FOURTH SECTION

**CASE OF BĒRZIŅŠ v. LATVIA**

*(Application no. 25147/07)*

JUDGMENT

STRASBOURG

25 February 2014

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Bērziņš v. Latvia,

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

 Päivi Hirvelä, *President,* Ineta Ziemele, George Nicolaou, Nona Tsotsoria, Paul Mahoney, Krzysztof Wojtyczek, Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 4 February 2014,

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

PROCEDURE

1.  The case originated in an application (no. 25147/07) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Latvian national, Mr Kaspars Bērziņš (“the applicant”), on 31 May 2007.

2.  The applicant, who had been granted legal aid, was represented by Mr A. Zvejsalnieks, a lawyer practising in Riga. The Latvian Government (“the Government”) were represented by their Agent at the time, Ms I. Reine, and subsequently by Ms K. Līce.

3.  The applicant alleged that he had been ill-treated by police officers on 26 March 2004 and that there had been no effective investigation in that regard.

4.  On 30 November 2010 that complaint was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1976 and lives in Riga.

A.  The applicant's arrest

6.  The Department for the Combat of Organised Crime (*Organizētās noziedzības apkarošanas pārvalde*) received information regarding the applicant's alleged involvement in the sale of drugs. The department initiated a covert investigative measure, namely a test purchase of drugs. This measure was carried out on 24 and 26 March 2004.

7.  After the test purchase on 26 March 2004 a police patrol unit working with officers from the Department for the Combat of Organised Crime stopped a vehicle being driven by S.I. in which the applicant was a passenger, at about 10 p.m. near Riga city centre. The applicant was apprehended and taken to State Police premises.

8.  The applicant submitted that he had been repeatedly hit on the head, hit several times on the back, knocked down on to the pavement and pushed, which had resulted in bodily injuries. He had not offered any resistance.

9.  In the Government's version of events V.V., a police officer, opened the front passenger door and pulled the applicant out of the vehicle by his clothing. The applicant fell on to the edge of the pavement. He was then placed face down on the pavement and handcuffed.

B.  The applicant's state of health

10.  The Government noted that while on State Police premises the applicant had complained of chest pain, saying he had heart disease.

11.  At around 1.30 a.m. the applicant was transported from the premises of the State Police by the emergency medical service to the hospital. Head of the emergency medical service unit made an entry in form no. 573, as follows: “Abdominal contusion (*sasitums*). Acute gastritis? Facial contusion with skin abrasions (*nobrāzumi*).”

12.  The applicant was admitted to Riga no. 1 Hospital at 1.33 a.m. The applicant's medical record indicated the following diagnosis on admission: “Head, thorax and abdominal contusion.”

13.  The entry made following the applicant's examination by a surgeon at 1.35 a.m. indicated the same diagnosis and the applicant's complaint: “The patient was beaten up during the arrest approximately one and a half hours ago.”

14.  Further, at 2.20 a.m. a neurosurgeon recorded that the applicant had an eyelid haematoma around his left eye. The doctor also noted that the applicant had said that during his arrest he had fallen and hit his head in the area of the right eyebrow.

15.  At 2.55 a.m. the applicant was referred to be tested for narcotic and psychotropic substances. The applicant was found not to be under the influence of alcohol, narcotic drugs or psychotropic substances.

16.  On the same day, between 4.35 a.m. and 5.00 a.m., I.K., a chief specialist from the Department for the Combat of Organised Crime questioned the applicant as a suspect. The applicant indicated that he wished to make a statement in the presence of a lawyer.

17.  At 5.51 a.m. the applicant was transferred to a temporary detention facility, where he stayed until 30 March 2004, during which time he did not seek any medical assistance.

18.  On 29 March 2004 between 1.30 p.m. and 1.55 p.m. I.K. questioned the applicant in the presence of a lawyer. The applicant made a statement, the record of the relevant part of which is as follows:

“... While being arrested on 26 March 2004 [the applicant] was pulled out of the vehicle, a jacket was pulled over [his] head and [he] was pushed on to the ground. [He] then received one to three blows to the head and one blow to the abdomen. [The applicant] does not recall the precise number of blows he received. [He] did not lose consciousness. The blows were [inflicted] with a hard, blunt object.”

19.  In the context of the interrogation of the applicant described above, the Government put to the Court that no complaints or requests had been raised by the applicant or his lawyer. Notwithstanding, a forensic examination of the applicant had been arranged.

20.  Accordingly, on 29 March 2004 I.K. ordered an expert report to ascertain what injuries had been sustained by the applicant, in view of the applicant's statement that while being arrested he had been kicked on the body and head. The order stated that it had been issued as part of a criminal investigation of unauthorised acquisition, possession and sale of psychotropic substances.

21.  On the same day an expert examined the applicant. In the expert's report the following information the applicant had provided was recorded:

“On 26 March 2004 during the arrest police officers in uniforms placed a jacket over [his] head, hit [him] on the head [and] abdomen with something [and he] fell down. It is impossible to tell with accuracy whether the abrasions on [his] legs were caused by the fall or a blow. [He] had nausea [but] did not vomit. [He] did not lose consciousness ...”

The expert's report of 29 March 2004 described the applicant's condition as follows:

“A haematoma 4 cm x 2.5 cm on the upper eyelid of the left eye ... an abrasion 0.2 cm x 0.1 cm in the middle area of the right cheek ... no visible injuries on the body found ... seven abrasions from 0.2 cm x 0.2 cm to 1.5 cm x 0.8 cm on the front surface of the left knee joint and on the front surface of the left lower leg ... a haematoma 5 cm x 4 cm on the front surface of the left lower leg.”

22.  On 29 March 2004 the expert recorded in her report that the applicant's medical records should be requested from Riga no. 1 Hospital. On 30 March 2004 the Department for the Combat of Organised Crime issued a request to Riga no. 1 Hospital for the applicant's medical records.

23.  On 2 April 2004 the expert added in the same report her conclusions based on the applicant's examination and the data contained in his medical documentation. In particular:

“[The applicant] has the following injuries – a contusion on the head with subdermal haematoma and skin abrasion, and a contusion on the left leg with subdermal haematoma and skin abrasions.

These injuries could have been caused by hard, blunt objects.

The possibility cannot be ruled out that the injuries were caused in the circumstances indicated in the decision and by [the applicant], and on 26 March 2004.

The injuries ... are light injuries, which do not cause short-term health impairment for a period of time of more than six days.

The diagnosis of 'head, thorax and abdominal contusion' cannot be taken into account in the assessment of the gravity of the injuries, because it has not been affirmed by impartial clinical data, in-patient (*stacionārā*) inspection and examination (visible injuries are not described in the medical history and were not found in the course of the forensic examination).”

24.  The applicant stated in his appeal of 2 April 2004 to the Riga Regional Court (*Rīgas apgabaltiesa*) against his pre-trial detention that physical force had been applied to him during his arrest, following which he had requested medical assistance at Riga no. 1 Hospital.

25.  On 13 April 2004 officer A.Ž. gave a statement in the criminal investigation regarding the test purchase of drugs carried out on 24 and 26 March 2004, and stated that the applicant had been apprehended on 26 March 2004. A.Ž. gave evidence that the applicant had not been apprehended immediately after the purchase, because it was necessary to ascertain whether the applicant had been working with anyone else.

C.  Court proceedings and conviction

26.  On 30 April 2004 the Riga Regional Court rejected the applicant's appeal against the pre-trial detention and decided to keep the applicant in custody. The Regional Court in the decision referred to the applicant's argument contained in his appeal, including the following:

“... police employees beat up [the applicant] when they arrested him; as a result he needed hospital treatment ...

In court [the applicant] and his lawyer ... maintained the appeal ...”

27.  On 9 May 2005 the Vidzeme Regional Court (*Vidzemes apgabaltiesa*) found the applicant guilty of unauthorised acquisition, possession and transport of narcotic and psychotropic substances on a large scale, with intent to sell. He was sentenced to eight years and six months' imprisonment, as an aggregated term, with confiscation of property and police control for two years.

28.  On 16 December 2006 the Criminal Cases Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*) upheld the applicant's conviction on appeal. Further, on 19 February 2007 the Senate of the Supreme Court (*Augstākās tiesas Senāts*) rejected the applicant's appeal on points of law.

D.  Investigation of the alleged ill-treatment

1.  Police inquiry and refusal to institute criminal proceedings

29.  On 12 March 2007 the applicant made representation to the Vidzeme Regional Court about ill-treatment during his arrest on 26 March 2004. The Regional Court transmitted the request to the Internal Security Office of the State Police (*Valsts policijas Iekšējās drošības birojs*).

(a)  Response of the Internal Security Office of the State Police

30.  The applicant submitted to the Court a copy of a letter from the Internal Security Office of the State Police, dated 25 April 2007. It was sent in response to the applicant's submission of 12 March 2007, mentioned above. The letter stated that the human resources inspection division had requested information from the emergency medical service about the call made to them on 27 March 2004. However, the applicable regulations required records of emergency calls to be kept for a period of one year. It followed from the applicant's medical records at Riga no. 1 Hospital that on 27 March 2004 the applicant had been diagnosed with head and thorax contusions and that he had told medical staff that he had fallen and hit his head while being arrested. While in the temporary detention facility between 27 and 30 March 2004 the applicant had not asked for medical assistance.

31.  The letter indicated as follows:

“... in accordance with section 22(2) of the Law on the Police a police employee could not be held responsible for pecuniary or physical harm, caused within the official authority, to an offender who did not comply or who resisted during arrest.”

The answer concluded that State Police employees had not violated the relevant statutes.

(b)  Inquiry and decision of the Internal Security Office of the State Police

32.  In April 2007 the Internal Security Office collected reports (*ziņojumi*) from D.M., A.Ž. and A.K., officers of the Department for the Combat of Organised Crime.

33.  D.M., in a report of 24 April 2007, indicated that on the day in question he had been working with a team of traffic police officers. Their task had been to intercept the applicant's vehicle after the test purchase of drugs. Once they had received information about the vehicle with the applicant as a passenger inside, a traffic police employee had stopped the vehicle and invited the driver to step out. At this time other department officers arrived and arrested the applicant. D.M. could not remember the arresting officer or subsequent proceedings with respect to the applicant.

34.  The department officer A.Ž. stated in his report of 11 April 2007 that the applicant's arrest had been carried out by V.V. He also indicated that the applicant had not been ill-treated. The applicant had complained of heart problems while on department premises and an ambulance had been called. An examination by a doctor revealed no health problems and the applicant was then questioned.

35.  In his report of 27 April 2007 department officer A.K. declared that he had arrived at the scene after the applicant had been arrested. A.K. could not remember who the arresting officer was. According to A.K. the applicant had been transported to department premises. Police officers had not ill-treated the applicant in A.K.'s presence and he had not seen any injuries.

36.  In addition to these reports, the Internal Security Office of the State Police obtained on 17 April 2007 evidence from the temporary detention unit. This indicated that the applicant had not requested medical assistance between 27 and 30 March 2004. On the same day that office also requested the applicant's medical file from Riga no. 1 Hospital.

37.  Following the applicant's request of 13 April 2007 to the Prosecutor General to submit information about ill-treatment, a prosecutor took a statement from him on 8 June 2007. The applicant indicated that he wished to provide more details about what had happened on 26 March 2004. The statement included the following:

“Late in the evening of 26 March 2004 ... [the applicant] was in the vehicle ... as a passenger ... The vehicle was stopped by traffic police ... [The applicant's] colleague was invited to the police vehicle ... the passenger door on [the applicant's] side opened and [he] received a hard blow to the head ... the blow pushed him towards the driver's seat and [he] heard shouts not to move and received several blows on the back ... the same person who had hit [him then] grabbed [him] by [his] jacket and pulled [him] out of the vehicle. The jacket was placed over [his] head ... One of the blows knocked [him] off his feet, as a result of which [he] fell face down with his abdomen on the edge of the pavement. Thereafter a couple of blows followed on [his] body. Everything happened very fast ... [The applicant] heard people passing by saying 'What are you doing?' ... [he] was handcuffed ... in the police vehicle [he] was hit on the body ... [The applicant] would be able to recognise the police officer who inflicted the blows ... No physical ill-treatment was inflicted on him at the police station ... After some time ... [the applicant] felt ill ... [he] even lost consciousness in the police station ...”

38.  In the statement the applicant requested that an investigation be conducted and criminal proceedings initiated in respect of the infliction of the injuries, because there had been no reason to resort to violence during the arrest.

39.  The statement was sent for decision to the Internal Security Office of the State Police.

40.  On 18 June 2007 L.L., a senior inspector of the pre-trial investigation division of the Internal Security Office of the State Police, refused to initiate criminal proceedings. This decision, referred to by the Government, did not elaborate reasons for the refusal.

2.  First prosecution decision upon appeal

41.  The applicant appealed against the refusal to the Office of the Prosecutor General (*Latvijas Republikas Prokuratūras Ģenerālprokuratūra*).

42.  On 18 July 2007 V.Č., acting as chief prosecutor of the pre-trial investigation and oversight division, quashed the decision as ungrounded and ordered that the Internal Security Office of the State Police conduct an additional inquiry. His finding read:

“The decision has been adopted on the basis of an incomplete examination ... without requesting the expert's report and without clarifying the possible circumstances in which the injuries observed on [the applicant] had been sustained.”

3.  Police additional inquiry and refusal to institute criminal proceedings

(a)  Additional inquiry

43.  On 7 August 2007 the Internal Security Office of the State Police requested information on the identities of the traffic police employees who had been on duty on 26 March 2004 around 10 p.m. and whether they had participated in the applicant's arrest. It also asked those officers to attend the Internal Security Office. In response, the Internal Security Office was provided on 14 August 2007 with the information that officers B.M. and L.V. had carried out the arrest and that they had been advised to attend the Internal Security Office.

44.  During August 2007 the Internal Security Office of the State Police collected explanations (*paskaidrojumi*) from five officers, A.Ž., D.M. and V.V., officers of the Department for the Combat of Organised Crime, and B.M. and L.V., officers of the police patrol unit.

45.  In particular, further statements were taken from A.Ž. and D.M. on 20 August 2007. Their explanations were broadly the same as those they had made previously, on 11 and 24 April 2007 respectively. A.Ž. repeated, *inter alia*,that the applicant's arrest had been made by V.V. and that the applicant had not been ill-treated. D.M. again gave evidence that he had no recollection of the identity of the arresting officer or of further proceedings with regard to the applicant. On 24 August 2007 V.V. gave his explanation as follows:

“On 26 March 2004 a covert measure of investigation was implemented ... Following the experiment [V.V.] received an instruction to apprehend [the applicant] ... when the traffic police officers stopped the vehicle ... [V.V.] approached the vehicle ... and opened the front passenger door. [The applicant] was just then reaching to close the driver's door, which had been left open. A traffic police employee was at the driver's door. [V.V.] identified himself as a police employee and invited [the applicant] to step out of the vehicle. [V.V.] does not remember exactly whether [the applicant] was handcuffed and which of the colleagues assisted in [the applicant's] arrest. Following [his] arrest [he] was taken to the State Police ... but [V.V.] does not remember who took him there. [The applicant] was not subjected to any physical violence when he was arrested, because there was no need to apply physical force.”

46.  B.M. and L.V., officers of the police patrol unit gave explanations on 20 and 27 August 2007 respectively. They both stated that on 26 March 2004 they had been on duty and had been asked to drive to the State Police and work with officers of the Department for the Combat of Organised Crime. L.V. in his explanation of 27 August 2007 specified that department employees had briefed them that it was necessary to intercept a vehicle which might contain a person whose arrest was being sought. After receiving these instructions they had left the department, with department officers. Two of them had been in their own vehicle. At around 10 p.m. on the instruction of the department officers they had stopped a vehicle with a driver and a passenger inside. Both B.M. and L.V. stated that B.M. had approached the driver of the vehicle and asked him to present the necessary documents. The arrest had been made by department employees and no physical force had been used, either on the applicant or the driver of the vehicle. L.V. indicated that he had stayed inside the patrol vehicle while this was going on. B.M. declared that he had not seen the applicant since the arrest. The driver of the vehicle had been taken to the State Police and an administrative report that he had been driving without a licence was drawn up. L.V.'s account stated that both the applicant and the driver had been taken to the State Police.

(b)  Report of the Internal Security Office of the State Police

47.  On 3 September 2007 a senior inspector of the Internal Security Office of the State Police human resources inspection division issued a report on the results of the inquiry into the circumstances of the applicant's arrest on 26 March 2004.

48.  The report stated that information from the emergency medical service and Riga no. 1 Hospital, and explanations from the officers A.Ž., D.M., V.V., B.M. and L.V. had been collected. An explanation could not be obtained from A.K., because he did not attend the Internal Security Office as agreed and later went on holiday and was unreachable by telephone. The Internal Security Office had requested S.I., the driver of the vehicle in which the applicant had been a passenger when he was arrested on 26 March 2004, to attend the office. S.I. had informed the office by telephone that he was unable to attend because of the expected birth of a child and because he was too busy. S.I. also said on the telephone that he had been questioned about the incident on several occasions, and that time had passed and he could not remember the precise circumstances of the applicant's arrest. S.I. did not know whether physical force had been used on the applicant, because he had stepped out of the vehicle. No physical force had been used against S.I.

49.  The report further stated:

“Likewise, during the inquiry which was conducted no unequivocal and impartial evidence was obtained that police employees had used unjustified physical force on [the applicant] during his arrest. In this regard the police employees categorically deny any use of physical force on [the applicant], whereas [the applicant] alleges to the contrary. Therefore, the question whether the police officers used physical force on [the applicant] and to what extent (during arrest, transport for questioning, or questioning itself) is to be examined in the pre-trial investigation division of the Internal Security Office of the State Police (*VP IDP Pirmstiesas izmeklēšanas nodaļa*), by taking the necessary actions in criminal procedure (questioning and subsequent confrontation between the police employees concerned).”

50.  With regard to disciplinary liability the report indicated that in any event this would be barred by a period of statutory limitation.

(c)  Decision of the Internal Security Office of the State Police

51.  On 11 September 2007 the pre-trial investigation division of the Internal Security Office of the State Police refused to initiate criminal proceedings.

52.  That decision established:

“... on 26 March 2004 [the applicant] was justifiably arrested for a criminal offence ... All the police officers who carried out the arrest on 26 March 2004 indicated that more than three years had passed since the event and they could not remember precisely what had happened. The applicant did not, immediately after the arrest, express any complaints about the police employees' conduct against him. [The applicant] could obtain the established light injuries, which do not cause short-term health impairment for more than six days, before or during the apprehension, when special measures were applied to him. It may not be asserted unequivocally that during [the applicant's] arrest the police employees exceeded their authority by intentionally using unjustified force, thus committing a criminal offence as set out in section 317(2) of the Criminal Law.”

4.  Second prosecution decision upon appeal

53.  On 21 September 2007 the applicant appealed to the Office of the Prosecutor General against the aforementioned refusal to initiate criminal proceedings. He argued that the existence of his injuries had not been disputed and had been confirmed by the expert's report. He could not have sustained the injuries prior to the arrest because he had been arrested at 10 p.m. on 26 March 2004 and admitted to Riga no. 1 Hospital at 1.33 a.m. the next day. The applicant pointed out that a surgeon had noted on his record “was beaten up one and a half hours ago”. Further, the fact that police officers could not remember the circumstances of the arrest did not prove anything, and was not a justification. He also stressed that no one who could have given impartial information had been questioned.

54.  On 7 November 2007 J.K., a prosecutor responsible for the criminal case against the applicant in respect of drug sale, gave a report that the applicant had never complained of ill-treatment by police officers during the investigation or court hearings.

55.  On 8 November 2007 V.O., as chief prosecutor of the pre-trial investigation and oversight division, confirmed the decision of the Internal Security Office of the State Police of 11 September 2007. She noted that that office had questioned the police officers and had obtained the expert's report and information from S.I. However, no unequivocal and impartial evidence had been obtained that the injuries had been caused during the arrest. V.O. added the following words to her decision:

“... [the applicant's] account of 8 June 2007 that police officers on 26 March 2004 had hit [him] several times on the back has not been confirmed, because the expert's report did not establish any injuries on the back ... [the applicant] gave a contradictory account of how the abdominal contusion had been acquired (not taken into account in the expert's report as not affirmed by impartial clinical data). On 29 March 2004 [the applicant] stated that police officers had hit [him] on the abdomen during [his] arrest but [he] had not lost consciousness, however on 8 June 2007 [the applicant] stated that the abdominal contusion had been caused by a fall on asphalt and that [he] had lost consciousness on the State Police premises ... It has also been established that, after being taken to Riga no. 1 Hospital at 1.33 a.m. on 27 March 2004 and examined there by doctors, [the applicant] was taken to a temporary detention facility at 5.51 a.m. ... from which a medical report has been received that between 27 and 30 March 2004 [he] did not request medical assistance.”

56.  V.O. also indicated that there were no grounds to initiate disciplinary proceedings because no evidence had been obtained that State Police employees had exceeded their authority or abused their official position during the arrest. She also explained the period of statutory limitation for disciplinary proceedings.

57.  V.O. stated that this decision was final.

II.  RELEVANT DOMESTIC LAW

A.  Criminal Law

58.  Section 317 provides that a State official whose intentional actions manifestly exceeded the powers and authority vested in him or her by law or pursuant to his or her assigned duties shall be criminally liable if substantial harm is caused thereby to the State, administrative order or the rights and interests protected by law of other persons. The applicable punishment is imprisonment of up to five years or a fine of up to one hundred minimum monthly salaries. If the actions had serious consequences or involved violence or threat of violence, or if they were carried out with the intent to obtain a material benefit, the applicable punishment is imprisonment of up to ten years or a fine of up to two hundred minimum monthly salaries.

B.   Criminal Procedure Code

59.  The relevant provisions of the former Criminal Procedure Code, in force until 1 October 2005, read as follows:

Section 3(1) (duty to institute criminal proceedings)

“A court, prosecutor or investigating authority, in so far as it is within its powers, shall institute a criminal case whenever elements of a criminal offence (*noziedzīga nodarījuma pazīmes*) are discovered, using all means laid down in law with a view to discovering the circumstances of the criminal offence and persons liable for the commission of the criminal offence so that they may be punished.”

Section 109(1), (2) and (5) (duty to examine applications
and notifications of criminal offences)

“An investigating authority, prosecutor, judge or court shall accept materials, applications and notifications on a criminal offence that has been committed or is being planned, including in cases which do not fall under their jurisdiction.

In connection with the material, applications or notifications received, one of the following decisions shall be adopted:

1)  to initiate a criminal case,

2)  to refuse to initiate a criminal case,

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

Applications and notifications on crimes shall be examined immediately but no later than within ten days of their receipt. If an expert or audit report or a specialist consultation is necessary in the course of examination, the applications and notifications shall be examined no later than within thirty days.”

C.  Law on the Police

60.  Under section 13(1)5) a police employee has the right to use physical force and special combat techniques to detain and bring offenders to police premises and to restrain arrested and detained persons and convicts during the escort, if they do not comply or resist police employees or there are grounds to believe that they may flee or cause harm to others or to themselves.

61.  In accordance with section 13(2) the type of special means and the intensity of physical force and special means shall be determined in view of the particular situation, the nature of the offence and the personal characteristics of the offender, with an upper limit on the harm that may be caused by these means. If there are victims of the use of physical force or special means, a police officer is obliged to provide immediate medical assistance to victims and inform his or her immediate superior, who is to inform a prosecutor. A police employee shall inform his or her immediate superior in writing about all cases of use of special means.

THE LAW

I.   ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ILL-TREATMENT

62.  The applicant alleged that the police officers had ill-treated him on 26 March 2004. He also complained about the investigation of this event. This complaint falls to be examined under Article 3 of the Convention, which reads as follows:

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

A.  Admissibility

1.  The parties' submissions

63.  The Government requested that the application be declared inadmissible. Recalling the purpose of the six-month rule pursuant to *Opuz v. Turkey* (no. 33401/02, § 110, ECHR 2009), the Government opined that the complaint had been introduced out of time, in that more than six months had passed since the event of 26 March 2004. Also, referring to *Varnava and Others v. Turkey* ([GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 165, ECHR 2009), the Government drew attention to the unexplained three-year period of inactivity on the part of the applicant after 26 March 2004, in that he only addressed a complaint about the alleged ill-treatment to the Vidzeme Regional Court on 12 March 2007.

64.  The applicant disagreed. He relied on *Paul and Audrey Edwards v. the United Kingdom* ((dec.), no. [46477/99](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"appno":["46477/99"]}), 7 June 2001), and argued that the six-month time-limit had started to run from the final decision on 8 November 2007 refusing to institute criminal proceedings. In response to the Government's point about his inactivity the applicant stated that the State Police officers had been aware of his injuries, given the information from the hospital and the subsequent expert's report. He further indicated that the statutory time-limit for criminal prosecution had not yet expired at the time of his complaint, three years after the event on 26 March 2004.

2.  The Court's assessment

65.  The purpose of the six-month rule is to promote security of law (see *Gakayeva and Others v. Russia*, nos. 51534/08, 4401/10, 25518/10, 28779/10, 33175/10, 47393/10, 54753/10, 58131/10, 62207/10 and 73784/10, § 304, 10 October 2013, and *Meryem Çelik and Others v. Turkey*, no. 3598/03, § 34, 16 April 2013). The rule also provides the opportunity to ascertain the facts of a case before memory of them fades away with time (see *Gakayeva*, cited above, ibid., and *Stanimirović v. Serbia*, no. 26088/06, § 30, 18 October 2011).

66.  The six-month period normally runs from the final decision in the process of exhaustion of domestic remedies. In the absence of a final decision, the period runs from the date of the acts or measures complained of. Where an applicant avails himself of an existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the six-month time-limit is calculated from the date when the applicant first became or ought to have become aware of those circumstances (see, among others, *Gakayeva*, cited above, § 305; *Stanimirović*, cited above, § 31; and *Orlov v. Russia*, no. 29652/04, § 62, 21 June 2011).

67.  The Court has held in cases concerning the obligation to investigate under Article 2 of the Convention that where a death has occurred applicant's relatives are expected to keep track of the progress of the investigation and to lodge their applications with due expedition once they are, or should have become, aware of a lack of an effective investigation. The Court considers that the same principle applies by analogy to cases concerning the obligation to investigate under Article 3 of the Convention (see *Stanimirović*, cited above, § 32; *Akhvlediani and Others v. Georgia* (dec.), nos. 22026/10, 22043/10, 22078/10, 22097/10, 22128/10, 27480/10, 27534/10, 27551/10, 27572/10 and 27583/10, § 23, 9 April 2013; and *Manukyan v. Georgia* (dec.), no. [53073/07](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"appno":["53073/07"]}), § 27, 9 October 2012).

68.  Turning to the case at hand, the Court is unable to accept the Government's contention that the applicant complained for the first time about the ill-treatment only on 12 March 2007.

69.  The Court observes that the applicant had already, on 29 March 2004, while being questioned by I.K., a chief specialist of the Department for the Combat of Organised Crime, voiced the issue of ill-treatment during his arrest (see paragraph 18 above). Also, in his appeal of 2 April 2004 to the Regional Court the applicant had indicated that physical force had been applied to him during the arrest, following which he had requested medical assistance at Riga no. 1 Hospital (see paragraphs 24 and 26 above). Both, the police and the court, in accordance with the Criminal Procedure Code, were apparently existing remedies for this type of complaint (see paragraph 59 above) (see, *mutatis mutandis*, *Grimailovs v. Latvia*, no. 6087/03, § 118, 25 June 2013, and *J.L. v. Latvia*, no. 23893/06, § 77, 17 April 2012).

70.  The question however remains whether the applicant subsequently became or ought to have become aware of the circumstances which rendered those remedies ineffective, and it may therefore be appropriate to calculate the six-month time-limit from that date.

71.  In this regard, the Court observes that in response to the grievance raised by the applicant the domestic authority ordered an expert report to ascertain the applicant's injuries (see paragraph 20 above). The applicant's injuries were examined by an expert, who gave her conclusions in response to the questions put by I.K. (see paragraphs 21-23 above).

72.  However, a period of inactivity on the part of the investigative authorities emerges from the date of the expert's conclusions on 2 April 2004 or, at the latest, from 30 April 2004, when the Riga Regional Court referred to the applicant's allegation (see paragraph 26 above), until the inquiry following the applicant's request of 12 March 2007 (see paragraphs 29 et seq. above).

73.  This may raise a question of whether the applicant could have been expected to exercise more diligence and follow up on the progress of the investigation, and not wait almost three years to repeat his complaint. However, he had raised the allegation of ill-treatment with the domestic court. The Regional Court merely noted that allegation (see paragraphs 26 and 69 above, and see, *mutatis mutandis*, *Grimailovs*, cited above, § 118). The court proceedings ended on 19 February 2007 and the applicant repeated his allegation shortly thereafter, on 12 March 2007. Following this the competent domestic authorities resumed their inquiry. They addressed the merits of the applicant's complaint. The Court finds no reason to disregard their final decision in this respect, which was adopted on 8 November 2007 (see paragraphs 55-57 above). The applicant lodged his complaint before the Court within six months of that final decision.

74.  It follows that this complaint is not out of time for the purposes of Article 35 § 1 of the Convention. The Government's objection on the six-month time-limit is therefore dismissed.

75.  Also, in view of the foregoing finding the Court is unable to conclude that the applicant failed to act with due expedition in bringing his allegation to the attention of the authorities immediately after the event complained of so as to render his complaint manifestly ill-founded (compare and contrast *Khudobin v. Russia* (dec.), no. 59696/00, 3 March 2005).

76.  The complaint is not manifestly ill-founded within the meaning of Article 35 §§ 1, 3 and 4 of the Convention.

77. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The substantive aspect

(a)  The parties' submissions

(i)  The applicant

78.  The applicant maintained that he had been subjected to physical ill‑treatment by State Police officers while being arrested on 26 March 2004. The applicant submitted that his descriptions of the event given at different points in time had been complementary. He further relied on the results of examination at Riga no. 1 Hospital and the expert's report and its conclusions. The applicant referred to *Ribitsch v. Austria* (4 December 1995, Series A no. 336), that in respect of a person deprived of his liberty, any recourse to physical force which had not been made strictly necessary diminished human dignity and infringed Article 3 of the Convention.

79.  The applicant also submitted that his conduct during the arrest had not warranted physical force by the police officers and that the force used on him had been disproportionate. Nothing in the case material indicated that he had been armed or had been behaving in a threatening manner. The arrest had been sudden and the applicant had had no opportunity of escape or resistance. He had been outnumbered by the State Police officers.

(ii)  The Government

80.  The Government pointed out that it remained undisputed that physical force had been used against the applicant only while he was being arrested and not while he was in detention, unlike in *Ribitsch*. They argued however that the conduct of the State Police officers had not contravened Article 3.

81.  In contrast with *Matko v. Slovenia* (no. 43393/98, 2 November 2006) and *Rehbock v. Slovenia* (no. 29462/95, ECHR 2000‑XII), which concerned serious injuries, in the case at hand the applicant had suffered only light injuries. Also in contrast with those cases, the applicant's arrest had not been scheduled in advance but had been dependent on the outcome of the test purchase of drugs. The applicant had not been outnumbered by the police officers. Only six police officers had participated in the operation. Three of them had remained in the vehicle of the police patrol unit and A.Ž. had been with A.G.

82.  Also, the police officers had to take into account that the applicant had been in the vehicle with S.I. In addition, the applicant had been a former police auxiliary, a security guard and the winner of the 1990 Latvian national judo championship; he had also been a weightlifting instructor.

83.  The action of officer V.V. in pulling the applicant out of the vehicle had been proportionate and justified, given the applicant's personality. No more force had been used than was strictly necessary, given the factual circumstances.

84.  The applicant's fall on to the pavement had not been intentional, and had been caused by the inevitable struggle in pulling the applicant out of the vehicle. The light injuries suffered by the applicant had not attained the minimum level of severity required under Article 3, similarly to *Klaas v. Germany* (22 September 1993, Series A no. 269), where the Court found no violation of Article 3.

85.  Emphasising the standard of proof “beyond reasonable doubt” as applied in *Berliński v. Poland* (nos. 27715/95 and 30209/96, § 59, 20 June 2002), the Government disputed the applicant's version of the event. They noted discrepancies in the applicant's statements given on different dates.

86.  In particular, the Government outlined that on 2 April 2004 the applicant had claimed to the Regional Court that his jacket had been pulled over his head so that he could not see his assailants. However, he had told the forensic expert that he had been pushed and punched by uniformed police. Further, on 2 April 2004 the applicant had claimed that he had been punched three or four times. However, on 8 June 2007 the applicant had submitted that he had received a systematic and continuous beating, and that the beating had continued in the police vehicle. Also, the applicant had told the expert that he had not lost consciousness. Whereas, according to the applicant's account of 8 June 2007 he had lost consciousness while on the premises of the State Police. He had told the neurosurgeon and the expert that he had fallen on to the pavement, hitting and bruising his face and scraping his legs respectively. In his evidence of 8 June 2007 he said he had been pushed on to the pavement, hitting his abdomen.

87.  The Government remarked that the severity of the ill-treatment as recounted by the applicant had increased with the passage of time.

88.  In that light, the Government contended that the standard of proof “beyond reasonable doubt” was not met.

(b)  The Court's assessment

(i)  General principles

89.  The Court reiterates from the outset the absolute nature of the prohibition of torture and inhuman and degrading treatment and punishment. It is true that, according to the Court's case-law, Article 3 does not prohibit the use of force for effecting an arrest. Nevertheless, such force may be used only if it is indispensable, and it must never be excessive (see *İzci v. Turkey*, no. 42606/05, § 54, 23 July 2013, and *Ivan Vasilev v. Bulgaria*, no. [48130/99](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{), § 63, 12 April 2007).

90.  Furthermore, recourse to physical force which has not been made strictly necessary by a person's own conduct is in principle an infringement of the right set forth in Article 3 of the Convention. In this connection, the Court reiterates that the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see *İzci*, cited above, § 55, and *Ribitsch*, cited above, § 38). The Court has previously recognised that a form of constraint applied by police officers may be justified where persons being controlled offer physical resistance or present a risk of a violent behaviour (see *Klaas*, cited above, § 30, and *Sarigiannis v. Italy*, no. 14569/05, § 61, 5 April 2011).

91.  The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Krivošejs v. Latvia*, no. 45517/04, § 69, 17 January 2012, and *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000‑IV).

92.  Where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill‑treatment (see *Mrozowski v. Poland*, no. 9258/04, § 26, 12 May 2009).

(ii)  Application in the present case

93.  It was common ground between the parties that a State Police officer used some physical force to pull the applicant out of the vehicle. The parties however disagreed on whether the applicant had fallen to the ground or had been pushed, and whether he had received any blows from the officers. Further, they contradicted each other as to whether the physical force had been necessary and proportionate.

94.  In this regard, the Court notes that when the applicant had been admitted to Riga no. 1 Hospital his diagnosis three and a half hours after his arrest read: “Head, thorax and abdominal contusion.” The same diagnosis was made by a surgeon when the applicant was examined shortly afterwards (see paragraphs 12 and 13 above). However, two days later no visible injuries on the applicant's thorax and abdomen were described in the expert's report (see paragraph 21 above). According to that report the applicant had light injuries to the left leg and the head, including a haematoma measuring 4 cm x 2.5 cm on the upper left eyelid.

95.  The Government argued that a struggle in pulling the applicant out of the vehicle had been inevitable. The applicant on the other hand maintained that he had not offered any resistance and claimed to have received blows. In support of his allegation he referred to the aforementioned medical evidence. According to the police officers' statements, no force had been used on the applicant. Further, none of the officers had indicated seeing any injuries on the applicant even though according to the expert's report two days later the applicant had a haematoma measuring 4 cm x 2.5 cm on the upper left eyelid. It had not been made clear when the haematoma could have become visible, which would have allowed inferences to be made as to the credibility of the police officers' evidence.

96.  Although invited to do so by the Government, for the reasons provided below, the Court is unable simply to accept the assessment of the facts made by the national authorities, notably the prosecutors and the Internal Security Office of the State Police. In this connection, the reliance placed by the Government on *Klaas* (cited above) is misconceived since, firstly, the disputed facts in that case had been established by the domestic courts which had had the benefit of examining the various witnesses and of evaluating their credibility and, secondly, no cogent elements had been provided which could lead the Court to depart from the findings of fact made by the domestic courts.

97.  In the circumstances of the present case, the Court notes that the applicant's allegation in general was corroborated by medical evidence. Accordingly, the applicant had laid the basis of an arguable claim that he had been ill-treated. At the same time, the Court finds it impossible to establish, on the basis of this evidence, whether or not the applicant's injuries were caused as alleged. For the reasons set out below the difficulty in determining the substance of the applicant's allegation of ill-treatment rests with the failure of the authorities to investigate his complaint effectively (see *Timofejevi v. Latvia*, no. 45393/04, § 81, 11 December 2012, and *Hristoviv v.* *Bulgaria*, no. 42697/05, § 83, 11 October 2011).

2.  The procedural aspect

(a)  The parties' submissions

(i)  The applicant

98.  The applicant submitted that the investigation of the alleged ill-treatment had been ineffective. In the closing of the investigation on 8 November 2007 the police officers' evidence had been preferred to the established facts. He referred to the medical record and the expert's report attesting to his injuries. He maintained that the evidence had not been fully examined.

(ii)  The Government

99.  The Government drew a distinction between the present case and *Labita* (cited above)*,* especially as to the credibility of the applicant's assertion. In this respect they reiterated that the applicant had made official representation to the national authorities alleging the ill-treatment almost three years after the disputed event. Referring to *Khudobin* (cited above), the Government underlined that a failure to bring allegations of ill-treatment to the attention of the authorities immediately after the event complained of may result in the complaint being declared manifestly ill-founded by the Court.

100.  The Government drew attention to the fact that the obligation under the procedural aspect of Article 3 was one of means not result.

101.  In the Government's view the investigation had been speedy. Referring to the evidence gathered the Government maintained that the investigation had also been thorough. They also indicated that all persons who had had any contact with or access to the applicant had been questioned. The prospects of the investigation however had been reduced by the applicant's making his submission only three years after the incident.

102.  According to the Government, the applicant making false allegations had been the main reason for the investigation not resulting in criminal charges.

103.  The Government emphasised that the investigation by the Internal Security Office of the State Police had been independent, as that office was directly subordinated to a head of the State Police only. Further, the investigation had been overseen by the Office of the Prosecutor General, a fully independent and impartial institution for the purposes of the present case.

(b)  The Court's assessment

(i)  General principles

104.  As the Court has previously held, where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation (see *Labita*, cited above, § 131, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998‑VIII).

105.  Even in the absence of an express complaint, an investigation should be undertaken if there are other sufficiently clear indications that torture or ill-treatment might have occurred. A requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Tolerance by the authorities towards such acts cannot but undermine public confidence in the principle of lawfulness and the State's maintenance of the rule of law (see *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 97, 3 May 2007).

106.  Furthermore, the investigation into allegations of ill-treatment must be thorough. This means that the authorities must make a serious attempt to find out what happened, and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the applicable standard (see *Markaryan v. Russia*, no. 12102/05, § 55, 4 April 2013, and *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006).

107.  Furthermore, the investigation should be independent of the executive (see *Oğur v. Turkey* [GC], no. 21594/93, §§ 91 and 92, ECHR 1999‑III, and *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004). Independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms (see *Ergi v. Turkey*, 28 July 1998, §§ 83 and 84, *Reports of Judgments and Decisions* 1998‑IV).

108.  Lastly, the victim should be able to participate effectively in the investigation in some way (see, *mutatis mutandis,* *Oğur*, cited above, § 92, and *Dedovskiy and Others v. Russia*, no. 7178/03, § 92, ECHR 2008 (extracts)).

(ii)  Application in the present case

109.  At the outset the Court notes the Government's contention with respect to independence of the investigation (see paragraph 103 above). The Court recalls that already previously it has been confronted with the issue of the independence of the Internal Security Office and, while it has not given a general assessment of the independence of that office, the Court has found serious shortcomings in its work (see *Jasinskis v. Latvia*, no. 45744/08, §§ 75-78, 21 December 2010).

110.  Turning to the steps taken during the investigation, the Court is unable to accept the Government's contention that it was solely due to the applicant making his complaint three years later that the prospects of the investigation were diminished.

111.  As established above, the applicant had raised as early as 29 March 2004 with the police the issue of ill-treatment during his arrest. The applicant had been diagnosed at Riga no. 1 Hospital with “head, thorax and abdominal contusion” soon after his arrest. These circumstances therefore as noted by the Court above were not comparable to those in *Khudobin* (cited above) referred to by the Government.

112.  While the expert's observations regarding the applicant's injuries differed from those recorded a couple of days earlier at Riga no. 1 Hospital, the expert had identified injuries to the applicant, and had not ruled out the possibility that they had been caused in the circumstances related by the applicant (see paragraph 23 above). Despite this, it appears that following the said expert's report the domestic authorities had themselves not continued their inquiry. Further, no action had followed with respect to the applicant's allegation of ill-treatment made before the domestic court (see paragraph 26 above).

113.  As regards the proceedings following the applicant's repeated claim on 12 March 2007, the Court notes that upon the applicant's appeal against the first refusal of the criminal proceedings, it had been found on 18 July 2007 that the investigation had been incomplete. The expert's report had not been requested and the circumstances of the applicant's injuries had not been clarified (see paragraph 42 above).

114.  With regard to the latter, the Court has no alternative but to note that the circumstances of the applicant's injuries had not been clarified in the course of the subsequent inquiry as terminated on 8 November 2007. Therefore, this shortcoming, ascertained by the domestic authorities themselves, remained.

115.  But, most importantly, there had been no attempt to assess the proportionality of the manner in which the applicant had been arrested. The Court notes the content of the letter from the Internal Security Office of the State Police of 25 April 2007. Injuries to the applicant had been confirmed. Yet, without any assessment of the circumstances of the arrest, the Internal Security Office emphasised that police employees were not responsible where a law offender did not comply or resisted arrest (see paragraphs 30 and 31 above). Also, the decision of 11 September 2007 had affirmed that the injuries could have been inflicted on the applicant during the arrest by the use of special measures (see paragraph 52 above). However, no endeavour had been made in the course of the inquiry to examine whether the measures applied had been indispensable and not excessive.

116.  In addition, while the Government averred that the investigation had been thorough, the Court observes that the domestic authorities had not secured the attendance and questioning of S.I., who had been at the scene. Also, it appears from the report of 3 September 2007 that S.I. had been questioned about the event on several occasions before (see paragraph 48 above). However, the content of S.I.'s earlier evidence remained unclear. The failure to secure the attendance of a witness who had material evidence related to the circumstances of the alleged ill-treatment must be regarded as diminishing the effectiveness of the inquiry.

117.  Further, it appears that no attempt was made to obtain statements from the doctors who had seen the applicant shortly after his arrest, including a head of the emergency medical service unit (see paragraph 11 above), a surgeon (see paragraph 13 above) and a neurosurgeon (see paragraph 14 above). Also, it does not appear that any effort was made to locate any possible eyewitness to the applicant's arrest, given that it had been carried out close to Riga city centre.

118.  In so far as the Government contended that all the police officers involved had been questioned, the Court remarks that their statements in fact resembled duty reports (see paragraphs 33-35, 45 and 46 above). None of those statements recorded any questions put to the police officers in an attempt to clarify the circumstances of the applicant's arrest.

119.  Lastly, it appears that the decision of 8 November 2007 justifying closing the investigation had in fact been focused on discrepancies in the applicant's descriptions of the incident (see paragraph 55 above). The Court however is not satisfied that these discrepancies or those described by the Government (see paragraphs 86 and 87 above) did not require a more thorough investigation of the case.

120.  In particular, while the expert's report had not precisely identified the injuries on the applicant's back, this did not make irrelevant the evidence attesting to the applicant's other injuries (see paragraphs 11-14 and 21-23 above). While indeed the expert had not seen a couple of days after the incident any visible injuries on the applicant's abdomen, the diagnosis of “abdominal contusion” emerged clearly from the evidence from Riga no. 1 Hospital.

121.  It also remains unclear how the domestic authorities assumed that the applicant's statements that he had had fallen on to the pavement hitting his abdomen and had been hit on the abdomen contradicted each other. In particular, it remains unclear why the domestic authorities excluded the possibility that the one had followed the other, especially in view of the wording of the applicant's submissions (see paragraph 18 and 37 above).

122.  Also, further clarification was required as to the reasons on the basis of which the Government assumed that according to the applicant's information given to the expert the “officers in uniforms” denoted certainly both those officers who had “placed a jacket over [his] head” and those who had “hit [him]”, and not only the former. In particular, it should be noted that this was a statement neither written by the applicant himself nor a verbatim record, but the expert's concise notes based on the applicant's verbal description. Similarly, upon a careful scrutiny of the wording of the records, the Court is not persuaded that the information the applicant had given to the neurosurgeon and the expert about his fall had necessarily included two different causes of that fall (see paragraphs 14 and 21 above). More explanation was required as to why the domestic authorities took the view that these submissions negated the applicant's later allegation that he had been pushed to the ground.

123.  The Court notes the Government's observation that between the applicant's accounts given in 2004 and in 2007 the intensity of the alleged ill-treatment had increased. There was no detailed statement from the applicant in 2004, and absent further elucidation of the circumstances the Court is not persuaded by the Government's contention that the applicant's statements were false.

124.  In view of the foregoing the Court concludes that the domestic authorities did not make a serious attempt to find out what had happened during the applicant's arrest on 26 March 2004.

(c)  Conclusion

125.  The foregoing considerations taken as a whole are sufficient to enable the Court to conclude that the investigation of the applicant's allegation of ill-treatment was not conducted in compliance with the requirements enshrined in Article 3 of the Convention.

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

II.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

127.  Lastly, the applicant also made numerous complaints under Articles 3, 5, 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. These complaints were not communicated to the Government.

128.  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.

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

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

130.  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

131.  The applicant claimed 20,000 euros (EUR) in compensation for non-pecuniary damage.

132.  The Government disagreed with the claim.

133.  Having regard to the nature of the violation found in the present case, its case-law and deciding on an equitable basis, the Court awards the applicant EUR 4,000 in compensation for non-pecuniary damage.

B.  Default interest

134.  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* admissible the complaint under Article 3 of the Convention concerning the incident on 26 March 2004 and the remainder of the application inadmissible;

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

3.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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 25 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Päivi Hirvelä
 Deputy Registrar President