SECOND SECTION

CASE OF BARTA v. HUNGARY

(Application no. 26137/04)

JUDGMENT

STRASBOURG

10 April 2007

FINAL

10/07/2007

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 **Barta** v. Hungary,

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

Mrs F. Tulkens, *President*,

Mr A.B. Baka,

Mr R. Türmen,

Mr M. Ugrekhelidze,

Mr V. Zagrebelsky,

Ms D. Jočienė,

Mr D. Popović, *judges*,

and Mrs F. Elens-Passos, *Deputy Section Registrar,*

Having deliberated in private on 20 March 2007

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

PROCEDURE

1. The case originated in an application (no. 26137/04) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British national, Ms Sophie Barta ("the applicant"), on 25 May 2004.

2. The applicant was represented by Mr. A. Kádár, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. The applicant alleged that she had been ill-treated by the police and that the investigation into her complaint of ill-treatment was ineffective, in breach of Article 3 of the Convention.

4. On 11 May 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

5. On 26 February 2007 the Government of the United Kingdom declared that they would not exercise their right under Article 36 § 1 of the Convention and Rule 44 of the Rules of Court to intervene in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lives in London.

A. The circumstances of the incident and the criminal proceedings conducted against the applicant

7. At the material time, the applicant and her mother, Ms E. Rhodes, lived in Hungary. They ran a shelter for dogs and cats (*Csizmás Kandúr Állatotthon és Alapítvány*[1]) in the village of Bőny.

8. Apparently in the context of an alleged nuisance caused by the animals, in October 2002 the Győr Police Department initiated an investigation for disorderly conduct *(garázdaság)* against unknown perpetrators. The Police Department was of the view that there was a well-grounded suspicion against the applicant and her mother.

9. Not knowing their exact names or address and thus unable to summon them, on 15 October 2002 the Police Department commissioned the locally competent police officer *(bőnyi körzeti megbízott),* P.Z.H., to establish data about the applicant and her mother and to escort them to the Győr Police Department. Because of the office he held in the village, P.Z.H. had previously been introduced to the applicant and her mother.

10. At 7.30 a.m. on 16 October 2002, P.Z.H., who hardly spoke any English, appeared at the gate of the shelter. He rang the bell, and the applicant's mother received him. Over the closed gate, P.Z.H. told her in Hungarian, without producing a written summons, that the police were conducting a criminal investigation against her and that she was supposed to go with him.

11. The applicant's mother – who is of a British origin but, unlike the applicant, speaks Hungarian – refused to comply with P.Z.H.'s instruction. Following a brief dispute, she turned around and headed for the house across the yard and called her dogs to the gate of the shelter. Observing her reluctant behaviour, P.Z.H. pushed the gate open and entered the garden.

12. Since P.Z.H. had heard the applicant's mother order the dogs, he drew his truncheon in order to keep them at bay.

13. The applicant's mother stepped towards P.Z.H., grabbed his right arm and the truncheon, started to shake him and tried to push him out of the garden through the open gate. Since her attempts failed, the applicant's mother told P.Z.H. that she would get dressed, collect her documents and go with him. However, having entered the house, she locked the entrance door and refused to open it despite the request of the police officer.

14. The applicant was in the house. She heard the argument and saw part of the struggle from the window of the upper floor. She grabbed a camera and took pictures, using a flash, of P.Z.H. from the window. She then hurried down to the ground floor.

15. From this point onwards, the Government's and the applicant's versions of events differ.

16. The Government stated that the applicant stepped out of the house through a side door and continued to take pictures; meanwhile her mother was abusing the police officer verbally. P.Z.H. requested the applicant to show him her passport. The applicant, instead of complying with the order, hit his shoulder and arm three times with the camera. Subsequently, she

stepped back towards the house and P.Z.H. followed her. They both entered the house. Once inside, P.Z.H. tried to take the camera out of the applicant's hand but he failed. Meanwhile, the applicant locked the door from the inside and sat on the key. The police officer attempted to get the key by immobilising the applicant's arm when her mother appeared, to whom the applicant gave the key.

17. The applicant stated that P.Z.H. was banging on the front door, demanding to be let in. The applicant slightly opened the door and took a picture of P.Z.H. Perceiving the flash, the police officer started yelling at her and, with his truncheon in his hand, shoved the door with his shoulder. The applicant, standing right behind the door, fell against the wall. The door handle hit her stomach and the door-frame hit her shoulder. While she doubled up with pain, P.Z.H. repeatedly hit her with the truncheon on the neck, back and shoulders. The applicant dropped the camera. The police officer only stopped beating her when – hearing the applicant's scream – her mother ran into the room.

18. P.Z.H. asked for reinforcements from police headquarters. With the help of two other officers, P.Z.H. took the applicant and her mother to the *Petz Aladár* Hospital in Győr where all the three parties were examined. The Hospital prepared a medical report on their injuries, which stated that the applicant had a contusion on the back of her right hand, a distension of the right shoulder and abrasions on her back.

19. P.Z.H's left shoulder and collar bone were sensitive, and part of the middle finger nail of his left hand was torn off (0.5-centimetre). He also had a 4-centimetre abrasion on the right hand.

20. The applicant and her mother were then taken to the Police Department where both of them were heard, as was P.Z.H. as a witness against them. On 17 October 2002 they were both charged with violence against an official *(hivatalos személy elleni erőszak).*

21. On 15 January 2003 the prosecutor in charge of the case made an official note, stating that the applicant's mother had informed him of a third individual, a Romanian national, who had been inside the applicant's house at the time of the incident and had seen the events from the roof window. She provided this person's Romanian telephone number and the name of the company employing him in Hungary. The Prosecutor's Office made no attempt to find this person, supposing that he was an illegal worker who had by that time left Hungary.

22. In the ensuing proceedings, the Prosecutor's Office heard the applicant as a defendant and P.Z.H. as a witness. It obtained the opinion of a forensic medical expert. Although the applicant requested the examination of the injuries of all the parties and their possible causes, this opinion, prepared by Dr Zs.T. on 10 June 2003, only concerned the injuries of the police officer. According to its conclusions, P.Z.H.'s injuries had probably been caused as described by him, i.e. the applicant had hit him on the shoulder with the camera and then they had struggled for the door key.

The expert stated that the applicant's version concerning the origin of the officer's injuries was less plausible though not impossible.

23. On 16 May 2003 the original criminal proceedings conducted against the applicant and her mother on charges of disorderly conduct were terminated in the absence of any evidence of a criminal offence.

24. On 25 July 2003 the Prosecutor's Office submitted a bill of indictment to the Győr District Court, charging them with violence against an official. After four hearings, the District Court acquitted them on 13 June 2005, giving the following reasoning:

"In view of the consistent testimonies of the defendants, the inconclusive character of the medical expert opinions, and the testimony given by Officer P.Z.H. which contained several contradictions, the court did not find it proven with the requisite certainty that the defendants had caused light bodily injury to Officer P.Z.H."

25. On the prosecutor's appeal, the Győr-Moson-Sopron County Regional Court quashed the first-instance judgment and remitted the case to the District Court. Hearings took place on 19 July and 8 September 2006. On the latter date, P.Z.H.'s commander was heard as a witness and was asked why he had not investigated how the applicant had suffered an injury to her back. He gave the following answer:

"What can I examine on the basis of a medical report? That has been written by a doctor. A medical report was prepared; the lady said that she had been injured. I cannot conduct any examination with regard to this."

The case is still pending at the first-instance.

B. Proceedings pursuant to the applicant's complaint

26. On 14 November 2002 the applicant and her mother expressed their intention to bring charges against P.Z.H. Their criminal complaint was forwarded to the Győr-Moson-Sopron County Public Prosecutor's Office under the same reference number as the one which concerned the charges against them.

27. On 19 June 2003 the Prosecutor's Office closed the investigation concerning the applicant's complaint against P.Z.H., in the absence of any evidence of a criminal offence. The Prosecutor's Office relied solely on the evidence which had been produced in the parallel criminal proceedings conducted against the applicant and her mother. These documents (the minutes of interrogations, the medical files and the findings of the enquiry conducted by P.Z.H.'s superior) were submitted to the court dealing with the criminal case conducted against the applicant and her mother.

28. The decision of the Prosecutor's Office contained the following conclusions:

"In the course of the investigation, it has been established that when Officer P.Z.H., acting on orders and wearing uniform, appeared at the house of Eva Rhodes and her daughter, he proceeded in accordance with Act no. 34 of 1994 on the Police, and Decree no. 3 of 1995 of the Ministry of the Interior on the Rules of Service of the Police. It was Eva Rhodes and her daughter [the applicant] who refused to obey the police measure; they did not comply with the officer's demand, obstructed him in performing his duties and caused him bodily injuries. ... Since, according to the findings of fact of the investigation [against the applicant and her mother] and to the enquiry carried out by the officer's superior, the actions of the officer as well as the use of coercive measures were lawful, no 'mistreatment in official proceedings' can be established within the meaning of section 226 of the Criminal Code; therefore, we closed the investigation in the absence of any crime."

29. On 13 August 2003 the applicant lodged a complaint with the Chief Prosecutor's Office against that decision. She complained that there had been no independent investigation in the case, particularly as the investigation authorities had not appointed a forensic medical expert in order to establish how her injuries had been caused. Moreover, the applicant stressed that the police officer's conduct had been unlawful in the absence of a written summons and that the decision of the Prosecutor's Office was illogical.

30. On 11 September 2003 the Chief Prosecutor's Office dismissed the applicant's complaint. After summarising the factual basis of the case, it gave the following reasoning:

"During the review of the documents of the investigation, ... [it] established that the police action did not give rise to the well-founded suspicion [of a crime]; namely, that the injuries of [the applicant] or those of Eva Rhodes had been caused by intentional ill-treatment exerted by the proceeding officer. Apart from the victims' allegations, there was no evidence proving that the police officer, in the course of his lawful action, exceeded the indispensable measure of force which was necessary to defy the threat and aggression directed against him and to overcome the resistance to a lawful police measure. In view of the fact that the complaint lodged against the decision closing the investigation does not contain any data to strengthen a well-founded suspicion of a crime committed by a police officer, I saw no reason to quash the impugned decision or to continue the proceedings."

31. Meanwhile, the applicant, independently of the ongoing criminal proceedings, requested another forensic medical expert to prepare an opinion concerning the possible causes of her injuries and those of the police officer.

32. The opinion of Dr J.H., dated 15 October 2003, concluded that the applicant's version of the events was a plausible explanation for her injuries. The expert stated in particular that the injuries on the applicant's shoulder and back might have originated either from punches by a hard object (like a truncheon) or, with equal likelihood, from being repeatedly banged against a wall. Moreover, he was of the view that the police officer's version did not explain the injuries. Concerning the injuries of P.Z.H, the expert established that they could have been caused as he described. The expert added that the injury to the officer's shoulder could also be explained by the applicant's version.

33. On 20 October 2003 the applicant, acting as substitute private prosecutor *(pótmagánvádló)*, lodged a bill of indictment with the Győr-Moson-Sopron County Regional Court against P.Z.H. for mistreatment in official proceedings and other offences. In the bill of indictment, she complained that, despite her repeated request, P.Z.H. had never been heard as a suspect, the investigation authorities had never obtained an opinion of a forensic medical expert concerning the possible causes of her injuries and, therefore, had not produced a plausible explanation for them. The applicant attached the opinion of Dr J.H. to the bill of indictment.

34. On 3 December 2003 the Regional Court dismissed the indictment. Without giving any detailed arguments and relying exclusively on the case file, it held that there was no reason to depart from the decisions of the prosecution authorities.

II. RELEVANT DOMESTIC LAW

35. Act no. 4 of 1959 on the Civil Code

Section 349

"(1) Liability for damage caused by the State administration shall only be established if damage could not be prevented by means of ordinary legal remedies or if the person concerned has resorted to ordinary legal remedies appropriate for preventing damage. ...

(3) These rules shall also apply to liability for damage caused by the courts or the prosecution authorities, unless otherwise provided by law."

36. Act no. 1 of 1973 on the (Old) Code of Criminal Procedure (as in force at the time of the incident)

Section 100 – Bringing-in (*elővezetés*)

"(1) Any person in respect of whom there is an order to be brought in, must be presented before the authority, if necessary by the use of a coercive measure."

Section 112 – The summons and the notification

"(1) The authority – unless the law prescribes otherwise – shall summon any person whose presence at a procedural act is mandatory and shall notify those whose presence is not mandatory but allowed by the law.

(2) A summons or a notification is normally done in writing. ...

(3) If necessary, a summons or a notification may be done in a short way (for example, by telephone)."

Section 113

"(1) If a defendant, legal counsel, a witness or an expert does not [comply with] a summons issued under section 112 ..., the authority may

a) order the defendant to be brought in, ..."

37. Act no. 19 of 1998 on the (New) Code of Criminal Procedure (in force since 1 July 2003)

Section 195

"(1) Any person who is concerned by a decision of the prosecutor or the investigation authority may lodge a complaint against the decision within eight days from its delivery. ...

(5) ... Subject to the exceptions provided in paragraph 6, no further remedy lies against a decision determining a complaint."

Section 199

" ... (2) After the dismissal of his [or her] complaint, a victim may act as a substitute private prosecutor (*pótmagánvádló*) if ...

b) the investigation was terminated under section 190 § (1) (a)-(d) or (f) [the absence of a serious suspicion of a crime, etc.].”

Section 229

“(1) If the superior public prosecutor dismissed a victim’s complaint lodged against the dismissal of a criminal report or against the discontinuation of an investigation and it is possible to lodge a substitute private bill of indictment under section 199, ... the victim may act as a substitute public prosecutor within thirty days from the date of the delivery of the decision.”

Section 231

“(1) The court shall accept a private bill of indictment, if there is no reason to declare it inadmissible.

(2) The court dismisses the private bill of indictment if ...

(d) its factual or legal background is evidently missing.”

Section 233

“(1) No appeal lies against a decision dismissing a private bill of indictment.”

38. Act no. 34 of 1994 on the Police

Section 15 – The principle of proportionality

“(1) A police measure may not cause such disadvantage as is obviously disproportionate to the legitimate aim pursued by the measure. ...”

Section 33 – Capture and arrest

“... (2) For the sake of public safety, the police may put before the authority or the competent body any person who ...

(b) may be suspected of having committed a crime. ...

(4) An arrested person must be informed orally or in writing about the reasons for his [or her] arrest ... .

Section 39 – Police action in private houses and other non-public places

“(1) The police may not enter private houses without permission or a warrant unless it is necessary for...

(b) the capture and arrest of a perpetrator or a suspect of a crime, ...

(f) the implementation of an order to bring someone in, ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that she had been ill-treated by the police, and that the investigations into her related complaints had been inadequate, in breach of Article 3 of the Convention, which provides:

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

A. Admissibility

40. The Government argued that the application should be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 § 1 of the Convention, which provides as relevant:

"The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ... ."

41. The Government contended that the applicant should have lodged an official liability action under section 349 of the Civil Code, this provision also being applicable to damages caused by the prosecution authorities. This remedy was available to the applicant both in respect of the alleged ill-treatment and the alleged omission of investigation. Had she availed herself of this remedy she could have been awarded compensation, which essentially would have afforded the same redress as that available from the Court. An action in compensation may be deemed a sufficient remedy where compensation is the only means of redressing the damage suffered.

42. The Government were aware that, according to the Court's case-law, if more than one legal remedy existed under the domestic law, the applicant had the right to choose which one to exhaust. However, in the present case, the very different nature of the available remedies should require the applicant to have exhausted both the criminal and the civil legal avenues. In the criminal proceedings instituted by her against the police officer, the defendant's procedural and Convention rights, such as the presumption of innocence, had to be respected in that – although it is the duty of the State to investigate the ill-treatment allegedly committed by the police – facts not proven beyond doubt could not serve as a basis for the police officer's conviction. Consequently, only civil proceedings instituted against the State could provide the Contracting Party with an opportunity to put right the violations allegedly committed by it.

43. The applicant maintained that civil compensation could not be deemed fully to rectify a breach of Article 3. In addition, she drew attention to the fact that in previous cases where the Court had found Hungary to have violated Article 3, the Government did not argue nor did the Court find that, by not attempting to obtain redress in a civil lawsuit, the applicants had failed to exhaust domestic remedies.

44. The applicant also submitted that in the similar case of *Balogh v. Hungary* (no. 47940/99, 20 July 2004), the Government had argued that the applicant's failure to exhaust domestic remedies by not having availed himself of an ordinary remedy – a complaint under section 148 of the (Old) Code of Criminal Procedure – against the discontinuation of the

criminal proceedings. This preliminary objection was dismissed by the Court. In any event, in the present case the applicant lodged such a complaint.

45. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. However, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 51-52).

46. The Court notes that Hungarian law provides civil remedies against illegal acts attributable to the State or its agents. However, it considers that these remedies cannot be regarded as sufficient for a Contracting State's obligations under Article 3 of the Convention in cases like the present, as they are aimed at awarding damages rather than identifying and punishing those responsible (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3286, § 85).

47. The Court observes that the applicant complained to the public prosecutor of the treatment to which she claimed to have been subjected. Furthermore, acting as substitute private prosecutor, she lodged with a court a bill of indictment against P.Z.H. for mistreatment in official proceedings. In the Court's view, these remedies may have resulted in the identification and the punishment those responsible. The applicant must therefore be regarded as having brought the substance of her complaint to the notice of the national authorities and as having sought redress through the national channels for her complaint. The Court reiterates in this connection that, in relation to treatment contrary to Article 3 of the Convention, raising criminal charges against the officials concerned or, in the alternative, filing a civil action for compensation are, in Hungary, generally effective remedies to be exhausted under Article 35 § 1 of the Convention (see *Bethlen v. Hungary*, no. 26692/95, Commission decision of 10 April 1997, unpublished).

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

B. Merits

1. The applicant's arguments

49. The applicant submitted that her injuries were serious enough to bring the case within the scope of Article 3 of the Convention, with special regard to her sex, the unlawful nature of the policeman's action and that she, being a foreigner, did not speak Hungarian. She had, therefore, not understood what was happening. Concerning the mental effects, she submitted that she had felt deeply humiliated and had experienced considerable psychological trauma, which had resulted in her decision to leave Hungary.

50. The applicant pointed out that the policeman's unlawful behaviour should also be measured against the minor offence with which she had originally been charged and the negligible threat posed by her to the officer.

51. She also submitted that it could reasonably be established that the incident had taken place as she had described it, and that her injuries were caused by the unlawful use of force by the police officer, while P.Z.H.'s version of the events was not logical.

52. Moreover, in the applicant's view, the police officer's version did not explain some of her injuries, namely the distension of the right shoulder and several abrasions on the back. In contrast, her version was supported by the opinion of the forensic medical expert Dr J.H. Nor did the other expert opinion exclude that the incident could have taken place as she had described it.

53. Concerning the effectiveness of the investigation, the applicant submitted that serious doubts arose as to whether there had been any proper investigation at all. The Public Prosecutor's Office's decision terminating the investigation into the charge of ill-treatment laid by the applicant bore the same reference number as the case concerning the criminal charges against her and her mother. Therefore the two investigations were included in the same file.

54. However, there were no documents in the case file showing that a procedure concerning the alleged ill-treatment was in progress. The first document containing such a reference was the terminating decision. Moreover, P.Z.H. was never formally interrogated as a suspect, let alone charged; he was only heard as a witness in the course of the proceedings against the applicant.

55. The applicant pointed out that the Prosecutor's Office, despite her repeated requests, only obtained a medical expert opinion concerning the possible causes of the police officer's injuries. Although Dr. J.H.'s opinion did not exclude that the applicant's injuries had been sustained as she described, and concluded that the police officer's version was implausible, the terminating decision was nevertheless based entirely on P.Z.H.'s version, for which no reasons were given.

56. The applicant's complaint against this decision as well as her private bill of indictment were likewise dismissed without any reasoning, an evaluation of Dr. J.H.'s opinion or reflections on any of her arguments.

57. The applicant submitted that the public prosecutor had ignored some evidence potentially supporting her version, by failing to attempt to locate and hear as a key witness the person who had been present in the house of the applicant's mother during the incident. Moreover, the prosecution failed to seize the camera with which she was reported to have hit P.Z.H. or to appoint an expert to determine how it had been damaged.

2. The Government's arguments

58. The Government submitted that, according to the findings of fact established in the investigation, the applicant's allegations were not supported beyond reasonable doubt by medical expert opinion. The latter did not exclude that the events had taken place as the police officer described them.

59. The Government pointed out that the impugned struggle occurred because of the resistance of the applicant and her mother to a lawful police measure. They were of the view that the applicant's injuries were not serious, nor did they amount to inhuman or degrading treatment. Therefore they did not attain the minimum level of severity envisaged by the Court's case-law for Article 3 to come into play.

60. As to the alleged lack of investigation, the Government submitted that the domestic authorities and courts examined the case thoroughly and weighed all the evidence put before them, namely medical reports, documentary evidence, and the testimonies of the parties and the commander of P.Z.H. They drew attention to the principle established by the Court's case-law, according to which the assessment of evidence is primarily a matter for the national authorities.

3. The Court's assessment

61. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of a democratic society. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 even in the event of a public emergency threatening the life of the nation.

62. The Court recalls that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his or her liberty, recourse to physical force which has not been made strictly necessary by that person's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § §§ 93-94).

63. In the instant case, the Court considers that the injuries suffered by the applicant, namely a contusion on the back of her right hand, a distension of the right shoulder and abrasions on her back, were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see, for example, *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21). It remains to be considered whether the State should be held responsible under Article 3 for these injuries.

a. Alleged ill-treatment by the police

64. The Court observes that the parties have not disputed that the impugned injuries were caused by the police officer during the applicant's arrest. It is also uncontested that the police officer used force in order to carry out the arrest which the applicant and her mother resisted. However, the parties disagree as to whether the police officer's action was lawful.

65. It must be noted that there was a well-grounded suspicion that the applicant and her mother had committed an offence, and the Győr Police Department intended to question them. However, since their exact names and address were unknown to the police, who were thus unable to summon them in writing, the Police Department decided to summon them orally by

sending the locally competent police officer to their home. This is permissible under section 112(3) of the Code of Criminal Procedure (see paragraph 36 above).

66. The Court observes that it is not contested that the applicant's mother, who speaks Hungarian, refused to comply with the police officer's instructions, called her dogs on him, grabbed his arm and tried to push him out of the garden. The applicant also refused to go with him; instead, she took photographs of him using a flash. The parties disagree on whether or not the applicant hit P.Z.H. with the camera. On the basis of the parties' observations and the material in its possession, the Court finds it impossible to establish the exact sequence of events.

67. The Court notes that, even though P.Z.H. apparently hardly spoke any English and could probably not express his instructions properly to the applicant, the latter did not attempt to clarify the situation, for example by asking her mother to translate. Rather, she immediately obstructed P.Z.H., whose position as a police officer was known to her. The Court also notes in this connection that P.Z.H. wore uniform. In these circumstances, the Court sees no reason to depart from the domestic authorities' conclusion that the police officer's action was lawful. It remains to be determined whether the police officer exceeded the necessary use of force when arresting the applicant and her mother.

68. As to the cause of the applicant's injuries, the parties' submissions again differ from each other. However, it is to be noted that the only expert opinion which actually concerned the origin of the applicant's injuries, characterised the police officer's version as implausible. Concerning the applicant's version, the expert found it equally likely that the injuries on the applicant's back and shoulder originated either from being banged against a wall or from punches by a truncheon.

69. Against this background, the Court again finds it impossible to establish beyond reasonable doubt that the applicant's injuries were sustained either when the police officer forcibly opened the door of the house – a necessary measure in the circumstances – and thereby pushed the applicant against the wall, or subsequently when he was allegedly beating her.

70. The Court notes that the applicant and her mother were arrested in the course of an operation giving rise to unexpected developments to which the police officer was called upon to react, since there is nothing in the case file indicating that P.Z.H. should have expected resistance (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002). While it is true that the police officer was probably stronger than the applicant or her mother, account must be taken of the fact that they effectively resisted his legitimate action – by refusing to comply with the verbal demands to follow him, setting dogs on him and resisting the attempts of the officer to apprehend the applicant (compare and contrast with *Rehbock v. Slovenia*, no. 29462/95, 28.11.2000, ECHR 200-XII).

71. The Court draws attention to the fact that the applicant lacked critical judgment of her own conduct when faced with a simple obligation to cooperate with the legitimate requirements of a law enforcement officer – an obligation which is part of general civic duties in a democratic society. These circumstances count heavily against the applicant, with the result that the Government's burden to prove that the use of force was not excessive in this case is less stringent (see, *Rehbock v. Slovenia*, §§ 65-78).

72. In sum, the Court cannot overlook the fact that the recourse to physical force – the exact character of which cannot be established from the case file – in the present case was made necessary by the applicant's own conduct (see, *Berliński v. Poland, op.cit.,* § 64). Moreover, while it is not disputed that the applicant suffered some injuries as a result of the incident, their nature does not show beyond reasonable doubt that the use of force against her was excessive.

73. Accordingly, there has been no substantive violation of Article 3 of the Convention with regard to the alleged ill-treatment by the police.

b. Adequacy of the investigation

74. Nevertheless, the Court considers that, taken together, the medical evidence, the applicant's testimony and the fact that her injuries were sustained in the course of police action, give rise to a reasonable suspicion that she may have been subjected to ill-treatment.

75. The Court recalls that where an individual raises an arguable claim of having been ill-treated by the police, unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition on inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice, and it would be possible in some cases for State agents to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, *op. cit.*, p. 3290, § 102).

76. The Court observes that, following the applicant's complaint, the authorities carried out an investigation into her allegations. It is not, however, persuaded that this investigation was sufficiently thorough and effective to meet the above requirements of Article 3.

77. The Court finds it regrettable that the medical expert appointed by the investigation authority only gave an opinion on the possible causes of the police officer's injuries, but, despite her repeated requests, did not deal with the origin of those sustained by the applicant. This is a serious shortcoming of the investigation, especially in the light of the opinion prepared by the medical expert commissioned by the applicant, according to which her version of the events was plausible, unlike that of P.Z.H.

78. The Court also notes that the applicant's complaint was forwarded to the Prosecutor's Office under the same reference number as that concerning the charge against her and her mother. Moreover, the police officer was never heard as a possible suspect and the individual allegedly staying at the applicant's house during the events was not heard, the investigation authorities making no attempt to locate that person. These elements show the reluctance of the authorities to carry out a thorough and effective investigation.

79. The Court also acknowledges that the applicant's complaint against the decision of Public Prosecutor's Office to close the investigation as well as her private bill of indictment were dismissed without any factual reasons being given, and without an evaluation of her medical expert's opinion or reflections on any of her arguments. Neither the Chief Prosecutor's Office

nor the County Regional Court went any further than pointing out the mere fact that the applicant had obstructed a lawful police action and this itself justified the force applied.

80. Consequently, in view of the lack of a thorough and effective investigation into the applicant's arguable claim that she was ill-treated by a police officer, the Court finds that there has been a violation of Article 3 of the Convention under its procedural limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

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

83. The Government found the applicant's claim excessive.

84. The Court finds that the applicant can reasonably be considered to have suffered some non-pecuniary damage in the circumstances. Making its assessment on an equitable basis, the Court awards her EUR 3,000 under this head.

B. Costs and expenses

85. The applicant also claimed EUR 3,500 for the costs and expenses incurred in the proceedings before the Court. She submitted that her claim is based on an agreement concluded with her lawyer, according to which she would only be billed if the case is closed successfully. She filed an itemised statement of the hours billable by her lawyer.

86. The Government found the applicant's claim excessive.

87. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court finds it reasonable to award the sum claimed in its entirety.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no substantive violation of Article 3 of the Convention with regard to the alleged ill-treatment by the police;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 3,500 (three thousand five hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 April 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.