

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

FOURTH SECTION

CASE OF HOLODENKO v. LATVIA

(Application no. 17215/07)

JUDGMENT

STRASBOURG

2 July 2013

FINAL

04/11/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Holodenko v. Latvia,

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

David Thór Björgvinsson, *President,*
Ineta Ziemele,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 11 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 17215/07) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Jurijs Holodenko ("the applicant"), on 10 April 2007.

2. The applicant, who had been granted legal aid, was represented by Ms D. Rone, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine, who was succeeded by Mrs K. Līce.

3. The applicant alleged, in particular, that he has been subjected to ill-treatment by police officers and that the authorities had failed to investigate his allegations.

4. On 6 September 2011 the complaint under Article 3 of the Convention was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969.

A. The applicant's arrest and detention, and the injuries sustained

6. At 7.18 a.m. on 9 June 2006 the State police in Rīga received a telephone call from R.H. who reported that two men had broken into his apartment in Rīga and attacked him with an axe. The alleged victim had escaped but his girlfriend, O.A., was still in the apartment and was allegedly under threat. According to reports drawn up by police officers K.H. and V.O. on the same date, four police officers (V.O., D.V., M.S., J.S.) from the "Alfa" special operations unit (*Speciālo uzdevumu vienība "Alfa"*) and two police officers (K.H. and I.G.) from the Rīga Main police station (First Division), went immediately to the address given. Next to the building they met R.H., who was bleeding. He guided the police officers to the apartment, where they saw a naked woman and two men. One of the men (the applicant) attempted to escape, so the police had to use a special combat technique to put him on the ground. The applicant did not calm down and was therefore handcuffed. Both men, as well as the alleged victims, R.H. and O.A., were taken to the Rīga Main police station (First Division). The applicant was searched and the police officers found narcotic substances on him.

7. According to the applicant, on 9 June 2006 he was in an apartment in Rīga visiting acquaintances and consuming alcohol, when suddenly five or six police officers arrived. They handcuffed and searched the applicant, and punched him a number of times in the head and body. The applicant was then dragged to a police car and taken to a police station. After an altercation with the police officers, the applicant was wrestled to the ground. The police officers kicked him; one of them jumped on him while he was on the ground, and another pulled open the applicant's eye and hit him in the eyeball. The ill-treatment lasted for about half an hour, during which the applicant lost consciousness several times. Afterwards he was put in a pre-trial detention cell where he asked for medical assistance. Only after repeated requests was he admitted to hospital.

8. The record of the applicant's arrest under article 46 of the Administrative Offences Code, drawn up at 8 a.m. on 9 June 2006 by police officer O.K., stated that the applicant had bruises on his arms and wounds to the left eyebrow and right cheek. It noted that during the search of the applicant the police had seized, among other things, a firearm-like object and a plastic bag containing a transparent substance. According to the report, the applicant was released at 4.30 p.m. on the same day and subsequently arrested under section 264 of the Law of Criminal Procedure. The arrest report indicated that the applicant had had a swollen eye and had been under the influence of drugs.

9. According to medical records, at around 1 p.m. on 9 June 2006 the applicant was examined at the State Drug and Alcohol Abuse Agency where it was confirmed that there were traces of narcotic substances in his body.

At about 10 p.m. the same day the applicant was admitted to Rīga Hospital No. 1. He complained of a headache and pain in the left part of the chest. An X-ray was taken and he was diagnosed with bruising on the head and chest.

10. On 11 June 2006 the Rīga City Latgale District Court remanded the applicant in custody.

11. On 12 June 2006 the applicant was admitted to the Latvian Prison hospital (*Latvijas Cietuma slimnīca*), where the results of an X-ray examination carried out on 13 and 19 June 2006 established that he had four broken ribs.

12. On 27 June 2006 the decision to detain the applicant was revoked and he was discharged from the hospital.

13. On 29 June 2006 the applicant was re-arrested for alleged possession of drugs which had been discovered on him on 9 June 2006 (see paragraph 8 above) and remanded in custody. Deciding on the measure, the investigating judge relied, *inter alia,* on the fact that the applicant had expressed his intention to leave the country.

14. From 29 June to 12 July 2006 the applicant was again admitted to the prison hospital where he was diagnosed with "a condition after a series of fractured ribs on the left side. Post-traumatic neuralgia".

B. Investigation into the applicant's complaint of ill-treatment on 9 June 2006

15. On 27 June 2006, following a complaint submitted by the applicant on 14 June 2006 that he had been ill-treated by police officers, the State police Internal Security Office (*Valsts policijas Iekšējas drošības birojs*) instituted criminal proceedings in case no. 11819004606 with respect to the alleged ill-treatment of the applicant in the short-term detention unit of the Rīga Main police station (*Rīgas Galvenās Policijas Pārvaldes Īslaicīgās aizturēšanas izolators*).

16. On 21 July 2006 R., the investigator of the Internal Security Office, sought medico-legal assessment and also asked the expert to ascertain whether the applicant's injuries could have been self-inflicted.

17. On 28 July 2006 the first medico-legal assessment was carried out on the basis of the available medical data. Additional information was requested from the health-care institutions and a radiologist in relation to the applicant's chest injury. On 12 October 2006 the radiologist concluded that the applicant had four fractured ribs on the upper left side under the arm. The fractures were considered to be "fresh", possibly sustained on 9 June 2006. On 16 October 2006 the medico-legal expert concluded that the fractured ribs constituted a medium-to-severe bodily injury causing long-term health problems of more than twenty-one days, whereas the other bruising constituted light injuries causing short-term health problems of no

more than six days. The conclusion stated that the applicant himself could have inflicted the bruising to his head and the hematomas on 9 June 2006, and that they may have been caused by a blunt object. The expert noted that the applicant had not been subjected to an early medico-legal assessment and it was therefore impossible to draw conclusions concerning the exact number of traumatic impacts. Nor could the expert draw conclusions about the exact manner and time at which the fractures had been sustained because the initial X-ray examination of 9 June 2006 had not disclosed that injury (the report stated that the results of that examination had not been kept) and the information about it had appeared for the first time on 13 June 2006. The expert stated that it could not be excluded that the fracture might have been caused on 9 June 2006 because the applicant had complained of pain on the same day. Nor could it be excluded that some of the injuries could have been caused as a result of the applicant falling down against a hard, uneven surface, but it would have had to have happened more than once.

18. From July 2006 to January 2007 nine police officers from the Rīga Main police station and the special operations unit were questioned. Police officer K.H. stated, *inter alia*, that when he and I.G. had arrived at the apartment, the applicant had tried to escape and had attempted to kick the police officers. Therefore he and some of his colleagues had had to put him face down on the ground and handcuff him.

19. In relation to the applicant's behaviour in the police station, K.H: stated:

> "... After having been brought to the [premises of the Rīga Main police station], the detainees behaved aggressively ... [the applicant] tried to kick me, used abusive language about police officers and threatened to cause us problems. In view of the aggressive behaviour of [the two detainees] and the fact that during arrest they had tried to run away, in order to prevent them from absconding again ... we ordered them to lay face down on the ground. A.S. obeyed our orders but [the applicant] refused and started to swear. Therefore [I] applied physical force, forced his hands behind his back and put him face down on the ground, [and] handcuffed him again. ([Let me] clarify that at that point his handcuffs still had not been removed and I did not force his arms behind his back but took [him] by the arms). Afterwards the search [of the applicant] was carried out."...

20. The other two police officers (I.G. and V.O.) who had participated in the applicant's arrest stated that the arrest had been carried out speedily. Once they had taken the applicant to the police station, their shift was over and they left without having witnessed the applicant being searched.

21. The other police officers either could not remember the events at the police station or contended that no-one had used force against the applicant. In particular, D.J. submitted that at 8 a.m. when he took up his duties at the police station the applicant had already been handcuffed. The applicant behaved aggressively; he was swearing, alleging that he had been detained without any grounds and threatening to cause the police officers problems at work. D.J. then left; when he returned the applicant was in the detention unit

and had some facial injuries. O.K. testified that at about 8 a.m. when he had arrived at the police station, the applicant had been lying face down and handcuffed on the ground. During the search the applicant was in a horizontal position on the floor and ignored orders to stand up and respond to questions. S.V., who arrived at the police station at 7.45 a.m. and together with other colleagues took over the detention procedure from the previous shift, noted that the applicant had been on the ground. During S.V.'s shift the applicant asked for medical assistance, which was provided to him. G.L., another police officer, could not remember the applicant's behaviour but recalled that when he had arrived at the police station at 7.45 a.m., the applicant had been lying on the ground and O.K. and the witnesses had been drawing up the arrest report.

22. J.O., one of the two civilians invited to witness the applicant' being searched, could not precisely recollect the events and whether the applicant had behaved aggressively during the search or whether special measures had been applied, but he thought he remembered that on his arrival the applicant had already been on the floor.

23. O.A., one of the alleged victims, testified that she had not witnessed any force being used against the applicant in the apartment. The co-defendant, A.S., stated that when the two defendants had been taken to the police station they had been first searched and afterwards put in separate cells, so he had been unable to witness the treatment of the applicant. Nevertheless, he had heard him shouting.

24. Meanwhile, following an order from the head of the Rīga Main police station, the human resources department (*Rīgas pilsētas Galvenās policijas pārvaldes Personālsastāva inspekcijas nodaļa)* carried out an internal investigation in order to verify the applicant's allegations. In the course of the investigation K.H. denied that he had used force against the applicant either in the apartment or in the police station. Four other police officers were also questioned and they denied that physical force had been applied to the applicant. G.L. stated that he had arrived at the police station at 7.45 a.m. and had seen two men lying on the floor; he and O.K. had filed the arrest report and stated that the two men had sworn at them when they were put in the police cells. His statement was confirmed by two other police officers who had witnessed the events.

25. The internal investigation was concluded on 15 August 2006. The decision stated that the police officers concerned had denied that the applicant had been subjected to brutal physical force, and that it had not been possible to prove the allegations without carrying out procedural measures. It was recommended that the materials of the internal investigation be forwarded to the Internal Security Office in order to decide whether to institute criminal proceedings, and to decide on any disciplinary measures after the adoption of the procedural decision.

26. On 20 and 23 October 2006 the applicant complained to the prosecutor's office about the ineffectiveness of the investigation into his alleged ill-treatment. In response, on 25 October 2006 the Internal Security Office and the Rīga City Centre District Prosecutor's Office questioned the applicant as a victim in the criminal proceedings concerning his alleged ill-treatment.

27. Meanwhile, following the applicant's complaint to the prosecutor's office, on 27 October 2006 prosecutor S. dismissed the allegations concerning the ineffectiveness of the investigation carried out by the investigator, R. The decision stated, *inter alia,* that it was only the applicant who alleged that brutal force had been applied against him. The prosecutor also referred to the conclusion of the medico-legal assessment, which stated that it could not be excluded that some of the bodily injuries might have been sustained by his falling on to an uneven surface. In response to a complaint lodged by the applicant, a supervising prosecutor stated that prosecutor S. had simply quoted a paragraph from the medical expert's conclusion and that she had not contended that the applicant's injuries had been self-inflicted.

28. On 10 January 2007 R., the investigator of the Internal Security Office, asked for an additional medico-legal assessment to be carried out in order to clarify whether on 9 June 2006, at the time the applicant was examined at Rīga Hospital No. 1, he had already had the broken ribs. After obtaining a specialist's opinion that the X-ray results of 9 June 2006 had disclosed suspicions that two ribs had been fractured, on 23 January 2007 the medico-legal expert delivered his conclusions. He stated that it had not been possible to establish precisely whether the applicant's ribs had already been broken on 9 June 2006, since the chest X-ray taken after the applicant's arrest had been of a general nature and had not been taken from an angle that revealed the fracture.

29. On 31 January 2007 R. terminated the criminal proceedings. Relying on the witness statements and the outcome of the medico-legal assessment, it was established that when the police officers arrived at the apartment, the applicant tried to escape and to attack the police officers, so K.H. and the officers from the special operations unit, using a special combat technique, put the applicant on the ground and handcuffed him. Later, at the police station, the applicant continued to behave aggressively, kicking one of the police officers and threatening them. In order to put a stop to his aggressive behaviour, the officers ordered the applicant to lie face down on the ground. The applicant refused, so K.H. forced him to lie down. During the search, O.K. and G.L., in the presence of two witnesses, found drugs in the applicant's pocket. The decision referred to the fact that the police officers had been engaged in an unplanned operation in relation to a serious crime; that there had been a firearm in the apartment; and that the applicant had attempted to escape and that he had not obeyed police orders. Quoting

section 31(1) of the Criminal Law it concluded that the bodily injuries inflicted on the applicant at the time of his arrest and at the police station were proportional to the applicant's behaviour. During the arrest and in the police station the police's use of force against the applicant had been in compliance with section 13 of the Law on the Police and no criminal liability under section 371 (2) of the Criminal Law could arise. The applicant lodged an appeal before the Rīga City Centre District Prosecutor's Office.

30. In February and March 2007 the applicant submitted various complaints about the investigation process to the Internal Security Office and requested the opportunity to identify the perpetrator in cross-examination. He was informed on various occasions that he should address his request to the prosecutor's office.

31. Following the applicant's appeal, on 1 March 2007 district prosecutor S. of the Rīga Centre District Prosecutor's Office upheld his earlier decision and stated that the medical documents only indicated the injury and not whether the police officers were guilty. Moreover, it had not been possible to establish with certainty whether the injuries, namely the broken ribs, had already been sustained on 9 June 2006.

32. The applicant appealed, and on 23 March 2007 a supervising district prosecutor of Rīga City Centre District Prosecutor's Office upheld S.'s decision.

33. Following a further appeal, on 9 May 2007 the prosecutor's office attached to the Rīga Court Region revoked as unfounded the decision to terminate the criminal proceedings and referred the criminal case to the State police Internal Security Office for an additional investigation. Referring to K.H.'s testimonies according to which he had handcuffed the applicant and the latter had fallen down once, the prosecutor argued that after handcuffing the applicant it had not been necessary to restrain him, and that he could not have sustained the injuries by falling down only once. He concluded:

> "... it was evident that, first, [the applicant] had sustained injuries during his arrest and, secondly, the treatment (in this case – beating at the apartment and the police station) during which the injuries had been inflicted, was not necessary in order to carry out his arrest: it was not necessary to continue applying force (*vardarbību*) in the police station or to lay him on the ground. ... once the applicant had been handcuffed [he] calmed down ... and the police officers had no legal grounds for applying force (*vardarbību*) against him and causing him medium-to-severe bodily injuries, by which the police officers evidently exceeded their duties".

34. From April 2007 to July 2008 the applicant submitted various complaints concerning the course of the investigation into his ill-treatment, and on several occasions he was informed that the preliminary investigation of the criminal case was pending.

35. Following a complaint submitted by the applicant on 22 October 2008 to the Prosecutor General, on 6 November 2008 the Rīga City Centre District Prosecutor's Office concluded that all the necessary investigative procedures had not been carried out in order to identify the perpetrators; it instructed the investigators to question the applicant and then re-assess all the materials in the case file in order to decide whether to carry out other procedural measures, including cross-examination. It noted that the supervising prosecutor must be immediately informed about the fulfilment of the instructions.

36. On 27 November 2008, the applicant was questioned again by the investigator of the Internal Security Office and declared that he could recognise the perpetrators because they had been summoned as witnesses in his criminal case. In February and March 2009 confrontations between the applicant and five police officers as well as the civilian witness were carried out. During the confrontation the applicant stated, *inter alia*, that K.H. and V.O. had beaten him both during the arrest and at the police station; he could not identify the person who had jumped on him. K.H. confirmed that he had had to use proportional force to restrain the applicant both during his arrest and at the police station, whereas V.O. stated that he had not witnessed any ill-treatment because from the place where he sat the applicant's cell was not visible.

37. On 20 May 2009 the investigator R. decided to terminate the criminal proceedings. It was noted that there were serious discrepancies between the statements of the applicant and the police officers. The decision said:

> "... [n]o causal link could be established between the actions of the police officers and the injuries sustained by [the applicant], and the investigation considers that the applicant could have sustained the injuries before his arrest on 9 June 2006, falling from his height under the influence of alcohol and drugs. The applicant was advised that the decision was subject to appeal to the Rīga City Centre District Prosecutor's Office."

38. The decision could be appealed with the Rīga City Centre District Prosecutor's Office. The applicant did not submit an appeal.

C. Trial

39. On 29 January 2007 the lower court convicted the applicant of possession of illegal drugs and sentenced him to three years' imprisonment. Some of the police officers who participated in his arrest testified as witnesses. As the events had taken place a long time before, they mainly upheld the statements that they had given during the pre-trial investigation. In answer to a question by the court, K.H. replied that at the time of the applicant's arrest the latter had not shown signs of any injuries.

40. On 6 June 2007 the Rīga Regional Court upheld the lower court's judgment. It also noted that the alleged ill-treatment of the applicant would be examined in another set of criminal proceedings and that the decision of 31 January 2007 had been appealed against. It stated, *inter alia*, that it had no reasons not to believe that the applicant had sustained injuries, but that the criminal proceedings had been terminated on the ground that the injuries had been inflicted as a result of the applicant's behaviour.

41. On 24 October 2007 the Senate of the Supreme Court dismissed the applicant's appeal on points of law.

II. RELEVANT DOMESTIC LAW

A. Criminal Law (*Krimināllikums*)

42. Section 317 specifies that a State official whose intentional acts manifestly exceed the powers and authority vested in him or her by law, or pursuant to his or her assigned duties, will be criminally liable if substantial harm is caused thereby to the State, administrative order or the rights and interests of other persons. The punishment for such offences may include, *inter alia*, up to ten years' imprisonment.

B. Criminal Procedure Law (*Kriminālprocesa likums*)

43. Section 37 provides, *inter alia*, that a prosecutor supervising an investigation must give instructions regarding the type of proceedings to be selected, the direction of the investigation and the carrying out of investigative measures, if the investigating authority does not conduct an effective investigation and allows the unjustified interference in a person's life or causes delays. The prosecutor must also examine complaints in relation to the investigator's activities and take over the direction of criminal proceedings without delay once sufficient evidence in the investigation has been obtained.

The supervising prosecutor has the following rights: to decide whether to institute criminal proceedings and whether to transfer them to an investigating institution; to request compliance with instructions issued in the investigation; to carry out investigative measures to inform the investigator; to familiarise himself or herself at any time with the materials of the case file; to revoke decisions adopted by the investigators; to submit proposals to a more senior prosecutor regarding the determination of the direct supervisor of another investigator of concrete criminal proceedings, or to transfer the criminal proceedings to another investigating institution; and to participate in a hearing in which the investigating judge decides on the preventive measures and special investigative measures.

44. Section 337 provides that a complaint about a decision or an act of an investigating authority must be submitted to the supervising prosecutor. Decisions or acts of a prosecutor may be appealed against to a higher-level prosecutor.

C. Civil Law (*Civillikums*)

45. Under section 1635 a delict is any wrongful act as a result of which damage (including non-pecuniary damage) has been caused to a third person. The person who has suffered the damage has the right to claim satisfaction from the person who caused it, insofar as he or she may be held responsible for such an act. Section 1779 provides that anyone is under an obligation to make good damage caused by his or her act or failure to act.

D. Law on the Police (*likums "Par policiju"*)

46. Under section 13, police officers have the right to use physical force and special combat techniques to restrain arrested, detained and convicted individuals during conveyance and incarceration, if they resist police officers. The use of physical force and special combat techniques will be assessed by taking into account the nature of a particular situation and the characteristics of the individual concerned.

47. Sections 15, 38 and 39 provide that within their scope of competence the Cabinet of Ministers, the Minister of the Interior and municipalities exercise control over the functioning of the police. The State police are under the supervision of the Minister of the Interior, whereas the Office of the Prosecutor General and its subordinate prosecutors supervise the compliance with the law of police activities.

E. The Law on the Prosecutor's Office (*Prokuratūras likums*)

48. The relevant provisions of the Law on the Prosecutor's Office, as applicable at the material time, are summarised in *Sorokins and Sorokina v. Latvia*, (no. 11065/02, § 57, 11 December 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that on 9 June 2006 police officers had ill-treated him in order to make him confess, and that the investigation into

the alleged ill-treatment had been ineffective. In particular, he complained that during his arrest and at the police station he had been punched and kicked in the head and body, and that a police officer had jumped on his chest and broken his ribs. In this respect he invoked Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Arguments of the parties

(a) Remedies under the Criminal Law

50. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaint of alleged ill-treatment by police officers. According to the Government, the applicant had two types of remedies available to him. Under section 337 of the Criminal Procedure Law he was entitled to appeal to the Rīga City Centre District Prosecutor's Office against the second decision of 20 May 2009 by which the State police Internal Security Office terminated the criminal proceedings (see paragraph 37 above). The decision adopted by the above prosecutor's office could then be challenged before a prosecutor at the next level, namely the prosecutor's office attached to the Rīga Court Region. They asserted that the applicant had clearly been aware of that procedure and its effectiveness, because in May 2007 the prosecutor's office attached to the Rīga Court Region had quashed the first decision by which the Internal Security Office had terminated the investigation into the applicant's ill-treatment. The Government contended that, as in the case of *Leja v. Latvia* (no. 71072/01, 14 June 2011) in which the Court accepted the Government's preliminary objections in relation to the applicant's failure to submit a complaint to the prosecutor's office, in the case at hand the applicant had failed to avail himself of an effective remedy and the State had therefore been denied an opportunity to remedy the matter before it had reached the Court.

51. The applicant's counsel submitted that the applicant had availed himself of three consecutive appeals (in June 2006, and March and May 2007) in relation to the contested events, none of which had effectively changed the outcome of the criminal investigation. She also noted that in most cases the decisions adopted by the State police Internal Security Office had remained unchanged because the police officers had defended each other and refused to recognise procedural mistakes. Therefore, in cases such as this, the procedure set out by the Government for exhausting domestic

remedies would have been a mere formality, as had been proved by the decision adopted in the applicant's case.

52. In their additional observations the Government dismissed the applicant's doubts about the effectiveness of that remedy and added, first, that the applicant had submitted only two appeals; secondly, that on one occasion a supervising prosecutor had quashed the contested decision and therefore the procedure could not be considered as formal; and, lastly, that the applicant's opinion about the success of the remedy was highly subjective and judgmental.

(b) Remedies under the Civil Law

53. The Government further submitted that under sections 1635 and 1779 of the Civil Procedure Act, the applicant had the right to seek compensation for the damages caused by the State police, if a court had concluded that the applicant's rights had been infringed. They emphasised that the outcome of the criminal proceedings were not determinative for the success of compensation proceedings. According to the Government, the Court reached similar conclusions in cases such as *Plotiņa v. Latvia* ((dec.), no. 16825/02, 3 June 2008), *Pundurs v. Latvia* (dec.), no. 43372/02, 20 September 2011) and especially *Blumberga v. Latvia* (no. 70930/01, 14 October 2008). They added that the threshold for awarding damages in civil proceedings was lower than the one required for establishing criminal responsibility. Concerning the effectiveness of the compensation proceedings, the Government submitted several decisions adopted by the domestic courts in which compensation had been awarded for damages sustained as a result of the unlawful actions of State officials. The Government observed that the applicant had never lodged a civil claim and thus the State had been denied the opportunity to remedy the matter before it had reached the Court.

54. The applicant's counsel commented that, since on 20 May 2009 the State police Internal Security Office had discontinued the criminal proceedings on ill-treatment, there had been no legal grounds on which a claim against the State police for compensation for pecuniary and non-pecuniary damages could be based.

2. The Court's assessment

55. The Court observes that the essence of the Government's allegation was that, by failing to institute the second round of appeals' procedure with the Rīga City Centre District Prosecutor's Office and by not seeking compensation in the civil courts, the applicant had deprived the State authorities of an opportunity to remedy the alleged infringements through procedures under the civil and criminal law.

56. The Court reiterates that Article 35 of the Convention requires, amongst other things, that complaints intended to be made before the Court

should have already been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Akdivar and Others v. Turkey*, [GC], 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV). However, there are exceptions to the rule, especially where the national authorities remained totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they failed to undertake investigations or offer assistance. In such circumstances the burden of proof shifts back to the Government (ibid., §§ 68-69). Concerning the appropriate remedies, the Court has established that in cases of wilful ill-treatment by State agents in breach of Article 3, two measures are necessary to provide sufficient redress: a thorough and effective investigation capable of leading to the identification and punishment of those responsible; and, where appropriate, an award of compensation (see, amongst other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010). Moreover, in cases of wilful ill-treatment a breach of Article 3 cannot be remedied only by an award of compensation to the victim (ibid., § 119).

57. Turning to the Government's arguments about the effectiveness of the civil-law remedy, the Court takes note of the positive developments in the national courts' case-law in dealing with claims for damages caused as a result of the unlawful acts of State agents. The Court notes, however, that none of the examples concerned claims resulting from the allegedly excessive use of force by the police during arrest. In any event, the Court refers to the principles set out above: that the acts of State agents in breach of Article 3 of the Convention cannot be remedied exclusively through an award of compensation to the victim. The Court therefore dismisses this part of the Government's argument.

58. As concerns the criminal-law remedy, the Court observes that the applicant submitted three appeals against the impugned decision within the hierarchy of the Prosecutor's Office. The complaint to the third level of supervising prosecutor resulted in the decision being quashed and led to a supplementary investigation, the decision of which was subjected to another round of appeals within the same hierarchy, starting from the lower one. The question whether the applicant was required to launch a second round of appeals is closely related to the substance of the complaint, and will be assessed together with the State's positive obligation to take effective measures to protect against ill-treatment, especially the obligation to carry out an effective investigation.

59. In the light of the above, the complaint is neither manifestly ill-founded within the meaning of Article 35 §§ 1, 3 and 4 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The substantive aspect

(a) Arguments of the parties

60. The Government argued that according to the Court's case-law the reliance on appropriate and proportional physical force during arrest may be justified for the sake of maintaining order and preventing offences. Distinguishing the facts of the present case from those in *Ribitsch v. Austria*, 4 December 1995, Series A no. 336; *Rehbock v. Slovenia*, no. 29462/95, ECHR 2000-XII and *Matko v. Slovenia*, no. 43393/98, 2 November 2006, they contended that in this particular case physical force had been used against the applicant only during the course of his arrest when, in the absence of any planned operation and given the small number of police officers present, the unexpected development of the events made it necessary to use certain combat techniques. The Government relied on the fact that before arriving at the relevant address, the police had received information that a serious crime had allegedly been committed and that a victim was still in danger. Moreover, a gun-like object had been within reach of the perpetrators. The Government further emphasised that both at the place of his arrest and later in the police station the applicant had behaved aggressively and provocatively; he had not cooperated with the police and had disobeyed their orders. Relying on *Spinov v. Ukraine*, no. 34331/03, 27 November 2008, the Government considered that those circumstances had counted heavily against the applicant and therefore the Government's burden of proof that the use of force had not been excessive became less stringent.

61. Concerning the alleged injuries, the Government commented that the light bodily injuries sustained by the applicant had not attained the level of severity necessary for the application of Article 3, whereas it could not be established beyond reasonable doubt or any other sufficiently strong, clear and concordant inferences, that the fractured ribs had been sustained in the circumstances alleged by the applicant. In this connection, the Government raised doubts about the applicant's allegations that his ill-treatment while in the police station had lasted for half an hour. According to the police reports, the police had arrived at the apartment after 7.18 a.m. whereas the administrative arrest report had been drawn up at 8 a.m. Moreover, the applicant had not raised any objections concerning the alleged ill-treatment either during his administrative arrest or when he was arrested in the context of the criminal proceedings. The Government also emphasised the consistency of the statements given by police officers K.H. and V.O. on the circumstances of the use of force against the applicant. Lastly, referring to the medico-legal report, the Government noted that it had not been possible

to exclude that the bodily injuries the applicant had sustained, namely broken ribs, were not the direct result of physical force applied on the day of the incident but had pre-existed or resulted from another cause.

62. The applicant's counsel maintained that the police officers had used disproportionate force. She emphasised that specially trained officers from the special forces unit had been involved in the applicant's arrest. She also noted that the police officers had not followed the procedure provided for by section 13 of the Law on the Police (see Domestic law above), according to which they should have reported the applicant's injuries to their superiors, and that the applicant himself had requested medical assistance.

63. The Government disputed the above allegations, indicating that immediately after the incident the police officers had drawn up a report on the course of events. They invited the Court not to limit its assessment of the circumstances of the present case to the applicant's allegations, but instead to give due consideration to the factual circumstances and the applicant's behaviour and personality.

(b) The Court's assessment

64. The Court reiterates the well-established principle that where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-). Besides, any allegation of ill-treatment must be supported by appropriate evidence, in assessment of which the Court has generally applied the standard of proof "beyond reasonable doubt" (*Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). In respect of a person deprived of his liberty, any 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 of the Convention. The Court reiterates that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see *Tomasi v. France,* 27 August 1992, § 115, Series A no. 241-A).

65. Even though the Government emphasised that the police officers had used force authorised by section 13 of the Law on the Police only during the applicant's arrest in the apartment, it follows from the applicant's allegations and the documents of the case file that the police officers deployed physical force both at the time of his arrest and in the police station. This conclusion is supported by the fact that the use of force at the police station was the object of the criminal proceedings instituted by the State police Internal Security Office (see paragraph 15 above). It is undisputed that at the time of his arrest in the apartment, the applicant's

behaviour could be described as belligerent (see paragraphs 18-19 above) and that the development of an unplanned arrest may, if strictly necessary, justify the use of force (see, for instance, *Klaas v. Germany*, 22 September 1993, § 30 Series A no. 269; see also *Hurtado v. Switzerland*, (Rep.), 8 July 1993, Series A, No 280-A where the injuries inflicted on the detainee were considered proportional in the context of an arrest of members of a mafia-type organisation). The Court nevertheless notes that the applicant's complaint concerned primarily the use of disproportionate force in the police station, where he was taken after his arrest. The Court will therefore focus on evaluating all the materials of the case, including such inferences as may flow from the facts and the parties' submissions, in order to establish and assess, in the light of Article 3 of the Convention, the applicant's behaviour and the reaction of the police officers.

66. The Government raised doubts about the credibility of the injuries the applicant had sustained either during the arrest or in the police station, and alleged that the fractured ribs had been neither corroborated by consistent witnesses' testimony nor established beyond doubt by the medical documents. In this connection, the Court reiterates that where the events at issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries sustained during such detention (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). The Court will proceed with analysing separately each of the Government's above arguments (see paragraph 61 above) in the light of all the materials of the case.

67. Concerning the medical documentation, the medico-legal reports show that soon after his arrest on 9 June 2006, the applicant complained of pain in his chest to the doctors of the Rīga Hospital No. 1 and that the fractures were considered to be "fresh" (see paragraph 17 above). Moreover, the X-ray examination carried out a couple of hours after the arrest disclosed "suspicions" of a fracture, which were later confirmed by further X-ray examinations on 13 and 19 June 2006 (see paragraph 28 above). The Government have not furnished any information indicating that the injuries might have been sustained before his arrest (contrary to *Lobanovs v. Latvia* (dec.), no. 16987/02, 28 September 2010, where the applicant was shown to be suffering from a chronic illness) and no such allegations, supported by any evidence, were made by the investigation. The Court therefore concludes that the injuries, which were described as medium to severe and thus fall within the level of severity required by Article 3 of the Convention, were caused during the applicant's arrest. It remains for the Court to assess whether the force used against the applicant was in any manner justified and proportionate.

68. The Court observes that the applicant admitted to having had an altercation with the police officers and claimed that that was why he had

been ill-treated. It follows from the statements provided by the police officers that, even though they witnessed the same circumstances at the same time, their recollections of the applicant's behaviour in the police station were somewhat contradictory: some of them saw the applicant behaving aggressively whereas others remembered that he had failed to react at all (see paragraphs 19-23 above). Those who had seen the applicant behaving aggressively at the police station specified that he had been swearing, had attempted to kick the police officers and had threatened them with "problems at work". The Court puts however particular weight on the undisputed fact, supported by the testimonies of various police officers, that during the disputed events the applicant had already been handcuffed (see paragraph 19 above). The domestic investigation found that it was strictly necessary for police officer K.H. to apply special measures in order to prevent the applicant from absconding. However, the above findings are not supported by other evidence of the applicant's alleged aggression or any other grounds justifying the use of force as provided for by section 13 of the Law on the Police.

69. As concerns the above evidence indicating the reaction of the police officers in the police station, the Court notes first that their testimonies were contradictory. None of them admitted to seeing K.H. use force against the applicant, even though it follows from K.H.'s testimonies to the Internal Security Office that various police officers had asked the applicant to stop cursing and ordered him to lie down (see paragraph 19 above), after which K.H. had forced the applicant to the ground. In the course of the internal investigation conducted by the State police, K.H. denied that fact. The statements of the other police officers that when they arrived, the applicant was already on the ground, are in contradiction with K.H.'s statements that he was not the only officer present at the police station during the contested events (ibid.). There are strong indications that during the contested events there was a considerable number of police officers present because they were changing shifts and at a certain point there were between seven and nine police officers present and two civilians who had been invited as witnesses during the search of the applicant (see paragraph 20 above). In the light of the controversial testimonies of the police officers concerning the circumstances of the events, and the apparent understanding expressed by some police officers that the applicant's insulting language had justified the use of force, the Court notes that the atmosphere in the police station was very likely to have provoked the police officers into acting in the way alleged by the applicant. However, the Court cannot conclude from the case file that the applicant's conduct justified the deployment of strict restraint measures by the police officers. Noting that the applicant was already handcuffed before his arrival at the police station, the police should have reacted with more restraint to the applicant's verbal insults, if any (see *Fahriye Çalişkan v. Turkey*, no. 40516/98, § 43, 2 October 2007).

70. Observing the above assessment, and especially the seriousness of the injuries and the behaviour of the applicant, the Court cannot conclude that during the applicant's arrest the police officers deployed proportional force against him. Moreover, the Government did not provide any other evidence in relation to the purpose, necessity and proportionality of the use of force by the police officers. At the same time the Court does not find any indication that the police used force with an aim to extort a confession from the applicant.

71. In relation to the other argument raised by the Government that the applicant's statements as to the length of his ill-treatment in the police station lack credibility (see paragraph 61 above), the Court notes that no records were furnished as to the precise time the applicant was taken to the police station, but it follows from the witness statements that his arrest was carried out promptly and that he was immediately taken to the police station, therefore it is possible that the applicant spent at least half an hour in the police station. Consequently, the Court cannot accept the Government's argument.

72. Lastly, addressing the Government's argument that the applicant had not raised any objections in the arrest report (see paragraph 61 above), the Court notes, first, that the administrative arrest report (drawn up at 8 a.m.) and the arrest report (drawn up at 3.30 p.m.) did not reflect the same injuries to the applicant. Moreover, as the applicant was first administratively detained, the reports did not contain a section in which the applicant could separately raise objections and complaints (*pretenzijas*), whereas under the Criminal Procedure Law the arrest report bears no such information and therefore does not show whether the applicant was asked to express an opinion on that matter.

(c) Conclusion

73. In the light of the above, the Court concludes that there has been a violation of the substantive aspect of Article 3 of the Convention.

2. The procedural aspect

(a) Arguments of the parties

74. The Government submitted that the domestic authorities had acted with promptness and diligence in investigating the disputed events and determining the plausibility of the allegations. They noted, in particular, that following the applicant's initial complaint, the State police instituted criminal proceedings within six working days, thereby meeting the requirement of speediness; that all reasonable steps had been taken to secure evidence, including repeated questioning of the applicant, detailed eyewitness testimonies, and two medico-legal assessments. They alleged

that, in contrast to *Spinov v. Ukraine*, no. 34331/03, 27 November 2008, the Internal Security Office had taken concrete steps to investigate the allegations. The Government drew particular attention to the additional investigation, including confrontations, which followed the quashing of the first decision (see paragraph 33 above). They also maintained that the investigating authorities had kept the applicant informed about the progress of the investigation and had taken into account his requests to examine certain witnesses. The Government emphasised the hierarchical independence of the Internal Security Office and stated that the internal investigation carried out by the human resources department of the Rīga Main police station had been a separate procedure. Lastly, they noted that all the decisions adopted during the course of the investigation had been re-examined by the prosecutor's office, which, contrary to the case of *Ramsahai*, was independent and carried out effective supervision.

75. The applicant's counsel argued, first, that the investigation carried out by the State police Internal Security Office could not be considered as independent because that body was directly connected with the police and the prosecutor's office and, secondly, that the authorities had not shown the required diligence in establishing the facts and identifying the perpetrators.

76. The Government in response considered that the above allegations were of a speculative nature, and reiterated that the obligation to investigate was not an obligation of result, but of means.

(b) The Court's assessment

77. In the light of the Court's findings above and the fact that the inadequacy of the initial investigation carried out by the State police Internal Security Office was recognised as ineffective by the prosecutor's office (see paragraph 33 above), the Court does not need to depart from the latter's conclusions in order to dismiss the Government's allegations to the contrary (see *Karabet and Others*, § 275). In addition, the Court notes that such elements of the investigation as the contradictory statements of the police officers, the fact that the medico-legal assessment was based purely on the medical documents; and the fact that the applicant was first questioned four months after the alleged events, all indicate a lack of diligence during the initial phase of the investigation. In the light of the above observations, the Court will limit its assessment to the investigation carried out after the quashing of the first decision. It will pay particular attention to the adequacy of the prosecutor's supervision of the investigation as a whole.

78. The Court notes at the outset that, as argued by the Government, the State police Internal Security Office carried out an investigation separate from the internal investigation undertaken by the police station's human resources department (see paragraph 24 above). The Court reiterates that the independence of the authority carrying out the investigation tasks is one of

the elements to be considered, the other elements being promptness, sufficiency, and access to information (see, for example, *Kişmir v. Turkey*, no. 27306/95, § 117, 31 May 2005). Without elaborating on the *de facto* independence of the State police Internal Security Office, the fact remains that both the Internal Security Office and the human resources department are part of the Ministry of the Interior.

79. In relation to promptness and access to information, the Court observes that the case file contains no information as to whether any investigatory measures were carried out during the period from May 2007, when the prosecutor's office attached to the Rīga Court Region revoked the first decision to terminate the proceedings, to November 2008 when, following the applicant's repeated requests addressed to various authorities, including the Prosecutor General, the applicant was at last questioned. It can therefore be concluded that the responses to the applicant's inquiries about the progress of the investigation were in fact misleading.

80. As to the sufficiency of the fresh investigation, the Court observes, first, that one and a half years after the quashing of the first decision the supervising prosecutor instructed the authorities to carry out two additional activities, namely to question and cross examine the applicant. In addition to the supervisory authority's lack of promptness, there are clear indications that the instructions were issued as a consequence of the applicant's repeated complaints. The Court notes that the prosecutors responsible executed their tasks not in the course of thorough and permanent supervision, but rather as a mere reaction to a complaint (*Vovruško v. Latvia*, no. 11065/02, § 52, 11 December 2012). Secondly, concerning the organisation of the confrontation, it appears that the applicant was confronted with those police officers whom he could name, having seen them appear as witnesses in the criminal proceedings against him, even though, as follows from the case file, it was likely that other police officers and at least one civilian were present during the contested events and could have been recognised by the applicant. Thirdly, during the additional investigation no efforts were made to clarify the contradictions in the witnesses' statements noted above.

81. In relation to the supervision, the Court observes that in its first decision the Internal Security Office admitted in essence that injuries had been inflicted on the applicant but stated that they had been a result of the authorised use of force (see paragraph 29 above). Seized to examine the lawfulness of the above decision, the supervising prosecutor of the Rīga City Centre District Prosecutor's Office upheld it, but in addition relied on the fact that the medico-legal expert had not confirmed with certainty that the applicant had already had the chest injury before his arrest (see paragraph 31 above). The supervising prosecutor expressed a similar argument before the adoption of the impugned decision (see paragraph 27 above). That decision in essence was upheld by a superior prosecutor of the

Rīga City Centre District Prosecutor's Office (see paragraph 32 above). Disregarding the findings of the regional prosecutor's office who considered that the force used to restrain the applicant was not necessary and was in any event disproportionate or the fact that the criminal case had been remitted for an additional investigation in order to identify the perpetrators, the additional investigation concluded that the fact of injury could not be established (see paragraph 37 above). That conclusion was concordant with the three previous decisions of two levels of prosecutors within the hierarchy of the Rīga City Centre District Prosecutor's Office, which, according to the Government, had to be addressed in order to exhaust domestic remedies in this case. Bearing also in mind the failure to follow their instructions, the Court considers that it would be unreasonable to require the applicant to launch a 'second round' of appeals within the hierarchy of the prosecutor's office where the same supervising authority had already clearly expressed its opinion about the principal issue of the complaint and where there is no new evidence which could change their opinion. This conclusion is strengthened by the fact that with the passage of time, investigation becomes more problematic.

(c) Conclusion

82. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the alleged ill-treatment was not effective. In the light of the above, the Court therefore dismisses the Government's objections as to the exhaustion of domestic remedies previously joined to the merits.

There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

83. The applicant also makes numerous complaints under Articles 5 and 6 of the Convention concerning his detention, trial and conviction. These complaints were not communicated to the Government.

84. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the remainder of the application does not disclose any appearance of a violation of any of the Articles of the Convention relied on. It follows that these complaints are inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 100,000 euros (EUR) in compensation for non-pecuniary damage.

87. The Government disagreed with the claim.

88. Having regard to the nature of the violation found in the present case and deciding on an equitable basis, the Court awards the applicant EUR 5,000 in compensation for non-pecuniary damage.

B. Default interest

89. 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

1. *Joins* unanimously to the merits the Government's objection regarding the non-exhaustion of domestic remedies available under the Criminal Law;

2. *Declares* unanimously the complaint concerning Article 3 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* by six votes to one that there has been a violation of the substantive aspect of Article 3 of the Convention;

4. *Holds* unanimously that there has been a violation of the procedural aspect of Article 3 of the Convention and *dismisses* the objection regarding the non-exhaustion of domestic remedies raised by the Government;

5. *Holds* unanimously*:*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention EUR 5,000 (five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Latvian lati at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	David Thór Björgvinsson
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Wojtyczek is annexed to this judgment.

D.T.B.
F.E.P.

PARTLY DISSENTING OPINION OF JUDGE WOJTYCZEK

1. I respectfully disagree with the majority's finding that there has been a violation of Article 3 of the Convention in its substantive aspect. At the same time, I agree with the view that the investigation carried out by the authorities was ineffective and that there has been a violation of the procedural limb of Article 3.

2. It has been established by the Court that the applicant tried to escape from the apartment where he was apprehended by the police and that he resisted arrest. It is not disputed that the police had to use force to arrest the applicant. It is also clear that because of his resistance and aggressive behaviour the applicant suffered some kind of injuries during the arrest.

However, the exact circumstances of the arrest and detention at the police station on 9 June 2006 are disputed by the parties. It is not possible to establish these circumstances on the basis of the evidence provided by the parties. In particular, it is not possible to establish what kind of injuries were caused to the applicant during the arrest or whether further injuries were inflicted at the police station. The available evidence does not allow the conclusion that the injuries were necessarily inflicted on the applicant when he was detained at the police station. Given the lack of detailed information on what exactly happened during the arrest and in the police station, it is not possible to assess whether the measures applied by the police were justified and proportionate. It remains unclear to what extent the injuries were the result of the applicant's behaviour and to what extent they were caused by the action of the police. The fact that the applicant was handcuffed before his arrival at the police station does not necessarily mean that he was unable to assault the police officers. Furthermore, I do not know what the atmosphere was like at the police station. Whereas I agree that it is not possible to conclude from the case file that the applicant's conduct justified the deployment of strict restraint measures by the police, I cannot exclude the fact that his conduct might have justified such measures.

3. I cannot agree with the finding that the Government had not furnished any information indicating that the injuries might have been sustained before his arrest. The Government presented arguments that cast doubt on the version of events given by the applicant. They expressly stated that, in their view, the injuries had been inflicted during his apprehension. They gave an account of events that demonstrated the necessity of the use of force during the arrest.

The Government drew attention to the fact that the applicant had been under the influence of narcotics when he was arrested. This fact could have had a major impact on the course of events. They also pointed out that the applicant had been diagnosed by medical experts as having an inclination towards self-harm. I am not in a position to assess the credibility of that statement, but I consider that it should not be ignored.

4. The adjudication of complaints under Article 3 of the Convention requires a clear division of the burden of proof between the parties. In the present case the presumption that arises from the fact that someone was taken into police custody in good health does not apply. It is not clear for me how the burden of proof was divided between the applicant and the Government. Whereas the standard of proof "beyond reasonable doubt" imposes a burden that may be impossible to meet for applicants, it is also necessary to take into account the unavoidable limits of a most effective investigation carried out in good faith by the authorities.

5. In the case of *Grimailovs v. Latvia* (no. 6087/03, 25 June 2013) the Court, when considering an allegation of ill-treatment by the police, was confronted with similar difficulties in establishing the facts. The reasons in that judgment state that the Court found it "impossible to establish, on the basis of the evidence before it, whether or not the applicant's injuries were caused as alleged". Therefore the Court could not find a violation of the substantive aspect of Article 3 of the Convention. I do not see any reason to depart from the approach adopted in that case.