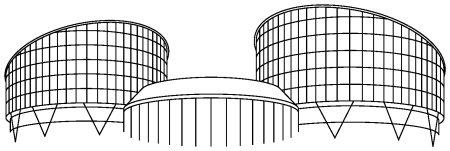

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF Y v. LATVIA

(Application no. 61183/08)

JUDGMENT

STRASBOURG

21 October 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 Y v. Latvia,

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

Päivi Hirvelä, *President,*
Ineta Ziemele,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 26 August and 23 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 61183/08) 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, Ms Y ("the applicant"), on 1 December 2008. The President of the former Third Section acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms I. Nikuļceva, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine and subsequently by Mrs K. Līce.

3. The applicant alleged, in particular, that she had been subjected to inhuman and degrading treatment and that she had no possibility of obtaining compensation for the damage sustained.

4. On 5 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1959 and lives in Liepāja.

6. On 1 November 2007, when the applicant was in the courtyard of her apartment building, two officers from the municipal police force (J.M. and J.L.) pulled up in a car. After having a conversation with the applicant they

twisted her arms behind her back and forced her to approach their car. She was eventually let go, but later she started feeling ill and had to call an ambulance. The applicant submits that she still felt ill effects on her health more than a year after the events of 1 November 2007.

7. On 2 November 2007 the applicant wrote to the Liepāja City Public Prosecutor's Office and requested that criminal proceedings be instituted against the officers responsible. The applicant stated that she had told the officers that they could go and talk in her apartment, after which one of them had grabbed her right upper arm and twisted her arm behind her back, she avoided the grip owing to pain, while the police officer shouted that he would teach her a lesson about resisting the police. At that moment the second policeman had grabbed and twisted the applicant's left arm. The policemen had then tried to push the applicant into the back of their car. They eventually let her go after her neighbours intervened. Immediately after the policemen had left, the applicant had started experiencing health problems, namely, sharp pain in her chest, high blood pressure, pain in her back, neck and head, and a loss of feeling in her hands. She had called an ambulance and had been given an injection. The following day a general practitioner had issued the applicant with a sick leave certificate until 12 November 2007 and had prescribed painkillers and sedatives. The applicant asked the prosecutor to order an appointment with a forensic medical expert, pointing out that there were haematomas on her upper arms.

8. It appears that the prosecutor instituted criminal proceedings the same day. The case was forwarded to the State police for investigation.

9. On 4 November 2007 the applicant submitted a complaint to the head of the Liepāja City Municipal Police. In substance she repeated her account of the events of 1 November. In the concluding part of her complaint, the applicant requested that the actions of the two officers of the municipal police be investigated. She also pointed out that as a result of their actions she had suffered mental anguish and material and psychological harm.

10. On 21 January 2008 an inspector from the Liepāja City and District Police Department adopted a decision to terminate the criminal proceedings which had been initiated by the prosecutor. The decision was adopted on the basis of statements made by the applicant (see paragraph 11 below), by J.M. and J.L. (see paragraph 12 below) and by three other witnesses (see paragraph 14 below) as well as the forensic medical expert's report (see paragraph 13 below) and a decision of the Liepāja City Municipal Police to take disciplinary measures in respect of J.M. and J.L. for having failed to properly document the administrative infraction committed by the applicant (see paragraph 15 below).

11. The applicant had testified that she had been washing her car in the courtyard of her neighbour's house and that, after she had parked the car near her house, two policemen had pulled up. They had asked the applicant to approach their car, which she had not done because she had needed to

return to her apartment urgently. The policemen had then warned her that she was disobeying police orders and had subsequently twisted her arms behind her back; she had tried to free herself from the grip.

12. The policemen J.M. and J.L. stated that they had been called out about an administrative violation – a car being washed in a public courtyard. Upon arrival at the scene they had noticed the applicant standing next to a car holding a bucket. J.L. had then invited the applicant to approach the police car so that a record of an administrative violation could be drawn up, which the applicant had refused to do and had started to walk away. The policemen had then taken her by the arms and started directing her towards the police car. Since the applicant had not demonstrated resistance, J.L. and J.M. had released their hold and subsequently taken statements from the applicant's neighbours for the purpose of initiating administrative proceedings against her.

13. The forensic medical expert who had examined the applicant noted that each of her upper arms bore two haematomas. It was concluded that the haematomas could have appeared in the circumstances described by the applicant. The haematomas were described as minor injuries which would not have adverse medical effects for more than six days ("*kas neizraisa īslaicīgus veselības traucējumus uz laiku virs 6 dienām*"). The fact that the applicant had actually sought medical treatment for longer than six days was considered irrelevant, since the expert considered that the nature of her injuries did not warrant such extended treatment.

14. The three eyewitnesses to the events of 1 November all agreed that the applicant had ignored the requests of the police and that the policemen had therefore tried to detain her. The applicant had resisted and the officers had twisted her arms behind her back. After the applicant had stopped resisting, she had been released.

15. The findings of the internal investigation of the Liepāja City Municipal Police of 16 November 2007 disclosed that the policemen J.L. and J.M. had been penalised for their lack of diligence in drawing up a record of the administrative violation allegedly committed by the applicant (failure to obey the lawful order of a police officer). No mention appears to have been made of the alleged use of force against the applicant.

16. Taking into account the information set out above, the inspector concluded that the applicant had intentionally disobeyed the lawful order of a police officer (thus committing an administrative offence under Latvian legislation). As a result, J.L. and J.M. had used special restraint techniques ("*pielietoja speciālos cīņas paņēmienus*"), namely holding the applicant's arms behind her back in order to detain her. The applicant had shown resistance while she was being directed towards the police car. Once she had stopped resisting, she had been released and J.L. had informed his supervisor of the events. In consultation with J.L.'s supervisor it had been decided not to bring the applicant to the police station but instead to initiate

administrative proceedings against her. Administrative proceedings were initiated on 13 November 2007 and discontinued on 18 February 2008 because procedural time-limits had not been observed by the police.

17. The decision stated that, since the applicant had refused to cooperate with the police and had started to walk away, the policemen had had legitimate grounds for detaining her, as long as they observed the requirements set out in the Law on Police (see paragraphs 24 and 25 below). Nevertheless, J.L. and J.M. had failed to fulfil the requirements of section 13 *in fine* of the Law, which prohibits the use of special restraint techniques against women, other than in exceptional circumstances. As a result, the applicant had sustained minor injuries. Infliction of minor injuries is an offence proscribed by section 130 of the Criminal Law. Under section 7(3) of the Criminal Law, infliction of minor injuries is one of the crimes that are prosecuted privately by the victim.

18. The inspector further noted that J.L. and J.M. had not exceeded their official authority in contravention of section 317 of the Criminal Law. It was established that even though the policemen had violated the requirements of section 13 *in fine* of the Law on Police, it had to be taken into account that the applicant herself had disobeyed and resisted the police. Thus, taking into account the "nature, circumstances and consequences of the officers' actions", the inspector concluded that, pursuant to the explanations contained in section 23(1) of the Law on the Coming into Force and Application of the Criminal Law, there had been no substantial harm done to state authority, administrative order or the rights and interests of any person. Accordingly the inspector held that the municipal police had to decide whether J.L. and J.M. should be held disciplinarily liable for the violation of section 13 *in fine* of the Law on Police. In conclusion, it was decided to terminate the criminal proceedings for absence of *corpus delicti*.

19. The decision was conveyed to the applicant in a letter of 24 January 2008. The letter stated:

> "... You may appeal against the adopted decision to the Liepāja City Public Prosecutor's Office within 10 days of receiving the decision. Please also note that section 7(3) of the Criminal Procedure Law provides that the offence mentioned in section 130 of the Criminal Law (intentional infliction of a minor injury) is prosecuted privately. In the course of private prosecution criminal proceedings, the prosecutorial functions are carried out by the victim, who must lodge an application with a court. ..."

20. The applicant did not appeal against the decision of 21 January 2008. She did, however, submit a complaint to the Liepāja Court stating her intention to initiate a private prosecution under sections 130 and 156 of the Criminal Law. The complaint was dated 29 April 2008 and was marked as having been received at the court on 30 April. The applicant indicated that J.M. and J.L. had used special restraint techniques against her in contravention of the Law on Police, as a result of which she had been

injured, which had been confirmed by a forensic medical expert. She further pointed out that she had incurred pecuniary and non-pecuniary losses. Accordingly, she claimed damages.

21. On 7 May 2008 a single judge of the Liepāja Court issued a decision concerning the applicant's complaint. The judge held that the limitation period of six months had expired and criminal proceedings could therefore not be instituted. He noted that he had received the applicant's complaint on 6 May 2008, that is to say after the expiry of the statutory time-limit. Furthermore, the decision noted that the applicant had failed to specify which paragraph of section 130 formed the legal basis of her complaint, and had not substantiated in any way her claim under section 156.

22. The applicant appealed. On 2 June 2008 a single judge of the Kurzeme Regional Court dismissed her appeal. The decision noted that the last day on which J.L. and J.M. could have been charged by the way of private prosecution had been 1 May 2008. Since the applicant had lodged her complaint on 30 April 2008, it would have been physically impossible to initiate proceedings on 1 May 2008 because of the large number of procedural steps that would have had to be taken (for example, a copy of the complaint would have had to be sent to the accused, the accused would have had to be informed about their rights, the applicant would have had to be informed about the time and the place of the hearing, and the accused and other persons would have had to be called to the hearing). The judge further noted that the police's decision not to initiate criminal proceedings was made on 21 January 2008, yet the applicant had waited for almost three months before lodging a request to initiate private prosecution proceedings. The decision had also explained that a refusal to initiate criminal proceedings did not preclude the applicant from lodging a civil claim in order to obtain compensation for the harm allegedly done. Finally it was remarked that the judge of the first-instance court had correctly held that the applicant had failed to specify which of the three paragraphs of section 130 of the Criminal Law formed the legal basis of her complaint. Under the Criminal Procedure Law, the judge of the first-instance court had a duty to establish whether the legal categorisation of the alleged crime was correct, since the accused had a right to know the exact content of the accusations against them. The decision of the Kurzeme Regional Court was final and not subject to further appeal.

II. RELEVANT DOMESTIC LAW

23. Article 95 of the Constitution (*Satversme*) prohibits torture, as well as any cruel, inhuman or degrading treatment or punishment.

24. Article 92 of the Constitution provides, *inter alia*, that "any person whose rights are violated without justification has a right to commensurate compensation".

25. Section 12 of the Law on Police (*Likums par policiju*) authorises police officers to perform various activities necessary to maintain public order and to stop or to investigate crimes and administrative violations. The police are authorised, *inter alia*, to detain suspects, bring them to a police station and hold them under guard. Section 13 of the said law regulates the conditions for the use of force, weapons and specialised equipment by the police. Paragraph 6 of section 13, as in force at the relevant time, authorised the use of force and specialised equipment in order to:

> "stop intentionally wrongful disobedience of lawful requests made by police officers or other persons performing service duties with the aim of maintaining public order or in the fight against crime."

26. Section 13 *in fine* at the relevant time provided that

> "The ... intensity of the use of physical force or special means shall be determined taking into account the specific situation, the nature of the violation and the individual characteristics of the violator, and restricting as much as possible the harm done by such means. If someone is injured as a result of the use of physical force or special means, a police officer is obliged to provide medical assistance to the victim without delay and to report the incident to his or her immediate supervisor, who shall notify the prosecutor. ...
>
> It is prohibited to use special [restraint] techniques ... against women ..., except in cases when they ... endanger the lives or health of other persons and police officers, or show armed resistance."

27. Section 130 of the Criminal Law (*Krimināllikums*) reads:

Section 130 – Intentional [Infliction of] Minor Bodily Injuries

> "(1) For a person who intentionally inflicts [upon another person] bodily injuries which have not caused damage to health or the general ongoing loss of ability to work (minor bodily injuries), or a person who intentionally [subjects another person] to beating which has not resulted in the consequences mentioned, the applicable sentence shall be custodial arrest, or community service, or a fine not exceeding ten times the minimum monthly wage.
>
> (2) For a person who intentionally inflicts [upon another person] minor bodily injuries, which have caused temporary damage to health or insignificant general ongoing loss of ability to work, the applicable sentence shall be deprivation of liberty for a term not exceeding one year, or custodial arrest, or community service, or a fine not exceeding twenty times the minimum monthly wage. ..."

28. Section 317 reads:

Section 317 – Exceeding Official Authority

> "(1) For a person who, being a State official, commits intentional acts which manifestly exceed the limits of rights and authority granted to the State official by law or pursuant to his or her assigned duties, if substantial harm is caused thereby to State authority, administrative order or to legally protected individual rights and interests,
>
> the applicable sentence shall be deprivation of liberty for a term not exceeding five years, or community service, or a fine not exceeding one hundred times the minimum

> monthly wage, with or without deprivation of the right to occupy specified positions for a term of between one and three years. ..."

29. Section 23(1) of the Law on the Coming into Force and Application of the Criminal Law (*Par krimināllikuma spēkā stāšanās un piemērošanas kārtību*) clarifies that

> "Liability for a criminal offence provided for in the Criminal Law by which substantial harm has been caused, shall become effective if the offence has caused not only significant financial loss but has also threatened other interests or rights protected by law, or if such a threat has been significant."

30. Under section 7(3) of the Criminal Procedure Law (*Kriminālprocesa likums*), the offence mentioned in section 130 of the Criminal Law is subject to private prosecution. Section 102(1) of the Criminal Procedure Law provides that such cases must be brought by the victim directly before the competent court, after which a judge must decide whether to initiate criminal proceedings. Section 621(2) provides that

> "no later than the next working day following receipt of [the private prosecution] complaint, the judge shall verify whether the victim's complaint contains a correct indication of the section and paragraph of the Criminal Law on the basis of which criminal proceedings are to be initiated in a private prosecution case, and whether or not a statutory limitation has entered into effect ..."

31. After criminal proceedings have been initiated, it is the duty of the victim to prove the accusations contained in his or her complaint. For this purpose the victim may ask the judge to call witnesses and to obtain other materials (section 102(2) of the Criminal Procedure Law). Section 622(2) provides that no pre-trial investigation takes place in private prosecution cases. Lastly, the statutory limitation period in cases susceptible to private prosecution expires six months after the day on which a criminal offence has been committed (section 56(1)(1)). Section 56(2) provides that "the [statutory] limitation period shall be calculated from the date on which the criminal offence was committed until the date when charges are brought".

32. Sections 350 to 353 of the Criminal Procedure Law set out the rules on compensation for victims' pecuniary and non-pecuniary damage. Section 350(3) provides that if a victim considers the compensation obtained in the course of criminal proceedings insufficient, he or she may request additional compensation in the civil courts. In such cases, the civil courts are bound by the criminal courts' findings concerning the defendant's guilt.

33. Section 1635 of the Civil Law defines a delict as any wrongful act as a result of which damage (which may include non-pecuniary damage) has been caused to a third person. The person who has suffered the damage has the right to claim satisfaction from the person who caused it. Section 1779 provides that anyone is under an obligation to make good damage caused by his or her act or failure to act.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained about the use of force by the police officers. The Government were asked whether the applicant had been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, which reads:

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

A. Admissibility

35. The Government argued that the applicant had not exhausted the available domestic remedies and that her complaint therefore had to be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention. Specifically, the Government submitted that it had been possible and necessary for the applicant to challenge the 21 January 2008 decision of the Liepāja police (see paragraphs 9 to 17 above) before a public prosecutor.

36. The applicant submitted that she had accepted the conclusions of the said decision in so far as it had concerned section 317 of the Criminal Law (that is, the offence of exceeding official authority). However, in respect of the infliction of a minor bodily injury she had followed the instructions in the letter accompanying the decision and had attempted to initiate private prosecution proceedings.

37. The Government submitted in response that private prosecution proceedings could not be considered an effective remedy for complaints under Article 3 and that the six-month period for the purposes of Article 35 § 1 of the Convention had therefore started running on 21 January 2008 and the applicant's unsuccessful attempt to initiate private prosecution proceedings did not interrupt the running of that time-limit.

38. The Court agrees with the Government in so far as under the Convention the effective remedies in cases of wilful ill-treatment by State agents in breach of Article 3 require a thorough and effective investigation capable of leading to the identification and punishment of those responsible, where necessary, *ex proprio motu*; and, where appropriate, an award of compensation (see *Holodenko v. Latvia*, no. 17215/07, § 56, 2 July 2013). However, taking into account that it was the Liepāja police, which, having refused to initiate investigation concerning section 317 of the Criminal Law, explicitly informed the applicant of the possibility of pursuing a private prosecution in respect of the infliction of minor bodily injuries and the fact that private prosecution proceedings – had they been initiated – would have pursued essentially the same aims as criminal proceedings conducted by

public prosecutors (that is to say, both procedures would have sought to determine the potential criminal liability of the two police officers), the Court is not persuaded that the applicant's attempt to institute private prosecution proceedings should be considered a misconceived application to a body or an institution which has no power or competence to offer effective redress for the applicant's complaints and thus held against the applicant (see *Beiere v. Latvia*, no. 30954/05, § 38, 29 November 2011, with further references), which indeed would not interrupt the running of the six-month period. Therefore this period for the purposes of Article 35 § 1 of the Convention is to be counted from the end of the applicant's attempt to institute private prosecution proceedings, that is, from 2 June 2008. The application was lodged with the Court on 1 December 2008 and the Government's objection as to the non-compliance with the six-month rule is therefore dismissed.

39. Turning to the Government's submission that by not lodging an appeal against the 21 January 2008 decision of the Liepāja police the applicant failed to exhaust the domestic remedies, the Court reiterates that, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010). The Court considers that the applicant's "essential grievance" concerned the use of force against her. Her objective was to obtain a criminal investigation of the actions of the officers responsible and eventually to vindicate her rights. While achieving that objective might have been significantly more difficult in the course of privately prosecuted criminal proceedings which normally do not benefit from the extensive investigative powers of public prosecutors, the Court considers that the applicant cannot be put at a disadvantage for having chosen, in response to an explicit recommendation of the State police, to use an alternative remedy.

40. As for the fact that the applicant's attempt to institute private prosecution proceedings was ultimately unsuccessful, the Court notes that the Government did not argue that the applicant was to be considered as not having exhausted the domestic remedies for this reason. As noted above (see paragraph 35), the Government were concerned only that the applicant had not lodged an appeal against the 21 January 2008 decision of the Liepāja police. No comments were offered with regard to the suggestion by the police that the applicant seek to initiate private prosecution proceedings. The usual practice of the Court – where a case has been communicated to the respondent Government – is not to declare the application inadmissible for failure to exhaust domestic remedies unless this matter has been raised by the Government in their observations (see *Lavents v. Latvia*,

no. 58442/00, § 57, 28 November 2002; *Dobrev v. Bulgaria*, no. 55389/00, § 112, 10 August 2006, with further references; see also *Solovyev v. Russia*, no. 2708/02, § 124, 24 May 2007; *Mechenkov v. Russia*, no. 35421/05, § 78, 7 February 2008; and *Iskandarov v. Russia*, no. 17185/05, § 121, 23 September 2010).

41. Lastly, the Government argued that the applicant's complaint must be declared inadmissible because she had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention since the alleged violation did not attain the minimum level of severity required to warrant consideration by an international court.

42. The applicant submitted that the extent of her injuries and other medical problems, combined with the public humiliation in front of her neighbours in a public place, meant that the disadvantage that she had suffered could not be considered insignificant.

43. As was indicated in paragraph 79 of the Explanatory Report to Protocol No. 14, which inserted the "no significant disadvantage" criterion in Article 35:

> "The new criterion may lead to certain cases being declared inadmissible which might have resulted in a judgment without it. Its main effect, however, is likely to be that it will in the longer term enable more rapid disposal of unmeritorious cases".

44. At the outset, the Court notes that the application of this criterion is not limited to complaints relating to specific Articles of the Convention. However, the Court finds it difficult to envisage a situation in which a complaint under Article 3 of the Convention which would not be inadmissible on any other grounds and which would fall within the scope of Article 3 (which means that the minimum level of severity test would be fulfilled) might be declared inadmissible because the applicant has not suffered significant disadvantage. The present case is certainly not an example of such a situation. The Government's objection under Article 35 § 3 (b) of the Convention is dismissed.

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

B. Merits

1. The parties' submissions

46. The applicant asserted that her treatment by the police had attained the minimum level of severity required for it to fall within the scope of Article 3 of the Convention. In this regard she stated that in addition to the haematomas recorded by the medical expert (see paragraph 12 above), she had suffered from a heart attack, high blood pressure and other medical

problems. In addition, the applicant indicated that, in order to assess the severity of her treatment, it was relevant to note that the police had ill-treated her in a public place and in front of neighbours who had ridiculed her in the process. The police officers had not had any reason to detain her, since she had in fact invited them to accompany her to her apartment. She admitted that she had started to walk away from the police car by stepping two steps, when the police officers grabbed and twisted her arms behind her back.

47. The applicant further considered that the fact that the officers had acted in breach of the Law on Police ought, in itself, to lead to the finding of a violation of Article 3, especially considering that the police had used force against a woman who was fifty years old at the time. The use of force had been excessive, absolutely unnecessary and disproportionate. Not only was the applicant not committing a criminal offence, she was not even committing an administrative offence, as is apparent from the fact that she was in the end not fined for the alleged offence. Even if the applicant had been washing her car, in breach of administrative regulations, the nature of such an offence would not have justified the use of force against the suspected perpetrator.

48. The Government stated that the Convention did not explicitly prohibit the use of force by law enforcement officials against persons disobeying legitimate orders or resisting the police, as long as such use of force was proportionate and necessary. In the analysis of proportionality and necessity, the Government attached weight to the fact that the police officers had not intended to humiliate the applicant and that her treatment had been "justified by her own aggressive, provocative, non-cooperative behaviour, as well as by the necessity to interrupt her disobedience". The Government conceded that the techniques used by the officers against the applicant had been in breach of the Law on Police but considered that the short time during which they had been used and the fact that the applicant was "constantly dragging and twisting her arms", in combination with the fact that she had been freed very quickly, meant that she had not been ill-treated.

49. The Government submitted that a violation of national law did not in itself automatically entail a violation of the Convention (referring to *Wiesinger v. Austria*, 30 October 1991, § 60, Series A no. 213, and *Keipenvardecas v. Latvia* (dec.), no. 38979/03, § 40, 2 March 2010).

50. Lastly, the Government submitted that the facts of the present case were not very different from those of the case *Klaas v. Germany* (22 September 1993, Series A no. 269), in which the Court had found that the Convention had not been violated.

51. The applicant argued that there were significant differences between her situation and that of Mrs Klaas. In particular, the applicant in the *Klaas* case had been criminally prosecuted and eventually fined for an administrative offence, unlike the applicant in the present case. Secondly,

the arrest of Mrs Klaas was found to have been lawful, while the police officers had acted in breach of domestic law when using force against the applicant in the present case, as conceded by the Government.

2. Assessment of the Court

52. According to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among many others, *Farbtuhs v. Latvia*, no. 4672/02, § 49, 2 December 2004, and *Bazjaks v. Latvia*, no. 71572/01, § 105, 19 October 2010).

53. The Court reiterates that in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof "beyond reasonable doubt". Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, for instance, *Bazjaks*, cited above, § 74).

54. 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. 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 *Bērziņš v. Latvia*, no. 25147/07, § 90, 25 February 2014 with further references).

55. The Court observes that the parties have not disputed that the two police officers had twisted the applicant's arms behind her back, as a result of which she had sustained minor injuries (bruises) on her arms and, as reported by the domestic authorities, the impairment of the applicant's health had lasted for a period shorter than six days (see paragraph 13 above). The applicant argued that she had had numerous other medical issues as a result of her alleged ill-treatment; but that assertion is not supported by the materials in the case file.

56. However, it is undisputed that the police officers had warned her that she was disobeying police orders (see paragraphs 11-12 above), nevertheless she had walked away from them (see paragraphs 12 and 46 above). The Government argued that she had been actively resisting the police officers (see paragraph 48 above), which was not denied by the applicant. In fact, she admitted to the domestic authorities that she had "avoided the grip" and "tried to free herself" (paragraphs 7 and 11 above).

In this connection, it is noteworthy that the three eyewitnesses also confirmed that the applicant had shown resistance and that she had been let go as soon as she had stopped it (see paragraph 14 above).

57. In view of the above, the Court considers that the applicant's treatment on 1 November 2007 did not reach the minimum level of severity required to fall within the scope of Article 3 of the Convention.

58. There has, accordingly, been no violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. The applicant complained that she had no possibility of obtaining compensation for the damage done to her health, reputation and honour. She relied on Article 41 of the Convention. This complaint was communicated to the respondent Government under Article 13 of the Convention, which reads:

> "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."

60. As a preliminary remark, the Court notes that the applicant, in the original application submitted to the Court, did not complain about the quality of the investigation of her ill-treatment or the absence thereof. Instead she complained about the lack of any possibility of obtaining, at a domestic level, compensation for damage resulting from a violation of Article 3 of the Convention. Her complaint therefore falls to be examined only under Article 13 (see *Rupa v. Romania (no. 1)*, no. 58478/00, § 181, 16 December 2008, and, *mutatis mutandis*, *Zavoloka v. Latvia*, no. 58447/00, § 36, 7 July 2009).

A. Admissibility

61. The Government argued that the applicant had no "arguable complaint" in respect of which a domestic law remedy might be required pursuant to Article 13 of the Convention.

62. The Court observes that the applicant's complaint under Article 3 of the Convention was declared admissible and was examined on the merits. Although the examination on the merits resulted in the finding that the applicant's treatment did not amount to a violation of Article 3, the applicant's complaint was nevertheless "arguable" for the purpose of Article 13 of the Convention (see, for instance, *Andrei Georgiev v. Bulgaria*, no. 61507/00, § 67, 26 July 2007). The Government's argument against admissibility is therefore rejected. The Court notes that this complaint is not manifestly ill-founded within the meaning of

Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

63. The Government suggested that the applicant could have obtained sufficient redress for the breach of Article 3 by lodging a civil claim on the basis of sections 1635 and 1779 of the Civil Law (see paragraph 33 above). The Government submitted two examples of cases in which Latvian courts had awarded compensation for damage caused by State officials and had particularly emphasised the fact that in one of the examples submitted the Senate of the Supreme Court had explicitly stated that the termination of criminal proceedings due to lack of *corpus delicti* had no prejudicial effect on the adjudication of civil claims arising from the same facts.

64. In the alternative, the Government proposed that the applicant could have complained to administrative courts or else appealed against the 21 January 2008 decision of the Liepāja police.

65. The applicants had two principal arguments concerning civil proceedings as a remedy capable of offering redress. Firstly, the applicant disagreed with the Government concerning the prejudicial effect of the outcome of criminal proceedings concerning the same underlying facts. She argued that civil courts would take into account the decisions of the Liepāja police and of the Kurzeme Regional Court and consider them decisive for establishing that J.L. and J.M. had not been at fault for the damage caused to the applicant. The second objection offered by the applicant concerned the type of liability established by the Senate of the Supreme Court in the cases that the Government had submitted as examples. The cases in question had concerned strict liability due to using items causing increased risk (*paaugstinātas bīstamības avots*), more specifically firearms. Since strict liability had been engaged, the courts had not been required to establish the defendants' fault.

66. The Government argued that the applicant's objections concerning the civil proceedings were misguided. The Government clarified that civil courts would be bound by a determination of a person's guilt – or absence thereof – contained in a judgment of a criminal court but not by a decision to terminate criminal proceedings due to lack of *corpus delicti*, as had been explicitly held by the Senate of the Supreme Court.

2. Assessment of the Court

67. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the 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, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (see, for example, *Bazjaks v. Latvia*, no. 71572/01, § 127, 19 October 2010, with further references).

68. The Court reiterates that the remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (see *Asproftas v. Turkey*, no. 16079/90, § 120, 27 May 2010). However, the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII) and the mere fact that an applicant's claim fails is not in itself sufficient to render the remedy ineffective (*Amann v. Switzerland* [GC], no. 27798/95, §§ 88-89, ECHR 2000-II).

69. Since in the present case the alleged violation with respect to the applicant was an instantaneous one, the remedy in question had to be capable of providing her with adequate redress (*Sürmeli*, cited above, § 99). The Court has previously held that compensation for non-pecuniary damage ought to be, as a matter of principle, one aspect of "adequate redress" for a breach of Article 3 of the Convention (*Bazjaks*, cited above, § 131).

70. Therefore the question to be answered here is whether the applicant had available to her, both in theory and in practice, a remedy for the alleged violation of Article 3 of the Convention that would have allowed her to obtain financial compensation. The Court has frequently held that its task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (see *The Holy Monasteries v Greece*, 9 December 1994, § 55, Series A no. 301-A).

71. The Court notes that the Government have explained that the applicant was entitled to institute civil proceedings on the basis of sections 1635 and 1779 of the Civil Law. The Government furthermore submitted examples of domestic case-law in which comparable claims had been upheld by civil courts. The Court is not convinced by the applicant's attempts to distinguish the cases submitted by the Government from her situation. As the Government have correctly pointed out, the Senate of the Supreme Court has explicitly stated that a decision to discontinue criminal proceedings due to lack of *corpus delicti* exercises no prejudicial effect in civil proceedings. The applicant's argument that the cases invoked by the Government concerned strict liability of State officials is not accurate. One of the cases cited by the Government concerned the use of force by prison

guards against a prisoner and did not concern strict liability. Hence the Court comes to the conclusion that the possibility of bringing civil proceedings against the Liepāja Municipal police and against individual police officers in order to obtain financial compensation for the alleged violation of Article 3 existed in both theory and practice. It has not been shown that this remedy would not have been effective for the purposes of Article 13.

72. In the light of this conclusion, the Court is not required to examine whether administrative or criminal proceedings would also have been capable of offering appropriate relief for the applicant's Article 3 complaint.

73. The Court concludes that there has been no violation of Article 13 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints concerning Articles 3 and 13 of the Convention admissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 3 of the Convention;

3. *Holds*, unanimously, that there has been no violation of Article 13 of the Convention.

Done in English, and notified in writing on 21 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinions of Judges Ziemele, Nicolaou, Kalaydjieva are annexed to this judgment.

P.H.
F.E.P.

JOINT CONCURRING OPINION OF JUDGES ZIEMELE AND NICOLAOU

We have voted with the majority but not without some hesitation.

In a case such as the present, Latvian law does not allow the use by the police of special restraint techniques against women (section 13 *in fine* of the Law on Police, see paragraph 26 of the judgment). Regrettably, the police officers who dealt with the matter at the scene did not act in conformity with the law in question. Although the applicant's conduct made the situation difficult to manage and resolve, that did not absolve them from the obligation to abide by what the law required.

The State is entitled to adopt such a measure, which obviously addresses, in the domestic context, the particular vulnerability of women and seeks to safeguard their dignity. It can be seen as connected, *inter alia*, with the protection that Article 3 of the Convention accords to individuals against degrading treatment. Thus, the existence of the measure in question should seriously enter into the equation when one comes to consider the gravity of the treatment meted out to the applicant.

What the result may be is, of course, a matter of overall assessment; and, on this, we have finally concluded that there is no firm ground on the basis of which we should depart from the view taken by the majority.

SEPARATE OPINION OF JUDGE KALAYDJIEVA

In the present case the respondent Government did not contest the fact of use of physical force or the fact that the applicant sustained minor bodily injuries and anguish *per se*. In this regard I fail to agree with the conclusions of the majority (paragraph 57) that the applicant's treatment did not reach the minimum level of severity required to fall within the scope of Article 3 of the Convention and that "there has, accordingly, been no violation of that Article" (paragraph 58).

The question whether the treatment sustained by the applicant in this case reached the "minimum level of severity" should be subject to an assessment, which (as noted in paragraph 52) "depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among many others, *Farbtuhs v. Latvia*, no. 4672/02, § 49, 2 December 2004, and *Bazjaks v. Latvia*, no. 71572/01, § 105, 19 October 2010)."

In so far as this assessment led the majority to conclude that the treatment sustained did not reach the "minimum level of severity", this conclusion concerns first and foremost the applicability of Article 3 and should accordingly lead to a finding that the applicant's complaint is manifestly ill-founded as falling outside the scope of the protection of this provision.

I agree with my colleagues' conclusion that there was no violation of Article 3 in the present case, not because the sustained treatment did not reach the "minimum level of severity" (a matter which was insufficiently examined), but because "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 violent behaviour (see *Bērziņš v. Latvia*, no. 25147/07, § 90, 25 February 2014 with further references)." The applicant did not deny her resistance or the fact that she had been let go as soon as she had stopped resisting. In these circumstances, and given the level of severity and short duration of the treatment sustained, there is little to convince me that the "recourse to physical force was not made strictly necessary by the applicant's own conduct" such as to constitute an infringement of her right set forth in Article 3 of the Convention.