not been fined.

141. Moreover, there was no information as to whether questions regarding the police officers' attitude towards members of the Roma community or which words they had used during the applicants' arrest had been put to the police officers during the proceedings. Nor had it been investigated whether they had been involved in racist incidents in the past, or whether (in the light of the numerous Court judgments and reports issued by international governmental and non-governmental bodies regarding the wide extent of racially-motivated police ill-treatment of Roma in Greece) the authorities had taken into consideration the need to attentively examine the applicants' allegations of racial discrimination.

2. The Government

142. The Government argued that in circumstances such as those in the present case – where the applicants had resisted arrest and fled the scene and the driver of the car had escaped arrest – the origin, race and ethnicity of the

arrested persons could not have been known in advance and could not have affected the behaviour of the police officers.

143. Moreover, in respect of any violation of Article 3, the allegation of a racist motive for the police actions had been examined at all stages of two investigations, which had rejected it with reasoned decisions.

144. As regards the observations of the third-party intervener, the Government argued firstly that they were general in nature and thus could not help the Court in the adjudication of this case, and secondly that it could not be concluded that there was a systemic problem in Greece. The Government added that in any event, Greece was complying with the execution of the relevant judgments against it (mentioned by the third-party intervener) in respect of racist violence. In any event, the Criminal Code contained a special Article concerning offences that had been committed with a racial motive, and the office of Ombudsman had been designed as National Mechanism for the Investigation of Arbitrary Incidents. In order for the investigation of police ill-treatment incidents to be effective, Presidential Decree no. 111/2019 provided that such investigations should be conducted by a directorate different than the one in which the accused officers served.

3. The third-party intervener

145. Intervening as a third party, the ERRC argued that institutional racism and "anti-Gypsyism" characterised policing in Greece and urged the Court to acknowledge that pattern, as it had done in the case of *Lingurar v. Romania* ([Committee], no. 48474/14, § 80, 16 April 2019). The problem was well documented in Greece, as the United Nations Committee on the Elimination of Racial Discrimination, the United Nations Human Rights Committee and the United Nations Committee against Torture had all expressed concerns about allegations of racially motivated police brutality against Roma in Greece and had called for a thorough investigation of such allegations. The ERRC further referred to several cases lodged with the Court by Roma alleging human-rights violations – including police ill-treatment.

146. The ERRC emphasised that this was a structural problem, that the Court had to recognise its existence and that, in view of its existence, adapted criteria should be used in the assessment of cases involving this phenomenon. In particular, special attention should be given to the fact that victims alleging racially motivated police violence were unlikely to be able to discharge the burden of proof when they were too often also victims of a failure to conduct a thorough investigation. Referring to Article 2 (3) of the 2000/43/EC Directive, the ERRC further requested the Court to take into account the notion of harassment as a form of discrimination when deciding on potentially discriminatory policing.

4. The Court's assessment

147. The Court reiterates that discrimination is treating differently, without an objective and reasonable justification, individuals in relevantly similar situations. Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (see *Stoica v. Romania*, no. 42722/02, § 117, 4 March 2008, with further references).

148. Moreover, the State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of actions that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment that is irreconcilable with Article 14 of the Convention. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not is absolute. However the authorities must do what is reasonable, given the circumstances of the case, in particular to collect and secure evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence (see, for example, *Lakatošová and Lakatoš v. Slovakia*, no. 655/16, §§ 75-6, 11 December 2018, with further references).

(a) Article 14 in conjunction with Article 3 under its substantive head

149. The Court reiterates that in assessing evidence it has adopted the standard of proof "beyond reasonable doubt" (see among other authorities, *Bouyid*, cited above, § 82); nonetheless, it has not excluded the possibility that in certain cases of alleged discrimination it may require the respondent Government to disprove an arguable allegation of discrimination and – if they fail to do so – find a violation of Article 14 of the Convention on that basis. However, where it is alleged – as here – that a violent act was motivated by racial prejudice, such an approach would amount to requiring the respondent Government to prove the absence of a particular subjective attitude on the part of the person concerned. While in the legal systems of many countries proof of the discriminatory effect of a policy or decision will dispense with the need to prove intent in respect of alleged discrimination in employment or the provision of services, that approach is difficult to transpose to a case

where it is alleged that an act of violence was racially motivated (see *Nachova and Others*, cited above, § 157 and *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 65, ECHR 2005-XIII (extracts)).

150. The applicants in the present case are Roma. Even though suspicions that they had been ill-treated for racially-related reasons were investigated, no such offences have been established at the national level. In this connection, the Court notes that the question of the authorities' compliance with their procedural obligations to look into a possible racist motive behind the applicants' ill-treatment is a separate issue, to which it will revert below.

151. Although the Court has found the first and the third applicant's ill-treatment to have been established, in the absence of further contextual evidence this is insufficient to draw the conclusion that racism was a causal factor in their ill-treatment (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 153 *and M.B. and Others v. Slovakia (no. 2)*, no. 63962/19, § 89, 7 February 2023). Furthermore, in so far as the applicants have relied on general information about police abuse of Roma in Greece, the Court cannot lose sight of the fact that its sole concern is to ascertain whether in the case at hand the treatment inflicted on the first and the third applicants was motivated by racism (see the above-cited cases of *Nachova and Others*, § 155, and *Bekos and Koutropoulos*, § 66). In the absence of further information or explanations, the Court must conclude that it has not been established that racist attitudes played a role in the violation of the first and third applicants' rights under Article 3, as found above (in that respect, see *Ognyanova and Choban*, cited above, § 147, with a further reference).

152. Accordingly, the present case must be distinguished from cases in which the burden of proof as regards the presence or absence of a racist motive on the part of the authorities within an Article 3 context has been shifted to the respondent Government (see *Makhashevy v. Russia*, no. 20546/07, §§ 176-79, 31 July 2012; and *Stoica*, cited above, §§ 128-32).

153. In sum, having assessed all the relevant elements, the Court does not consider that it has been established that racist attitudes played a role in the first and the third applicants' ill-treatment.

154. As regards the second applicant, the Court reiterates that his complaint under Article 14, like his complaint under Article 3, was declared admissible. However, it has concluded above that he was not subjected to ill-treatment. The situation underlying his complaint under Article 14 is no different from the complaint brought by him under Article 3 of the Convention (see *Antayev and Others v. Russia*, no. 37966/07, § 130, 3 July 2014). For the same reasons as those indicated above in paragraphs 131-133, the Court concludes that there has been no violation of Article 14 in conjunction with Article 3 in respect of the second applicant.

155. There has accordingly been no violation of Article 14 taken together with Article 3 of the Convention in its substantive aspect.

(b) Article 14 in conjunction with Article 3 under its procedural head

156. The Court has already found that the Greek authorities violated Article 3 of the Convention in that they failed to conduct a meaningful investigation into the ill-treatment of which the applicants complained (see paragraph 118 above). For the same reasons as those stated in the context of the examination of the procedural aspect of Article 3 of the Convention (see paragraph 106 above), the authorities' obligation to conduct an effective investigation of the existence of a possible link between racist attitudes and the ill-treatment alleged by the applicants was triggered from the moment the latter put forward an arguable claim that they had been ill-treated by police officers due to their ethnic origin.

157. The Court further considers that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 3 of the Convention but that that duty may also be seen as implicit in their responsibilities under Article 14 of the Convention to secure the fundamental values enshrined in Article 3 without discrimination. Owing to the interplay between the two provisions, issues such as those addressed in the present case may fall to be examined only under one of the two provisions (with no separate issue arising under the other) or may require examination under both Articles. This is a question to be decided in each case on its facts and depending on the nature of the allegations made (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 161). It considers that in the present case it must examine separately the complaint that there was also a failure to investigate a possible causal link between alleged racist attitudes and the alleged ill-treatment in question.

158. In this regard, the Court notes that the applicants asserted on numerous occasions – either directly (see paragraph 43 above) or through their representative – to the investigating authorities that their ill-treatment had been linked to their ethnicity (see paragraph 9 above). In view of the foregoing, the Court considers that the investigating authorities had before them plausible information that was sufficient to alert them to the need to carry out an initial verification and, depending on the outcome, an investigation into possible racist motives for the ill-treatment alleged by the applicants.

159. The Court further notes that the orders for the conduct of both the preliminary administrative inquiry and the sworn administrative inquiry included a specific order to investigate a possible racist motive (see paragraphs 17 and 26 above for the officers' actions. No such order was contained in the order for the preliminary criminal investigation (see paragraph 40 above) – an omission concerning which Mr Panayote Dimitras lodged a complaint (see paragraph 46 above). Nevertheless, the criminal prosecution of the police officers (following which a main investigation was

conducted) included an order to investigate a possible racist motivation behind their alleged actions (see paragraph 51 above).

160. Despite the explicit order to investigate the possibility of any racist motive (see paragraph 51 above), it is not clear from the material in the case file whether any steps were actually taken to try to determine any possible racist motivation for the police officers' actions. In particular, it does not appear that the investigative authorities did anything to verify the statements of the applicants that they had been verbally abused and called names; nor do any enquiries appear to have been made as to whether the police officers in question had previously been involved in similar incidents or whether they had ever been accused in the past of displaying anti-Roma sentiment, and nor does any investigation appear to have been conducted into how the other officers working at the police station habitually carried out their duties when dealing with ethnic minority groups (compare *Bekos and Koutropoulos*, cited above, § 74).

161. The Court thus finds that the authorities failed in their duty under Article 14 of the Convention taken together with Article 3 to take all possible steps to investigate whether or not discrimination may have played a role in the events in question. In the light of the above, the Court dismisses the Government's objection as to the applicants' alleged lack of victim status and concludes that that there has been a violation of Article 14 of the Convention taken together with Article 3 in its procedural aspect.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

162. 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

163. The applicants claimed jointly 360 euros (EUR) in respect of pecuniary damage, corresponding to the fine they were ordered to pay for the allegedly false accusations against the police officers. The first applicant, citing the Court's case-law on such matters, requested EUR 50,000 in respect of non-pecuniary damage. The second and third applicants both requested the sum of EUR 20,000 in respect of non-pecuniary damage.

164. The Government submitted that the mere finding of a violation would constitute sufficient compensation. Moreover, they noted that the first applicant's action for compensation in the administrative courts in respect of the same events was still pending.

165. In view of its findings under the substantive aspect of Article 3 of the Convention, the Court awards each of the first and the third applicants EUR 120 – namely, one third each of the fine imposed on the applicants. As regards the second applicant, the Court notes that there is no causal link between the sum claimed for pecuniary damage and the violations found in the instant case; it therefore dismisses the claim. The Court further considers that the applicants undoubtedly suffered non-pecuniary damage that cannot be compensated solely by the findings of violations. Having regard to the specific circumstances of the case, and ruling on an equitable basis, the Court awards each of the first and third applicants EUR 20,000 and the second applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

166. The applicants also claimed EUR 2,500 for the costs and expenses incurred before the Court, to be directly paid to the NGO Communication and Political Research Society – ETEPE – Greek Helsinki Monitor.

167. The Government replied that the applicants had not provided any proof that they had paid EUR 2,500 or any other amount; in any event, the amount requested was excessive.

168. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the lack of documents provided by the applicants and the above criteria, the Court rejects the applicants' claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* to the merits the Government's preliminary objection concerning the applicants' victim status in respect of their complaints under the procedural heads of Article 3 of the Convention and of Article 14 in conjunction with Article 3 and *rejects* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect in respect of all applicants;

4. *Holds* that there has been a violation of Article 3 of the Convention in its substantive aspect in respect of the first and the third applicant;

5. *Holds* that there has been no violation of Article 3 of the Convention in its substantive aspect in respect of the second applicant;

6. *Holds* that there has been no violation of Article 14 taken together with Article 3 of the Convention in its substantive aspect in respect of all applicants;

7. *Holds* that there has been a violation of Article 14 taken together with Article 3 of the Convention in its procedural aspect in respect of all applicants;

8. *Holds*
   (a) that the respondent State is to pay, 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 120 (one hundred and twenty euros), plus any tax that may be chargeable, to each of the first and third applicants in respect of pecuniary damage;
      (ii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, to each of the first and third applicants in respect of non-pecuniary damage;
      (iii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the second applicant;
   (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;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 21 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Peeter Roosma
Registrar	President

APPENDIX

List of applicants:

Application no. 44758/20

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Athanasios PANAYOTOPOULOS	1984	Greek	Aspropyrgos
2.	Ioannis BEKOS	1989	Greek	Aspropyrgos
3.	Vasilios LOUKAS	1995	Greek	Examilia