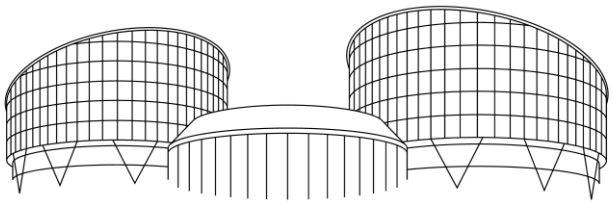

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER THIRD SECTION

CASE OF LIÇERES v. LATVIA

(Application no. 17/02)

JUDGMENT

STRASBOURG

28 June 2011

FINAL

28/11/2011

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

In the case of Liģeres v. Latvia,

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

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 17/02) 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 two Latvian nationals, Mrs Valija Liģere ("the first applicant") and her daughter Ms Inta Liģere ("the second applicant"), on 10 December 2001.

2. The applicants, who had been granted legal aid, were represented by Mr L. Liepa, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicants alleged, in particular, that the criminal proceedings in which they were joined as civil parties and the ensuing civil proceedings had been unreasonably long. They also complained that there had been no effective domestic remedies in that regard.

4. On 23 June 2006 the President of the former Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time.

5. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1). However, this case was retained by the former Third Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1957 and 1986 respectively and live in Rīga.

A. Events giving rise to the applicants' claim for damages

7. On 3 December 1994 the second applicant, who at the time was eight years old, was hit by a car driven under the influence of alcohol by P.S. ("the driver"), an employee of a limited liability company ("the company"). As a result the second applicant sustained serious bodily injuries: abdominal bruising with abdominal haemorrhage, rupture of the small and large intestine and liver, lung contusion, bruising and fracture of both thighs, and serious shock. She underwent numerous operations. Another person died as a result of the incident.

B. Criminal proceedings against the driver, which the company joined as a civil respondent

8. On 14 December 1994 criminal proceedings were opened in relation to the incident. On 4 January 1995 the first applicant was joined as a civil party (*civilprasītājs*) and on 20 June 1995 the company was joined as a civil respondent (*civilatbildētājs*) in those criminal proceedings. On 29 June 1995 a final charge was brought against the driver in relation to the incident.

9. On 19 July 1995 the first applicant, in her capacity as legal guardian of her minor daughter, the second applicant in the present case, submitted a civil claim in the amount of 5,968.13 Latvian lati (LVL) within the criminal proceedings to the Rīga City Centre District Court (*Rīgas Centra rajona tiesa*). Her civil claim consisted of the following items: LVL 63.90 for services in hospital, LVL 42.25 for rehabilitation in a sanatorium, LVL 472.50 for additional products, LVL 53 for damaged clothing, LVL 17.50 for damaged clothing during recovery, LVL 20 for consultations and visits to doctor, LVL 358.98 for transport and LVL 3,500 for disfigurement (*sakropļojums*).

10. On 30 September 1996 the driver's trial began at the Rīga City Centre District Court. During that hearing the court heard statements from the driver, the company managing director, an indirect witness and the first applicant, who maintained her claim for compensation. As three witnesses to the incident failed to appear the hearing was adjourned. The district court requested that local police forcibly convey (*piespiedu atvešana*) the witnesses to the next hearing.

11. The next hearing was held on 14 October 1996 and only one witness was present. On that date the district court adjourned the hearing at the parties' request, as counsel for the first applicant could not attend the hearing and had notified the court in advance.

12. The next hearing was held on 4 June 1997 and two of witnesses were forcibly conveyed, but counsel for the company was absent. The district court adjourned the hearing and noted in its decision that all witnesses not

attending should be forcibly conveyed, and that counsel for the company should attend.

13. On 3 December 1997, when the next hearing was held, the driver, counsel for the company and all the witnesses failed to appear.

14. The next hearing was held on 16 March 1998 and the driver and counsel for the company were absent. The district court adjourned the hearing once more and remanded the driver in custody. The first applicant was present during all the above-mentioned hearings. The second applicant was present during all the hearings except that which took place on 3 December 1997.

15. On 8 October 1998, following a hearing held on the same date in the absence of counsel for the company, the driver was convicted and sentenced to three years' imprisonment, suspended. The conviction was based on his confession, the testimony of the second applicant, her brother, one witness and forensic evidence. The district court did not examine the applicants' claim for damages. In that regard it ruled as follows:

> "[The first applicant] has submitted a civil claim in the amount of LVL 5,968.13, which consists of LVL 63.90 for services in hospital, LVL 42.25 for rehabilitation in a sanatorium, LVL 472.50 for additional products, LVL 53 for damaged clothing, LVL 17.50 for damaged clothing during recovery, LVL 20 for consultations and visits to a doctor, LVL 358.98 for transport and LVL 3,500 for disfigurement.
>
> As it is not possible to make a detailed calculation of the civil claim, this issue would have to be determined by the civil courts.
>
> Having evaluated the evidence the court, in accordance with section 307 of the Code of Criminal Procedure, leaves the civil claim unexamined."

16. On 23 October 1998, upon the applicants' appeal, the case was forwarded for examination to the Rīga Regional Court (*Rīgas apgabaltiesa*). In her appeal the first applicant contented that she had specified the incurred damage and had submitted documents to prove that. On 27 April 1999 the court adjourned the hearing due to the absence of counsel for the company. During this hearing the driver requested a lawyer, because the lawyer who had represented him up to that point was not present. On 18 April 2000 the court adjourned the hearing because the driver had requested that a lawyer be appointed. The first applicant was present at all these hearings.

17. Finally, on 9 May 2000 the regional court upheld the district court's judgment refusing to examine the applicants' claim for damages. The first applicant testified before the appellate court that she had specified all sums of the damage and that they were correct. She had given all the documents to her counsel, who had prepared the civil claim, which she had signed later. She admitted that a mistake in calculating the overall sum might have been made, but all the heads of damage were correct in themselves. The regional court noted the difference between the total amount of the civil claim as requested (LVL 5,968.13) and the actual sum of all damage claimed as

enumerated (LVL 4,528.13). No particular expenses had been specified for the difference between those sums (LVL 1,400). The Court noted the following:

> "For these sums no documents justifying damage have been submitted (such documents might not exist for damaged clothing and [as regards] compensation for disfigurement).
>
> It can be seen that the following documents are present in the case file:
>
> - signature and application for transport in the amount of LVL 250 (in the civil claim a sum of LVL 358.98 is mentioned);
>
> - extract certifying that [the first applicant] had bought the necessary material for the operation in the amount of LVL 13 (but a sum of LVL 63.90 is noted in the civil claim);
>
> - receipt for lawyer's services in the amounts of LVL 50 and LVL 40, but these expenses have not been noted in the civil claim at all."

For these reasons, the regional court concluded that it was not possible to make a detailed calculation of the civil claim, as rightly found by the first-instance court. Finally, the claim was left unexamined, with a note that the civil party had the opportunity to initiate proceedings before the civil courts. The regional court's decision took effect on 20 May 2000, as none of the parties had appealed on points of law.

C. The first set of civil proceedings against the company

18. On 9 May 2001 the first applicant, in her capacity as the second applicant's legal guardian, lodged a civil claim against the company with the Rīga Regional Court. They submitted that the driver had been unlawfully employed as he was not capable of performing such duties because of his state of health at the material time. They claimed LVL 33,000 for medical expenses and damages for the injuries, disfigurement and psychological suffering of the second applicant caused by the incident and its consequences. In order to assess the second applicant's state of health objectively, they requested that a medical and psychiatric expert report be commissioned and that a public prosecutor participate in the hearings. It was noted that the first applicant had attempted to reach a friendly settlement with the company for LVL 10,000, in vain. According to the applicants, in view of the company's and the (criminal) court's unwillingness to act in the interests of a child and in view of the protracted criminal proceedings, they had suffered additional pecuniary and non-pecuniary damage. No invoices or other documents that would prove the incurred expenses were added to this claim.

19. The Rīga Regional Court adjourned the hearing twice, first on 10 July 2001, due to the illness of counsel for the company, and second on 24 September 2001, to enable the judge to examine additional case materials that had been submitted by parties. On 5 October 2001 the applicants asked the court to request another expert report, on the second applicant's medical care. They also asked that other witnesses be called – an expert and the second applicant's doctor.

20. On 10 December 2001 the Rīga Regional Court examined the civil case. The applicants' representative testified before the regional court that they have not retained the evidence about medical expenses; they only had two invoices dating from August 2001 for LVL 13.85. The regional court upheld the applicants' claim in part and awarded them LVL 5,013.85, to be paid by the company. This amount consisted of LVL 13.85 for medical expenses and LVL 5,000 as compensation for bodily injuries.

21. The applicants appealed against that judgment and noted that the awarded sum was disproportionately low and maintained their civil claim in full. They did not complain about the lower court's refusal to commission expert reports or to summon two witnesses.

22. On 23 May 2002 the Civil Chamber of the Supreme Court (*Augstākās tiesas Civillietu tiesu palāta*) upheld the applicants' claim in part and awarded them LVL 10,013.85, to be paid by the company. The chamber increased the non-pecuniary compensation from LVL 5,000 to LVL 10,000 as the second applicant's injuries were not only bodily injuries but had amounted to disfigurement of her body. The applicants submitted an appeal on points of law against that judgment and required that the total amount of compensation be increased to at least LVL 20,000. An appeal on points of law was also submitted by the company.

23. On 9 August 2002 the Civil Department of the Senate of the Supreme Court (*Augstākās tiesas Senāta Civillietu departaments*) dismissed the applicants' appeal on points of law and on 13 September 2001 it dismissed the company's appeal on points of law.

D. Enforcement of the 23 May 2002 judgment

24. On 29 August 2002 the first applicant submitted a writ of execution to a bailiff. The writ contained an incorrect reference to the company's registration number. Therefore, on 29 October 2002 a new writ was issued. Two days later the first applicant submitted it to the bailiff.

25. On two subsequent occasions, a month apart, on 17 September and 17 October 2002, the Civil Chamber of the Supreme Court rejected the company's application to pay damages in instalments.

26. Between 26 November 2002 and 30 April 2003 the first applicant received the whole debt in four instalments.

E. Complaints about the enforcement of the 23 May 2002 judgment

27. Between 19 September and 17 December 2002 the first applicant contacted the bailiff on three occasions with a view to enquiring about the execution of the judgment. The bailiff responded to her letters and informed about progress achieved in the enforcement.

28. On 20 March 2003 the first applicant complained to a prosecutor that the company, contrary to the decisions of the Civil Chamber of the Supreme Court, were paying damages in instalments. The prosecutor replied that the company had not acted illegally, as it had paid the whole amount, LVL 10,013.85.

29. On 4 June 2003 a superior prosecutor reviewed her further complaint. He noted that in accordance with the Law on Civil Procedure a bailiff had to submit an application to initiate administrative or criminal proceedings if a debtor had provided false information. Having reviewed the case material, that prosecutor found that the company had paid almost every month since September 2002 and therefore they had not deliberately obstructed the enforcement procedure.

F. Second set of civil proceedings against the company

30. On 19 August 2003 the first applicant lodged another civil claim against the company with the Rīga City Ziemeļu District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*). She submitted that a private person had granted her a loan over a period of four years so that she could ensure proper care for her daughter, the second applicant in the present case. The loan had to be repaid by 31 December 2002. She did not have enough financial resources to do so and thus she was also liable to pay a contractual penalty for any delay. She claimed that the company was liable for her debt as it had not paid her damages immediately after they were awarded in the first set of civil proceedings against the company.

31. On 15 October 2003 the Rīga City Ziemeļu District Court found against the first applicant. That court refused her request for three witnesses to be summoned who could have confirmed the existence of the loan agreement, as it was not disputed by the parties. She appealed against that judgment. She required the appellate court to question three witnesses, whom she would invite herself.

32. On 13 April 2005 the Rīga Regional Court examined the case and upheld the lower court's judgment. During the hearing, the first applicant's representative did not request any witnesses to be summoned.

33. On 1 August 2005 the Supreme Court dismissed the first applicant's appeal on points of law.

G. Civil proceedings on child support payments

34. On 25 January 2002 the first applicant lodged a civil claim for child support payments against the mother of her ex-husband ("the respondent") for her three children, including the second applicant.

35. On 17 May 2002 the Rīga City Vidzeme District Court (*Rīgas pilsētas Vidzemes priekšpilsētas tiesa*), composed of a single judge, S.B., examined the case and decided in favour of the first applicant. The first applicant was present at the hearing. The respondent appealed against the judgment. Her appeal was transmitted to the Rīga Regional Court in a letter dated 23 July 2002, and the first applicant was invited to submit her observations in reply by 23 August 2002. On 2 October 2002 the Rīga Regional Court quashed the judgment and found in favour of the respondent; the first applicant was present at the hearing. On 19 February 2003 the Senate of the Supreme Court, on an appeal by the first applicant on points of law, upheld the judgment of the appellate court.

36. On 15 August 2002 the first applicant submitted an appeal to the Rīga City Vidzeme District Court against the 17 May 2002 judgment, together with a request for an extension of the time-limit for her appeal. Judge B.T. registered her appeal. Her request for an extension of the time-limit was not put before a judge for decision in timely fashion. On 25 October 2002 the first applicant complained to the Rīga City Vidzeme District Court about it. That court then sent her a letter dated 4 November 2002, to the effect that a hearing on the matter would take place on the next day and that she had been notified of it. On 5 November 2002 Judge B.T., holding a hearing at which the first applicant was present, decided not to allow her appeal against the 17 May 2002 judgement, on the ground that she had been present at the hearing on 17 May, when the judgment was delivered, read out in full and the appeals procedure against it explained.

37. On 14 November 2002 the first applicant submitted an ancillary complaint about the decision of 5 November 2002 and contended that at the hearing of 17 May 2002 Judge S.B. had read out only the operative part and had stated that the full judgment would be available twenty days later. She also noted that on 7 June 2002, when she had gone to the court, the full judgment had not yet been available.

38. On 18 December 2002 the Rīga Regional Court upheld the decision of 5 November 2002, on the ground that she had been present at the 17 May 2002 hearing, and that the procedure for appeal had been explained and the date determined when the full judgment would be available. It referred to the case file, which contained the information that the judgment had been sent to the other party on 22 May 2002 and thus rejected the first applicant's argument that on 7 June 2002 the full judgment had not yet been ready. The court noted that there were no grounds to extend the time-limit, even assuming that on 7 June 2002 the full judgment had not yet been ready, as

she had not inquired about it thereafter and had waited to receive it by ordinary mail on 26 July 2002.

II. RELEVANT DOMESTIC LAW

A. Code of Criminal Procedure

39. According to section 101 of the former Code of Criminal Procedure (*Latvijas Krimināl*procesa kodekss), in force until 1 October 2005, a civil claim could be submitted by an individual who had suffered damage as a result of crime. A civil claim could be submitted when criminal proceedings had been opened, during the preliminary investigation and to the court prior to the court's investigation. It could be brought against an accused or a person materially liable for the acts of the accused.

40. Section 307 read as follows:

> "Upon delivery of a convicting judgment the court shall satisfy the civil claim fully or in part, or dismiss it, depending on whether or not the basis and the amount of the civil claim have been proved.
>
> In exceptional circumstances, when it is not possible to perform a detailed calculation of the civil claim without adjourning the proceedings or without additional documents, the court in a convicting judgment may recognise the victim's right to receive redress for his/her claim and forward the claim for determination of its amount in civil proceedings."

41. Under section 308, paragraph 2 if a civil claim in the criminal proceedings had been left unexamined, the victim had a right to lodge the claim in civil proceedings.

42. Pursuant to section 241, adjudication of a case in a hearing was to be commenced within twenty days (in exceptional cases within a month) of the date the case is received at the court. A case could only be adjudicated in the absence of the accused if he was not in the country's territory and was evading proceedings (section 247). Finally, under section 253 a case could be adjudicated in the absence of a civil respondent.

B. Law of Civil Procedure

43. According to section 7, paragraph 1 of the Law of Civil Procedure (*Civilprocesa likums*), in force since 1 March 1999, claims for pecuniary or non-pecuniary damages in criminal matters can be brought before civil courts if they have not been submitted or adjudicated within criminal proceedings. Under section 96, paragraph 3 a judgment adopted in criminal proceedings is binding in civil proceedings to the extent that it concerns the crime perpetrated and the liability of the perpetrator.

44. Pursuant to section 204, a judgment is executed upon its entry into force, except in cases where it is to be executed without delay. Under section 205, paragraph 1, part 4 the court can, at the request of one of the parties, order that a judgment be executed without delay in cases concerning compensation for disfigurement or other injury to health. Such a decision must be expressly contained in the writ of execution (section 538). In accordance with section 541, the court draws up a writ of execution after the judgment's entry into force; in cases of immediate execution this must be done immediately after delivery of the judgment. It further provides that a court issues the writ of execution to the creditor upon request. Under section 556 the enforcement procedure is commenced following a ten-day period for voluntary execution.

45. Under section 632, paragraph 1, a bailiff's actions concerning enforcement can be appealed against by submitting an application to a district (city) court within ten days of the impugned actions.

46. With regard to trial, section 10 provides that parties exercise their procedural rights in adversarial proceedings, including by providing explanations, submitting evidence, and questioning witnesses and experts. Under the rules of evidence contained in section 94 the court allows only relevant evidence. Under section 199 a judge delivers the judgement in a courtroom, reads it out and explains its contents, the procedure and the time-limits for appeal. Under section 208 a copy of the judgment is sent to the absent party.

47. With regard to appellate proceedings, under section 415 an appeal must be submitted to the first-instance court within twenty days of the delivery of its judgment. After checking that the appeal complies with all requirements, a judge of the first-instance court informs the other party without delay and sets a time-limit for their observations in reply. After expiry of the time-limit for appeal, the judge sends the case materials, together with any appeal, to the appellate court without delay (section 422). Under sections 423-242 the other party has a right to submit their observations or counter-appeal (*pretapelācijas sūdzība*) directly to the appellate court within thirty days of receiving an appeal submitted by the first party.

C. Law on Bailiffs

48. Under section 15 of the Law on Bailiffs (*Tiesu izpildītāju likums*), in force since 1 January 2003, sworn bailiffs bear disciplinary, civil and criminal liability for their activities.

49. In particular, sworn bailiffs are under an obligation to insure themselves against possible risk of loss related to their professional activities (section 33). Any damage caused by a sworn bailiff's activities performed while fulfilling his official duties, irrespective of disciplinary or

criminal liability, should be covered by an insurance policy (section 39). Claims for losses shall be brought to the regional court under whose supervision the sworn bailiff is.

50. With regard to disciplinary liability, sections 53 and 54 provide that the Latvian Council of Sworn Bailiffs and the Minister of Justice can initiate disciplinary proceedings against a bailiff. They can do so, *inter alia*, upon a complaint received from an individual.

D. Other relevant laws

51. The relevant sections of the Civil Law, which was adopted on 28 January 1937, as in force at the material time, read as follows:

Section 1635

"Every wrongful act as such shall give the person who has suffered damage the right to claim compensation from the wrongdoer, in so far as he or she may be held culpable of such an act.

Note: The term act is used here within the widest meaning, including not only acts, but also failure to act, that is, inaction."

Section 1775

"All damage that is not incidental shall be compensated for."

Section 1779

"Everyone shall have a duty to compensate for damage he or she has caused through his or her acts or failure to act."

52. Under section 1 of the Law on Disciplinary Responsibility of Judges a judge may be subject, *inter alia*, to disciplinary responsibility for intentional violation of the law during the adjudication of a case, failure to perform his or her duties of employment, dishonourable actions and administrative violations.

53. In accordance with section 13, paragraphs 5 and 6 of the Law on the Judiciary a judge shall not be financially liable for damage incurred by a person who participates in a case, as a result of an unlawful or unfounded judgment of a court. In cases provided for by law, damages shall be paid by the State. A person who considers that a judgment of a court is unlawful or unfounded may appeal against it in accordance with the procedures provided by law, but may not make a claim in court against the judge who has adjudicated the matter.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF LENGTH OF PROCEEDINGS

54. The applicants complained under Article 6 § 1 of the Convention that the domestic proceedings where their damage claim was adjudicated was unreasonably long. Article 6 § 1 in its relevant part provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal ..."

A. Admissibility

55. The Government submitted observations in relation to the criminal proceedings against the driver and the first set of civil proceedings against the company separately. They argued that the complaint about the criminal proceedings, which were terminated on 9 May 2000 when the Rīga Regional Court delivered its judgment, was submitted outside the six-month time-limit. In the alternative, they argued that this complaint was manifestly ill-founded. The complaint about the civil proceedings, they maintained, was also manifestly ill-founded.

56. The applicants disagreed. They maintained that the criminal proceedings against the driver and the first set of civil proceedings against the company were to be regarded as one. They argued that outcome of the criminal proceedings was decisive for their civil claim on two accounts. Firstly, the applicants could not submit their claim in the civil courts before the trial in the criminal court ended, as there was a possibility that the criminal court (the Rīga Regional Court) would satisfy their civil claim. Secondly, they considered that the conviction of a perpetrator was a prerequisite for a successful claim in the civil courts. Accordingly, their complaint had been introduced in time.

57. The Court reiterates that the right to institute criminal proceedings and to secure the conviction of a third party is not a right which is included among the rights and freedoms guaranteed by the Convention (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I, and, more recently, *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 24, ECHR 2009-...). Article 6 § 1 may nevertheless apply to those proceedings where the civil limb remains so closely linked to the criminal limb that the outcome of the criminal proceedings may be decisive for civil claims (see, for example, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 62, ECHR 2002-I, and *Codarcea v. Romania*, no. 31675/04, § 82, 2 June 2009).

58. Turning to the facts of the present case, the Court notes at the outset that the applicants lodged their civil claim against the company in the course of criminal proceedings and sought compensation for injuries inflicted on the second applicant, which was the subject of the criminal trial. When the criminal court left their claim unexamined, a decision, which under domestic law could be adopted only in exceptional circumstances (see paragraph 40 above), it advised the applicants to address their claim to the civil courts. The Court is thus satisfied that the criminal proceedings were decisive for the applicants' civil right to claim compensation (contrast *Plotiņa v. Latvia* (dec.), no. 16825/02, 3 June 2008; and *Blūmberga v. Latvia*, no. 70930/01, § 68, 14 October 2008) and accordingly they fall within the ambit of Article 6 of the Convention. Both sets of proceedings were closely linked and the Court therefore considers that it would be inappropriate to separate them and to assess their length in isolation (see *Torri v. Italy*, 1 July 1997, §§ 20 and 21, *Reports of Judgments and Decisions* 1997-IV).

59. In view of the above considerations, the Court considers that this complaint was introduced within the six-month time-limit. It follows that the Government's objection in this regard must be rejected.

60. The Court considers that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The period to be taken into consideration

61. The Government argued that the length of the criminal and civil proceedings had to be calculated separately. In any event, as regards the criminal proceedings, the relevant period began on 27 June 1997, when the Convention entered into force in respect of Latvia.

62. The applicants maintained that both proceedings were to be regarded as one and that a period of five years, one month and thirteen days came within the Court's temporal jurisdiction.

63. The Court considers that the period to be taken into consideration did not begin when the first and second applicants were joined in the criminal proceedings, but only on 27 June 1997, when the Convention entered into force in respect of Latvia. However, in assessing the reasonableness of the time which had elapsed after that date, account must be taken of the state of proceedings at the time (see *Lavents v. Latvia*, no. 58442/00, § 86, 28 November 2002). On 27 June 1997 the proceedings had been already pending for two years, six months and thirteen days.

64. The period in question ended on 9 August 2002, when a final decision in respect to the applicants was taken in the civil proceedings.

65. Even though the proceedings were opened on 14 December 1994, the Court will take into consideration the period between 27 June 1997 and 9 August 2002, excluding the period from 20 May 2000 to 9 May 2001, when no proceedings were pending (see *Codarcea v. Romania*, cited above, § 86, and *Koziy v. Ukraine*, no. 10426/02, § 28, 18 June 2009). Accordingly, the period to be taken into consideration is four years, one month and twenty-five days in five instances before the civil and criminal courts.

2. Reasonableness of the length of proceedings

66. The Government submitted that the hearings before the Rīga City Centre District Court had been adjourned because on one occasion counsel for the applicants did not attend and on another the second applicant was absent. Three more hearings were adjourned due to the absence of the driver and several witnesses. They further argued that the applicants had protracted the overall length of proceedings by submitting an appeal against the first-instance court's judgment in the criminal proceedings. Finally, they considered that the hearings before the first-instance civil court had been scheduled at appropriate intervals.

67. The applicants disagreed. They considered that their use of the right to appeal could not be held against them.

68. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Estrikh v. Latvia*, no. 73819/01, § 137, 18 January 2007).

69. The Court considers that the case was not complex. It involved a traffic incident and ensuing civil liability. However, the Court considers that regard must be had to the fact that a claim for damages by a civil party is not the only issue to be determined in the criminal proceedings, but is accessory to the issue of criminal liability, which must be determined in the same set of proceedings.

70. As regards the conduct of the applicants, the Court first notes that it does not share the Government's view that that the applicants should be held responsible because they had submitted an appeal (see *Kolomiyets v. Russia*, no. 76835/01, § 29, 22 February 2007). On the other hand, the Court notes that the applicants did not provide sufficient documentary evidence in support of their civil claim and that for that reason the domestic criminal courts decided to leave their claim unexamined (see paragraph 17 above). In this respect, the Court recalls that it is not its role to assess the facts or evidence which have led a national court to adopt one decision, rather than another, unless there is clear evidence of arbitrariness (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 89, ECHR 2007-II),

and notes that it does not discern in the present case any arbitrariness in the decision to leave the civil claim unexamined within the criminal proceedings. In fact, the domestic judicial system provided a favourable possibility for the applicants to submit and substantiate their claim before the civil courts. Finally, the Court notes that the applicants lodged their claim with the civil courts one year after the completion of the criminal proceedings. Even if the Court does not consider this period as a part of the overall length of proceedings in the present case (see paragraph 65 above), it nevertheless considers that this period contributed to the protracted determination of the applicants' civil claim.

71. As to the conduct of the domestic authorities, the Court observes that there were certain periods of inactivity. The Court shall therefore ascertain whether they were justified, taking into account the particular circumstances of the case and, in particular, in view of what was at stake for the applicants (see paragraph 75 below).

72. As regards the criminal trial before the Rīga City Centre District Court after 27 June 1997, when the Convention entered into force in respect of Latvia, three hearings were held in regular intervals in less than one year. Taking into account that the hearings were adjourned due to the absence of the driver, witnesses and counsel for the company, and that the district court took appropriate measures to avert further protraction of the trial, the Court does not consider this period excessive.

73. Turning to the appeal proceedings before the Rīga Regional Court, the Court observes that three hearings were held. Even though the one-year gap between those two hearings is regrettable, the Court finds that a period of one year, eight months and sixteen days for an appellate court to adjudicate a case does not contravene the requirement of timely examination of the case.

74. As regards the proceedings before the civil courts, the Court finds no delays attributable to the authorities. The civil proceedings were completed in less than one and a half years at three levels of jurisdiction. The Court is therefore satisfied that the domestic courts paid particular regard to the importance of the issues at stake during all stages of those proceedings.

75. As to what was at stake for the applicants, the Court notes that the proceedings concerned a very important issue, namely compensation for serious injuries in a road incident sustained by the second applicant, who at the time was eight years old. The second applicant underwent several operations and received medical treatment, the costs of which the first applicant could not fully cover herself and thereby she was obliged to obtain a loan. However, the Court has already found that the applicants themselves were partly responsible for the delays caused, in particular as regards the fact that they did not submit sufficient documentary evidence within the criminal proceedings, thereby causing their civil claim to be left unexamined. The Court has also found that the applicants waited one full

year to lodge their claim with the civil courts (see paragraph 70 above), a protraction which could have been avoided, given that a judgment in their favour would have certainly remedied, at least in part, their difficult financial situation caused by the incident.

76. In the light of the foregoing, the Court finds that the "reasonable time" requirement laid down in Article 6 § 1 of the Convention has been complied with in the present case. There has therefore been no breach of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION CONCERNING THE LACK OF EFFECTIVE DOMESTIC REMEDY FOR EXCESSIVE LENGTH OF PROCEEDINGS

77. The applicants, invoking Article 13 of Convention, complained that they did not have an effective domestic remedy to complain about the length of domestic proceedings adjudication upon their damage claim.

Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Admissibility

78. The Government submitted that there existed effective domestic remedies. They relied, first of all, on sections 1635, 1775 and 1779 of the Civil Law to argue that the applicants could claim compensation for infringement of their rights from the responsible judges. Secondly, they claimed that under section 1 of the Law on Disciplinary Responsibility of Judges the applicants could have invoked disciplinary measures against judges who had failed to ensure compliance with the applicants' rights contained in Article 6 § 1 of the Convention. In support of their arguments the Government relied, in particular, on the letter from the Ministry of Justice of the Republic of Latvia, in which it was argued that these remedies were effective.

79. The applicants disagreed. They relied on section 13, paragraphs 5 and 6 of the Law on the Judiciary to argue that under Latvian law a judge is not financially liable for damage incurred by the parties. They further considered that disciplinary measures against a judge are not an effective remedy in their case.

80. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms, in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to

require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *McFarlane v. Ireland* [GC], no. 31333/06, § 108, 10 September 2010).

81. In view of the above finding (see paragraph 76 above) the Court concludes that the applicants did not have an arguable claim to a remedy for the Article 6 § 1 complaint under Article 13 of the Convention.

82. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention

III. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION ON ACCOUNT OF DELAYED ENFORCEMENT OF A JUDGMENT AND LACK OF EFFECTIVE DOMESTIC REMEDY

83. The applicants complained that there had been a two-fold violation of Article 6 § 1 of the Convention. Firstly, in that the enforcement of the 23 May 2002 judgment had been unreasonably long. Secondly, in that the compensation had been paid in instalments, contrary to what had been adjudicated. The applicants also alleged that contrary to Article 13 of the Convention they did not have effective remedies available at the domestic level in those respects.

Admissibility

1. Delayed enforcement of the judgment

84. The Government submitted that this complaint should be dismissed as manifestly ill-founded. They submitted that the bailiffs' office had commenced enforcement proceedings without any delay after the writ of execution against a private company had been submitted to them.

85. The applicants disagreed.

86. The Court notes that in the present case less than eight months passed between the date when 23 May 2002 judgment took effect and 30 April 2003, when the applicants received the last payment following the enforcement procedure. The Court notes that a bailiff, who is a State officer responsible for the enforcement, commenced the procedure without undue delay after receiving a writ of execution from the first applicant on 29 August 2002. Throughout the enforcement procedure, the bailiff kept the first applicant informed about the activities within those proceedings (see paragraph 27 above).

87. In the circumstances of the case, taking into account that the enforcement proceedings were opened and completed within less than one year, the Court considers that the period of enforcement in the present case complies with the requirements of the Convention.

88. It follows that the first part of this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

89. Given the finding in the above paragraph, the Court considers that the applicants did not have an arguable claim, and accordingly their complaint under Article 13 in this regard is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Payment of compensation in instalments

90. The Government argued that the applicants' reference to section 205 of the Civil Procedure Law was not relevant, as it provided an option for a party to request that a judgment be executed without delay. As the applicants had not requested it, the 23 May 2002 judgment did not contain such an obligation. In as far as the applicants' complaint under Article 13 of the Convention was concerned the Government submitted that the domestic law provided for effective remedies. They referred to section 632 of the Civil Procedure Law (a civil remedy) and sections 15 (civil, criminal and disciplinary remedies), 53 and 54 (a disciplinary remedy) of the Law on Bailiffs.

91. The applicants disagreed.

92. The Court agrees with the Government's assertion that the applicants did not request that the domestic court rule that the judgment should be executed without delay. Therefore, a writ of execution did not contain such an indication.

93. However, the Court notes that the Supreme Court on two occasions, on 17 September and 17 October 2002, explicitly refused the debtor company's request for payment by instalments to be authorised. Therefore, the Court has to determine if any issues arise under the Convention in such circumstances. The Court will now consider this issue together with the applicants' complaint under Article 13 of the Convention in that regard.

94. The Court can accept the applicants' dissatisfaction with the fact that the award was paid in instalments rather than as a single payment. However, the Court notes that the applicants could have used the domestic remedies if they considered that payment in instalments violated their rights or inflicted additional damage on them.

95. The Court considers that the applicants had at least two avenues to avail themselves of if they considered their rights violated or if, as a result of the bailiff's actions in the enforcement proceedings, they had incurred additional damages. First of all, the applicants could have complained under section 632 of the Civil Procedure Law to a domestic civil court about the bailiff's activities or omissions that concerned the execution of judgment. Secondly, the Court notes that bailiffs in Latvia are obliged under a compulsory insurance scheme to insure their activities, and irrespective of the disciplinary or criminal liability, damage caused by them is to be

covered under the insurance policy under sections 33 and 39 of the Law on Bailiffs. Thus, the applicants could have applied to a competent domestic civil court to recover their losses, if they had indeed suffered any at the hands of the bailiff. Finally, the Court need not rule on the third remedy proposed by the Government, namely disciplinary proceedings against a bailiff, since it has already established that the applicants did not exhaust either the first or the second remedy proposed by the Government.

96. It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF FAIRNESS IN OTHER CIVIL PROCEEDINGS

97. The first applicant further complained that the second set of civil proceedings against the company was unfair. She alleged that she did not have a reasonable opportunity to present her case, including her evidence, when the Rīga City Ziemeļu District Court on 15 October 2003 and the Rīga Regional Court on 13 April 2005 refused to summon witnesses. She relied on Article 6 § 1 of the Convention in that regard.

98. The first applicant also complained about the civil proceedings on child support payments in that her appeal against the judgment of 17 May 2002 was never heard on merits. She further complained that it was Judge B.T. who had refused to extend the time-limit for her appeal. She relied on Article 6 § 1 of the Convention in that regard.

Admissibility

1. As concerns the second set of civil proceedings against the company

99. The Government considered the complaint manifestly ill-founded. Concerning the Rīga City Ziemeļu District Court hearing on 15 October 2003 they submitted that the witnesses would only testify about existence of a loan agreement, a matter which was not disputed. Concerning the Rīga Regional Court hearings on 13 April 2005 they contested the first applicant's argument that the witnesses were not summoned. The Government noted that in her appeal the first applicant stated that she would invite the witnesses herself to the appellate hearings. Furthermore, during the hearings her representative did not request the court to summon any witnesses. Finally, the first applicant did not include the issue of witnesses in her appeal on points of law.

100. The first applicant did not provide any further submissions in this regard.

101. The Court notes that even though the first applicant applied to the appellate court for additional witnesses to be examined, which the first-instance court had refused to do, she did not pursue her application throughout the appellate proceedings. At first, in her appeal she noted that she would invite the witnesses herself. The Court finds that in the context of civil proceedings this fact in itself did not have the effect of putting the first applicant at a substantial disadvantage *vis-à-vis* the other party. Further, when the appellate hearings took place the witnesses were not present. During the hearing her representative did not apply to have any witnesses questioned or summoned.

102. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

2. As concerns the civil proceedings on child support payments

103. The Government explained that under domestic law the judgment of 17 May 2002 was sent only to the respondent, as she was absent on the date of its delivery. As the first applicant was present during the delivery hearing, she did not receive the judgment's copy by post. Accordingly, the first applicant was given an equal opportunity to present her case upon appeal. They agreed that her application for renewal of the time-limit was examined with a delay but that it was not significant. Finally, they pointed out that under domestic law the first applicant was entitled to submit observations or a counter-appeal (see paragraph 47 above).

104. The first applicant did not provide any further submissions in this regard.

105. The Court notes that the first applicant was present during the hearing of 17 May 2002, when the judgment was delivered, read out and the appeals procedure was explained to her. Irrespective of whether or not the judgment or its operative part was read out during the hearing of 17 May 2002, the first applicant was aware from that date that her claim was satisfied in the amount of LVL 10 per month. Thus, she was not put at a disadvantage *vis-à-vis* the respondent, because she was aware of the contents of the judgment. She also did not exercise her right to submit observations in reply to the respondent's appeal directly to the appellate court or a counter-appeal to contest the amount of the allowance. Therefore, it cannot be said that domestic authorities did not offer her a reasonable opportunity to present the case. The Court concludes that the first applicant could present her case under the same conditions as the respondent party.

106. In so far as her complaint relates to the fact that it was Judge B.T. who examined her application to extend the time-limit for appeal, the Court does not find any indication that Judge B.T. lacked impartiality when ruling on this issue.

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

V. OTHER COMPLAINTS

108. The applicants further complained under different Articles of the Convention about various violations of their Convention rights.

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

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the applicants' complaint under Article 6 § 1 of the Convention concerning the length of proceedings admissible;

2. *Declares* unanimously the remainder of the application inadmissible;

3. *Holds* by six votes to one that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 28 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President

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

J.C.M.
M.T.

DISSENTING OPINION OF JUDGE ZIEMELE

1. I voted against the finding that there had been no violation in this case. I can accept that in general a period of just over four years in criminal and civil proceedings falling within the *ratione temporis* jurisdiction of the Court is not excessive and that it was about time that the Court became more pragmatic in its assessment of the length of domestic proceedings compared to its previous case-law.

2. It is true, however, that the proceedings in the applicants' case started as far back as 1994, that is, before Latvia ratified the Convention, and thus took almost seven years. The Court stated in the case of *Lavents v. Latvia* (no. 58442/00, 28 November 2002) that it will keep in mind in such cases the time a person has already spent in court proceedings before the entry into force of the Convention in the country concerned. This has to be balanced against the particular circumstances of the case such as the fact that, at the time of the car accident, the second applicant was only eight years old and that the injuries were such as to require extensive medical treatment and thus financial resources which the mother did not have. In the case of *Gheorghe and Maria Mihaela Dumitrescu v. Romania* (no. 6373/03, 29 July 2008), the Court found that the length of proceedings for damages lasting for just over three years, in circumstance where the car accident led to paralysis of the lower limbs of a five-year-old girl, was in breach of Article 6.

3. In the case in issue the majority considered that since there were two sets of proceedings and the applicants waited for one year before lodging their civil claim for damages and, in fact, seemingly failed to submit their civil claim in the criminal proceedings in the proper manner, a considerable portion of responsibility for the length of the proceedings should be imputed to them. I believe that the civil claim that the applicants submitted within the criminal proceedings was of sufficient quality (see paragraph 17 of the judgment). The only difficulty was that the total amount of the claim did not correspond to the heads of damages claimed. In this respect the applicants readily admitted a possible mistake in the final calculation. It is therefore perplexing that the criminal courts left the claim unexamined, given the urgency of the matter in view of the child's state of health. I cannot agree with the majority that this fact, when compared to the many delays in the proceedings caused by the absences of the respondent and witnesses (see paragraphs 13, 14 and 16) should weigh against the applicants. Furthermore, there is nothing unusual in the fact that it took the applicants one year to lodge a civil claim (see paragraph 70), given the circumstances in which they found themselves after the car accident. The applicant, who is not a lawyer, had to attend to the needs of her daughter and mount a case in the civil courts. That is no simple matter in practice. I also note that in the civil proceedings the hearing finally took place on 10 December 2001 whereas

the claim was lodged on 9 May 2001 (see paragraphs 19-20). In sum, I do not agree that the applicants' behaviour was such as to outweigh the various delays caused in this case before the national courts, taking into consideration the interests at stake, namely, compensation for physical injury following a car accident involving the second applicant, an eight-year-old child. I do not think that this was a good case in which to start pursuing a more pragmatic judicial policy as regards Article 6 § 1 complaints regarding the length of proceedings, bearing in mind that the application was lodged with the Court in 2002.

4. Finally, a point on the Article 13 complaint raised by the applicants. They are right. At the relevant time there certainly existed no remedy in the Latvian legal system enabling individuals faced with delays in different types of court proceedings to speed up those proceedings. Today, there is some remedy in criminal proceedings, as provided for by section 14 of the Criminal Procedure Act 2005. However, this will most likely not be particularly relevant or even helpful to the victims of a crime. It is therefore, and despite the outcome in this case, of great importance that the respondent State review the state of the legal mechanisms available with a view to ensuring compliance with the Article 13 requirements as articulated by the Court in *Kudła v. Poland* ([GC], no. 30210/96, ECHR 2000-XI).