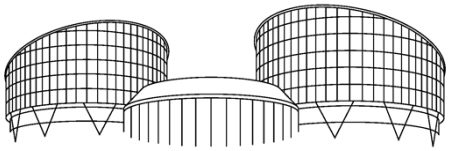

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CSONKA v. HUNGARY

(Application no. 48455/14)

JUDGMENT

STRASBOURG

16 April 2019

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

In the case of Csonka v. Hungary,

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

Georges Ravarani, *President,*
Marko Bošnjak,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 26 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 48455/14) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Zsolt Csonka ("the applicant"), on 17 June 2014.

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

3. On 10 May 2017 notice of the application was given to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1988 and lives in Szigetvár-Becefa.

5. At 11 a.m. on 4 February 2013 the applicant was taken to Sellye police station for questioning, at first as a witness, in relation to recent occurrences of timber theft. According to the police record, he waived his right to counsel and immediately admitted to his involvement in the offence in question. As a result, from 12.12 p.m. onwards, he was further questioned, this time as a suspect, and disclosed the identity of his accomplices. At 2.15 p.m. the applicant was taken home (in order to change his shoes because the police wanted to seize the ones he had been wearing) and then to the scene of the theft, where he explained to the officers precisely how the offence had been carried out. At 4 p.m. he was released after having signed a document stating that he had not suffered any injuries while in custody and had no complaints about the questioning.

6. On leaving the police station, the applicant met his aunt and a man from his village, who were waiting for him and his accomplice (his cousin), who had been questioned at the same time by other officers.

7. At 4.56 p.m. the applicant was examined by a general practitioner in Sellye and was diagnosed with hyperaemia (redness) measuring 8 cm in diameter on his left cheek and a minor wound in his mouth. His chest was also noted to be tender. On 6 February 2013 X-ray and ultrasound examinations were conducted on the applicant at a hospital in Pécs. No fracture was found, but a bruise was noted at rib cage level.

8. On 6 February 2013 the applicant initiated proceedings on account of ill-treatment inflicted by the police in order to extort a confession. He indicated his willingness to undergo a polygraph test in order to prove the veracity of his allegations.

9. On 28 March 2013 the applicant was examined by the Pécs investigating prosecutor. He contended that, on the morning of 4 February 2013, he had been questioned by five police officers. When he had denied his involvement in the offence, one of them (wearing gloves) had slapped him on both cheeks several times. Another officer had then ordered him to stand up and when he had done so, the officer had kicked him in the chest so that he had fallen back onto the chair. The third officer had slapped him in the face once or twice, and had punched him in the stomach once. The applicant could name two of the officers whom he knew from previous police visits to his village: one of them – who had been in charge of his questioning on 4 February 2013 – had not hit him, while the other one had only "dropped by" but had allegedly taken part in his beating. He gave a description of the two unknown officers who he alleged had beaten him.

10. On 16 October 2013 the prosecutor questioned the police officer who had been in charge of questioning the applicant on 4 February 2013. The police officer firmly denied any kind of ill-treatment and said that, after his release, the applicant had met someone who he had alleged had participated in the crime. The police officer suggested that the applicant's injuries might well have resulted from that encounter. He further contended that when he had been taken home on 4 February 2013, the applicant had met his mother but had not complained to her of any kind of ill-treatment.

11. On 25 October 2013 the applicant's aunt and her son (the applicant's accomplice) were examined by the prosecutor. The applicant's aunt said that when she had met the applicant at 4 p.m. in front of the police station, she had seen his mouth bleeding. The accomplice also alleged that he had seen wounds inside the applicant's mouth.

12. A medical expert opinion was obtained. On the basis of the documents previously drawn up by the general practitioner and the doctor at Pécs Hospital, the expert concluded that the applicant's visible injuries, namely the hyperaemia on his face and a minor wound in his mouth, might have resulted from a single slap inflicted with medium force – the wound

being caused by the canine tooth colliding with the mucous membrane. The expert indicated that the sensitiveness of the chest, without any perceivable external symptoms, was a subjective complaint and it could not therefore be considered as an injury for the purposes of criminal law.

13. On 15 November 2013 the prosecutor discontinued the investigation. Having particular regard to the medical expert opinion allegedly contradicting the applicant's statements (given that it only corroborated one blow, rather than several as described by the applicant), he held that the ill-treatment of the applicant while in police custody could not be proven "beyond reasonable doubt".

14. The applicant lodged a complaint against the prosecutor's decision, arguing, among other things, that the authorities had failed to organise a confrontation between him and the police officer in charge in order to resolve the discrepancies in their statements, or an identification parade in order for the applicant to identify the police officers involved. Moreover, the prosecutor's decision had not given any reasons for disregarding the statements of the two witnesses (the applicant's aunt and her son) who had seen the applicant with a bleeding mouth immediately after his release (see paragraph 11 above).

15. On 5 December 2013 the Baranya County Chief Prosecutor's Office rejected the complaint as ill-founded. It stressed that further investigative steps (a confrontation or an identification parade) would have been necessary only if the medical expert had substantiated the applicant's allegations, which he had not. Since the fact of ill-treatment by the police as such was not sufficiently proven, there was no need for further investigation into the identity of the alleged perpetrators. It also noted that the witnesses had not seen the alleged ill-treatment taking place.

16. This final decision was allegedly served on the applicant on 17 December 2013. The applicant was informed that he had the possibility of bringing a private prosecution, by acting as substitute private prosecutor, under Articles 229-230 of the Code of Criminal Procedure.

17. On 13 December 2013 the investigation against the applicant on account of the alleged timber theft was discontinued for want of sufficient evidence. The decision took account of the fact that the applicant had withdrawn his confession and that his brother had provided him with an alibi.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

18. The applicant complained under Article 3 of the Convention of ill-treatment allegedly sustained during police questioning, as well as of the lack of a thorough and effective investigation into his grievances.

Article 3 reads as follows:

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

A. Admissibility

19. The Government argued that the applicant had not exhausted the available domestic remedies in that he had not pursued a substitute private prosecution (see paragraph 16 above). The applicant disagreed.

20. The Court notes that this legal avenue has already been examined in cases such as *M.F. v. Hungary* (no. 45855/12, §§ 35-36, 31 October 2017) and *Tarjáni v. Hungary* (no. 29609/16, §§ 31-32, 10 October 2017), which were similar to the present one. In those cases, it was held that the applicants could not be reproached for not pursuing this remedy. The Court finds no reason to reach a different conclusion in the present application. The Government's preliminary objection of non-exhaustion of domestic remedies must thus be rejected.

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

B. Merits

1. The parties' submissions

(a) The applicant

22. The applicant submitted that the medical expert opinion had failed to recognise that he had been unharmed before entering the police station and that he had later been escorted, by an unbiased independent witness, to the local clinic. He noted that he therefore had a witness to confirm that his route between the police station and the doctor's surgery had been undisturbed. He stressed that he had entered the police station without any injuries but had left the building with injuries. Moreover, although the medical expert opinion alone was not decisive, the purpose of the investigative phase of the criminal proceedings had not been to prove the

officers' criminal responsibility beyond reasonable doubt; and even a single injury would have been sufficient for an indictment. In any event, the opinion had been prepared more than six months after the incident, by which time some of the injuries could no longer be detected – which did not mean that they had never occurred.

23. In the applicant's view, the police officers' denials carried little weight, since officials who had beaten citizens almost never admitted their deeds. Furthermore, the statement signed by him on release was thoroughly unreliable; he was practically illiterate and had been under the influence of the police officers mistreating him in order to obtain his confession for a crime he had never committed. The witnesses had observed him exiting the police station and had met him immediately after the interrogation; therefore it was not relevant that they had not been present actually during the incident. What mattered was that they had met him on the street accidentally and had had no interest in lying as witnesses.

24. The investigation had been deficient notably because although he had offered to take a polygraph test (see paragraph 8 above), this had not been performed, even though it could have clarified the truth in the face of the conflicting accounts that had been advanced by himself and the officers. Likewise, a confrontation would have been essential.

(b) The Government

25. The Government submitted that the medical expert opinion had referred both to the findings of the medical examinations that had been carried out after the applicant's police questioning and to the applicant's testimony. According to the testimony, during his questioning one of the police officers had slapped the applicant in the face several times, then another officer had kicked him in the chest, and then the first officer had continued to slap him (see paragraph 9 above). The expert had, however, only been able to verify one blunt blow (see paragraph 12 above), which had not been sufficient to substantiate the extent of the ill-treatment alleged in respect of its manner and magnitude. Moreover, an hour had elapsed between the applicant's release from custody and his medical examination.

26. Since the medical expert opinion had not supported the applicant's allegations and the officers had expressly denied any ill-treatment, the occurrence of ill-treatment could not be proved beyond reasonable doubt; therefore the proceedings had been lawfully discontinued by the investigating authority. Of note was also the fact that after his questioning the applicant had not complained of ill-treatment and had signed a waiver (see paragraph 5 above).

27. Moreover, in the final decision the investigating authority had refuted the applicant's allegation that the testimonies of his aunt and her son had not been taken into consideration, since in the first-instance prosecutorial decision those testimonies had been assessed. In any event,

those witnesses had not been present during the questioning. Lastly, the decision about whether to use a polygraph was entirely within the investigating authority's discretion; and a confrontation would have served no purpose since it could not have reconciled the diametrically opposing accounts advanced by the parties.

2. The Court's assessment

28. The Court's relevant case-law has recently been summarised in, among many other authorities, the *M.F. v. Hungary* case (cited above, §§ 42-45).

29. In the present application the Court observes that it has not been disputed by the parties that the applicant was in good health before the incident in question.

30. After release from custody, he had at least one injury, corroborated by the medical expert as having been caused by a blunt blow to his mouth (see paragraph 12 above), which, for the Court, attains the minimum level of severity required to bring Article 3 of the Convention into play (see, *mutatis mutandis*, *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-13, ECHR 2015). This is so even if the issue of another injury to the applicant's chest is discarded, given the inconclusive medical evidence.

31. It remains to be considered whether the State should be held responsible under Article 3 for this injury.

32. The Court takes note of the applicant's allegation that the ill-treatment took place during his police detention as part of an interrogation. It takes the view that the Government have not furnished any convincing or credible arguments which would provide a basis to explain or justify how the injury was sustained. The Court is reluctant to attribute any decisive importance to the short delay of about one hour between the applicant's release from custody and his seeking medical attention (see paragraphs 5-7 above), which, in any event, cannot be considered so significant as to undermine his case under Article 3 (see, *mutatis mutandis*, *Balogh v. Hungary*, no. 47940/99, § 49, 20 July 2004). The suggestion that he was hit by an acquaintance shortly after his release (see paragraph 10 above) is not supported by any evidence. The fact that the applicant signed a waiver before his release (see paragraph 5 above) carries little weight, since this happened while the applicant was still at the police station, in all likelihood under the influence of the preceding situation and in the presence of the officers who had allegedly ill-treated him.

33. As the Government have failed to provide a satisfactory and convincing explanation of the applicant's injury (see *Bouyid*, cited above, § 83), the Court concludes that the applicant was subjected to degrading treatment and that consequently there has been a violation of the substantive head of Article 3 of the Convention.

34. Moreover, as regards the investigation into the applicant's complaints, the Court observes in particular the authorities' reluctance to accept as relevant witnesses the persons who met the applicant on his release and to organise an identification parade or a confrontation between the applicant and the alleged perpetrators. Noting that in the opinion of those authorities the evidence obtainable from these sources would have been immaterial, the Court nevertheless considers that this unfortunate state of affairs undermines the adequacy of the investigation (see, *mutatis mutandis*, *Kmetty v. Hungary*, no. 57967/00, § 41, 16 December 2003; *Réti and Fizli v. Hungary*, no. 31373/11, § 35, 25 September 2012; and *Bouyid*, cited above, § 131).

35. In the light of the above, the Court considers that the applicant did not have the benefit of an effective investigation. It consequently finds a violation of the procedural head of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government contested this claim.

39. Having regard to its case-law and deciding on the basis of equity, the Court awards the applicant the full sum claimed.

B. Costs and expenses

40. The applicant also claimed EUR 2,400 plus VAT for the costs and expenses incurred before the Court. This corresponds to 16 hours of legal work billable by his lawyer at an hourly rate of EUR 150 plus VAT.

41. The Government contested this claim.

42. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the full sum claimed.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,400 (two thousand four hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 16 April 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Georges Ravarani
Deputy Registrar	President