

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

FOURTH SECTION

CASE OF TIMOFEJEVI v. LATVIA

(Application no. 45393/04)

JUDGMENT

STRASBOURG

11 December 2012

FINAL

29/04/2013

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



In the case of Timofejevi 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 Lawrence Early, *Section Registrar,*

Having deliberated in private on 20 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 45393/04) 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 two Latvian nationals, Mr Zintis Timofejevs ("the first applicant") and his father Mr Jevgenijs Timofejevs ("the second applicant"), on 5 February 2005.

2. The applicants were represented by Mr E. Embergs. The Latvian Government ("the Government") were represented by their Agent at the time, Mrs I. Reine.

3. The applicants complained, in particular, about the conditions in the short-term detention facility in Cēsis. The first applicant also complained about the effectiveness of the investigation into his allegations of excessive use of force during his arrest on 30 June 2004.

4. On 17 May 2010 the application 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

A. Background

5. The applicants were born in 1984 and 1958 respectively and live in Drabeši parish, Amata municipality.

6. According to the applicants, they have been involved in various disputes with the local police in their area, that is, with officers of the Cēsis District Police Department (*Cēsu rajona policijas pārvalde*). As established by an internal investigation, on 14 March 2004 there was an incident involving police officer J.M. of the Cēsis District Police Department and both applicants. The police officer and the second applicant had a discussion in a car. The first applicant approached the car and the police officer fired a shot. It hit the roof of the car. Following an internal investigation into the incident, police officer J.M. was discharged from the Cēsis District Police Department for having committed a serious breach of the rules of discipline by carrying firearms while under the influence of alcohol. The police officer stood trial; there is no information concerning the outcome of those proceedings.

7. The Government disagreed with the applicants' account but provided no further information as regards the criminal proceedings against police officer J.M.

B. The applicants' arrest

1. The Government's version of the events

8. On 30 June 2004, at 1 p.m., police inspector J.S. and police cadet V.D. of the Cēsis District Police Department were patrolling in the Amata parish of the Cēsis District when J.S. saw the first applicant driving a car. The officers knew that the first applicant's driving licence had been suspended after several violations of the traffic rules. J.S. approached the first applicant and informed him that he was committing a violation of the traffic rules by driving without a valid driving licence. The first applicant did not reply. Instead, he got out of the car and went into the mechanic's workshop *Ģikši*, which belonged to his father, the second applicant. Although J.S. continued to shout towards the first applicant, requesting him to stop and come back, the latter did not pay any attention. Accordingly, J.S. and V.D. decided to apprehend him in order to draw up an administrative

offence report. They followed him, took hold of his hands and attempted to walk him towards the police car. However, the first applicant resisted by pulling his hands away, pushing the police officers away and falling on the ground in order to drag J.S. down with his weight. In addition, the workshop employees actively obstructed the officers' arrest of the first applicant by dragging him away, as well as by grabbing the police officers' uniforms. At some point, the first applicant managed to break free and ran off.

9. J.S. started to pursue him, while V.D. drove the police car in order to intercept the first applicant and call for support. The officers caught the first applicant in the courtyard of the *Jaunģikši* country house and, after a short struggle, the first applicant was apprehended by J.S., V.D. and a second police patrol, which had arrived as reinforcement. In addition, the officers apprehended the second applicant, who had arrived at *Jaunģikši* and attempted to obstruct the first applicant's arrest.

10. Both applicants were taken to the Cēsis District Police Department, where they were placed in the short-term detention facility.

11. On the same date the first applicant was given an administrative fine for a violation of the traffic rules.

12. In addition, criminal proceedings were instituted against both applicants for assault on a representative of public authority.

2. The applicants' version of the events

13. The applicants contested the Government's version of events, which was largely based on the testimony of the police officers during the first applicant's trial, to which they objected. The applicants alleged that the police officers had assaulted the first applicant and detained the second applicant for no reason. The first applicant claimed that the police officers had forcibly held his arms behind his back, pushed him to the ground, tried to break his ribs with their knees, and dragged him to the ground on the premises of the workshop *Ģikši*, where he had first been stopped. They had also taken his mobile phone. When he had managed to break free of the police officers' grip, he had fled.

14. V.D. had caught up with the first applicant in the courtyard of *Jaunģikši*. He had pushed him to the ground and dealt him numerous blows, including to his face. The second applicant and a witness, K.R., had arrived at the scene. The second applicant had seen V.D. dragging the first applicant along the ground by his hands; the first applicant's face had been red and swollen, covered in sand and with blood round his lips. Then J.S. had arrived, pointed a gun and threatened to use it. After twenty minutes another police car arrived. The applicants and the witness K.R. had been taken into custody and placed in the short-term detention facility in Cēsis.

15. The record relating to the administrative fine had been drawn up on 30 June 2004 at about 7.30 p.m.

C. The first applicant's state of health

16. According to the first applicant, following the events of 30 June 2004 he requested on several occasions to be examined by a forensic medical expert to determine if he had any bodily injuries. An expert examination was ordered on 2 July 2004 but was not carried out until much later. The results of this examination have not been made available to the Court.

17. While the first applicant was in the Cēsis short-term detention facility an ambulance was called on several occasions at his request because he felt ill. On 1 July 2004, at 2.37 p.m., an ambulance arrived at the detention facility. The first applicant complained about bruises on his body and a headache and a note was made of the first applicant's statement that on the previous day police officers had beaten him and he had felt sick. He was diagnosed with cephalgia (headache). He was examined by an ambulance doctor, who did not find any bruises on his body and concluded that the first applicant's account was not consistent with his objective state of health.

18. At 4.46 p.m. on 3 July 2004 an ambulance arrived at the first applicant's request as he felt ill and had pains in his stomach. He was diagnosed with trauma to the head, "susp." concussion and hyperthermia. The notes again recorded him as stating that he had been placed in custody following a fight with police officers. He complained of a headache, feeling ill, lack of alertness and not being able to sleep at night. He requested a forensic medical examination. This time the ambulance doctor concluded that the first applicant's account did correspond to his objective state of health.

19. According to a report drawn up by the first applicant's family doctor on 30 May 2005, following the events of 30 June 2004 he had regularly visited doctors in Rīga and Cēsis to minimise the effects of concussion. He had been examined on several occasions and diagnosed with post-traumatic symptoms, including post-traumatic pulsating cephalgia, post-traumatic astheno-depressive symptoms and an unexplained increase in body weight of 20 kilograms over a nine-month period, plus post-traumatic problems in the cerebral cortex and possible post-traumatic hypertonic disease.

20. The Government disagreed but provided no further information concerning the first applicant's state of health at the material time.

D. Conditions of detention

21. After the applicants' arrest on 30 June 2004, they were held at the short-term detention facility in Cēsis, which was located in a police department.

22. According to the applicants, the conditions therein were degrading – the cell was cold and had a foul smell. There were no toilets, instead two buckets were provided. There were no mattresses and they had to sleep on a bare wooden platform; no blankets were provided and the police did not allow them to use the blankets supplied by the applicants' mother and wife.

23. The Government did not agree with the applicants' description of the detention conditions.

24. On 11 July 2004 the second applicant was released.

25. On 13 July 2004 the first applicant was transferred to Valmiera Prison, where he remained until his release pending trial on 11 August 2004.

26. On 13 December 2004 the Chief of the Cēsis District Police Department replied to various enquiries by the first applicant. He mentioned, among other things, that under the internal prison regulations they were not allowed to hand over blankets supplied by relatives to detainees; that there were no rules regarding smells in the cells; and that the use of buckets as toilets was temporary (since 1999) and due to financial problems. Works were in progress to rectify this.

27. It appears that the second applicant's complaint to the Cēsis District Police Department of 2 November 2004 about, among other things, the fact that he had had to sleep on a bare wooden platform for eleven days, received no reply.

E. The criminal proceedings against the applicants

1. Preliminary investigation

28. On 30 June 2004 an inspector of the Cēsis District Police Department, D.B., instituted a criminal inquiry against the applicants in connection with the events of 30 June 2004. She initially classified the events as "assault on a representative of public authority" under section 269, paragraph 1, of the Criminal Law. At about 4.50 p.m. on the same day, the applicants were detained at the police station on the basis of section 120, paragraph 1, of the former Code of Criminal Procedure.

29. On 2 July 2004 the applicants' detention was authorised by a judge of the Cēsis District Court and this was confirmed on appeal on 7 July 2004.

30. On 9 July 2004 inspector D.B. sent the case to the prosecutor's office attached to the Cēsis District Court for the purpose of bringing charges against the applicants. She classified the offence as "resisting a representative of public authority" (section 270 of the Criminal Law). On the same date a prosecutor brought charges against the first applicant under section 270, paragraph 1, of the Criminal Law.

31. On 11 July 2004 the prosecutor lifted the second applicant's detention order because there was not sufficient evidence to bring charges

against him. On 10 August 2004 the prosecutor discontinued the criminal proceedings against the second applicant for lack of evidence that he had committed an offence under either section 269 or section 270 of the Criminal Law.

32. On 13 July 2004 the first applicant was placed in Valmiera Prison. On 11 August 2004 he was released. On 17 August 2004 the preliminary investigation was completed and the case materials were sent to the Cēsis District Court.

2. The first applicant's trial

(a) First round of proceedings

33. The hearings in the first applicant's trial before the Cēsis District Court took place between 8 and 11 November 2004 and between 14 and 20 December 2004. A verdict was pronounced on 20 December 2004 whereby the first applicant was convicted of resisting a representative of public authority using violence, as defined in section 270, paragraph 1, of the Criminal Law. He was given a suspended sentence of one and a half years' imprisonment. The court heard the testimony of the police officers, the applicants and several direct and indirect witnesses, and examined circumstantial evidence.

In particular, witness K.B. testified during the trial that when the applicant had been arrested at *Ģikši* he had not resisted. Rather, the police officers had used force against him and pushed him to the ground in order to handcuff him. The court did not believe K.B. because in his testimony at the pre-trial stage he had testified to the contrary: that the first applicant had resisted and the police officers had not used force. The court gave more credence to the two statements K.B. had given at the pre-trial stage. Witnesses R.M. and A.S. testified that the first applicant had resisted the police officers, but had not struck them. Witnesses A.O., V.T. and I.T. testified that the applicant had not resisted as he had been on the ground, although he had tried to run away. In addition, witnesses V.T. and I.T testified that police officer V.D. had confiscated V.T.'s mobile phone when the latter had tried to call the police. Witness [X].B. testified that when running away from *Ģikši* the first applicant had asked him for a mobile phone to call the second applicant.

None of the witnesses testified that they had heard the first applicant or the police officers swearing or threatening each other. The testimony of all the witnesses in fact related to the events at *Ģikši* and not to the events at the *Jaunģikši* country house.

Further, the court gave credence to the testimony of the police officers, who claimed that the first applicant, before entering the premises of *Ģikši*, had made violent threats against them. There was no other evidence in support of the testimony of the police officers. The court did not give

credence to the first applicant's submissions that the police officers had used force against him at *Ģikši*, and thus rejected that testimony as his defence position.

All in all, the court concluded as follows:

> "[The first applicant] actively resisted the police officers. He tried to break free of the officers' grip, pushed the police officers, did not allow them to lead him away; while being restrained he fell to the ground, using his body weight in an attempt to escape from their grip, did not allow them to lead him away and tried to break free of their grip using one and then the other hand; he wriggled on the ground and would not follow the police officers, who were thus obliged to struggle with him in order to get him into the police vehicle, whereupon he broke free and fled".

During the trial the prosecutor dropped the charges against the first applicant in relation to his resistance at *Jaunģikši*. The court found that there was no evidence of it and did not give credence to the testimony of the police officers in that respect. The court also held that there was no evidence that the police officers had kicked and pushed the first applicant. It did not give credence to the testimony of the first and second applicants in that respect. The court also found that there was insufficient evidence to conclude that the first applicant had struck the police officers at *Ģikši*. He was not found responsible for inflicting minor bodily injuries on the police officers, and their civil claims in that regard were rejected.

34. On 7 July 2005, following an appeal by the first applicant, the Vidzeme Regional Court set aside the district court's judgment and acquitted him. The court heard evidence from his mother and the family doctor. The police officers were not present. The first applicant's mother testified that in her opinion the actions of the police officers could have been motivated by revenge since the first applicant had previously dated V.D.'s sister.

The regional court concluded that the actions for which the first applicant had been convicted were to be classified as an administrative offence under section 175 of the Code of Administrative Violations. The court noted that the district court had agreed with the prosecutor's recommendation to withdraw the charges concerning resistance by the first applicant at *Jaunģikši*. Similarly, the district court had dismissed the charges of active violence against the police officers at *Ģikši* causing them minor bodily injuries, and the applicant was not held responsible in that regard.

The regional court did not agree with the district court that the police officers' testimony had greater credence. It did not agree that the first applicant's testimony and the supporting testimony of the witnesses ought to be dismissed as lacking credence. The court considered that the statements of the police officers and of the first applicant were to be evaluated equally critically. These persons had an equal interest in giving testimony to justify their actions, the police officers in respect of the arrest of the first applicant and his bodily injuries, and the first applicant in

relation to driving a car without a valid driving licence and resisting the police officers.

The court dismissed as incorrect the district court's conclusion that the testimony of the police officers had been consistent. It highlighted various inconsistencies between the testimony they had given at different times. It also dismissed their claims that they had acted politely towards the first applicant and had complied with the rules on discipline. The court also took into account the apparent conflict between the applicants and the Cēsis District Police Department. In particular, the events of 14 March 2004 were noted. The court expressed doubts about the objectivity of the police officers of that police department towards the applicants. Concerns about their objectivity were evident from the preliminary investigation procedure as a whole. First of all, no bodily injuries had been recorded in the first applicant's detention order even though the police officers had used force against the applicant. Second, even though the first applicant had been examined by an ambulance doctor twice and a diagnosis established, no mention of it had been contained in the forensic report. The court noted that it had been impossible for the first applicant to prove that he had sustained concussion because he was being held in custody, whereas it had been a duty incumbent on the investigating authorities to examine his physical condition and on the forensic expert to take it into account. Third, the same officer (D.B.) had taken decisions in both the first applicant's case and that of the police officers; in such circumstances her impartiality was questionable. The court also concluded that the prosecutor dealing with the case had been keen to send the first applicant's case for trial as soon as possible.

35. On 20 September 2005, upon appeals on points of law submitted by the prosecutor and the police officers, the Senate of the Supreme Court set aside the judgment of the Vidzeme Regional Court and sent the case to a regional court for fresh consideration.

The Senate ruled that the appellate court had erred in its conclusion that the actions for which the first applicant had been convicted by the first-instance court were not of a criminal nature within the meaning of section 270, paragraph 1, of the Criminal Law. His actions had not been passive and had thus been wrongly classified by the appellate court as an administrative offence under section 175 of the Code of Administrative Violations. The Senate concluded that the appellate court had not adequately evaluated the facts of the case and the actions of the police officers from the perspective of their lawfulness.

In reply to the first applicant's request for criminal proceedings to be instituted against the police officers and D.B., the Senate noted that it did not have competence to comply with such a request.

(b) Second round of proceedings

36. On 5 December 2006 the Latgale Regional Court examined the first applicant's appeal against the district court's judgment anew, and upheld the ruling. A prosecutor, both police officers, the first applicant and his counsels attended the hearing.

The Latgale Regional Court established that the first applicant had actively resisted the police officers and thus committed a criminal offence under section 270, paragraph 1, of the Criminal Law. The court found no evidence that the police officers had struck or kicked the first applicant at *Ģikši*.

The Latgale Regional Court did not give credence to the testimony of the first applicant's mother before the Vidzeme Regional Court regarding a possible revenge motive, since the case materials did not support it.

37. On 19 January 2007 a senator of the Supreme Court informed the first applicant that his appeal on points of law against the judgment of the Latgale District Court had been dismissed without a review on the merits since it disputed the assessment of the evidence and such a complaint did not fall within the competence of the cassation court.

F. The applicants' complaints about the police officers' actions during the arrest

1. Prosecutor's Office and Police

38. On 12 July 2004 inspector D.B. of the Cēsis District Police Department adopted a decision refusing to institute the criminal proceedings against police officers J.S and V.D. in response to the first applicant's complaint. She noted:

> "A review of the case materials does not bear out the allegation that the police officers abused their official position in relation to [the first applicant]; they acted in compliance with the powers vested in them to prevent and stop [the first applicant's] misdemeanours.
>
> Having fully reviewed the case materials, I consider that inspector J.S. and cadet V.D. of the Cēsis District Police Department did not abuse their official position within the meaning of section 318, paragraph 1, of the Criminal Law, therefore it is refused to institute the criminal proceedings."

39. On 5 July 2004 the first applicant's counsel complained to the Cēsis District Prosecutor's Office and to the Prosecutor General that the investigation by officer D.B., as supervised by prosecutor A.S., had been biased. He mentioned that they had repeatedly made requests for a forensic examination to be carried out to establish whether the first applicant had any bodily injuries, and that it had not been carried out until that date. In his

complaint to the Prosecutor General, the first applicant's counsel requested that the investigation be handed over to another investigative authority.

40. On 12 July 2004 a prosecutor of the Cēsis District Prosecutor's Office replied that there was no evidence that the forensic examination had been delayed. She noted that such an examination had been requested on 2 July 2004. She did not consider that the investigation had not been objective.

41. On 14 July 2004 a prosecutor of the Prosecutor's Office attached to the Vidzeme Regional Court replied to another complaint, noting that after an examination of the case materials there was no evidence that the Cēsis District Police Department and the Cēsis District Prosecutor's Office were not interested in carrying out an objective and detailed investigation. The request to hand over the investigation to another investigative authority was therefore refused.

42. On 10 August 2004 the Chief of the Cēsis District Police stated, in reply to a complain by the first applicant's mother, that with regard to the events of 30 June 2004 at the mechanic's workshop *Ģikši* and the *Jaunģikši* country house, criminal proceedings had been instituted for assault on the police officers. The actions of J.S. and V.D. had been reviewed in these proceedings and it had been concluded that they had not exceeded their official authority within the meaning of section 317 of the Criminal Law. The first applicant's mother was informed that on 9 July 2004 the case had been sent to the prosecutor's office and that charges had been brought against the first applicant in this connection.

43. On 31 August 2004 the Chief of the State Police wrote to the first applicant's mother informing her that he had reviewed her complaints about the police officers of the Cēsis District Police Department and their actions on 30 June 2004. He also noted that the information provided by her was of significant importance for the criminal proceedings against the first applicant and thus she should address all her complaints to the Cēsis District Court in that regard.

44. On 13 September 2004, in reply to a complaint by the first applicant's mother, a prosecutor of the Cēsis District Prosecutor's Office stated that the decision to refuse to institute the criminal proceedings against the police officers had been left unchanged as she did "not see any reason to overturn that decision".

45. According to a note by an inspector at the Cēsis District Police Department dated 21 October 2004, the first applicant had been transported from the short-term detention facility in Cēsis:

- to the Cēsis District Court on 2 July 2004;
- to the Vidzeme Regional Court on 9 July 2004;
- to Valmiera Prison on 13 July 2004.

46. On 13 December 2004 the Chief of the Cēsis District Police Department replied to various enquiries by the first applicant. He noted that

during the course of reviewing the possible criminal case materials against the police officers, inspector D.B. had questioned them. She had also added transcripts of the first applicant's testimony during the criminal proceedings against him to the case materials, as well as the testimony of witnesses I.T. and A.S. She had not, however, held a confrontation between the police officers and the first applicant, because a confrontation between the first applicant and J.S. and the second applicant and V.D. had taken place during the preliminary investigation in the criminal case against the first applicant. The first applicant was seen by the following persons in the short-term detention facility in Cēsis:

- 1 July 2004 from 9.00 a.m. to 9.20 a.m. – inspector J.V. for questioning;
- 1 July 2004 from 12.10 to 2.40 p.m. – inspector D. B. for questioning with counsel;
- 2 July 2004 from 4.15 p.m. to 5.30 p.m. – inspector S.G. for the detention hearing;
- 3 July 2004 from 4.55 p.m. to 5.00 p.m. – ambulance doctor to check the first applicant's state of health;
- 5 July 2004 from 12.40 to 12:50 – inspection by a forensic medical expert;
- 8 July 2004 from 3.00 p.m. to 5.30 p.m. – inspector D.B. for confrontation, with counsel;
- 9 July 2004 from 7.45 a.m. to 12.05 – to the Vidzeme Regional Court as regards the detention measure;
- 9 July 2004 from 1.25 p.m. to 3.15 p.m. – prosecutor A.S. for bringing charges, with counsel;
- 4 August 2004 from 10.30 a.m. to 12.00 – prosecutor J.R. for questioning, with counsel;
- 9 August 2004 from 3.45 p.m. to 4.10 p.m. – prosecutor A.S. for a conversation;
- 11 August 2004 from 2.00 pm to 5.25 p.m. – prosecutor A.S. for questioning, with counsel.

47. On 16 December 2004 a prosecutor of the Prosecutor's Office attached to the Vidzeme Regional Court, following a complaint by the first applicant, quashed the 12 July 2004 decision on the ground that the review had been deficient: a forensic report on the first applicant's medical examination had not been included in the case-file materials; the second applicant had not been questioned about the events of 30 June 2004; and the applicable regulations regarding the criteria for the use of force had not been mentioned.

48. On 5 January 2005 a second decision refusing to institute the criminal proceedings was adopted by the Cēsis District Police Department.

The first applicant did not receive a copy of that decision. No copy has been made available to the Court.

49. On 1 March 2005 a prosecutor of the Prosecutor's Office attached to the Vidzeme Regional Court, upon another complaint by the first applicant, informed him of the decision of 5 January 2005 and of his right to lodge a complaint against that decision, even if he had not received a copy, with the Cēsis District Prosecutor's Office. Mention was also made of the judgment of 20 December 2004, whereby the first applicant was "found guilty under section 270, paragraph 1, of the Criminal Law and therefore [his] suggestions about the fabrication of that criminal case by the Cēsis District Police Department and [his] complaint that officer D.B. of the Cēsis District Police Department had reviewed the case materials [were] groundless".

50. On 1 March 2005 a prosecutor of the Cēsis District Prosecutor's Office, upon a complaint by the first applicant, informed him that he did not see any grounds to overturn the decision of 5 January 2005 because the first applicant mentioned no new facts and because there was no evidence that the police officers had struck the applicant with their fists or legs as stated in the judgment of 20 December 2004. The prosecutor's letter contained a reference to the fact that the applicant had been informed about the decision of 5 January 2005.

51. On 20 June 2005 a prosecutor of the Office of the Prosecutor General, upon a complaint by the first applicant's mother, reviewed the case materials and upheld the decision of 5 January 2005.

52. On 15 September 2005 the Chief of the Cēsis District Police Department, upon a request by the first applicant, replied that the material under no. 834/04, which included the decision of 5 January 2005, had been sent to the Vidzeme Regional Court.

2. Domestic courts

53. On 21 October 2004 the first applicant applied to the Cēsis District Court with a view to instituting criminal proceedings against J.S and V.D. In his application he gave his version of the events that had taken place at the mechanic's workshop *Ģikši* and the *Jaunģikši* country house, and asked that the relevant material be sent to an impartial authority for a preliminary investigation. On 5 November 2004 the court forwarded the material to the Cēsis District Prosecutor's Office.

54. During his trial before the Cēsis District Court, the first applicant testified, in particular, that the events at *Jaunģikši* had been as follows.

> "V.D. jumped out of his car, ran towards me, twisted my arms behind my back, pushed me to the ground, held me on the ground with his knees, twisted my arms and dealt several blows to my sides and my head. I did not see, but I think that the blows were made with his legs. While I was lying on the ground my father and K.R. drove up".

55. In the 20 December 2004 judgment the Cēsis District Court did not examine this episode because the prosecutor had withdrawn the charges against the first applicant in relation to his resistance at *Jaunģikši*. The district court accepted the withdrawal, noting: "the victims' testimony that at *Jaunģikši* Z. Timofejevs continued to resist has not been confirmed; nor has the testimony of both [the applicants] that the police officers punched and kicked Z. Timofejevs".

56. During his trial before the Vidzeme Regional Court on 7 July 2005, the first applicant testified in connection with the events at *Jaunģikši* as follows: "...the police officers caught up with me, they started delivering blows to my body, kicked me in the head, and twisted my arms. Then my father and K.R. arrived". In the hearings the first applicant's counsel requested that a decision be made with a view to instituting criminal proceedings against J.S. and V.D.

57. In the judgement of 7 July 2005, the Vidzeme Regional Court noted that the prosecution had withdrawn the charges against the first applicant in respect of his resistance at *Jaunģikši*. The regional court also noted as follows:

> "... taking into account the witness statements before the first-instance court, the expert report and information provided by the ambulance medics, on 30 June 2004 bodily injuries were inflicted on Z. Timofejevs during his arrest; however, the issue of the lawfulness of the police officers' actions does not relate to the charges brought against Z. Timofejevs since the appellate court under section 255 of the Code of Criminal Procedure has to comply with its limitations on adjudication. The issue of the criminal liability of J.S. and V.D. has already been decided, as evidenced by the added material under no. 834/04. The court notes that on the ground of the illnesses discovered, Z. Timofejevs and his counsel may apply to the prosecutor's office requesting that the decisions included in the material under 834/04 be reconsidered, and asking for the appropriate forensic examination".

58. On 19 September 2005, in his comments on the appeals of J.S. and V.D. on points of law, the first applicant once more asked the Senate of the Supreme Court to send the material to institute a criminal investigation into the actions of J.S., V.D. and D.B., referring to various criminal offences, and that the preliminary investigation be carried out by the Internal Security Department of the State Police, since the officials of the Cēsis District Police Department were not impartial. The first applicant mentioned, among other things, that in the courtyard of *Jaunģikši*, near the corner of a farm building (*saimniecības ēka*), V.D. had delivered blows to his body with his legs while he was on the ground.

59. In the decision of 20 September 2005 the Senate of the Supreme Court noted that it was not competent to decide on the alleged criminal responsibility of police officers J.S. and V.D. in respect of the first applicant's bodily injuries during his arrest.

II. RELEVANT DOMESTIC LAW AND PRACTICE

60. The relevant provisions of the former Code of Criminal Procedure (*Kriminālprocesa kodekss*), in force until 1 October 2005, read:

Section 3 § 1

"A court, prosecutor or investigating authority, in so far as it is within its powers, shall institute criminal proceedings whenever signs of a criminal offence (*noziedzīga nodarījuma pazīmes*) are discovered, using all means laid down in law with a view to discovering any incidence of a criminal offence and the persons responsible for the criminal offence in order to punish them."

Section 109 §§ 1, 2 and 5

"An investigating authority, prosecutor, judge or court shall accept material, applications and declarations concerning a criminal offence that has been committed or planned, including in cases which do not fall under its jurisdiction.

In response to the material, applications or declarations received, one of the following decisions shall be adopted:

1) to institute criminal proceedings,

2) to refuse to institute criminal proceedings,

3) to forward the application or declaration to the competent authority.

...

Applications and declarations concerning crimes shall be examined immediately, but at the latest within ten days of their receipt. If an expert or audit report or specialist's consultation is necessary for such examination, applications and declarations shall be examined at the latest within 30 days. "

Section 112 § 3

"A copy of the decision to refuse to institute criminal proceedings ... shall be sent to the applicant and those concerned with an explanation of their right to complain about the decision: a decision adopted by an investigating authority to a corresponding prosecutor, by a prosecutor to a higher-ranking prosecutor, by a prosecutor of the Office of the Prosecutor General to the Prosecutor General, and by a judge to a higher-instance court."

Section 255 § 1

"In the hearings the court shall examine the case only as against the persons charged with the criminal offence and only in relation to the charges brought against them."

61. The relevant provisions of the Law of Criminal Procedure (*Kriminālprocesa likums*), effective from 1 October 2005, as in force at the material time, read:

Section 371 § 5

"... A judge or court shall send, without deciding on it, an application, material, or information acquired in adjudication to an investigating authority or, in the cases specified by law, to the prosecutor's office."

62. The relevant provisions of the Criminal Law (*Krimināllikums*) read as follows:

Section 269 § 1

"A person who commits an assault on a representative of public authority or other State official, in connection with that representative's lawful official activities, or commits an assault on a person who is participating in preventing or interrupting a criminal or otherwise illegal offence shall be

- imprisoned for a term not exceeding seven years, or subject to a custodial arrest."

Section 270 § 1

"A person who resists a representative of public authority or other State official in the course of his or her official duties, or resists a person who is participating in preventing or interrupting a criminal or otherwise illegal offence, or compels such a person to perform manifestly unlawful acts by resistance or compulsion involving violence or threats of violence shall be

- imprisoned for a term not exceeding three years, or subject to a custodial arrest, or a fine not exceeding sixty times the minimum monthly wage shall be imposed."

Section 317

"1. A State official who commits an intentional act which manifestly exceeds the limits of the statutory rights and authority granted to the State official or pursuant to his or her assigned duties, and if substantial harm is caused thereby to State authority, administrative order or a person's rights and interests protected by law, shall be

- imprisoned for a term not exceeding five years, or sentenced to community service or a fine not exceeding one hundred times the minimum monthly wage, with or without deprivation of the right to occupy specified positions for a term of not less than one and not exceeding three years.

2. A person who commits such acts and thereby causes serious consequences, or uses violence or threats of violence for the purpose of acquiring property shall be

- imprisoned for a term not exceeding ten years, or sentenced to community service or a fine not exceeding two hundred times the minimum monthly wage, with or

without deprivation of the right to occupy specified positions for a term of not less than one and not exceeding five years."

63. The relevant provision of the Code of Administrative Violations (*Administratīvo pārkāpumu kodekss*) reads as follows:

Section 175

"In the case of malicious non-compliance with a police officer's, national guard's or soldier's lawful order or requirement issued in accordance with their duties to maintain order and protect the public,

- a fine shall be imposed in an amount of up to 200 lati (LVL), or administrative detention shall be applied for a period of up to fifteen days."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS CONCERNS THE DETENTION CONDITIONS

64. The applicants complained that the conditions in the short-term detention facility in Cēsis had been contrary to Article 3 of the Convention. In particular, they stated that there had been only buckets in their cell instead of toilets and that no blankets were provided. Article 3 reads as follows:

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

65. The Government disagreed with the applicants' account.

Admissibility

66. The Government disputed the admissibility of this complaint on two grounds. They argued, first of all, that the applicants had failed to comply with the six-month time-limit set out in Article 35 § 1 of the Convention. They contended, secondly, that the applicants had failed to exhaust domestic remedies.

67. The applicants did not agree.

68. Article 35 § 1 of the Convention and the Court's case-law (see, among many others, *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001) determine the starting point of the running of the six-month time-limit as follows: (a) when there are effective remedies available, it runs from the date of the final decision in the process

of their exhaustion; (b) where it is clear from the outset that no effective remedies are available, it runs from the date of the acts or measures complained of, or from the date of knowledge of those acts or their effect on or prejudice to the applicant (see, for a recent authority, *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 54, 29 June 2012). Accordingly, the Court must establish if there were any effective remedies for the applicants' complaint, and in view of that finding it will establish the starting date for the running of the six-month period.

1. Exhaustion of domestic remedies

69. The Government argued that the applicants had not exhausted remedies under the Law of Administrative Procedure. They referred to the statistics provided by the Judicial Administration (*Tiesu administrācija*), according to which the administrative courts had examined 22 cases concerning conditions of detention in the short-term detention facilities between 2 February 2004 and 1 September 2010. The Government referred to three particular cases. The first case concerned the conditions in the short-term detention facility in Jelgava between 11 and 15 May 2009 (no. A420527910). The second case concerned the conditions in the short-term detention facility in Ventspils during various periods from 17 September 2004 to April 2005 (no. A42510707). The third case concerned the conditions in the short-term detention facility in Ventspils between August 2003 and August 2006 (no. A42583206).

70. The applicants did not comment.

71. The Court observes that it has had the opportunity to examine the effectiveness of the remedy in question and has found it not to be accessible in practice to detainees, at least before 15 June 2006 (see *Melnītis v. Latvia*, no. 30779/05, § 46-53, 28 February 2012, and *Katajevs v. Latvia* (dec.), no. 1710/06, § 19, 11 September 2012). In the present case the Government provided more examples from domestic case-law; however, the Court does not recognise them as relevant for the purposes of the present case. The first of these relates to events that took place nearly five years after the events at issue in the present case. The first-instance court ruling referred to by the Government in the second case was overruled by the appellate court and the claim was rejected. Lastly, the third set of proceedings appears to be still pending. The ruling to which the Government referred in this connection was adopted by the Senate of the Supreme Court in 2010 and the case was sent back for fresh examination to the regional court. Having established that the domestic case-law referred to by the Government does not prove the effectiveness of the administrative courts at the material time for the purposes of the present case, the Court finds that the proposed remedy cannot be considered effective in so far as the applicants' complaint is concerned. Therefore, the applicants did not need to exhaust it (see, for the

principle that only effective remedies need to be exhausted, *Paksas v. Lithuania* [GC], no. 34932/04, § 75, 6 January 2011).

72. The Court further notes that the Government do not argue non-exhaustion on any other grounds.

73. The Court therefore rejects the Government's preliminary objection concerning the exhaustion of domestic remedies.

2. The six-month rule

74. The Government maintained that the applicants had not complied with the six-month time-limit in that they had been released from the short-term detention facility in July 2004 and lodged their complaint with the Court in that regard more than six months later, in February 2005.

75. The applicants offered no comment.

76. The Court observes at the outset that the applicants lodged complaints with the police department as concerns the conditions of detention in Cēsis. The Court has already found that a complaint to the police department alone cannot be considered an effective remedy in circumstances such as those in the present case (see *Ņikitenko v. Latvia* (dec.), 62609/00, 11 May 2006, and *Katajevs* (dec.), cited above, § 26). The Court sees no reason to depart from that finding in the present case. The Court therefore holds that the applicants had recourse to a remedy which cannot be considered effective and thus it should not be taken into consideration when determining the starting point of the six-month time-limit for the purposes of Article 35 § 1 of the Convention.

77. The Court considers that the six-month time-limit in the present case started to run on the date that followed the first and second applicants' release from the short-term detention facility in Cēsis, on 14 and 12 July 2004 respectively, and expired six calendar months later, on 13 and 11 January 2005 respectively.

78. In respect of the question whether the six-month rule has been complied with, the Court notes that pursuant to Rule 47 § 5 of the Rules of Court, as in force at the material time, the date of introduction of the application is as a general rule to be considered to be the date of the "first communication from the applicant setting out, even summarily, the object of the application" (see, as a recent example, *Andreyev v. Estonia*, no. 48132/07, § 51, 22 November 2011). The Court notes that the first and second applicants in their first letters to the Court, posted on 23 November 2004, indicated that they would like to lodge an application against Latvia under Articles 2, 3 and 13 of the Convention. They did not provide any, however succinct, reference to the factual basis of their complaint and the nature of the alleged violation. It was only on 5 February 2005 that they posted their application forms to the Court and provided some factual information concerning the Article 3 complaint as regards the conditions of detention. The Court considers that in such

circumstances the applicants' letters of 23 November 2004 cannot be considered as setting out the object of the application; the object of their application was only set out in their later application forms, which were posted to the Court on 5 February 2005, that is, more than six months after their release from the short-term detention facility in Cēsis.

79. Taking into account the foregoing, the Court considers that the applicants have failed to comply with the six-month rule. It therefore accepts the Government's preliminary objection and rejects this complaint pursuant to Article 35 §§ 1 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS CONCERNS THE EFFECTIVENESS OF THE INVESTIGATION

80. The first applicant relied on Articles 3, 6 § 1 and 13 of the Convention, alleging excessive use of force by the police officers when arresting him on 30 June 2004; he complained about the investigation into these events.

81. The Court finds it impossible to establish on the basis of the evidence before it whether or not on 30 June 2004 the first applicant was subjected to treatment contrary to Article 3, or that the authorities had recourse to physical force which had not been rendered strictly necessary by the first applicant's own behaviour. However, for the reasons set out below, it considers that the difficulty in determining whether there was any substance to the first applicant's allegations of ill-treatment rests with the authorities failure to investigate their complaints effectively (see *Veznedaroğlu v. Turkey*, no. 32357/96, § 31, 11 April 2000; *Petru Roşca v. Moldova*, no. 2638/05, § 42, 6 October 2009; *Popa v. Moldova*, no. 29772/05, § 39, 21 September 2010; and *Hristovi v. Bulgaria*, no. 42697/05, § 83, 11 October 2011). The Court will accordingly examine this complaint under the procedural aspect of Article 3 of the Convention (see *Shchukin and Others v. Cyprus*, no. 14030/03, § 99, 29 July 2010; *Đurđević v. Croatia*, no. 52442/09, §§ 80-81, ECHR 2011 (extracts); *Khatayev v. Russia*, no. 56994/09, § 110, 11 October 2011; *Halat v. Turkey*, no. 23607/08, §§ 48-50, 8 November 2011; *Şercău v. Romania*, no. 41775/06, §§ 79-80, 5 June 2012; and *Mitkus v. Latvia*, no. 7259/03, §§ 68-71, 2 October 2012).

A. Admissibility

82. The Government argued that the first applicant had not exhausted remedies under the Code of Criminal Procedure. They pointed out that the first applicant had failed to complain about the decision of 1 March 2005 to a higher-ranking prosecutor of the prosecutor's office attached to the

Vidzeme Regional Court, whose decision in turn could have been finally appealed against to the Prosecutor General.

83. The first applicant disagreed.

84. The Court considers that the Government's preliminary objection is closely related to the merits of the first applicant's complaint. It will therefore examine it together with the merits of this complaint.

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

B. Merits

1. Parties' submissions

86. The first applicant submitted that the investigation into his allegations had been deficient. His counsel had complained to the domestic authorities as early as 5 July 2004 that the investigation by the Cēsis District Police Department into his complaints had been biased. The requests to carry out a forensic examination to determine the first applicant's bodily injuries had not been made until much later. He also alleged procedural shortcomings as concerns the forensic examination report, for example, that it had been drawn up only in August and in Valmiera. On the other hand, the same expert had prepared forensic reports on the injuries sustained by both police officers already on 30 June 2004 and the relevant decision had been made *ex post facto*, on 1 July 2004, in respect of them. The answers to the first applicant's complaints provided by the officials of the Cēsis District Police Department had been formalistic; the first applicant also disputed the facts on which the authorities had relied. He also considered that D.B. was not impartial and that her second examination of the material, which had resulted in the decision of 5 January 2005, had been superficial.

87. The first applicant pointed out that his complaint to the Cēsis District Court had been merely forwarded to the Cēsis District Prosecutor's Office, where no action had been taken in connection with it.

88. The Government argued that there had been an effective investigation in response to the first applicant's complaint about his alleged ill-treatment on 30 June 2004. They distinguished the present case from *Labita v. Italy* on the facts, stating that the actions of the Cēsis District Police Department had never been the subject of explicit media attention. Moreover, the applicants' allegations had given rise to certain doubts as to their credibility. In this regard the Government referred to *Avşar v. Turkey* (no. 25657/94, ECHR 2001-VII (extracts)), noting that the obligation under the procedural aspect of Article 3 of the Convention was one of means, not

result (*ibid.*, § 394): an effective investigation could well end with a finding that no violation had taken place.

89. In the Government's submission, the requirement that the investigation be speedy had been satisfied in the present case since the first applicant's complaint had been promptly examined in accordance with section 109 of the Code of Criminal Procedure.

90. As regards the requirement that the investigation be independent, the Government were of the opinion that the investigation by the State Police had been impartial. Evidence gathered during the examination by the State Police had later been re-examined by the institutions of the Prosecutor's Office, which were fully independent and impartial for the purposes of the present case; the results of the examination had been found to be lawful and reasoned.

91. As regards the alleged impartiality of D.B., the Government argued that the first applicant had been entitled to lodge a discharge request. It was their view that he had not done so.

2. The Court's assessment

92. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

93. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily come to a conclusion which coincides with the applicant's account of events. However, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

94. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including*, inter alia*, eyewitness testimony, forensic evidence and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will

risk falling foul of the applicable standard (see *Mikheyev*, cited above, § 108).

95. For an investigation to be effective it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also practical independence (see *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004; and also *Poltoratskiy v. Ukraine*, no. 38812/97, §§ 70, 126-127, ECHR 2003-V as concerns the requirement for the investigation to be carried out by an authority which was not directly involved in the events).

96. At the outset the Court observes that it is not disputed by the parties that the State was under a procedural obligation, arising from Article 3 of the Convention, to carry out an effective investigation into the circumstances in which the first applicant was arrested and sustained bodily injuries, the precise extent of which, regrettably, the Court has been unable to establish. It remains undisputed, however, that the first applicant had sustained bodily injuries, that he complained of headaches and, as established by an ambulance doctor, was suspected of having concussion. Moreover, according to the evidence given by his family doctor during the criminal trial, the first applicant developed a number of post-traumatic health disorders after the events in question.

97. The Court notes that the authorities carried out an inquiry into the first applicant's allegations. It is not convinced, however, that the inquiry was sufficiently thorough and effective to meet the requirements of Article 3 of the Convention.

98. In this connection, the Court notes, first of all, that the investigation into the first applicant's allegations was carried out by the Cēsis District Police Department, that is, by the very authorities to which the officers who had allegedly inflicted the injuries on the first applicant belonged organisationally and were subordinated hierarchically. Since the officers conducting the investigation were subordinated to the same chain of command as those officers subject to investigation, serious doubts arise as to their ability to carry out an independent investigation (see *Matko v. Slovenia*, no. 43393/98, § 89, 2 November 2006, and *Đurđević*, cited above, § 87). Furthermore, not only did officer D.B., who was in charge of the investigation, work for the Cēsis District Police Department, she had also been in charge of the preliminary investigation in the criminal proceedings brought against both applicants in connection with the events of 30 June 2004 which eventually resulted in the first applicant's conviction for resisting a representative of public authority. In this connection, the Court notes that the first applicant's counsel first brought up the issue of bias on 5 July 2004, but received a negative reply from the two supervising prosecution authorities. The Court therefore rejects the Government's argument that the first applicant did not properly bring this issue to the

attention of the domestic authorities. The independence of the investigation carried out by the Cēsis District Police Department is further tainted by the history of disagreement between both the applicants and another officer of that police department. In this regard it is not insignificant that there had been a prior incident involving the use of a firearm in breach of the rules of discipline by the police officer, as a result of which he had been discharged from his duties. Taking into account the foregoing, the Court considers that the investigation carried out by the Cēsis District Police Department cannot be considered to have been independent.

99. Secondly, the Court observes that the circumstances surrounding the securing of the evidence by the police authorities and, in particular, the obtaining of the forensic report on the bodily injuries of the first applicant remain somewhat unclear. It can be seen from the material before the Court that the forensic expert visited the first applicant in the short-term detention facility in Cēsis on 5 July 2004 and in about ten minutes the examination had already been concluded. It seems rather unlikely that in such a short period of time a thorough examination of the first applicant's state of health could have been made.

100. Furthermore, in view of the speediness with which the bodily injuries were established in the case of the police officers on 30 June 2004, it remains unclear why it took five more days for a similar examination to be carried out in respect of the first applicant. The Court cannot but conclude that the police authorities did not proceed with the requisite expedition when securing the evidence in that regard.

101. Thirdly, the supervising prosecutors did not undertake any independent investigative steps, such as interviewing the second applicant, the officers involved and the eyewitnesses. There are no indications that they were prepared to scrutinise the police account of the incident in any way. When significant shortcomings in the initial investigation were discovered some five months later on 16 December 2004, the case materials were sent back to the same authority whose actions had been found to be inadequate. The Court notes, furthermore, that the results of the additional investigation, if any, have not been made available to the Court. In these circumstances the Court does not consider that the investigation into the first applicant's allegations was thorough.

102. At this point the Court considers it appropriate to address the Government's objection that the applicant should have complained about the decision of 1 March 2005 to a higher-ranking prosecutor. In this respect, the Court emphasises that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court has already held on a number of occasions that the rule of exhaustion is neither absolute not capable of being applied automatically; it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of

the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *İlhan v. Turkey* [GC], no. 22277/93, § 59, ECHR 2000-VII).

103. In the present case the Court cannot hold against the first applicant the fact that he did not complain about the decision of 1 March 2005 to a higher-ranking prosecutor for two main reasons. Firstly, the Court notes that the prosecution authorities participated in the criminal proceedings against the first applicant. They were well aware of his allegations of the excessive use of force at the mechanic's workshop *Ģikši* and the *Jaunģikši* country house and of the fact that he maintained those allegations throughout his trial (see the next paragraph). In addition, the prosecution authorities dropped, during the first applicant's trial before the Cēsis District Court, the charges in relation to his resistance at the *Jaunģikši* country house. They implicitly agreed that he had not actively obstructed his arrest, which fact, if properly established, would have rendered any use of force by the police officers against him excessive. Secondly, the higher-ranking prosecutors of the Prosecutor's Office attached to the Vidzeme Regional Court, in fact, examined several complaints by the first applicant and concluded that there was no bias in the investigation carried out by the Cēsis District Police Department (see paragraphs 41 and 49 above). The first applicant did not have any grounds to consider that they would provide a different answer if he lodged another complaint. It follows that the prosecution authorities, including the higher-ranking prosecutors, knew about the first applicant's allegations as concerns the events of 30 June 2004 and yet they did not consider that these allegations merited any further independent investigation. The Court therefore considers that in the circumstances of the present case the first applicant did everything that he could reasonably have been expected to do and that he complied with his duty to inform the relevant national authorities of both alleged episodes of the alleged ill-treatment. It accordingly rejects the Government's preliminary objection as concerns the exhaustion of domestic remedies.

104. Finally, the Court notes that the first applicant also complained about the failure of the domestic courts to look into his allegations. In this regard the Court considers that initially the Cēsis District Court showed sufficient diligence by forwarding the first applicant's complaint of 21 October 2004 to the prosecutor's office. However, when the first applicant's charges concerning the events at the *Jaunģikši* country house were withdrawn during his trial for lack of evidence, the district court as well as the prosecutor had nevertheless heard the first applicant's allegations made during the trial, namely that at *Jaunģikši* "V.D. [had] dealt several blows to [his] sides and head" while he was lying on the ground. This

information should have triggered an official investigation. However, no additional investigative steps were taken by the domestic authorities in response to the first applicant's allegations concerning this episode. The district court, in its judgment of 20 December 2004, merely stated that the first applicant's testimony had not been corroborated. Because the charges against the first applicant did not include the events at *Jaunģikši*, any material that might have been related to that episode, including the testimony of the second applicant and K.R., was not included in the judgment. Although the first applicant maintained his request for the opening of criminal proceedings against the police officers throughout his trial also before the Vidzeme Regional Court and the Senate of the Supreme Court, it was refused as being not related. The prosecution authorities, for their part, did not undertake any investigation whatsoever in relation to this episode. In such circumstances, the Court concludes that there has not been a thorough investigation into the first applicant's allegations concerning the events at *Jaunģikši*.

105. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of the procedural aspect of Article 3 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

106. Lastly, the second applicant complained that he had been held in detention for twenty hours without a valid court order. He also submitted that his attempts to discover the truth of the events about which he complained had not been duly considered, and that the Cēsis District Police Department had misinformed the public through the media that the first applicant had attacked the police officers. Finally, he considered that the domestic authorities had failed to ensure effective remedies because they had provided meaningless answers to his complaints. The second applicant relied on Article 3, Article 6 §§ 1 and 2, and Article 13 of the Convention in support of these complaints.

107. However, 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 finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

108. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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."

110. The applicants claimed an unspecified amount in just satisfaction, which encompassed pecuniary and non-pecuniary damage. They also claimed compensation for unspecified costs and expenses incurred at the domestic level.

A. Damage

111. The Government contested the claims.

112. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects that claim. On the other hand, it awards the first applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

113. The Government observed that the applicants had failed to comply with Rule 60 § 2 of the Rules of Court in that they had not submitted itemised particulars of their claim, together with the relevant supporting documents or vouchers.

114. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see, for example, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). Furthermore, Rule 60 § 2 of the Rules of Court provides that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part.

115. In the instant case, the Court observes that the applicants have not substantiated their claim by any relevant supporting documents establishing that they were under an obligation to pay the costs of legal services, or actually paid them. Accordingly, the Court decides not to award any sum under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits of the case the Government's objection relating to the complaint under Article 3 of the Convention as concerns the lack of an effective investigation into the first applicant's allegations, *declares* this complaint admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention and *dismisses* the Government's above-mentioned objection;

3. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), to be converted into the currency of the respondent State 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;

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

Done in English, and notified in writing on 11 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President