EUROPEAN COURT OF HUMAN RIGHTS

Bouyid v. Belgium (App. no. 23380/09)

THIRD PARTY INTERVENTION – HUMAN RIGHTS CENTRE OF GHENT UNIVERSITY

These written comments are submitted by the Human Rights Centre of Ghent University (Belgium), pursuant to leave granted by the President of the European Court of Human Rights in his letter *d.d.* 11 June 2014 and in accordance with rule 44 § 3 of the Rules of the Court. The Human Rights Centre is an academic centre. One of its leading projects is "Strengthening the European Court of Human Rights: More Accountability through Better Legal Reasoning." The project is led by Professor Eva Brems and funded by the European Research Council. It is in the context of this project that these written comments are submitted for your consideration. For more information on the project and the Human Rights Centre, see the Annex.

EXECUTIVE SUMMARY

The Human Rights Centre of Ghent University respectfully submits that *Bouyid v. Belgium*, a case concerning the alleged use of violence by the police against persons in police custody, raises a serious question affecting the interpretation and application of Article 3 ECHR, as well as a serious issue of general importance, in terms of Article 43 § 2 of the Convention. The Grand Chamber judgment in *Bouyid* may well become a decisive moment in the Court's case law on the interpretation of the notions of torture and inhuman or degrading treatment under Article 3 ECHR and, as a result, on the extent of the protection offered against police violence under the Convention. In this respect, we submit that the judgment of the Fifth Section in *Bouyid* unacceptably lowers the standard of protection against police violence traditionally offered by Article 3 ECHR and urge the Grand Chamber to reconsider the threshold question under Article 3 ECHR by paying particular attention to the importance of elements that were ignored by the Fifth Section, namely the **abuse of power** by police officers over persons who are under their complete **control** and therefore in a state of **vulnerability**.

FOCUS OF THIRD PARTY INTERVENTION

In this third party intervention, we will present arguments on an issue of principle, namely whether or not the giving of a single slap by a police officer to a person in police detention should meet the threshold for application of Article 3 ECHR. We will argue that it should, based on the following arguments:

1. The importance of incorporating, into the relative threshold requirement of Article 3 ECHR, elements related to the abuse of power by national authorities over persons who are under their complete control and therefore in a state of vulnerability. As a result, we submit, a lower threshold for application of Article 3 ECHR ought to apply in situations of police custody (Section I).
2. The importance of ensuring that the Convention provides effective protection against abuse of power by the police in the Contracting States (Section II).
3. The existence/prevalence of police violence in Belgium, as an important contextual factor (Section III).

In accordance with the terms and conditions set out in the letter of the President of the Court *d.d.* 11 June 2014, we will refrain from discussing the particular facts of the *Bouyid* case. Instead, we will proceed on the assumption that certain facts – in particular the giving of the slaps by the police officers – are sufficiently established for the purposes of application of Article 3 ECHR.

REASONING OF THE FIFTH SECTION IN *BOUYID V. BELGIUM*

The Fifth Section ruled that the slaps given by the police officers to the applicants did not meet the threshold for application of Article 3 ECHR:

> "51. In the present case, however, even supposing that the slapping took place, in both cases it was an isolated slap inflicted thoughtlessly by a police officer who was exasperated by the applicants' disrespectful or provocative conduct, without seeking to make them confess. Moreover, this had apparently occurred in an atmosphere of tension between the members of the applicants' family and police officers in their neighbourhood. In those circumstances, even though one of the applicants was only 17 at the time and whilst it is comprehensible that, if the events really took place as the applicants described, they must have felt deep resentment, the Court cannot ignore the fact that these were one-off occurrences in a situation of nervous tension and without any serious or long-term effect. It takes the view that acts of this type, though unacceptable, cannot be regarded as generating a sufficient degree of humiliation or debasement for a breach of Article 3 of the Convention to be established. In other words, in any event, the above-mentioned threshold of severity has not been reached in the present case, such that no question of a violation of that provision, under either its substantive or its procedural head, is raised." (*Bouyid v. Belgium*, App. no. 23380/09, 21 November 2013, para. 51).

In this paragraph, the Fifth Section relies on four main arguments to rule that the threshold for application of Article 3 ECHR has not been met in the case at hand:

a) The isolated nature of the slaps: one-off occurrence without serious or long-term effects.
b) The police officers did not aim at obtaining a confession.
c) The applicants (allegedly) displayed disrespectful or provocative behaviour.
d) The existence of an atmosphere of tension between the police and the applicants' family.

We respectfully disagree with the relevance and/or acceptability of all four arguments. Throughout Section I of this third party intervention we will consider these four arguments in the abstract (*i.e.* without specific reference to the facts of the case at hand). We will argue that they are either out of line with established case law of the Court – arguments b), c) and d) – or rely on too narrow a view of the threshold requirement under Article 3 ECHR – argument a).

In Section II of this third party intervention we will set out additional arguments on the importance of ensuring effective protection against abuse of power by the police in the Council of Europe Member States. In Section III, finally, we will present some contextual information on the existence and prevalence of police violence in Belgium.

SECTION I: THE THRESHOLD REQUIREMENT UNDER ARTICLE 3 ECHR

A. Established case law of the Court

In this subsection, we will explain why we consider arguments b), c) and d) of the Fifth Section – evaluated in the abstract – to be inconsistent with established case law of the Court.

Afterwards, in subsection B., we will argue that the remaining argument – argument a) – should be reconsidered, because it focuses excessively on the physical effects of the treatment at issue, while ignoring the relevance of other factors, namely the **abuse of power** by police officers over persons under their complete **control** and therefore in a state of **vulnerability**.

We respectfully submit that **argument c)** of the Fifth Section – The applicants allegedly displayed disrespectful or provocative behaviour – is irrelevant to the application of Article 3 ECHR, according to established case law of the Court.

According to the Court, "even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, *irrespective of the conduct of the person concerned* (emphasis added)." (see, for instance, *El-Masri v. The Former Yugoslav Repuplic of Macedonia* (GC), App. no. 39630-09, 13 December 2012, para. 195). In the context of (police) detention, this principle needs to be read together with another firmly established principle from the Court's case law: "[i]n respect of a person deprived of his liberty, recourse to physical force *which has not been made strictly necessary by his own conduct* diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (emphasis added)." (see, among many authorities, *El-Masri* (GC), *op. cit.* para. 263; *Ribitsch v. Austria*, App. no. 18896/91, 4 December 1995, para. 38; *Selmouni v. France* (GC), App. no. 25803/94, 28 July 1999, para. 99).

The Court has nevertheless clarified that treatment does not reach the threshold for application of Article 3 ECHR when an applicant violently resists, for instance, his arrest: "Article 3 does not prohibit the use of force in certain well-defined circumstances, such as to effect an arrest. However, such force may be used only if indispensable and must not be excessive." (see *Shchukin and Others v. Cyprus*, App. no. 14030/03, 29 July 2010, para. 93, with further references). From the Court's case law, it is clear that this principle – henceforth the 'violent resistance principle' – should be interpreted narrowly. It only applies when an applicant acts in a **violent** manner and provided that the force used is **indispensable** and **not excessive**. As a result, application of precisely the same amount of force will be compatible with Article 3 ECHR in certain circumstances, but will fall foul of the Article's requirements in other situations. More particularly, the use of force may be justified when it is indispensable to achieve the arrest of a violent suspect, provided that the force used is not excessive.[1] However, when the use of force is excessive and/or not indispensable – for instance when the suspect does not resist his arrest, when he has already been subdued or when the victim is not a suspect, but a peaceful protester – the 'violent resistance principle' does not apply and the ill-treatment will constitute a violation of Article 3 ECHR, provided that it is sufficiently serious to meet the threshold for application of the Article.[2]

[1] See, for instance, ECtHR, *Stojnsek* v. *Slovakia*, 23 June 2009; *Berlínski v. Poland*, App. nos. nos. 27715/95 and 30209/96), 20 June 2002; and, *mutatis mutandis*, ECtHR, *Julin* v. *Estonia*, 29 May 2012.

[2] See, for instance. ECtHR, *Erdoğan Yağız* v. *Turkey*, 6 March 2007; ECtHR, *Rehbock* v. *Slovenia*, 28 November 2000; ECtHR, *Grigoryev* v. *Russia*, 23 October 2012; *Kuzmenko v. Russia*, App. no. 18541/04, 21 December 2010; ECtHR, *Sylenok and Tekhnoservis-Plus* v. *Ukraine*, 9 December 2010; ECtHR, *Güler and*

The ‘violent resistance principle’ thus only applies under strict conditions, namely when an applicant **violently** resists, *e.g.*, his arrest and provided that the use of force is indispensable and not excessive. However, the Fifth Section in *Bouyid* did not refer to the violent conduct of the applicants, but to their (alleged) **disrespectful or provocative behaviour**. We respectfully submit that, given the strict conditions for the application of the ‘violent resistance principle’ mentioned above, an applicant's "disrespectful or provocative behaviour" cannot justify any use of force on the part of the police. Rather, this is a situation covered by the principle that "the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, *irrespective of the conduct of the person concerned*." We respectfully submit that the Fifth Section's reliance on the "disrespectful or provocative behaviour" is thus inconsistent with established case law of the Court.

Similar considerations apply to **argument d)** – The existence of an atmosphere of tension between the police and the applicants' family. In relying on this element, the Fifth Section appears to build upon earlier Court judgments in Article 3 ECHR cases that mention "an atmosphere of heightened tension and emotions" (see, most notably, *Gäfgen v. Germany* (GC), App. no. 22978/05, 1 June 2010, paras. 88 and 106; *Egmez v. Cyprus*, App. no. 30873/96, 21 December 2000, para. 78; *Selmouni* (GC), *op. cit.* para. 104). However, and this is crucial, in none of those other cases did the Court rely on this element to argue that the treatment at issue did not meet the threshold for application of Article 3 ECHR. Instead, in all cited judgments (two of which are Grand Chamber judgments), the Court found a violation of Article 3, *despite* the presence of "an atmosphere of heightened tension and emotions". Moreover, in all cited cases the heightened tension and emotions were of a very serious nature. In *Gäfgen*, for instance, the police officers were convinced that it concerned a situation of life and death for a young boy. The fact that even under such circumstances the ill-treatment at issue was held by the Grand Chamber to constitute inhuman treatment in violation of Article 3 ECHR, signals that the element of "an atmosphere of heightened tension and emotions" can never justify ill-treatment. Rather, police officers – who are specifically trained to deal with situations of "heightened tensions and emotions" – cannot be excused for losing control in such circumstances. Indeed, as the Court has previously held, "Article 3 of the Convention establishes ... a positive obligation on the State to train its law enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no-one is subjected to torture or treatment that runs contrary to that provision." (*Davydov and Others v. Ukraine*, App. nos. 17674/02 and 39081/02, 1 July 2010, para. 268).

We finally also respectfully submit that **argument b)** of the Fifth Section – The police officers did not aim at obtaining a confession – is ill-placed and fails to correctly apply the Court's established case law. The reference to the aim of obtaining a confession may be relevant to an examination of whether ill-treatment constitutes torture. However, it is much less relevant – irrelevant even – when considering whether or not treatment meets the threshold for application of Article 3 ECHR as constituting degrading treatment, the notion under which single slaps given by police officers to persons in police detention would most likely fall (see *infra*, subsection B.).

The Court has consistently defined torture in terms of "deliberate inhuman treatment causing very serious and cruel suffering" *and* as having "a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading

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Öngel v. *Turkey*, 4 October 2011; ECtHR, *Muradova* v. *Azerbaijan*, 2 April 2009; ECtHR, *Saya and others* v. *Turkey*, 7 October 2008.

Treatment or Punishment ... which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating." (*El-Masri* (GC), *op. cit.*, para. 197). Hence, any reference to the absence of an aim of obtaining a confession only plays a role in determining whether or not ill-treatment constitutes torture. It is, however, *not* relevant to determining whether the threshold for application of Article 3 ECHR as such has been reached. In particular, ill-treatment may very well constitute degrading treatment without aiming at a confession or even when it has no specific purpose at all, since "[t]he question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account [in determining whether treatment is degrading] *but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3* (emphasis added)." (see, for instance, *Labita v. Italy* (GC), App. no. 26772/95, 6 April 2000, para. 120).

Throughout this subsection, we have argued that arguments b), c) and d) of the Fifth Section in *Bouyid* are not relevant to the determination of whether or not the giving of a single slap by a police officer to a person in police detention meets the threshold for application of Article 3 ECHR, since these arguments are inconsistent with established case law of the Court.

As a result, the one remaining argument is argument a), which is the only one that speaks directly, in relevant terms, to the threshold requirement under Article 3 ECHR. This argument on the isolated nature of slaps without serious or long-term effects, will be discussed in subsection B., where we will argue that, although it is a valid argument in line with the Court's case law, it fails to consider the relevance of factors that should be central to the threshold question in situations of police detention, namely the **abuse of power** by police officers over persons who are under their complete **control** and who are therefore in a state of **vulnerability**.

B. The importance of incorporating abuse of power by the police over vulnerable persons under their control into the threshold requirement

According to established case law of the Court, the threshold for application of Article 3 ECHR is a relative one: "[i]n order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim ... Further factors include the purpose for which the treatment was inflicted together with the intention or motivation behind it ... as well as its context, such as an atmosphere of heightened tension and emotions." (*Gäfgen*, *op. cit.*, para. 88).

In its *Bouyid* judgment, the Fifth Section emphasised two of these factors, namely the duration of the treatment ("one-off occurrence") and the physical effects thereof ("without serious or long-term effects"). We strongly urge the Grand Chamber to go beyond the considerations of the Fifth Section by also incorporating into its reasoning other factors that are at least as central to the threshold question under Article 3 ECHR.

The most important of these other factors, we submit, is the context in which the ill-treatment was inflicted, namely one of (police) detention. We submit that in such a context, a number of particular elements justify the lowering of the threshold for application of Article 3 ECHR. These elements relate to the **abuse of power** by police officers over persons under their complete **control** and who are therefore in a state of **vulnerability**.

We respectfully submit that an excessive – or exclusive – focus on the physical effects of ill-treatment cannot do full justice to the relative nature of the threshold for application of Article 3 ECHR.[3] The reason for this is that, as explained above (see subsection A.), exactly the same use of force can, depending on the circumstances, constitute a violation of Article 3 ECHR or not meet the threshold for the Article's application. For example, having a police officer shoot a fleeing and armed suspect in the leg in order to affect his arrest may fall within the 'violent resistance principle', under which the use of force can be justified as indispensable. However, if the same police officer shoots a restrained suspect in the leg at the police station, this would certainly constitute – at the very least – inhuman treatment in violation of Article 3 ECHR. The crucial difference between both scenarios is not the severity of the inflicted pain, nor its lasting consequences, for these are identical. Instead, the distinction between both scenarios lies in the purpose for which the force is used as well as the level of powerlessness of the subject: the victim is in full control of his own agency in the first scenario, but completely surrendered to the power of the police officer in the second scenario.[4]

We submit that it is crucial to take this vulnerability of persons in police detention into account when assessing the threshold question under Article 3 ECHR. As Alexandra Timmer has noted, "[t]he paradigmatic image of the vulnerable person who cannot protect himself from the power of the state is found in the case law concerning detainees."[5] Indeed, the Court has repeatedly acknowledged that "[p]ersons in custody are in a vulnerable position" (*Salman v. Turkey*, App. no. 21986/93, 27 June 2000, para. 99). The Court has moreover on many occasions reiterated "its constant approach that Article 3 imposes on the State a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen." (*Denis Vasilyev v. Russia*, App. no. 32704/04, 17 December 2009, para. 115, with further references). The Court has furthermore referenced the relevance of a victim's feelings of fear and helplessness in determining whether or not the threshold requirement of Article 3 ECHR has been met (see, for instance, *Valiulienè v. Lithuania*, App. no. 33234/07, 26 March 2013, para. 70).

This approach of the Court is also confirmed by other regional and international bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The CPT has particularly pointed towards the vulnerability of juveniles: "regardless of the reason for which they may have been deprived of their liberty - juveniles are inherently more vulnerable than adults. In consequence, particular vigilance is required to ensure that their physical and mental well-being is adequately protected."[6] The UN Special Rapporteur on Torture has, for his part, emphasised that "[d]etainees, whether deprived of their liberty for justified or less justified reasons, belong to the most vulnerable and forgotten sectors of our societies"[7] and that "[a]mong detainees, certain groups are subject to double discrimination and vulnerability,

[3] Natasa Mavronicola, '*Güler and Öngel v Turkey*: Article 3 of the European Convention on Human Rights and Strasbourg's Discourse on the Justified Use of Force', 76 *Modern Law Review* (2013), p. 379: "neither the use of force nor the infliction of suffering can be the be-all and end-all of concepts such as 'inhuman treatment'."

[4] For a similar argument, see Natasa Mavronicola, *op. cit.*, p. 379.

[5] Alexandra Timmer, 'A Quiet Revolution: Vulnerability in the European Court of Human Rights', in Martha Albertson Fineman and Anna Grear (eds.), *Vulnerability - Reflections on a New Ethical Foundation for Law and Politics* (Surrey - Burlington: Ashgate, 2013), p. 154.

[6] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *9th General Report*, CPT/Inf(99)12, 30 August 1999, para. 20.

[7] United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, A/HRC/13/39, 9 February 2010, para. 74.

including ... children".[8] In this respect, it falls to be noted that one of the applicants in *Bouyid* was a minor at the time of the events and thus in a situation of particular vulnerability while in police detention. As Manfred Nowak has moreover argued in his scholarly writings, "[i]t is the powerlessness of the victim in a situation of detention which makes him or her so vulnerable to any type of physical or mental pressure. That is why such pressure must be considered as directly interfering with the dignity of the person concerned".[9]

We strongly urge the Grand Chamber to take the cited context of powerlessness and vulnerability into account in determining whether single slaps given by police officers to persons in their detention, and thus under their complete control, meet the threshold requirement under Article 3 ECHR. We particularly submit that in respect of persons, especially minors, who find themselves in a situation of powerlessness in police detention, the giving of even a single slap can have serious psychological repercussions and should therefore never be justified under Article 3 ECHR. By slapping a person in custody, whether or not this person is a suspect, a police officer abuses his power in order to demonstrate that he is in complete control of the other person, thereby also underlining the utter powerlessness of his victim. In doing so, the police officer - whether intended or not - debases and humiliates his victim, who is forced to undergo the violence without being able to respond. Moreover, the giving of a slap can be seen as a warning or a precursor of worse violence to come, if the victim does not start cooperating with the police officer.[10] As such, it is not unreasonable to assume that even a single slap can have powerful psychological effects, such as inducing a state of fear or shock in the victim.

In this respect, we invite the Grand Chamber to consider the following views of the CPT, expressed in its 2006 and 2010 reports on Belgium: "le CPT recommande de rappeler aux fonctionnaires de police qu'au moment de procéder à une interpellation, l'usage de la force doit être limité à ce qui est strictement nécessaire ; de surcroît, dès l'instant où la personne interpellée a été maîtrisée, *rien ne saurait jamais justifier qu'elle soit frappée* (emphasis added)."[11]

In this context, it is furthermore important to note that recent psychological research on 279 torture victims has shown that psychological forms of ill-treatment, including humiliating treatment, do not "seem to be substantially different from physical torture in terms of the severity of mental suffering they cause, the underlying mechanism of traumatic stress, and their long-term psychological outcome".[12] The findings of the study are "[c]onsistent with ... previous research [which] has shown that what determines traumatic stress in torture survivors is perceived *uncontrollability* and *stressfulness* of the torture stressors and not mere exposure to them (emphasis added)."[13] The study concludes that its "findings imply that various psychological manipulations, ill treatment, and torture during interrogation share the same psychological mechanism in exerting their traumatic impact. All 3 types of acts are

[8] Ibid., para. 75.
[9] Manfred Nowak, 'Challenges to the Absolute Prohibition of Torture and Ill-Treatment', 23 *Netherlands Quarterly of Human Rights* (2005), p. 678.
[10] For a relevant case from the Court's case law, see *Davydov*, *op. cit.*, particularly at paras. 265 and 271.
[11] CPT, *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 septembre au 7 octobre 2009*, CPT/Inf(2010)24, 23 July 2010, para. 13; CPT, *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 18 au 27 avril 2005*, CPT/Inf(2006)15, 20 April 2006, para. 12.
[12] Metin Başoğlu, Maria Livanou, and Cvetana Crnobarić, 'Torture vs Other Cruel, Inhuman, and Degrading Treatment - Is the Distinction Real or Apparent?', 64 *Archives of General Psychiatry* (2007), p. 277.
[13] Ibid., p. 283.

geared toward creating anxiety or fear in the detainee while at the same time *removing any form of control* from the person to create a state of total *helplessness* (emphases added)."[14]

The cited psychological study confirms the need to not only determine the physical effects of ill-treatment, but to also take other factors into account, such as lack of control, helplessness and fear, which seem at least as central in causing mental suffering and traumatic stress in victims of ill-treatment as physical pain.

We finally also invite the Grand Chamber to consider the potential motivation of a police officer who gives a single slap to an (allegedly) 'difficult' minor or juvenile in police custody. In particular, the giving of such a slap could very well be intended by the police officer, and experienced as such by his victim, as a form of punishment for the latter's perceived unruly behaviour. We submit that the giving of a single a slap thus constitutes an immediate form of corporal punishment for disobedience, administered by the police officer on the spot. At the very least, we submit, it is analogous to corporal punishment for the purposes of application of Article 3 ECHR.

Crucially, the Court has ruled that acts of corporal punishment constitute degrading punishment in violation of Article 3 ECHR: "[t]he very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being ... although the applicant did not suffer any severe or long-lasting physical effects, his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the main purposes of Article 3 (art. 3) to protect, namely a person's dignity and physical integrity." (*Tyrer v. The United Kingdom*, App. no. 5856/72, 25 April 1978, para. 33; in para. 35 the Court describes this treatment as degrading punishment; see also *A. v. the United Kingdom*, App. no. 25599/94, 23 September 1998).

In this context, we finally also invite the Grand Chamber to consider the relevance of the views of the United Nations Committee on the Rights of the Child, expressed in its General Comment No. 8, in which the Committee "defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light"[15] and finds that "it is clear that the practice directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity. The distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence."[16]

SECTION II: ENSURING EFFECTIVE PROTECTION AGAINST ABUSE OF POWER BY THE POLICE

We respectfully submit that the *Bouyid* case constitutes a pivotal moment in the Court's case law on the effective protection against police violence in the Contracting States.

It is beyond doubt that the giving of even single slaps by police officers to persons in police detention is utterly unacceptable, as explicitly recognised by the Fifth Section in *Bouyid* (*Bouyid*, *op. cit.*, paras. 50-51). We submit that this is an area in which human rights law and the European Court of Human Rights have a crucial role to play by explicitly condemning such acts of police violence as human rights violations.

[14] Ibid.
[15] Committee on the Rights of the Child, *General Comment No. 8*, CRC/C/GC/8, 2 March 2007, para. 11.
[16] Ibid., para. 12.

In this context, we once again stress the Court's case law to the effect that "Article 3 of the Convention establishes ... a positive obligation on the State to train its law enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no-one is subjected to torture or treatment that runs contrary to that provision ... This also presupposes that the training activities of law enforcement officials, including officials of the penitentiary institutions, are not only in line with that absolute prohibition, but also aim at prevention of any possible treatment or conduct of a State official, which might run contrary to the absolute prohibition of torture, inhuman or degrading treatment or punishment." (*Davydov*, *op. cit.*, para. 268).

By nevertheless declining to find a violation of the ECHR, the Fifth Section in *Bouyid* has sent the deplorable signal that, in terms of European human rights law, it is perfectly acceptable to slap persons under police control, as long as it only happens once. This is patently *not* a message that should be given to the Contracting States, since it fails to ensure effective protection against abuse of power by the police and may entice police officers to engage in violent conduct. We urge the Grand Chamber to adopt a judgment that ensures that all individuals in the Council of Europe Member States are offered effective protection against abuse of power by the police in the form of police violence.

In subsidiary order, should the Grand Chamber fail to be convinced by the above argumentation under Article 3 ECHR, we invite it to – if necessary *proprio motu* – also consider the case under Article 8 ECHR, given that slaps given by police officers to persons under their complete control certainly constitute a disproportionate – since not necessary – interference with the applicants' physical integrity, as part and parcel of their right to private life (see *X. and Y. v. The Netherlands*, App. no. 8978/80, 26 March 1985, para. 22).

SECTION III: CONTEXTUAL INFORMATION - POLICE VIOLENCE IN BELGIUM

The two main institutions dealing with police violence in Belgium are the governmental *Comité P* and the NGO intitiative *ObsPol*. *Comité P* is the watchdog of the police services created in 1991 in order to provide for an external body to monitor the Belgian police. *ObsPol*, an independent monitoring centre for police violence in Belgium, was established by the NGO *Ligue des Droits de l'homme* in 2013 in order to provide an alternative for people who are too afraid to go to the police with their complaint.

Statistics provided by *Comité P* show a steadily growing number of complaints about police violence. For instance, in 2012 *Comité P* received 576 complaints about police violence, compared to 468 cases in 2010.[17] Moreover, roughly one out of every 5 complaints received by *Comité P* in 2010, 2011 and 2012 concerned police violence.[18]

ObsPol's figures show that a large proportion of persons who report police violence are aged between 18 and 30 (43%).[19] With regards to the context of the alleged violence, *ObsPol*'s figures disclose that 26% of all alleged acts were committed at a police station.[20] Furthermore, according to *OsbPol* 73% of all cases allegedly involve one or more forms of discrimination,

[17] *Comité P*, *Rapport annuel 2012*, p. 78, available at http://www.comitep.be/2012/2012FR.pdf.
[18] Ibid.
[19] *ObsPol*, *Rapport 2014 - Un an d'existence: un premier bilan*, p 11, available at https://www.obspol.be/docs/Rapports/ObsPol_Rapport-2013-2014.pdf.
[20] Ibid., p. 12.

including on the basis of "colour of skin" (22% of all cases).[21] Incidental evidence shows that the Belgian police does not necessarily deny it experiences problems of racism. For instance, the police Commissioner of one of Brussels' communes has acknowledged that some persons still want to be a police officer "*pour casser des arabes*".[22]

In recent years, the Belgian police has been at the heart of a number of brutal cases of police violence.[23] Most of these cases may be exceptional, but they nevertheless demonstrate that police violence amounting to torture and inhuman treatment does occur in Belgium. One such case was that of 26-year old Jonathan Jacob.[24] In January 2010, Mr. Jacob, a body-building enthousiast who was addicted to amphetamines, which caused him to suffer from psychosis, appeared to be "confused" when he encountered a police patrol in the streets. The police brought Mr. Jacob to the police station and, after several psychiatric institutions refused to admit him, stripped him naked and placed him in a detention cell, at the police station. Later that day, when the police officers no longer knew how to cope with Mr. Jacob's psychosis, a six-man police unit wearing protective armour and identity-hiding helmets entered his cell and beat him severely. Mr. Jacob died in his cell as a result of his injuries.

Of more immediate relevance to this third party intervention is the disturbing finding that in certain police stations in the Brussels region, the giving of 'pies' [*taarten*] – slaps with the open hand that generally leave (nearly) no marks – is almost routine behaviour.[25] The fact that specific terminology is being used to describe such slaps and that their use is recognised as constituting a problem by senior police officers, such as the Commissioner of one of Brussels' communes,[26] signals the frequency with which police officers resort to giving such slaps.

We conclude by inviting the Grand Chamber to consider the following: a one-off violent incident, both for the victim and potentially even for the perpetrator, may very well situate itself in a context in which the infliction of such violence is far from exceptional, but constitutes a pattern. In that respect, an ECtHR judgment finding a violation of Article 3 (and/or Article 8) ECHR may be a crucial factor in breaking such a pattern of police violence at the domestic level. Therefore, it is important that the Grand Chamber remain conscious of the fact that it are not individual Belgian police officers – who 'only' administered a single slap – who are 'on trial' in Strasbourg, but rather the Belgian State, whose police force as a whole appears to routinely engage in such violent conduct towards persons in their custody. As such, a Grand Chamber ruling finding a violation of Article 3 (and/or Article 8) ECHR in one particular case may play a crucial role in offering guidance for the setting out of policies and guidelines at the domestic level, in order to prevent this type of violence from occurring in future situations.

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[21] Ibid., p 14.
[22] John Vandaele, *op. cit.*
[23] For additional examples, see *Liga voor Mensenrechten*, 'Identificatie agenten noodzakelijk om politiegeweld aan te klagen' [Identification of police officers necessary to accuse police violence], 15 March 2013, available at http://www.mensenrechten.be/index.php/site/nieuwsberichten/identificatie_agenten_noodzakelijk_om_politiegeweld_aan_te_klagen; John Vandaele, '"Zeg dat je een makaak bent of ik sla harder"' ["Say you are a *makaak* [derogatory term for persons from Maghreb origin], or I will hit harder"], *MO* Magazine*, 25 April 2012, available at http://www.mo.be/artikel/zeg-dat-je-een-makaak-bent-ik-sla-harder.
[24] *Panorama*, 'De gestoorde procedure' [The disturbed procedure], 21 February 2013, available at http://deredactie.be/cm/vrtnieuws/videozone/programmas/panorama/EP_130221_panorama [video].
[25] John Vandaele, *op. cit.*
[26] Ibid.