

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

FOURTH SECTION

CASE OF VOVRUŠKO v. LATVIA

(Application no. 11065/02)

JUDGMENT

STRASBOURG

11 December 2012

FINAL

11/03/2013

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



In the case of Vovruško 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. 11065/02) 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, Aleksejs Vovruško on 5 November 2001.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine who was succeeded by the Agent Mrs. K. Līce.

3. The applicant alleged that while in police custody he had been ill-treated by police officers, who had put a gas mask and a plastic bag on his head and had beaten him up with the aim of extorting a confession. He alleged, in particular, that the manner in which the authorities had conducted the investigation and the excessive delays encountered showed a lack of intention on their part to establish the truth.

4. On 22 February 2007 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). On 1 November 2012 the case was assigned to Section Four (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Rīga.

A. The applicant's arrest and conviction

6. On 25 April 1998 the police arrested the applicant and another individual, V.J., both of whom were suspects of an aggravated assault against a victim, P.M. ("the victim"). They were then taken to Rīga Main police station (*Rīgas Galvenā Policijas Pārvalde*).

7. On the same day the applicant was interviewed at the station and denied committing the offence. According to the applicant's statement he was in the stairwell of a dwelling house when the victim attacked him, punching and hitting him in the left ear. After the fight the applicant ran downstairs and noticed a policeman chasing him. In order to escape he smashed through a window in the entrance door and as a result cut his wrists. The applicant was then surrounded by several police officers who brought him to the ground and one of the officers proceeded to kick him twice in the head near his left ear.

8. When questioned on 27 April 1998, the victim alleged that, in the stairwell next to his apartment, two men had attacked him from behind and hit him in the head. In his statement, police officer P.K. said he had been running after the applicant and at one point they had both fallen down fighting. He said that the applicant had freed himself from the officer's grip and, after smashing a window, cut the officer's face with a piece of glass. He was subsequently arrested by the other police officers present.

9. On 27 April 1998 the applicant was interviewed as a suspect and underwent repeated questioning by two officers, V.Ju., and L.K. During the interview the applicant confessed to the crime.

10. On 28 April 1998 the applicant and V.J. (who were represented by a lawyer) were brought before a judge of the Rīga Vidzeme District Court and remanded in custody. According to the applicant, during the hearing he denied his earlier confession, informing the court that it had been obtained under duress.

11. On 20 October 1999 a public prosecutor finalised the bill of indictment against the applicant and V.J., in which the applicant was charged with robbery and the attempted murder of the police officer P.K.

12. On 27 September 2000 the first-instance court established that both defendants had caused bodily harm to the victim and that, at the time of his arrest, the applicant had also caused bodily harm to the police officer P.K., the charge for this offence being obstructing a police officer on duty. The applicant and co-defendant were found guilty of the charges and sentenced to twelve and nine years' imprisonment respectively.

13. By a final decision of 15 January 2002 the Senate of the Supreme Court dismissed the appeal of points of law lodged by the defendants.

B. Allegations of ill-treatment and the investigation thereof

14. On 9 July 1998 the applicant complained to the Prosecutor General's Office that he had been ill-treated by several officers of the Rīga Main police station (Second Division). He alleged, in particular, that the police officers had punched him, hanged him by a scarf, and tried to suffocate him with a plastic bag and a gas mask. The police officers had reproached him for the attacks on their friend and colleague and had forced him to sign a statement of confession. A similar complaint was made by the co-defendant V.J.

15. On 28 September 1998 the Prosecutor's Office attached to Rīga Court Region (*Rīgas tiesas apgabala prokuratūra*) initiated a criminal investigation into the allegations of ill-treatment. The applicant was officially recognised as a victim for the purposes of the investigation.

16. At the applicant's request to inform him about the progress of the investigation, on 29 January 1999 the Prosecutor's Office attached to Rīga Court Region replied that the Inquiry Unit of the State Police (*Valsts policijas Izziņas pārvalde*) was carrying out a pre-trial investigation into the allegations of ill-treatment. On 16 February 1999 the Inquiry Unit forwarded the applicant's request to the Rīga Main police station which (as from 10 October 1998) was in charge of the investigation.

17. It appears from the information submitted by the Government that the applicant had repeatedly complained to the Prosecutor General's Office about the ineffectiveness of the investigation into his alleged ill-treatment. One such complaint, dated 30 July 1999, was forwarded to Rīga Centre District Prosecutor's Office (*Rīgas pilsētas Centra rajona prokuratūra*). The Court has been given no information as to its outcome.

18. In a further complaint of 12 October 1999, the applicant alleged that the investigators had deliberately failed to arrange visual identification of the alleged perpetrators, despite the applicant stating he was able to identify them. On 20 October 1999 the applicant was informed that on 15 October 1999 a prosecutor from the Rīga Centre District Prosecutor's Office had been looking into the investigation and had issued instructions to the investigators concerning further measures to be taken.

19. According to the Prosecutor General's Office, in response to a complaint made by the applicant on 11 August 2000 expressing concerns about a two-year delay in receiving any progress reports about the investigation, the prosecutor responsible for the case (*Ģenerālprokuratūras krimināltiesiskā departamenta Pirmstiesas izmeklēšanas uzraudzības nodaļas prokurors)* had issued additional instructions to investigators and had informed the applicant of the measures taken.

20. This was also confirmed by the Government's Agent, who was provided with information by the Rīga Main police station suggesting that

in September 2000 a prosecutor from the Rīga Centre District Prosecutor's Office had issued additional instructions in respect of the investigation.

21. On 19 March 2001 the inspector of the Rīga Main police station ordered termination of the investigation. The decision stated:

"...

[2.] Under questioning ... as a victim, [the applicant] stated [that] ... on 27 April 1998, he was summoned to the Rīga Main police station (Second Division).... He was escorted by two police officers who took him to office no. 408, where there were already several plain-clothed police officers. He was handcuffed to a stool with metal legs. One of the officers put a gas mask on his head and cut off the air supply to it; this happened three times, after which the police officers had tried to pressure the [applicant] into making a confession. [The applicant] refused and the officer slapped his neck five times with the palm of his hand. They then put a transparent plastic bag on [the applicant's] head and cut off the air supply using a sling; this was repeated several times. The victim began to pass out. Then another police officer - [V.Ju.], as [the applicant] later learned - approached him and hit him with the palm of his hand on the forehead, after which the victim fell on the floor, still attached to the stool, and [V.Ju.] kicked him twice in [his] chest. The victim has a vague memory of what happened next: he said that there were other officers in the room who also punched and kicked him. He did not remember what the other officers looked like and could not identify them. He said that one of the officers had strangled him with a scarf. As a result of the torture, he signed a statement of confession which he says was made under duress. [The applicant] argued that his screams and the fact that police officers had beaten him could be confirmed by [V.G.] who was in the office next door at the time and had overheard the officers saying that they were ready to beat [the applicant] up.

[3.] Under questioning as a witness, [V.G] explained that on 27 April 1998 he was also [at the police station in question], where he met [the applicant], with whom he had been transferred to Central Prison. [V.G.] stated that he had also been summoned for questioning, but that he never heard any screams or conversations among police officers about plans to beat [the applicant] up.

[4.] ... On 2 December 1999 [the applicant] was invited to visually identify [L.K.]; [the applicant] identified him as a police officer who, together with V.Ju., had tortured him and had pressured him into making a confession.

[5.] [On 10 March 1999] under questioning as a witness, the officer [L.K.] said that on 27 April 1998, he had requested, in writing, that [the applicant] be escorted from [the pre-trial detention facility] so that he could be questioned. [The applicant] had facial injuries including scrapes and bruises. He was brought to office no. 413 where [officer V.Ju.] was. [The applicant] was filmed on camera, his fingerprints were taken and a conversation about the assault took place. V.Ju wrote down the [applicant's] statements. No physical force was used [against the applicant].

[6.] During questioning, both [the applicant] and [L.K.] maintained their statements. (...).

[7.] [On unknown date] under questioning as a witness, the officer [V.Ju.] said that on 27 April 1998, [the applicant] was summoned to the [pre-trial detention facility], and that, together with [the officer L.K.], he had questioned the applicant in office no. 413. The witness stated that no physical force against [the applicant] had been used. He denied the allegations and said that [the applicant] had sustained the aforementioned bodily injuries upon his arrest. [V.Ju.] also denied the involvement of other police officers in the questioning of [the applicant].

[8.] During questioning, both [V.Ju.] and [the applicant] maintained their statements.

[9.] Under questioning as a witness ... the police officer [P.K.] stated that on 25 April 1998 [he had participated in the applicant's arrest].... They started fighting and both fell on the pavement; [they] started to beat each other in the body and the face. ... [After having] broken a window pane, the applicant took a piece of glass and started to use it against [P.K.] on his head and face .... [P.K.] contended that [the applicant] must have sustained bodily injuries but he could not describe precisely where.

...

[11.] By analysing the documents, the outcome of the investigation is that the statements of [the applicant] are inconsistent and that there are several contradictions. For example, each time new facts came to light, others that had already been mentioned disappeared. For example, in the first statements' report, [the applicant] stated that the ill-treatment had lasted four or five hours at a stretch [but] in his subsequent complaint [the applicant contended that it lasted] six hours; ... each time he referred to one episode of torture, whereas according to documents of [the detention facility] he had been summoned for questioning only for an hour and a half, on two separate occasions: before and after lunch. The number of police officers who allegedly ill-treated him also varies considerably: from "some policemen" to "fifteen ... who had frantically beaten him." In the first statements' report [the applicant] said that he had been hanged onto a closet by a scarf, he had been strangled with a gas mask and a plastic bag; when interviewed the second time [the applicant] added that he had been given electric shock treatment, the next time [he referred to] blows to the body, head and face, but did not mention electric shock treatment. A year and a half later, [the applicant] argued that [L.K.] had tied his arms to the chair with a pair of handcuffs and fastened his feet with a scarf.

The fact that [the applicant] identified [L.K.] also raises some doubts. For example, in his statements, [the applicant] said that he had identified two policemen who had inflicted his injuries - [V.Ju.] and another, a fair-haired officer, twenty-seven or twenty-eight years' of age - but that he could neither identify nor describe the other. Then, suddenly, among the individuals chosen for the visual identification, [the applicant] was able to identify [L.K.] as one of the officers who had participated in his ill-treatment. ... He even recalled the exact words with which [L.K.] had threatened him, whereas a year ago he was unable to even describe the policeman's face. According to [the applicant] L.K. had ordered [V.Ju.] to read out the statements which [the applicant] was forced to sign. However, it transpires that in his complaint, [the applicant] alleged that he had not read any of his statements, whereas according to the applicant's testimonial evidence the statements had been read out to him and he was forced to sign them.

Accordingly, there are no grounds to question the statements of [the officers] who deny the use of any force against [the applicant], whereas the criminal case material, [the applicant's] personality..., the expert's deliberations and medical reports, and the statements of the witnesses V.G. and P.K. raise serious doubts as concerns the validity of the [applicant's] statements, therefore there are grounds to assume that in actual fact there has been no ill-treatment of [the applicant] by the police officers of the Second Division... the injuries in question were caused during [the applicant's] arrest .... In view of the above, the criminal case initiated following the complaint of [the applicant] should be discontinued.

..."

> [23.] Under questioning. the [thirteen] officers of the Rīga Main police station (Second Division) denied that they had participated in the interview of either V.J or [the applicant] and that they had ill-treated them".

22. By the same decision the Rīga Main police station discontinued the investigation instigated by the applicant's co-defendant V.J.

23. In April and May 2001 the applicant complained to the Prosecutor General that the investigation into his alleged ill-treatment had been discontinued. On 8 May 2001 a prosecutor from the Rīga Centre District Prosecutor's Office dismissed the complaint. Following repeated appeals by the applicant, at a later date a prosecutor issued a reprimand to the chief investigator for failing to inform the applicant of his rights to inspect the police file and of the grounds for an appeal.

24. On 3 January 2002 a prosecutor from the Prosecutor General's Office dismissed the applicant's allegations.

C. Medical reports concerning the injuries

25. On 25 April 1998, immediately following his arrest the applicant was admitted to the emergency unit of Rīga Clinic No. 1. According to a report drawn up by the clinic the applicant complained of headaches and was diagnosed by the doctor as having a cerebral contusion. The applicant also suffered from a cut and bruises to his right hand, which were treated at the time.

26. According to the information provided by the medical unit of the short-term detention unit of Rīga Main police station, on 27 April 1998 the applicant had complained about headaches and the doctor had diagnosed him with a cerebral contusion and prescribed him with pain killers.

27. On 29 April 1998 the applicant was transferred to the Central Prison. According to the information provided by the prison's medical unit, on his arrival the applicant had the following injuries: a haematoma on his left thigh (measuring 0.5 cm x 10 cm) and a bruise on his back (measuring 0.5 cm x 0.5 cm). On 7 September 1998 the applicant was also examined by a general practitioner.

28. On 14 May 1998 the forensic medical expert, after having examined the applicant's medical records from 25 April 1998, concluded that the applicant had bruises on both hands which he could well have sustained at the time of his arrest. The expert could not draw conclusions as to how the wounds had been inflicted as they were not described in sufficient detail in the records.

29. At the investigator's request, on 9 February 1999 the same forensic expert examined the applicant's medical records of 27 and 29 April 1998 and concluded that, at the time of being admitted to the Central Prison, the applicant had a bruise on his back and a haematoma on his left thigh which were considered to be light bodily injuries causing only short-term health

problems of no more than six days. The expert was unable to draw conclusions about the exact time the injuries had been sustained, however, he was able to ascertain that they may have been caused by a hard blunt object.

II. RELEVANT DOMESTIC LAW

30. Sections 22 and 23 of the Law on the Prosecutor's Office provide that the prosecutor's office shall consist of, *inter alia*, the offices of prosecutors attached to court regions, and be headed by the Prosecutor General, who has the right to revoke any groundless or illegal decisions adopted by the prosecutors attached to court regions.

31. Other relevant provisions of the Law on the Prosecutor's Office applicable at the material time are summarised in *Leja v. Latvia*, no. 71072/01, § 34, 14 June 2011. In particular, in accordance with section 15, a prosecutor shall supervise the execution of custodial sentences and the institutions in which individuals are detained as a result. Furthermore, section 16 provides that a prosecutor shall, in accordance with the procedures prescribed by law, carry out an investigation if the information received concerns a crime or a violation of the rights and lawful interests of, *inter alia,* detainees. According to section 17, when examining an application in accordance with the law, a prosecutor has the right: to request and to receive regulatory enactments, documents and other information from administrative authorities ...; to order heads and other officials of ... institutions and organisations to carry out examinations, audits and expert-examinations and to submit opinions, as well as to provide the assistance of specialists in the examinations carried out by the prosecutor; to summon a person and to receive from him/her an explanation on the breach of law... . When taking a decision on a breach of law, the prosecutor, depending on the nature of the breach, has the duty: ... to bring an action to the court, to initiate a criminal investigation or to initiate [proceedings on] administrative or disciplinary liability.

III. RELEVANT PARTS OF THE CPT REPORTS

32. The report of 22 November 2001 to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("the CPT") from 24 January to 3 February 1999 notes the following:

> "14. The delegation received a considerable number of recent allegations of physical ill-treatment of persons detained by members of the police forces in Latvia. These allegations related to both the time of apprehension and police interrogations. The ill-treatment alleged consisted essentially of punches and kicks, and of striking the persons concerned with truncheons or a gun butt.

In some cases, the ill-treatment alleged - severe beating, asphyxiation using a plastic bag or a gas mask, strangulation using a guitar wire, infliction of electric shocks, in the course of questioning - could be considered as amounting to torture.

15. Certain of the persons who made allegations of ill-treatment were found on examination by medical members of the delegation to display physical marks or conditions consistent with their allegations. By way of example, the following cases can be mentioned:

i) A man detained at the Rīga Main police station Detention facility alleged that, when previously arrested in December 1998, he had been questioned in the same establishment by non-uniformed police officers for more than 5 hours. During this period he had apparently been tied to a chair; on two occasions, a plastic bag was placed over his head and face, and he had lost consciousness. He alleged that he had then been strangulated with a guitar wire. On examination by a medical member of the delegation, he was found to display clear horizontal, linear scar tissue on the anterior aspect of his neck compatible with the allegation of strangulation using a guitar wire.

...

20. It is axiomatic that one of the most effective means of preventing ill-treatment by the police lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where appropriate, the imposition of a suitable penalty. This will have a very strong dissuasive effect. Even in the absence of an express complaint, action should be taken if there are other indications (e.g. visible injuries; a person's general appearance or demeanour; the precise circumstances of a person's apprehension) that ill-treatment might have occurred.

...

21. ... In the interests of the prevention of ill-treatment, **the CPT recommends that whenever an apprehended person brought before a prosecutor or judge alleges ill-treatment by the police, the prosecutor/judge immediately request a forensic medical examination of the person concerned and take the necessary measures in order for the allegation to be duly investigated. This approach should be followed irrespective of whether the person concerned bears visible injuries.**

Further, even in the absence of an express allegation of ill-treatment, the prosecutor/judge should request a forensic medical examination whenever there are grounds to believe that an apprehended person brought before him could have been the victim of ill-treatment."

33. The report of 10 May 2005 to the Latvian Government on the visit to Latvia carried out by the CPT from 25 September to 4 October 2002 notes the following:

"12. The CPT is seriously concerned about the high number and severity of complaints of ill-treatment of persons in police custody in Latvia; the situation has clearly not improved since the 1999 visit. Decisive action must be taken to eradicate ill-treatment, the existence of which was not contested by senior officials of the Ministry of the Interior. As already indicated in the report on the 1999 visit (page 9,

CPT/Inf (2001) 27), ill-treatment is not only harmful to the victim, but also degrading for the official who inflicts it or authorises it and ultimately prejudicial to the national authorities in general.

...

16. The CPT has previously highlighted steps to be taken by the prosecuting and/or judicial authorities for the prevention of ill-treatment by the police (*cf.* paragraph 21 of the report on the 1999 visit). Despite the explicit request by the President of the CPT in her letter of 26 October 2000, the Latvian authorities did not address this issue in their follow-up report. This is all the more of concern, bearing in mind that a number of persons met by the delegation indicated that they had been afraid to complain about their ill-treatment by the police ("this only leads to more trouble"). Some of them claimed that their lawyers advised them not to complain about the ill treatment inflicted by the police, even on subsequent admission to prison.

The CPT reiterates its recommendation that whenever an apprehended person brought before a prosecutor or judge alleges ill-treatment by the police, the prosecutor/judge should immediately request a forensic medical examination of the person concerned and take the necessary measures in order for the allegation to be duly investigated."

34. In response to the above-cited report, the Government explained that for the purposes of investigating offences committed by State Police employees, the State Police Internal Security Office was established in 2003, consisting of three departments: the Operative Department, Human Resource Inspection and Pre-Trial Investigation Department. The main task of the Internal Security Office is to preserve discipline and lawful order within the organisational units of the State Police.

35. In its report of 13 March 2008 to the Latvian Government on the visit to Latvia from 5 to 12 May 2004, the CPT noted that in 2003, the Internal Security Office of the State Police had been created and entrusted, among other tasks, with the handling of allegations of police ill-treatment carried out by police officers. It has an autonomous status within the police, under the direct supervision of the Chief of the State Police. The delegation was not in a position to examine in detail the effectiveness of the work performed by the Internal Security Office. However, the CPT stressed that, in order for the investigation of complaints against the police to be fully effective, the procedures involved must be (and be seen to be) independent and impartial. In this connection, the CPT considered that it would be preferable for the investigative work concerned to be entrusted to an agency which is completely independent of the police.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained under Articles 3 and 6 of the Convention that on 27 April 1998 at Rīga Main police station he had been ill-treated by police officers who had put a gas mask and a plastic bag on his head and beaten him with the aim of extorting a confession. He alleged, in particular, that the manner in which the authorities had conducted the investigation and the excessive delays encountered showed a lack of intention on their part to establish the truth and punish the perpetrators. The Court considers it appropriate to examine these complaints under Article 3 of the Convention alone, which reads as follows:

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

A. Admissibility

37. The Court notes that this complaint 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. Arguments of the parties

38. The Government contended that the injuries sustained by the applicant had occurred at the time of his arrest when, as a result of the applicant's violent behaviour, the police officers had had to use physical force against him. As regards the investigation into the applicant's complaint of ill-treatment, the Government contended that it was the applicant's fault that he had delayed in making the complaint by almost four months after the alleged events had taken place, which had consequently made it difficult for the investigators to establish the precise history of events, including a more accurate description of the injuries sustained by the applicant. The Government submitted that several administrative measures had been taken and that the investigation had been closely monitored by the prosecutor's office.

39. In his application, the applicant stated that he had given an account of his ill-treatment at the court hearing the day after the alleged events. He also submitted that he had made various representations to the prosecutor in

charge of his criminal case; however, the authorities had reacted to his allegations only after his co-accused had submitted his formal complaint.

40. In his observations the applicant further submitted that the medical report from Central Prison of 29 April 1998 had revealed further injuries which had not been referred to in his medical records from either the day of his arrest or when he had been admitted to the Rīga police detention facility. He also alleged that there had been no impartial investigation and that the police had covered for each other by providing false statements. The applicant also contended that police officer L.K.'s statement had contradicted the medical report of Rīga Clinic No. 1 (see paragraph 21, section 5 above) and insisted that the Government supply the video evidence to which the investigators had referred to in the decision (ibid.).

2. The Court's assessment

(a) General principles

41. The Court reiterates that Article 3 of the Convention enshrines an absolute prohibition of torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The ill-treatment must attain a minimum level of severity in order to fall within the scope of Article 3 of the Convention. The assessment of this minimum level depends on all the circumstances of the case, such as the stringency of the measure complained of, the objective pursued and its effects on the person concerned (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

42. The applicant's complaint under Article 3 raises an issue with respect to the State's procedural obligation to carry out an effective investigation in response to an arguable claim of ill-treatment (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita*, cited above, § 131). Such an investigation, as under Article 2, should be capable of leading to the identification and punishment of those responsible, and should reflect a serious effort on the part of the authorities to discover what really occurred (see *Poltoratskiy v. Ukraine*, no. 38812/97, § 125, ECHR 2003-V). According to the Court's case-law, the investigation should be independent, impartial, prompt and subject to public scrutiny (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, §§ 135-136, ECHR 2004-IV (extracts)) and involve external authorities (see *Poltoratskiy*, cited above, § 126). For an investigation to be considered effective, the authorities must, among other tasks, take reasonable steps to secure the evidence concerning the incident, including a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports (see *Batı and Others*, cited above, § 134).

43. The aforementioned obligations shall not, however, be interpreted as meaning that criminal proceedings should necessarily lead to a particular sanction; nevertheless the outcome of the investigation and of the ensuing criminal proceedings, including the sanction imposed as well as disciplinary measures taken, have been considered decisive, especially in relation to the role of the judicial system in preventing violations of the prohibition of ill-treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 121, ECHR 2010).

(b) Application to the present case

44. At the outset the Court observes that it is not disputed by the parties that two days before the alleged ill-treatment at the police station the applicant was arrested by a police officer who had to use force in order to overcome his resistance (see paragraphs 7, 8 and 12 above). It is also not disputed that the applicant had sustained sufficiently serious bodily injuries which had been confirmed by three different medical experts before and after the date of the alleged ill-treatment (see paragraphs 25-28 above). What is contested is whether the applicant had sustained all the above-mentioned injuries at the time of his arrest.

45. The Court reiterates that where the events in 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). As concerns the medical records the Court notes that the description of the injuries recorded on the day of the applicant's arrest contradict those recorded two days later when, after the alleged ill-treatment in the police station, the applicant was transferred to Central Prison (see paragraphs 25 and 27 above). Moreover, one of the police officers revealed under questioning that at the time of his interview at the Rīga Main police station the applicant was showing signs of injuries not recorded in any of the above-mentioned medical reports (see paragraph 21, section 5, above). It has to be noted that the forensic expert had issued his conclusions based only on the medical records, without actually examining the applicant in person (see paragraphs 28 and 29 above). In this regard the Court reiterates its earlier observations as to the authorities' failure at the material time to properly record the medical information of inmates in the Central Prison (see *J.L. v. Latvia*, no. 23893/06, § 47, 17 April 2012). The irreparable defects of the evidence characterising the applicant's injuries together with the fact that the applicant had sustained certain injuries even before the alleged events took place do not allow the Court to establish with a sufficient degree of certainty whether some of the injuries had been caused by police officers as alleged by the applicant (see *Assenov and Others*, cited above, § 100).

46. The Court nevertheless observes that the applicant's claim is arguable in the light of Article 3 of the Convention. In particular, the

credibility of the applicant's allegations is strengthened by his consistent description of the principal facts of the events which took place on 27 April 1998, and the fact that the CPT during their visit of 1999 had noted a significant number of nearly identical allegations in police establishments in Latvia (see paragraph 32 above). The Court shall therefore proceed next with the examination of the procedural obligations which the State authorities are required to comply with in cases where an arguable allegation of ill-treatment has been brought under Article 3 of the Convention.

47. As concerns the effectiveness of the investigation, the Court notes that the parties dispute the precise date when the applicant had made his first complaint about the alleged events to the State authorities. In particular, the applicant alleged that he had complained about the ill-treatment the very next day (see paragraph 10 above). If this was the case, then the applicant's representations should have been sufficient for the prosecutors to apply section 16 (1) of the Law on the Prosecutor's Office and to launch an investigation into the matters brought to its attention (see, *mutatis mutandis*, *J.L. v. Latvia*, cited above, §§ 85-86). Even assuming that the applicant lodged his first complaint on 9 July 1998, which was thus two months after the events took place (see paragraph 14 above), the Court notes that it took more that two months for the authorities to review the complaint and to initiate criminal proceedings (see paragraph 15 above), therefore the applicant could not be blamed for this delay.

48. The Court observes that, both in his complaint to the prosecutor's office and when questioned as a victim, the applicant's statements concerning the methods of ill-treatment which might not have left physical traces (see paragraph 14 above) and which, as it has been noted by the CPT, at the material time had been widely practiced by the police (see paragraphs 32-33 above), had been consistent. There is nothing in the case file to suggest, however, that the investigators or the prosecutor's office had paid any attention to this part of the applicant's complaint.

49. The Court also notes that the decisions by which the police decided to discontinue the investigation of the alleged ill-treatment failed to refer to the video recording which, according to the police officer, had been made during the applicant's interview (see paragraph 21 above). Besides, it does not appear that the investigation had addressed the inconsistencies in the statements of the police officers. In particular, under questioning as a witness, officer L.K. referred to the applicant's facial injuries which had not been mentioned in any of the medical records (see paragraph 21, section 5, above). Furthermore, P.K. when questioned as a witness in the investigation into the alleged ill-treatment, said that he had hit the applicant in the face at the time of his arrest but had not mentioned this in the police reports made on the day of the applicant's arrest (see paragraph 8, above). The Court finds it incompatible with the principles of an effective investigation that the

principal witnesses, the police officer L.K. (who at the time the alleged events took place had been in charge of questioning the applicant) was questioned as a witness six months after the investigation into the alleged ill-treatment had started (see paragraph 21, section 5 above). Moreover, the investigation had relied heavily on a forensic report (of an expert who had never actually examined the applicant in person) and had failed to question the medical personnel of the police department who had been in direct contact with the applicant. In the light of the above and taking note that the first findings in the investigation into the alleged ill-treatment were made more than two years after the initial complaint had been lodged, the Court cannot conclude that the investigation of ill-treatment was effective.

50. As mentioned above, the prosecutor's office, after having instigated the investigation into the alleged ill-treatment, remitted the complaint to the State Police from which it was then forwarded for investigation to the Rīga Main police station (Second Division) where the applicant had been detained during the alleged events. The above-mentioned situation is similar to the facts in *Jasinskis v. Latvia*, no. 45744/08, § 75, 21 December 2010, in which the Court concluded that the inquiry carried out by the same authority allegedly liable for the wrongdoing did not comply with the minimum standards of an independent investigation. As concerns the present case, the Court cannot but come to an identical conclusion. The Court also observes, drawing conclusions from the Government's replies to the CPT, that the first attempt to establish an institution to be entrusted with carrying out internal investigations within the police was in 2003 (see paragraph 34 above), though the *de facto* independence of the newly established office had been questioned by the CPT (see paragraph 35 above).

51. It remains to be examined whether the above-mentioned shortcomings could, to a certain extent, be counterbalanced by an effective supervision of the investigation (see, amongst other authorities, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 345, ECHR 2007-II). The Court reiterates its previous case-law in which it had established that detainees in Latvia should normally address complaints concerning physical ill-treatment while in detention to the prosecutor's office (see *Leja*, cited above, § 68). In the present case the supervision of the investigation was exercised by the Rīga Centre District Prosecutor's Office whose decisions were subject to review by the Prosecutor General (see paragraph 30 above).

52. Even accepting that the prosecutor's office was sufficiently independent in exercising its supervisory powers over the investigation of the alleged ill-treatment, the Court nevertheless observes that the following circumstances call into question the efficiency of the supervision exercised by the public prosecutors responsible for this particular case. Even though the criminal case concerning ill-treatment was initiated in September 1998, it was only following repeated complaints lodged by the applicant (who complained about the ineffectiveness of the investigation and, *inter alia*, the

investigator's hesitation to arrange visual identification of the perpetrators) that the prosecutor responsible decided to review the case and in October 1999 and September 2000 issued instructions with further steps to be taken by the investigators (see paragraphs 18-19 above). This implies that the prosecutors responsible executed their tasks only as a consequence of the applicant's complaints and not as one would expect them to in the course of a thorough investigation (see also *Assenov and Others,* cited above, § 117). In this connection the Court cannot disregard the fact that, several months after instigation of the criminal investigation, the prosecutor responsible was not aware of the body which was carrying out the investigation (see paragraph 16 above). The above-mentioned shortcomings cannot be remedied by the fact that the prosecutor had reprimanded the chief investigator concerning the arrangements for informing the applicant that the investigation into his alleged ill-treatment had been discontinued (see paragraph 23 above).

53. It appears from the Government's observations that on two occasions during the investigation the prosecutor responsible had issued instructions to the investigators (see paragraph 19 above). Since no copies of the documents attesting to the substance of the above instructions have been made available to the Court, it has been unable to assess the effectiveness of the supervision exercised by the Prosecutor General's Office (see also *Poltoratskiy*, cited above, § 126).

54. Observing the investigation procedure as a whole, the above-mentioned considerations are sufficient to enable the Court to conclude that the investigation of the applicant's allegations of ill-treatment was not conducted in compliance with the requirements enshrined by Article 3 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

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

57. The Government disagreed with the claim. They contended that the applicant had failed to demonstrate that he had incurred any non-pecuniary

damage. Alternatively, the Government submitted that if the Court were to find a violation of the procedural limb of Article 3, the finding of a violation would itself constitute sufficient just satisfaction. However, if the Court were to find a violation of the material and the procedural limbs of Article 3 of the Convention, the Government invited the Court to conclude that the applicant's claim was excessive and that any compensation had to be awarded on an equitable basis taking into account, *inter alia*, the existing case- law and socio-economic circumstances in Latvia.

58. 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 4,000 in compensation for non-pecuniary damage.

B. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 3 of the Convention admissible;

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

3. *Holds:*
   (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 4,000 (four 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;

4. *Dismisses* the remainder of the applicant's 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

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Kalaydjieva and De Gaetano is annexed to this judgment.

D.T.B.
T.L.E.

CONCURRING OPINION OF JUDGE KALAYDJIEVA JOINED BY JUDGE DE GAETANO

I fully share the opinion that the present case discloses a violation of Article 3 of the Convention. This 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 ... capable of leading to the identification and punishment of those responsible... If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance ..., would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity*" (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

While the Court has clarified that the positive obligation to investigate arguable claims of ill-treatment is not "*one of result, but of means*", I find it increasingly disturbing that the Court is regularly confronted not only with instances of failure to use all appropriate means to investigate, but also with the absence of reasonable and plausible explanations for what sometimes appears to be a deliberate reluctance to do so. Practices of delays and failure to investigate are reflected in cases (among others) where the alleged victim's timely access to independent medical experts to document injuries allegedly sustained was barred; where there was an unwarranted refusal by the investigating authorities to collect relevant evidence in a timely manner (for example, the failure to question potential independent eyewitnesses); or where the authorities preferred to withhold such evidence (for example, a video recording of an interrogation).

Where the domestic investigating authorities fail to take all relevant steps "*capable of establishing the circumstances and leading to the punishment of those responsible*", the Court is not only required yet again to act as a first-instance court in trying to establish the facts, but is at times also confronted with a new line of objections on the part of the Government seemingly relying on the very failure to investigate such alleged treatment. In some cases the national authorities have relied on the delayed, contaminated or self-limited scope of the investigation in arguing that, while such endless proceedings remain pending at domestic level, an examination under the substantive aspect of Article 3 by the Court might risk a premature interference with the rights of officers suspected of ill-treatment to be presumed innocent and to have the issue of their guilt determined in accordance with their right to a fair trial.

Inexplicable failures to examine claims of alleged ill-treatment not only have the effect of barring the victims' access to compensation proceedings

at national level, but also prevent public scrutiny of potential abuse. Under the current practice of the Court, they also inevitably result in limiting the Court's scrutiny to the "cheaper" procedural limb of Article 3. Far from resulting in the adoption of appropriate individual measures (such as the reopening of any contaminated investigations, or the bringing to account of those who carried them out in bad faith) and/or general measures to provide effective domestic remedies to prevent the recurrence of similar violations, the Court's limited scrutiny now risks allowing the positive procedural obligation of States Parties to turn, albeit unwittingly, into an instrument that is increasingly liable to serve the opposite purpose, namely that of ensuring impunity.

Is it not the time for the Court to either require reasonable and plausible explanations for failures to investigate or, in the absence of such explanations, to draw inferences as to whether the failures *de facto* pursued or achieved impunity?