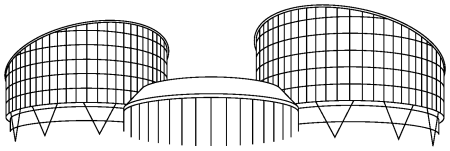

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF OSTROVEŅECS v. LATVIA

(Application no. 36043/13)

JUDGMENT

STRASBOURG

5 October 2017

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 Ostroveņecs v. Latvia,

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

Angelika Nußberger, *President,*
Nona Tsotsoria,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 5 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 36043/13) 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 Nikita Ostroveņecs ("the applicant"), on 24 May 2013.

2. The applicant was represented by Mr M. Intlers, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

3. The applicant alleged that he had been ill-treated by detainee escort officers on 20, 21, 24 and 25 May 2010 and that the investigation into that ill-treatment had been ineffective.

4. On 25 January 2016 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1993 and is detained in Jēkabpils. On 9 February 2011 he reached the age of majority.

A. The applicant's trial and the alleged ill-treatment

6. The applicant (who was a minor at the time of the criminal trial) and his co-accused, V.P., P.V. and F.Č., were charged with the aggravated murder of a fifteen-year-old girl, and the intentional destruction of property. The case was heard in May 2010 by the Riga Regional Court (*Rīgas apgabaltiesa*). The applicant pleaded "partially guilty" (*vainu atzīst daļēji*). He was held in detention on remand in Riga Central Prison (*Rīgas centrālcietums*) and was transported to the Riga Regional Court for the hearings.

7. The applicant submits that on the trial days, that is to say on 20, 21, 24 and 25 May 2010, in the holding area in the basement of the Riga Regional Court, he was insulted and physically assaulted by the detainee escort officers to make him confess to the crimes. He was made to perform different exercises, such as a "wall-sit" exercise, push-ups and a "duck walk" (walking slowly in a squatting position). While the applicant was performing the exercises he received blows to the back with a rubber truncheon. The applicant submits further that the escort officers assaulted him before and after the hearings and during the breaks. They beat him on different parts of the body. During the beatings they expressed their opinion regarding the criminal proceedings and manifested a negative and belittling attitude towards him. They also threatened to kill or mutilate the applicant if he did not plead guilty. Having been psychologically broken and without having consulted his lawyer, during the hearing of 25 May 2010 the applicant admitted his guilt and refused to testify.

8. On 26 May 2010 the applicant's mother visited him in Riga Central Prison. On the following day the applicant's mother, acting as his representative, lodged a complaint with the prosecution service. She stated that the escort officers had kicked her son on his body, arms, legs and head, and that he had shown her many bruises. She requested the prosecution service to institute criminal proceedings in respect of these events. On 31 May 2010 the prosecution service forwarded the complaint to the Riga regional division of the State Police. On 2 June 2010 the applicant's mother lodged a similar complaint with the Internal Security Office of the State Police (*Valsts policijas Iekšējās drošības birojs* – hereinafter "the Internal Security Office") (see paragraph 17 below).

9. On 26 May 2010 employees of the Ombudsman's Office visited the applicant in Riga Central Prison. On the following day the Ombudsman wrote a letter to the Internal Security Office stating that the applicant had alleged that the escort officers had assaulted him. He had borne traces of the alleged violence – a haematoma on his side and abrasions on his arm and legs. The Ombudsman requested the Internal Security Office to examine the actions of the escort officers. He informed the Riga Regional Court about this letter.

10. On 27 May 2010 the applicant's lawyer visited him in Riga Central Prison. Following the meeting, the applicant's lawyer lodged a complaint with the prosecution service. He stated that between 20 and 25 May 2010 the applicant had been beaten by the detainee escort officers in order to make him confess to the crime. The applicant had shown him his injuries. As a result of this coercion at the hearing on 25 May 2010 the applicant had admitted his guilt, contrary to his defence position. The applicant's lawyer requested the prosecution service to institute criminal proceedings in respect of these events. On 2 June 2010 the prosecution service sent the complaint to the Riga regional division of the State Police.

11. At a hearing on 28 May 2010 the applicant stated that on all four trial days he had been assaulted, as a result of which he had admitted his guilt. He maintained his earlier plea of "partially guilty". Moreover, the applicant's co-accused also stated that they had been assaulted. The applicant's lawyer stated that the applicant had a black eye and that he had been hit on his head. He argued that the applicant was unable to testify. The judge adjourned the hearing in order to request information from Riga Central Prison on the applicant's and his co-accused's state of health.

12. On 28 May 2010 Riga Central Prison faxed to the Riga Regional Court a copy of a medical certificate issued after the applicant had been medically examined on 26 May 2010. The handwritten medical certificate, dated 26 May 2010, provided to the Court by the Government stated that the applicant had the following injuries: wounds on his lower legs and on the right hand "in the typical area"; a haematoma on the left forearm; and a haematoma on the right side. The applicant had stated that he had been beaten with a truncheon while being escorted on 20, 21 and 24 May. The Government also provided a typewritten report, dated 14 June 2010, from Riga Central Prison. According to the report, the applicant's state of health on 26 May 2010 had been satisfactory; he had had several injuries covered by scabs on his lower legs; injuries covered by scabs on the "typical area" of the right hand caused by the use of handcuffs; a haematoma four centimetres in diameter on his left forearm; and a haematoma six centimetres in diameter in the "phase of absorption" on the right side in the area of the kidney.

13. At a hearing on 29 May 2010 the applicant stated that he was unable to testify because he had a headache. His lawyer argued that the applicant's medical examination had been superficial. The prosecution was of the view that the applicant was seeking to delay the proceedings. The judge decided to proceed with the trial. The same day the Riga Regional Court found the applicant and his co-accused guilty and sentenced him to ten years' imprisonment. The applicant and his mother lodged appeals indicating *inter alia* that the applicant had been assaulted by the escort officers. The case was forwarded to the Criminal Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*).

14. At a hearing on 30 January 2013 the prosecution informed the appellate court that the criminal investigation in relation to the applicant's "bodily injuries" had been terminated, that that decision had taken effect and that no appeal had been lodged against that decision. The relevant material was included in the case file. At a hearing on 9 December 2013 the applicant admitted his guilt in full and asked the court to review his conviction only in so far as it concerned his sentence.

15. On 11 December 2013 the Criminal Chamber of the Supreme Court upheld the applicant's conviction, but reduced his sentence to nine and a half years' imprisonment. In setting the sentence the court took into account that the proceedings before it had included a period of inactivity of more than one year and thus had lasted for unreasonably long time.

16. On 29 October 2014 the Supreme Court with a final decision dismissed the applicant's appeal on points of law.

B. Initial inquiry

17. As submitted by the Government, on 7 June 2010 the Internal Security Office instituted an internal inquiry. It requested the applicant's medical records from Riga Central Prison. On 18 June 2010 the Internal Security Office, referring to the complaint lodged by the applicant's mother (see paragraph 8 above), sent a copy of the file to the Riga regional division of the State Police for it to decide on the lawfulness of the actions of its employees. The Internal Security Office stated that the file did not indicate that the escort officers had committed a criminal offence.

18. On 28 June 2010 the applicant lodged a complaint with the Internal Security Office regarding his alleged ill-treatment, stating that he would be able to identify the alleged perpetrators. The Internal Security Office sent the complaint to the Riga regional division of the State Police.

19. On 3 August 2010 the Riga regional division of the State Police, terminated the internal inquiry. It noted that according to the medical documentation concerning the applicant provided by Riga Central Prison the applicant's state of health on 26 May 2010 had been satisfactory. He had had several wounds on his lower legs covered by scabs; wounds on the right hand covered by scabs, caused by the use of handcuffs; a haematoma four centimetres in diameter on his left forearm; and a haematoma six centimetres in diameter "in the phase of absorption" on the right side. The Riga regional division of the State Police noted the injuries found on V.P. At the same time, there had been no visible injuries found on P.V. or F.Č. According to explanations (*paskaidrojumi*) obtained from sixteen officers, neither the applicant nor his co-accused had been assaulted. The Riga regional division of the State Police concluded that the information gathered did not indicate that the officers had committed a disciplinary offence. It returned the file to the Internal Security Office.

20. On 11 August 2010 the Internal Security Office refused to institute criminal proceedings in view of the fact that the constituent elements of the offence of "exceeding official authority" under section 317(2) of the Criminal Law (*Krimināllikums*) were lacking in the officers' actions. The applicant's mother appealed against this decision.

21. On 26 August 2010 the prosecution service found that the Internal Security Office had based the impugned decision on an inquiry conducted by another institution of the State Police and medical documentation provided by Riga Central Prison. It was necessary to question the applicant and his co-accused regarding the circumstances of their transportation and to find out whether any of the employees of Riga Central Prison had seen injuries on them prior to and after their transportation and whether any of the employees had received any complaints from them in this regard. It was also necessary to find out whether between 20 and 25 May 2010 or earlier the applicant or his co-accused had been involved in any kind of conflict in the prison as a result of which they could have sustained the injuries. The prosecution service referred the case back to the Internal Security Office.

22. In reply to a request from the Internal Security Office, on 22 October 2010 Riga Central Prison provided information that prison employees who had between 20 and 25 May 2010 searched (*pārmeklēt*) the applicant and his co-accused each time prior to and after their being transported had not seen any injuries on them. The applicant and his co-accused had not made any complaints. There were no records showing that between 1 and 26 May 2010 they had been involved in any conflicts in the prison. On 5 November 2010 the Internal Security Office obtained explanations from the applicant and his co-accused, who maintained that the escort officers had assaulted them. As regards the daily physical security checks that they had undergone in the prison, they stated that prison employees had not asked them to undress. Therefore their injuries had remained undetected.

23. On 10 November 2010 the Internal Security Office again refused to institute criminal proceedings, stating that the information gathered during the additional inquiry did not indicate that the officers had committed any offence under section 317(2) of the Criminal Law. The applicant's mother appealed against this decision.

24. On 17 December 2010 the prosecution service quashed the decision as it had been based on an incomplete inquiry. It instructed the Internal Security Office to question the persons with whom the applicant and his co-accused had shared cells between 20 and 25 May 2010 and to obtain information regarding breaks during the trial days on which the applicant and his co-accused had allegedly been assaulted. It was also necessary to question further the escort officers.

25. On 29 November 2011 the Internal Security Office obtained information from Riga Central Prison regarding the applicant's and his co-accused's cellmates. In December 2011 and January 2012 it took

explanations from them. According to the applicant's cellmate, A.D., the applicant had told him that the escort officers had assaulted him and his co-accused. He had shown him marks left by the beatings. It was difficult for A.D. to recall details as a long time had passed. Between 19 and 30 January 2012 the Internal Security Office questioned the escort officers, who stated that they had not assaulted the applicant or his co-accused.

26. On 31 January 2012, for the third time, the Internal Security Office refused to institute criminal proceedings, stating that the information gathered during the additional inquiry did not indicate that the officers had committed any offence under section 317(2) of the Criminal Law. The applicant's mother appealed against this decision.

27. On 22 February 2012 the prosecution service quashed the decision. It considered that the Internal Security Office had not clarified the contradictions between the statements of the applicant and his co-accused on the one hand, and the statements of the escort officers on the other hand, and the circumstances in which the applicant and V.P. had obtained the injuries established on 26 May 2010. In view of the information gathered during the internal inquiry it was possible that above-mentioned offence under section 317(2) of the Criminal Law had been committed. Accordingly, the prosecution service instituted criminal proceedings and returned the file to the Internal Security Office for further investigation. On 23 February 2012 the prosecution service informed the applicant's mother that the criminal proceedings had been instituted.

C. Criminal investigation

1. Investigative steps and closure of the investigation

28. Between 29 February and 21 March 2012 the Internal Security Office questioned as witnesses fifteen escort officers, who gave largely the same statements. They had not beaten the applicant or his co-accused. They explained that officers wore belts which they never removed because handcuffs, truncheon, gun, pepper spray and gun belt were attached to them. They could not give more detailed statements as a long time had passed since the events. One escort officer, M.S., who was questioned as a witness on 11 April 2012, stated that he had seen bruises on the applicant and his co-accused during their personal search in the court building. M.S. had thought that they had been beaten in the prison. The escort officers had not assaulted them.

29. On 20 March 2012 an inspector of the Internal Security Office questioned one of the applicant's co-accused, V.P., as a witness.

30. V.P. stated that on the first trial day the escort officers had made him perform push-ups and a "duck walk", during which two escort officers had hit him on his back, abdomen, legs and chest with their legs, fists, a belt and

truncheons. The escort officers had also beaten the applicant, who had been next to him. The officers had placed V.P. in a holding cell, and after some time they had escorted him to the court room.

31. P.V. and F.Č., the applicant's co-accused, stated that on the second trial day the escort officers had made them perform push-ups and a "duck walk". While they had been performing the exercises the escort officers had beaten them. P.V. had been hit during a break by two escort officers with a black belt on his back ten to twelve times. F.Č. had been hit by one escort officer on his back and legs approximately ten times. He had also been hit on his buttocks with a belt twenty to thirty times.

32. P.V. had heard the applicant screaming. On the way back to the prison the applicant had told P.V. that he had been beaten; later, in the prison, he had shown him two bruises on his chest. After the occurrence of the alleged beating had been raised during the trial P.V. had been examined by a prison doctor. He had had no injuries.

33. V.P., P.V. and F.Č. stated that they would not be able to identify the officers who had beaten them. They could not recall the events in detail. They did not wish to be declared victims in the proceedings.

34. On 3 April 2012 the applicant was questioned as a witness. He stated that on the trial days in the basement of the court building the escort officers had made him perform different exercises, such as a wall-sit exercise, push-ups and a "duck walk". While he had been performing the exercises, the escort officers had beaten him. He further stated that the escort officers had beaten him on different parts of the body. They had also hit him with a belt. On 7 June 2012 the inspector presented photographs of the escort officers to the applicant for the purposes of identification. He could not identify the officers who had allegedly assaulted him.

35. As submitted by the Government, on 2 May 2012 the Riga Regional Court confirmed that the court building premises were equipped with a video surveillance system. However, they stated that video recordings were stored for two to three months and then erased.

36. On 3 May 2012 the Internal Security Office requested an expert medical report.

In respect of V.P., P.V. and F.Č. the report concluded that their medical documentation contained no records of injuries sustained over the time period in question. In respect of the applicant the report stated that the description of the injuries contained in the medical documentation, in the record of the applicant's questioning by the police, and in the hearings transcripts was incomplete. Therefore, it was not possible to determine the exact time at which the injuries had been sustained, how extensive they had been, and the degree of trauma or force that had been employed to inflict them. However, it could not be excluded that the injuries had appeared between 20 and 25 May 2010 in the circumstances indicated in the record of the applicant's questioning. While it was indicated in the record of the

applicant's questioning and in the hearings transcripts that injuries had also been inflicted to the applicant's face, abdomen, buttocks, lower part of the back, back, and left side of the thorax, such injuries had not been identified in the medical examination of 26 May 2010.

37. On 18 May 2012 the Internal Security Office questioned P.V.'s former cellmate, V.A., who stated that he had seen red patches on P.V.'s back. P.V. had told him that the escort officers had beaten him in the basement of the court building; they had also beaten the applicant. According to V.A. this had happened prior to 5 May 2010. V.A. had heard that the applicant had also been beaten in the prison.

38. On 20 July 2012 the Internal Security Office terminated the criminal proceedings on the grounds that the elements of the offence had not been made out. There was no irrefutable evidence that the escort officers had inflicted the injuries as alleged. According to the expert report, the injuries had not been recorded in the medical documentation precisely. The persons involved in the criminal proceedings had given contradictory accounts of the circumstances in which the injuries had been inflicted.

2. Appeal against closure of the investigation

39. On 6 August 2012 the applicant's mother lodged an appeal with the prosecution service against the decision to terminate the criminal proceedings, the applicant having on 21 October 2011 granted her power of attorney (*universālpilnvara*) to take any action concerning his property. This included the right to represent the applicant before the police, the courts and other institutions in relation to all rights vested in him as a victim. Prior to the authorisation she had represented the applicant on the grounds of his being a minor. In the wording of the appeal the applicant's mother indicated that she was acting on behalf of the applicant.

40. She complained of deficiencies in the criminal investigation which had precluded obtaining important information. Namely, the presentation of photographs to the applicant for the purpose of identifying the alleged perpetrators had been organised in a manner intended to impede justice - while he had been shown the small black-and-white frontal photographs he had been surrounded by seven escort officers in an effort to intimidate him. She asked that the investigating authorities organise an identity parade for the applicant and his co-accused and question the applicant's co-accused regarding the events in question.

41. On 6 September 2012 a prosecutor dismissed her appeal, noting that during the presentation of photographs the applicant had been assisted by his lawyer. They had not made any remarks or requests as regards this procedure. The investigating authorities had established that no force had been used against the applicant and his co-accused and that no threats had been made. From the moment at which the trial had started the Ombudsman had paid particular attention to the applicant and his co-accused. All of the

escort officers had been questioned as witnesses. They had had no interest in the outcome of the trial. Therefore, there had been no reason to doubt their account of the events. The applicant's co-accused had also been questioned and their evidence assessed. There was no need to take any further investigative steps as the constituent elements of the offence under section 317(2) of the Criminal Law were lacking in the officers' actions. The prosecutor indicated that her decision was amenable to appeal before a higher prosecutor.

42. On 22 September 2012 the applicant's mother appealed against the aforementioned decision before a higher prosecutor. She indicated that she was acting on behalf of the applicant. In addition to the issues raised previously she complained that a long time had passed before criminal proceedings had been instituted. She considered that it had been a deliberate delay to hide any traces of assault. Furthermore, during the internal inquiry the Internal Security Office had "interviewed" the applicant and the co-accused, who had been minors at the relevant time, in the absence of a lawyer or a representative. After those "interviews" the co-accused had all refused to testify.

43. On 24 October 2012 a higher prosecutor dismissed the applicant's mother's appeal. He upheld the findings of the lower prosecutor – the decision to terminate the criminal proceedings had been lawful as the constituent elements of the offence had been missing. At the same time, he noted that the applicant had not been declared a victim in the criminal proceedings and hence could not be represented by another person. Furthermore, at the time when the criminal proceedings had been instituted he had reached the age of majority. The higher prosecutor indicated that the applicant's mother did not have the right to complain about the decision to terminate the criminal proceedings and that it had been wrong for the lower prosecutor to examine her complaint on the merits. That being said, the higher prosecutor also examined her complaint on the merits for the reason of legal certainty as the lower prosecutor had done so. He concluded by indicating that the applicant's mother could not lodge further complaints about the decision to terminate the criminal proceedings.

44. On 9 November 2012 the applicant lodged an appeal with the prosecution service against the aforementioned decision. He stated that his mother had been authorised to lodge complaints in his name under the power of attorney that he had granted her on 21 October 2011. He further noted that the assessment of the flaws in the proceedings had been superficial and had not properly addressed the points raised by his mother. He emphasised that no explanation had been given for the injuries that he had sustained while in custody or for the delay in the institution of the investigation and the superficial manner in which it had been conducted. He argued that it might have been that the State, acting through its agents, had been willing to cover-up his assault.

45. On 12 December 2012 a chief prosecutor responded that the applicant's procedural status was that of a witness and that, unlike victims, witnesses had no right to authorise other persons to exercise their procedural rights on their behalf. Furthermore, the applicant himself did not have a right to challenge the response that had been given to his mother, as he was not the addressee of this letter sent to her. Lastly, because he had not been the one who had lodged the initial appeals, the applicant had missed the time-limit for lodging an appeal against the decision of 20 July 2012 terminating the criminal proceedings. Accordingly, the applicant's appeal was not examined. The applicant was informed of the fact that in accordance with domestic law this decision was not amenable to appeal.

D. Report of the Ombudsman

46. On 28 July 2011 the applicant complained to the Ombudsman, who then instituted an inquiry and requested information from Riga Central Prison, the State Centre for Forensic Medical Examination (*Valsts tiesu medicīnas ekspertīzes centrs*) and the Internal Security Office.

47. On 16 May 2012 the Ombudsman delivered a report in which he observed that, as the criminal investigation was still ongoing, it would be premature to assess the proceedings as a whole. However, with regard to the internal inquiry, the Ombudsman expressed concerns regarding the institutional independence of the Internal Security Office when analysing offences allegedly committed by the police officers.

48. Furthermore, the internal inquiry had lasted one year and seven months – beyond a reasonable time-limit. The inquiry had not been carried out with the requisite diligence, as exemplified by the repeated quashing of decisions not to institute criminal proceedings. The Ombudsman expressed concerns that flaws in the internal inquiry might render it impossible to establish whether the applicant's injuries had been inflicted by the police officers. Thus, the internal inquiry undertaken by the State Police could not be regarded as constituting an effective remedy within the meaning of Article 13 of the Convention. Nonetheless, the Ombudsman considered that it would be premature to pronounce on a violation of Article 3 of the Convention.

II. RELEVANT DOMESTIC LAW

A. Criminal Law

49. Section 317(1), as worded at the time in question, provided that intentional actions on the part of a State official that manifestly exceeded the powers and authority vested in him or her by law or pursuant to his or

her assigned duties rendered that official criminally liable if substantial harm was thereby caused to the State, administrative order, or the rights and interests protected by law of other persons. The applicable punishment was imprisonment of up to three years, community service or a fine of up to one hundred times the minimum monthly wage.

50. Under section 317(2), if the same actions involved violence or the threat of violence, or if they were carried out with the aim of obtaining material benefit, the applicable punishment was imprisonment of up to five years, community service, or a fine of up to two hundred times the minimum monthly wage.

51. Under section 317(3), if the action in question involved torture or had grave consequences, the applicable punishment was imprisonment of up to ten years.

B. Criminal Procedure Law

52. Section 337(2)(2) provides that a complaint about an investigating authority's decision may be submitted to a supervising prosecutor. Section 337(2)(3) provides that a complaint about a prosecutor's decision may be lodged with a higher prosecutor. Under section 339(2) an appeal against a decision of an investigating authority or a prosecutor may be lodged within ten days of receipt of the decision.

53. Under section 336(1) a complaint may be lodged regarding an action or a decision of an official in charge of criminal proceedings by a person involved in those criminal proceedings or by a person whose lawful interests have been infringed by the action or decision in question. Under section 104(1), a victim who has reached the age of majority may be represented by another person.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

54. The applicant complained under Article 3 of the Convention that he had been ill-treated by the detainee escort officers on 20, 21, 24 and 25 May 2010 and that the inquiry and criminal investigation in this regard had not been effective. He also invoked Article 13 of the Convention.

55. The Court considers that these complaints fall 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

56. The Government argued that the application should be declared inadmissible on account of the applicant's failure to comply with the six-month time-limit. According to the Government, the applicant submitted his complaints to the Court more than six months after the decision of 20 July 2012 terminating the criminal proceedings. By lodging an appeal against that decision outside the statutory time-limit of ten days he had attempted to restart the running of the six-month time-limit.

57. In reply, the applicant argued that the chief prosecutor's reply of 12 December 2012 constituted the final procedural document in the domestic proceedings.

2. The Court's assessment

58. The Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant. Moreover, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Blokhin v. Russia* [GC], no. 47152/06, § 106, ECHR 2016 with further references).

59. Turning to the present case, the Court has to ascertain whether the applicant had an effective remedy available to him and, if so, whether he made use of it and then seized the Court within the required time-limit. The Court notes that the Government did not argue that the applicant had not exhausted domestic remedies in respect of his allegations of assault.

60. The Court notes at the outset that the applicant's mother lodged two appeals on his behalf against the decision of 20 July 2012 to terminate the criminal proceedings with the prosecution service (see paragraphs 39 and 42 above); they were examined on the merits (see paragraphs 41 and 43 above). Even though the higher prosecutor considered that she did not have the right to lodge appeals on behalf of the applicant given that he had reached the age of majority, he examined it nevertheless (see paragraph 43 above). The applicant himself then lodged the last appeal with the chief

prosecutor, but the latter did not examine it on the merits (see paragraphs 44 and 45 above). It is notable that the chief prosecutor informed the applicant that he could not lodge any further appeals pursuant to domestic law (see paragraph 45 *in fine* above). Accordingly, it is on that date – 12 December 2012 – that the applicant became aware of the fact that his complaints in this regard have been finally settled at the domestic level. Subsequently, on 30 January 2013 the prosecution – in the criminal proceedings against the applicant – also informed the appellate court that the decision to terminate criminal proceedings in respect of the applicant's allegations of assault had taken effect.

61. The Court cannot hold against the applicant that he complained to the chief prosecutor. Taking into account the response given to his mother on 24 October 2012 that she could not lodge further complaints, the applicant continued to defend his interests himself. In view of previous procedural misgivings, it was not clear, until 12 December 2012, whether or not the prosecution service would examine a complaint lodged by the applicant. Therefore, the applicant exhausted a remedy, which did not appear ineffective in the situation created by the actions of the prosecution service. The fact that his complaint turned out not to be successful is of no importance (compare *Schmidt v. Latvia*, no. 22493/05, § 67, 27 April 2017). The decision of 12 December 2012 was not amenable to further appeal by the applicant and is, accordingly, the starting point of the running of the six-month time-limit in the present case.

62. It follows that the applicant, having introduced the application on 24 May 2013, must be regarded as having complied with the six-month rule.

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

B. Merits

1. Alleged failure to carry out an effective investigation

(a) The parties' submissions

(i) The applicant

64. In his application to the Court the applicant argued that the investigation into the alleged ill-treatment had not been effective. The inquiry had lasted a year and seven months before the prosecution service had instituted the criminal proceedings. There had been no objective circumstances preventing the investigating authorities from establishing in a timely manner how the applicant's injuries had been caused. In support of his claim, the applicant referred to the report of the Ombudsman.

65. The State's positive obligation to ensure an effective investigation into the alleged ill-treatment could not be complied with by providing for the possibility for the applicant to seek compensation for the damage caused by the detainee escort officers in the civil courts. Furthermore, the civil courts would not be in a position to decide on such a claim unless the criminal courts established that an offence had been committed.

(ii) The Government

66. The Government drew a distinction between the present case and the case of *Labita v. Italy* ([GC], no. 26772/95, ECHR 2000-IV). Unlike in *Labita*, the detainee holding facilities in question had not been the focus of attention from the media or other organisations in connection with any ill-treatment there. Paragraph 11 of a report entitled "Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 15 September 2011" stated that no allegations of physical ill-treatment had been received in respect of police officers performing custodial tasks in police detention facilities.

67. Furthermore, the applicant's allegations of ill-treatment had lacked credibility as they had contradicted the witnesses' statements and the medical records. He had failed to lay the basis of an arguable complaint that he had been ill-treated as alleged (referring to *Igars v. Latvia* (dec.), no. 11682/03, § 72, 5 February 2013).

68. Even though the applicant, his mother and lawyer had given contradictory descriptions of his injuries, their complaints had been forwarded to the Internal Security Office, which then had promptly opened an inquiry, examined the applicant's medical records, and obtained statements from everyone who had had any contact with the applicant or his co-accused. In the course of the subsequent inquiry conducted under the close supervision of the prosecution service the Internal Security Office had obtained additional evidence. The investigation had been thorough because the investigating authorities had promptly gathered and examined all available evidence.

69. The complaints had been examined by a body – the Internal Security Office – separate from that which had performed the detainee escort during the applicant's trial. In addition, the Internal Security Office had been supervised by the prosecution service. Therefore, the investigation had been independent.

70. Lastly, under sections 1635 and 1779 of the Civil Law, the applicant had had the right to seek compensation for any damage caused by the detainee escort officers. Referring to the cases of *Blumberga v. Latvia* (no. 70930/01, § 68, 14 October 2008) and *Y v. Latvia* (no. 61183/08, § 71, 21 October 2014), the Government argued that the outcome of criminal proceedings did not determine the success of compensation proceedings.

They noted the examples of domestic case-law provided to the Court in the case of *Y v. Latvia* (cited above).

(b) The Court's assessment

(i) General principles

71. The Court reiterates that where an individual raises an arguable claim that he has been ill-treated by the State authorities, in breach of Article 3, that provision – read in conjunction with the State's general duty under Article 1 of 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 of Judgments and Decisions 1998-VIII).

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

73. Any 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 (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 325, ECHR 2014 (extracts)). 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 *Bouyid v. Belgium* [GC], no. 23380/09, § 120, ECHR 2015).

74. Furthermore, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation was at issue, the Court assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, § 133 et seq.).

(ii) Application in the present case

75. The Court observes that the applicant raised the alleged assaults at a hearing on 28 May 2010, which was shortly after the events in dispute (contrast with *Igars*, cited above, § 70, where the first hint of any wrongdoing was made after more than five months). Prior to that, on 26 and 27 May 2010 he had informed his mother and lawyer and the employees of the Ombudsman's Office of the alleged assaults; those people all brought this to the attention of the domestic authorities, noting that the applicant had shown them injuries (see paragraphs 8-10 above). The

medical certificate from Riga Central Prison, issued shortly after the events in dispute, stated that he had injuries on his lower legs, hand, forearm and right side (see paragraph 12 above) (compare and contrast with *Igars*, cited above, § 68, where a small wound above the applicant's eyebrow had been noted in the forensic psychiatric report issued more than five months after the alleged ill-treatment).

76. Therefore, the applicant's allegations against the detainee escort officers, when assessed together with the medical evidence, were "arguable" and the domestic authorities were under an obligation to conduct an effective investigation satisfying the requirements of Article 3 of the Convention (see *Manzhos v. Russia*, no. 64752/09, § 36, 24 May 2016). However, the Court finds that they failed to carry out promptly important investigative measures, which undermined their ability to establish what had happened to the applicant.

77. In particular, they failed to secure the video recordings made by the security cameras of the courthouse. The prosecution service learned of the alleged ill-treatment on 27 May 2010, which was shortly after the events in dispute (see paragraph 8 above). The Court does not see any reason why the investigating authorities failed to examine those video recordings within the two months following the incident, when they were still available (see paragraph 35 above and paragraph 87 below) (see *Mustafa Hajili v. Azerbaijan*, no. 42119/12, § 51, 24 November 2016).

78. Most importantly, the investigating authorities did not promptly order an expert medical report in respect of the applicant's injuries. When nearly one year later they did do so, it was too late as the expert could not determine precisely what injuries the applicant had sustained or when and how they had been inflicted (see paragraph 36 above). Moreover, they failed to conduct an interview with an important witness – the doctor who had examined the applicant in Riga Central Prison on 26 May 2010 (see paragraph 12 above). Lastly, no identity parade was organised.

79. Such deficiencies on the part of the authorities caused, in the Court's view, precious time to be lost and made any further investigation of the applicant's allegations complicated, if not impossible (see, for similar reasoning, *Bobrov v. Russia*, no. 33856/05, § 51, 23 October 2014).

80. There were also other deficiencies. In particular, the Court notes that the statements of all detainee escort officers, except one, were broadly the same in their wording (see paragraph 28 above). Despite the fact that their statements clearly conflicted with the applicant's statement, the investigating authorities did not order a face-to-face confrontation between the applicant and the escort officers (see *Mustafa Hajili*, cited above, § 52).

81. The foregoing considerations are sufficient to enable the Court to conclude that the investigation of the applicant's claim of ill-treatment was ineffective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

2. Alleged ill-treatment of the applicant

(a) The parties' submissions

(i) The applicant

82. In his application to the Court the applicant, referring to *Ribitsch v. Austria* (4 December 1995, § 34, Series A no. 336) and *Mikheyev* (cited above, § 127), contended that it should be presumed that he had been ill-treated by the detainee escort officers because he had sustained the injuries while he had been in custody and the State had not explained their origin.

(ii) The Government

83. The Government contested the assertion that the applicant had been subjected to ill-treatment, contrary to Article 3 of the Convention.

84. The Government noted that the alleged ill-treatment had not been raised for the first time by the applicant himself but by his lawyer in support of his application for an adjournment of the trial.

85. The extent of the injuries alleged by him and the applicant had not been supported by the applicant's medical examination. Furthermore, both haematomas had not been fresh injuries as they had been "in the phase of absorption". Moreover, given their size and type and the fact that the injuries had been covered with scabs, they could not have been caused by the alleged beatings. In any event, they had not reached the minimum level of severity for Article 3 of the Convention to apply (referring to *Y v. Latvia*, cited above, §§ 52-57).

86. Furthermore, none of the applicant's co-accused had been eye-witnesses to the alleged ill-treatment. While P.V. and F.Č. had stated that they had been beaten, no injuries had been found on them.

87. Lastly, there had been factors that had served as a deterrent to the kind of ill-treatment alleged. The premises of the courthouse had been equipped with a video surveillance system and the employees of the Ombudsman's Office had visited the detainee holding area there. This had undermined the credibility of the applicant's allegations.

(b) The Court's assessment

(i) General principles

88. The Court reiterates that Article 3 enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see *Labita*, cited above, § 119).

89. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum 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. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (ibid., § 120, and *Bouyid*, cited above, § 101).

90. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. On this latter point the Court has explained that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (see *Bouyid*, cited above, §§ 82 and 83, with further case-law references).

(ii) Application in the present case

91. The Court notes at the outset that at the time of the events at issue the applicant was under the control of the detainee escort officers. It further observes that his allegation of ill-treatment was corroborated by some medical evidence. As can be seen from the case file he was found to have sustained a number of injuries subsequent to the events in dispute – in particular, injuries on his lower legs, hand, forearm and right side (see paragraph 12 above).

92. In addition, the Court notes that shortly after the alleged assaults the applicant informed his mother and lawyer and the employees of the Ombudsman's Office of those assaults; those people all brought this to the attention of the domestic authorities, noting that the applicant had shown them injuries (see paragraphs 8-10 above). Moreover, the applicant's cellmate, A.D., stated that the applicant had told him about the alleged assaults and had shown him marks left by the beatings (see paragraph 25 above). Similarly, the escort officer, M.S., gave evidence that he had seen bruises on the applicant (see paragraph 28 above). The applicant's co-accused, V.P., stated that the escort officers had beaten the applicant (see paragraph 30 above), and another of the co-accused, P.V., gave evidence that he had heard the applicant screaming (see paragraph 32 above).

93. In that light, the Court considers that the applicant has been able to produce sufficiently strong evidence in support of his claim of ill-treatment. In so far as the Government argued that the extent of the injuries alleged had not been supported by the applicant's medical examination or that those had been old injuries (see paragraph 85 above), the Court notes that according to the expert medical report the description of the injuries had been incomplete; at the same time, it could not be excluded that they had appeared between 20 and 25 May 2010 in the circumstances stated by the applicant (see paragraph 36 above).

94. The Court also cannot overlook the fact that the investigating authorities did not give in the reasoning for their decisions any explanation of how the injuries found on the applicant had been caused. Given these circumstances, the Court considers that the respondent Government have failed to discharge their burden of proof and to submit a plausible explanation refuting the applicant's account of events (see *Balajevs v. Latvia*, no. 8347/07, § 94, 28 April 2016, which also concerned ill-treatment by the detainee escort officers in the premises of the Riga Regional Court). The statements provided by the detainee escort officers were all, except one, drafted in broadly the same manner, despite the officers having been questioned separately, and no face-to-face confrontation was organised between the applicant and those officers (see paragraph 28 above). Therefore, the Court has no reason to doubt the applicant's account of events and finds that the injuries found on his body were sustained as a result of assaults by the detainee escort officers on 20, 21, 24 and 25 May 2010 (see *Mustafa Hajili*, cited above, § 41).

95. Neither has it been shown that the recourse to physical force against the applicant was rendered strictly necessary by his own conduct, nor that there were any other reasons justifying the use of force against him. The Court considers that the injuries sustained by the applicant must have caused him physical pain and suffering, even if they did not require an important medical intervention, given that according to the medical certificate, dated 14 June 2010, the applicant's state of health was satisfactory (see paragraph 12 above). Moreover, the ill-treatment inflicted by the detainee escort officers on the applicant, who was a minor and entirely under their control, must also have caused him considerable mental suffering, diminishing his human dignity.

96. In these circumstances, the Court considers the ill-treatment complained of as inhuman and degrading within the meaning of Article 3 of the Convention. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

99. The Government contested this claim.

100. The Court, deciding on an equitable basis, awards the applicant EUR 8,000 in respect of non-pecuniary damage.

B. Costs and expenses

101. The applicant also claimed EUR 1,210 for the costs and expenses incurred before the Court.

102. The Government noted that the only piece of evidence which the applicant had submitted in support of this claim was an invoice totalling EUR 1,210 issued by his lawyer. There was no detailed break-down in respect of each service rendered, indication of the number of hours spent or evidence that the applicant had paid the invoice.

103. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,210 to cover costs and expenses for the proceedings before it.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

4. *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:

(i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,210 (one thousand two hundred and ten euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President