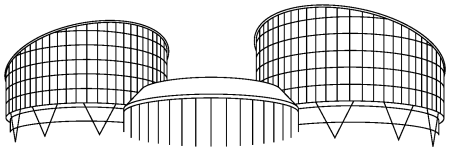

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF DJUNDIKS v. LATVIA

(Application no. 14920/05)

JUDGMENT

STRASBOURG

15 April 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 Djundiks 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,
Nona Tsotsoria,
Paul Mahoney,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 14920/05) 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 "permanently resident non-citizen" of the Republic of Latvia, Mr Ivans Djundiks ("the applicant"), on 14 April 2005.

2. The applicant was represented by Mr A. Freimanis, a lawyer practising in Luxembourg. The Latvian Government ("the Government") were represented by their Agent at the time, Mrs I. Reine, and subsequently by Mrs K. Līce.

3. The applicant alleged, in particular, that he had been ill-treated by municipal police officers, that there had been no effective investigation in that regard, and that he had been unlawfully detained.

4. On 8 February 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The applicant requested an oral hearing. The Chamber decided that no hearing was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Liepāja.

7. It appears that in 1983 the applicant was certified as being Category 3 disabled (the least severe level of disability).

8. On 28 April 2004 the applicant was certified as being Category 2 disabled (the medium level of disability) on the grounds of an unspecified illness. His disability was to be reassessed on a further occasion.

9. According to the applicant, on 29 April 2008 his Category 2 disability status was certified as permanent.

A. The applicant's administrative detention and his state of health

10. On 19 August 2003 the applicant was administratively detained by the municipal police. The circumstances are disputed between the parties.

1. Disputed facts

11. According to the Government, at 8 p.m. on 19 August 2003 the fire and rescue services received a call about a man who was lying on the ground near an apartment building. A municipal police patrol was dispatched to the address given. Police officers I.L. and N.M. arrived there at 8.18 p.m. and found no one there. However, they were approached by an unidentified woman who indicated that somebody was lying on the stairs inside the building. They found the applicant lying face-down on the stairs between the ground and 1st floor. He appeared to be in a state of heavy alcohol intoxication, was unable to communicate or identify himself, and was unable to move. He had several bruises and grazes on his face – cheeks, eyebrows and forehead. The officers carried him by his arms and legs to a municipal police van and took him to the municipal police station. They arrived there approximately one hour later, on the way having picked up another person who had been lying on the ground unconscious somewhere else.

12. At the municipal police station, a medical orderly visually examined the applicant and treated and recorded his facial injuries. The officers then carried him to a "sobering-up room" and placed him on a wooden plank bed. Several hours later the applicant was able to reveal his identity. According to the Government, reports (*protokoli*) in respect of administrative detention (*administratīvā aizturēšana*) and the administrative offence of "indecent public behaviour while being in a state of alcohol intoxication" were being drawn up. The Government could not provide the Court with copies of these procedural documents since they were destroyed in 2008 upon the expiry of their archival period.

13. Later, at some point during the night of 19 to 20 August 2003, the applicant complained of pain in his left leg. The medical orderly called an ambulance and the applicant was taken to a hospital in Liepāja.

14. The applicant did not agree with the Government's version of the events. According to the applicant, on 19 August 2003, between 6 p.m. and

7 p.m., he was sitting on a bench by the apartment building he lived in with a bottle of beer in his hand, when the municipal police arrived and two officers approached him with a view to taking him to the municipal police station. They did not inform him of the reasons for his detention; he got into the police van by himself and was taken to the municipal police station, where at 8.55 p.m. an administrative detention report was drawn up.

15. At the station, he was briefly examined to determine his state of health and level of intoxication. Following an examination, an officer instructed him to stand up immediately. The applicant replied that he was capable of doing so by himself, but slowly. Then another officer, who was standing behind him, ordered him to do as requested and then took him by the shoulders and pushed him against a wall. His left eye was hurt to the extent that he later required several stiches. The officer then grabbed the applicant by his clothes and dragged him on to the floor and down the stairs to the sobering-up room. The applicant tried to turn onto his left side as he had had an operation on his right leg and he was trying to spare it. While he was being dragged down the stairs, he felt a sharp pain in his left leg and started to scream. The officer did not stop; he dragged him into a cell and left him there. The applicant was unable to move. After some time, three persons entered the cell, took off his trousers, causing him more pain, and injected him with some substances. Then an unidentified officer approached him with a view to getting him to sign another report. He refused, protesting that he had already signed one. At about 5 a.m. an ambulance arrived and took him to a hospital in Liepāja.

2. Facts that are not disputed

16. The contents of the applicant's administrative detention report were partly reproduced in expert report no. 352 of 13 November 2003 and read as follows:

> "This report has been drawn up by ... N.H. on 19 August 2003, at 8.55 p.m., in Liepāja in respect of the applicant [date of birth and address][, who] was administratively detained and taken to the sobering-up room of the municipal police station on 19 August 2003, at 8.55 p.m. Reason for detention: to sober up. In the presence of witnesses [the applicant's] keys were confiscated. Detainee's clothes: blue blazer, dark shirt, blue trousers and dark shoes. In a check-up [the following] injuries were discovered: a bruise on the face, a bruise on the left eyebrow. The applicant was released on 20 August 2003, at 5.25 a.m. Reason for release: sobered up. Upon release: received keys. No complaints."

B. The applicant's admission to hospital

17. According to the ambulance log, a call was recorded at 5 a.m. on 20 August 2003. At 5.13 a.m. an ambulance arrived at the municipal police station. In the field "diagnoses" it was noted that the applicant's left hip and head were injured, there were bruises on his face, and he was in a state of

alcohol intoxication. In the field "additional findings" it was noted that the applicant had bruises on his face and the lower part of his body. He was taken to hospital, where at 5.45 a.m. his blood alcohol level was measured (0.25 ‰).

18. From 20 August to 2 September 2003 the applicant remained in hospital. Following an X-ray examination he was diagnosed with a fracture to his left hip (*kreisā augšstilba kakla kauliņa lūzums*). On 22 August 2003 an operation (endo-prosthesis) was performed and over the next few days the applicant received post-operative treatment.

19. On 2 September 2003 the applicant was issued with an extract from his medical file at the hospital. The extract did not contain any mention of the applicant's own description of the circumstances relating to his hip fracture.

C. The investigation of the applicant's complaints

20. On 8 September 2003 the applicant made a complaint to the prosecutor's office which was for the most part similar to his allegations before the Court. The municipal police were requested to prepare an internal report; on 23 September 2003 they issued report no. 9, the contents of which were later for the most part reproduced in the first decision (see paragraph 23 below).

21. On 16 September 2003 the applicant's complaint was forwarded for examination to the Liepāja police, a branch of the State Police.

22. On 1 October 2003 an expert examined the applicant's medical records and drew up report no. 407. Reference was made to a statement the applicant had made in the hospital that "he had fallen down somewhere on the street". The expert concluded that the applicant had sustained a bodily injury – a fracture of the left hip – which was classified as moderately severe (*vidēja smaguma miesas bojājumi*). This injury could have been sustained as a result of being hit by blunt objects or bumping into such objects.

23. On 13 October 2003 the Liepāja police decided not to institute criminal proceedings with regard to the injuries suffered by the applicant ("the first decision"). Reference was made to the internal report of 23 September 2003. According to the report, the events developed as follows.

At 8.18 p.m. on 19 August 2003, the municipal police received a call from the fire and rescue services informing them that a man was lying near an apartment building. Upon their arrival the officers found the applicant lying inside the apartment building on the stairs between the ground and 1st floor. He was too intoxicated to give any explanation; the police officers carried him out of the apartment building, placed him in the van and took him to the police station. He was placed in the sobering-up area, which was

located in the basement. The officers carried the applicant into a cell as he was unable to move. After about three hours the applicant was able to reveal his identity. He then complained about pain in his leg and a medical orderly called an ambulance to the police station. No injections were given to the applicant. He was detained on the basis of paragraph one of section 171 of the Code of Administrative Violations. On the basis of the case-file materials in their entirety, it was concluded that the applicant "could have sustained" injuries by falling on the stairs in the apartment building. There were no grounds to believe that the applicant's injuries had been wilfully inflicted in the sobering-up room or that excessive physical force had been used on him. There were no indications that the officers had exceeded their authority.

24. On 27 October 2003 the applicant lodged a complaint, noting that two witnesses had seen him getting into the police van by himself when being taken to the police station.

25. On 7 November 2003 the supervising prosecutor quashed the first decision and the case was remitted to the Liepāja police for additional investigation. The quashing order was issued on the ground that the applicant had not been questioned on the facts, nor had his neighbours been questioned; the person who had called the fire and rescue services had not been identified or questioned; the witnesses identified by the applicant had not been questioned; and lastly, the ambulance personnel had not been questioned.

26. During additional investigation the Liepāja police received information from the fire and rescue services and questioned the applicant's neighbours, including V.S., who had been identified by the applicant as a witness, and a doctor from the hospital. Another medico-legal examination was also ordered.

27. On 13 November 2003 an expert examined the applicant and his administrative detention report and drew up report no. 352 in addition to report no. 407. The background to the report was described as follows:

> "On 19 August 2003 police officers [allegedly] inflicted bodily injuries on the applicant at the police station. On 1 October 2003 an expert examined the applicant's medical records (report no. 407). The applicant ... alleged that he had suffered additional injuries to different parts of his body (eyebrow, lower body), [which were] not documented in the medical records".

The expert concluded that the applicant had the following injuries: "a scar on his left eyebrow that could be due to a cicatrised wound that had been stitched" and "scars on the back of the applicant's torso and on the buttock area that could have appeared after bruises had healed". They were both classified as minor bodily injuries (*viegli miesas bojājumi*).

28. On 25 November 2003 the Liepāja police again refused to institute criminal proceedings ("the second decision"). In addition to the grounds of the first decision, the second decision was based on the grounds that the fire

and rescue services did not hold information about incoming calls concerning alcohol intoxication. Such calls were transferred to the municipal police.

According to the second decision, an acquaintance of the applicant, V.S., stated that he had seen him sitting on a bench and consuming beer at about 6.30 or 7 p.m., and then the municipal police had arrived. Other statements were taken from neighbours, but they only indicated that the applicant often sat on the bench by the apartment building consuming alcohol. One neighbour, B.K., stated that the applicant had a "difficult" personality and that "he often started fights". Further, it was noted that "it was not possible to identify direct witnesses who could provide objective information about [the applicant's] arrest". The ambulance record indicated that the applicant had been taken from the municipal police station to the hospital with injuries to his left hip and head, bruises on his face and in a state of alcohol intoxication. Finally, the doctor's statement indicated that he had examined the applicant at 10 a.m., when he had sobered up; the doctor had inquired about the circumstances of the injury and the applicant had replied that he had fallen down somewhere on the street. A note was made that the conclusions drawn following the internal inquiry were confirmed by other case-file materials and that the statements made by the applicant and V.S. should be evaluated with caution. On the basis of the case-file materials in their entirety, it was concluded that the applicant "could have sustained" the injuries by falling on the stairs in the apartment building. There were no grounds for finding that the applicant's injuries had been wilfully inflicted in the sobering-up room, or that excessive physical force had been used on him. There were no indications that the officers had exceeded their authority.

29. On 26 January 2004 the supervising prosecutor examined the case-file materials and dismissed a complaint by the applicant about the second decision. She noted that the Liepāja police, even after her instructions, could not find any witness to his detention. It appears that she herself questioned V.S. for a second time. He clarified that he had only seen the applicant sitting on the bench; when the municipal police had arrived, he could not see the bench any more, as the van blocked the scene from his view. He testified that the police had been there for three to four minutes. In response to the applicant's allegations as to the location, nature and probable cause of his injuries in the circumstances, the prosecutor stated that the expert's observation that they could have been sustained as a result of being hit with blunt objects or bumping into such objects was only a probability and not an assertion. Moreover, she considered that there were no grounds to disregard the hospital doctor's remark that the circumstances of the applicant's injuries had been taken down in his own words. The prosecutor noted that his injuries, as detected upon his admission to the police station (bruises on the face and left eyebrow), were confirmed by the statement of N.M; his

alcohol intoxication was confirmed by the ambulance and hospital medical records and the statements of the police officers, the watch officer (N.H.), and the medical orderly (A.B.). She concluded that her previous instructions (issued on 7 November 2003) had been complied with and that on the basis of the case-file materials in their entirety "it [could] not be precluded" that the applicant sustained the injuries before his detention as he had been admitted to the station in an intoxicated state with visible injuries on his face.

30. On 17 March 2004 and 21 May 2004 two higher-ranking prosecutors dismissed the applicant's complaints against the second decision. The first prosecutor considered that the review of the applicant's complaints had been comprehensive and objective; no evidence had been found that the officers had exceeded their authority. Referring to the medico-legal examination report, the prosecutor considered that the applicant "could have sustained" injuries by falling from his own height, as he had indicated to the hospital doctor, whose testimony was to be given more weight as he was not an interested party. The second prosecutor also found the second decision justified. He referred to the administrative detention "documentation" and the officers' statements to demonstrate that the applicant had been lying on the stairs in the apartment building and not sitting on the bench next to it; V.S.'s statements did not corroborate these facts. The officers had taken the applicant to the sobering-up room because he had been unable to move by himself because of either his intoxicated state or his injuries. He concluded:

> "It follows from the foregoing that [the applicant] must have sustained the injuries before the arrival of the municipal police officers. [The applicant's] blood alcohol level after more than eleven hours of detention only further demonstrates that prior to detention [the applicant] was intoxicated with alcohol. This does not exclude the possibility that [the applicant] sustained injuries by falling from [his own] height."

31. On 20 July 2004 a prosecutor at the Office of the Prosecutor General dismissed the applicant's complaint. She examined the case-file materials and found that there were no grounds to quash the second decision. Among other things, she noted that section 171 of the Code of Administrative Violations provided for administrative liability for the use of alcoholic beverages or other intoxicating substances in public places or for appearing in public places in an intoxicated state, which was an affront to human dignity. For that reason, notwithstanding the discrepancy between the submissions of the officers, who had stated that the applicant had been lying inside the apartment building, and the applicant, who had stated that he had been sitting on a bench outside the building, the officers had had grounds to take him to the municipal police station to sober up and to draw up an administrative offence report.

32. On 4 August 2004 the applicant, in a complaint to a higher-ranking prosecutor, specified that his complaints did not relate to unjustified placement (*nepamatota nogādāšana*) in the sobering-up room or to being

taken there by force. Rather, they related to the failure to institute criminal proceedings in connection with bodily injuries inflicted on him while there.

33. On 19 August 2004 the higher-ranking prosecutor at the Office of the Prosecutor General dismissed the applicant's complaint. It appears that he obtained additional statements from officers I.L. and N.M., and the watch officer N.H. The prosecutor found that the applicant's allegation that the injury on his left eyebrow had been inflicted by officers pushing him against the wall in the police station were not corroborated by the officers' statements and the medical orderly's indication that the applicant had been admitted with the injury. Nor was the applicant's allegation that his left hip had been broken by the officers dragging him down the stairs at the police station confirmed. The officers had explained that they had carried him into the station as he had not been able to walk by himself. The prosecutor concluded that the applicant had sustained the injuries before his administrative detention.

34. A final decision, negative in respect of the applicant, was adopted by the Prosecutor General on 13 October 2004. He found that the applicant's allegations concerning contradictions and discrepancies in the case-file materials were unfounded. He noted, among other things, that the applicant's detention record and the medical record drawn up upon his admission to the police station confirmed that he already had injuries on his face and left eyebrow, thus his allegations about sustaining the injuries in the station were not confirmed. The applicant had been carried into the station because he had not been able to walk by himself and he had complained about pain in his hip only after sobering up, after which the medical orderly had called an ambulance.

35. The applicant received the decision on 15 October 2004.

II. RELEVANT DOMESTIC LAW

36. The relevant provisions of the former Code of Criminal Procedure (*Kriminālprocesa kodekss*), in force until 1 October 2005, have already been quoted in *Grimailovs v. Latvia* (no. 6087/03, § 84, 25 June 2013).

37. The relevant provisions of the Code of Administrative Violations (*Administratīvo pārkāpumu kodekss*), in force at the relevant time, read as follows:

Section 31
Administrative arrest

" ... Administrative arrest shall be imposed by a district (regional) court judge".

Section 171
Consuming Alcoholic Beverages or Other Intoxicating Substances in Public Places and Appearing in Public Places in an Intoxicated State

"In the case of consuming of alcoholic beverages or other intoxicating substances in public places ... or in the case of appearing in public places in an intoxicated state, which is an affront to human dignity –

a warning shall be issued or a fine in an amount of up to 25 Latvian lati (LVL) shall be imposed.

In the case of similar activities, if committed within a year of the imposition of an administrative sanction –

a fine in an amount of between LVL 25 and LVL 50 shall be imposed or administrative arrest shall be applied for a period of up to fifteen days."

Section 252 (1)
Measures to Ensure Record-keeping in Administrative Offence Matters

"In the cases specifically provided for by law in order to prevent the continuation of an administrative offence if other means have been exhausted, in order to determine the identity of the offender, or in order to draw up an administrative offence report, if this cannot be done on site and if the drawing up of a report is mandatory ... the administrative detention of a person ... shall be permitted. ..."

Section 253 (1)
Administrative Detention

"An administrative detention report shall be drawn up indicating the date and place of the drawing up thereof, the position, name and surname of the person who has drawn up the report, information regarding the detainee, and the time of and reasons for the detention. The report shall be signed by the official who has drawn it up and the detainee. ..."

Section 254
Institutions (Officials) Authorised to Impose Administrative Detention

Only the following institutions (officials) have the right to administratively detain a person who has committed an administrative offence:

1) police officials – in cases where ... alcoholic beverages have been consumed in public places or if a person has appeared in a public place in an intoxicated state, which is an affront to human dignity and public morals ..."

Section 255 (1) and (4)
Time-limits for Administrative Detention

"A person who has committed an administrative offence may be detained for no longer than 3 hours ..."

"The time-limit for administrative detention ... in respect of a person who has been under the influence of alcoholic beverages, narcotics or other intoxication substances [shall run] from the time of [his] becoming sober."

Section 259
Appeal against Administrative Detention

"The individual concerned may lodge an appeal against administrative detention ... to a higher-ranking institution (official) or prosecutor."

Section 289 (2)
Quashing of the Decision and Termination of the Administrative Offence Proceedings

"Damage suffered by individuals as a result of unlawful administrative arrest shall be compensated pursuant to the provisions of [a law named "*Par izziņas izdarītāja, prokurora vai tiesneša nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu*"]."

THE LAW

I. SCOPE OF THE CASE

38. The Court notes at the outset that in his reply to the Government's observations the applicant introduced a new complaint under Article 6 of the Convention. As it has decided in previous cases, the Court need not rule on complaints raised after the communication of an application to the Government (see *Ruža v. Latvia* (dec.), no. 33798/05, §§ 30-31, 11 May 2010 and the case-law cited therein).

II. PRELIMINARY OBJECTION UNDER ARTICLE 34 OF THE CONVENTION AND RULE 47 OF THE RULES OF COURT

A. The parties' submissions

39. The Government submitted a preliminary objection to the effect that the applicant had not provided the Court with the relevant evidence, namely, copies of the relevant reports pertaining to his administrative detention and the administrative offence, as well as copies of any interlocutory applications or other documents in support of his allegations. They considered that he had thereby failed to comply with Article 34 of the Convention in that he had not properly lodged an application within the meaning of Rule 47 of the Rules of Court, as in force at the material time.

40. The applicant considered that the documents he had submitted were sufficient to satisfy the requirements of the above-mentioned provisions. He specified that he had submitted all the documents at his disposal, notably copies of all decisions addressed to him. In addition, he had submitted evidence demonstrating that the domestic authorities had refused to give him a copy of the internal report of 23 September 2003 whose annexes

included the administrative detention report. He had never received a copy of the detention report.

B. The Court's assessment

41. The Court considers that the application form and the evidence submitted by the applicant contain sufficient information for the purposes of Article 34 of the Convention. It follows that the Government's objection in this regard should be dismissed.

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

42. The applicant argued that the police officers had ill-treated him in custody. He submitted that the investigation of his allegations by the authorities had not been effective, independent or thorough. He relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3 (prohibition of torture)

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

Article 13 (right to an effective remedy)

"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."

A. Admissibility

43. 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 alleged ill-treatment and its investigation

(a) The parties' submissions

44. The Government contested that the applicant had been subjected to ill-treatment contrary to Article 3 of the Convention. They pointed to alleged discrepancies between the applicant's submissions to the domestic authorities and his submissions to the Court. The Government, firstly, noted that he had lodged his complaint with the domestic authorities almost one

month after the events and that he had not produced any evidence or described the alleged perpetrators. Secondly, he had only belatedly informed the domestic authorities about possible witnesses and had not properly identified them. Moreover, the statements of V.S. had varied, whereas the testimony of the police officers concerning the place and time of the detention had remained consistent. Thirdly, the applicant had not raised any complaints when leaving the police station or in the hospital. The Government relied on the applicant's statement as noted by the attending doctor, that he had fallen on the street. They further considered that the applicant's allegations regarding facial injuries, raised at a later date before the domestic authorities, were unfounded as the administrative detention report had noted that they had been sustained previously. These discrepancies, in the Government's view, significantly undermined the credibility of the applicant's statements.

45. As to the applicant's hip injury, the Government acknowledged that on the applicant's admission to the police station a check-up had been carried out by a medical orderly. However, a full search and examination of the applicant's person had not been carried out and the medical orderly had no reason to suspect any hidden injury, such as a closed bone fracture, as the applicant had not made any health-related complaints. The Government asserted that, nevertheless, as soon as the applicant had complained about severe pain in his leg, the medic had decided that hospital treatment was necessary and called an ambulance. The Government did not deny that the ambulance officers noted an injury on the applicant's leg and that a fracture was discovered following an X-ray examination at the hospital.

46. The Government acknowledged that the first investigation by the Liepāja police had been found to be incomplete and noted that the prosecutor had given specific instructions for additional investigative actions. All possible information about the applicant's neighbours, doctors and other potential witnesses had been gathered during the second investigation. According to the Government, the investigation had been thorough. They further contended that the investigation by the Liepāja police had been independent, and that the evidence gathered therein had been later reassessed by various prosecutors and the results of the investigation had been found to be legitimate and reasoned. The Government maintained that the applicant's allegations were not corroborated by other evidence (statements of witnesses, material evidence and medical records) and were not credible.

47. The applicant maintained his complaint and submitted that in the present case a substantive violation of Article 3 of the Convention was difficult to prove because there had been no effective investigation. He disagreed with the Government's contention that his complaint was belated – he had submitted the complaint one week after his discharge from the hospital, on 8 September 2003, and one week later it had been forwarded to

the police. He argued that he was not obliged to provide conclusive evidence in support of his allegations as the obligation to investigate and gather evidence was incumbent on the domestic authorities.

48. The applicant criticised the first decision of 13 October 2003, which he claimed had largely relied on a hastily prepared internal report. He referred to the summary nature of the decision and pointed out that neither he nor the police officers had been questioned. He considered that the statements given by the police officers and by the watch officer about a year later were not corroborated by other evidence and were an insufficient basis for dismissing his complaint; their statements had in any event to be assessed very carefully given that the officers were implicated in the events. The applicant maintained that V.S.'s statements were not contradictory in so far as they stated that he had seen the applicant sitting on a bench and the police van arriving at the scene.

49. As to his injuries, the applicant relied on the ambulance medical record, according to which he had bruises on his left hip, head and face; the bruises on the left eyebrow were stitched at the hospital. He contended that he had signed the administrative detention report without having properly understood its contents as he was a Russian speaker. In this regard, the applicant noted a discrepancy in the Government's submissions – if indeed he had arrived at the police station in such a state of intoxication as claimed by the Government, he could not have signed the report at 8.55 p.m.

(b) The Court's assessment

50. The Court reiterates that it has described the applicable principles in cases relating to allegations of ill-treatment while in detention or otherwise under the control of the police, and the State's obligation to investigate such allegations, on numerous occasions in cases against Latvia (see *Vovruško v. Latvia*, no. 11065/02, §§ 41-43, 11 December 2012; *Timofejevi v. Latvia*, no. 45393/04, §§ 92-95, 11 December 2012; *Sorokins and Sorokina v. Latvia*, no. 45476/04, § 95, 28 May 2013; *Holodenko v. Latvia*, no. 17215/07, § 64, 2 July 2013; and *Grimailovs*, cited above, §§ 100-106).

51. In the present case, the Court finds it regrettable that the applicant was not taken for a full medical examination before being taken into custody at the Liepāja municipal police station. Such an examination would have been appropriate, particularly bearing in mind the Government's position that the applicant had allegedly fallen on the stairs and was unable to communicate and walk independently. Such a report could have provided clarification regarding the extent of the injuries the applicant sustained prior to his detention.

52. Furthermore, in cases of this kind it is all the more important that the person is medically examined before being placed in police custody. This would not only ensure that the person is fit to be admitted in police custody (see, *mutatis mutandis*, *Jasinskis v. Latvia*, no. 45744/08, § 66,

21 December 2010) but would also enable the respondent Government to discharge their burden of providing a plausible explanation for those injuries. In this connection, the Court notes that a medical examination is an important safeguard against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (see, *mutatis mutandis*, *Türkan v. Turkey*, no. 33086/04, § 42, 18 September 2008).

53. The Court cannot accept the Government's contention that the applicant's state of health upon his placement in custody did not require a full medical examination as there was no reason "to suspect any hidden injury ... as the applicant did not make any health-related complaints" since this clearly reverses the burden of proof. The Court has already held that where the national authorities fail to conduct a medical examination before placing the applicant in detention, the Government cannot rely on that failure in their defence and claim that the injuries in question pre-dated the applicant's detention in police custody (see *Türkan*, cited above, § 43).

54. In this connection, it is not insignificant that, according to the Government, the applicant was unable to communicate or walk independently when he was placed in custody. If that had been the case and, indeed, if the applicant had been carried into the police station not fully conscious after having fallen down on stairs outside the police premises, it is clear from the above-mentioned case-law that the police authorities would have been required to seek a medical opinion on his state of health before placing him in custody, or to call an ambulance without undue delay. The Court has held, in a related context, that the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Witold Litwa v. Poland*, no. 26629/95, § 78, 4 April 2000).

55. The Court further notes that upon the applicant's admission to the police station, on 19 August 2003, following a visual check-up only bruises on his face and his left eyebrow were recorded. The ambulance medical record, drawn up some eight hours later, revealed more injuries on the applicant's body – on his left hip and head; a further bruise on the lower part of his body was also recorded. Furthermore, two medico-legal examinations confirmed these injuries, albeit belatedly, in particular the applicant's hip injury and the bruises on the lower part of his body. In the Court's opinion, the findings contained in those reports, namely, that the applicant's injuries could have been sustained as a result of bumping into blunt objects, are consistent with the applicant's allegations of having been dragged down the stairs in the police station on his left side. These findings are also sufficiently serious to amount to ill-treatment within the meaning of Article 3 of the Convention (see *Ribitsch v. Austria*, 4 December 1995, §§ 13 and 39, Series A no. 336).

56. It therefore needs to be ascertained whether the Government have provided a plausible explanation of how those further injuries to the applicant's hip and the bruising on the lower part of his body were caused and produced evidence casting doubt on the veracity of the applicant's allegations.

57. The Court reiterates that, in respect of a person deprived of liberty, recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Ribitsch*, cited above, § 38). Furthermore, the use of force in the context of an arrest, even if it entails injury, may fall outside Article 3, particularly in circumstances resulting from an applicant's own conduct (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 64, 20 June 2002). In applying these principles, the Court found in *Holodenko* that the use of force against the applicant at the time of his arrest had not been proportionate in view of the seriousness of the injuries and his own behaviour (see *Holodenko*, cited above, § 70). In *Igars*, however, the Court found that the applicant did not lay the basis of an arguable complaint that he had been ill-treated as alleged (see *Igars v. Latvia* (dec.), no. 11682/03, § 72). In some other cases, the Court could not, on the basis of the evidence before it, establish whether the use of force on the applicant had been strictly necessary and proportionate in the circumstances (see *Sapožkovs v. Latvia*, no. 8550/03, § 66, 11 February 2014, not yet final), whether the applicant's injuries upon arrest were caused as alleged (see *Grimailovs*, cited above, § 109), whether the applicant was subjected to ill-treatment on the day of his arrest or whether the authorities had recourse to physical force which had not been rendered strictly necessary by the applicant's own behaviour (see *Timofejevi*, cited above, § 81).

58. In the present case, the Court rejects the Government's argument that the absence of complaints prior to 16 September 2003 undermines the credibility of the applicant's allegations of ill-treatment. The Court agrees with the applicant that his complaint cannot be considered unjustifiably delayed as he submitted it within five days following his discharge from the hospital. Nor can it be said that the absence of complaints when leaving the police station or in the hospital undermines the credibility of the applicant's allegations. It is undisputed that the applicant was suffering from severe pain in the police station and that an ambulance had to be called to take him to hospital. The Court finds it inconceivable that the applicant could reasonably be required to raise a complaint before being taken to hospital in such circumstances, even less so where his complaint related to the events that had allegedly taken place in that very police station.

59. Bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of any convincing explanation concerning the origin of the injuries noted in the

three medical reports mentioned above, the Court considers that the Government have failed to provide a plausible explanation of how the applicant's hip injury and the bruises on the lower part of his body were caused. It therefore concludes that the physical trauma in question was the result of treatment for which the Government bore responsibility. There has accordingly been a substantive violation of Article 3 of the Convention.

60. Turning to the effectiveness of the investigation, the Court observes that it is not disputed by the parties that the State was under a procedural obligation, arising from Article 3 of the Convention, to carry out an effective investigation into the circumstances in which the applicant was detained.

61. The Court notes that the authorities did carry out an inquiry into the applicant's allegations. It does not consider, however, that the inquiry was sufficiently thorough and effective to meet the requirements of Article 3 of the Convention.

62. The Court does not find it necessary in the particular context of the present case to draw general conclusions about the independence or lack thereof of the investigation carried out by the domestic authorities, since it considers that the investigation was defective for several reasons.

63. The Court notes that the Government acknowledged that the first round of investigation carried out by the Liepāja police was incomplete. It appears that the only investigative action undertaken by the police at that stage was ordering an expert to examine the applicant's medical records. That expert did not examine the applicant in person (see, for examples of similar shortcomings in an investigation, *Vovruško*, cited above, § 49, and *Grimailovs*, cited above, § 115).

64. The Court observes that during the second round of investigation the Liepāja police ordered another medico-legal examination, received information from the fire and rescue services and questioned some of the applicant's neighbours, V.S. and the doctor at the hospital. However, there is no information in the case material that either the applicant or the officers themselves were questioned at that stage. Nor did any cross-examination take place with a view to eliminating discrepancies in their submissions as to the circumstances in which the applicant sustained his injuries. In fact, no effort appears to have been made to assess the conflicting evidence. The Court considers that the Liepāja police relied to a considerable extent on the facts as established in the internal report by the municipal police, fully accepting that the applicant's injuries "could have been sustained" before his administrative detention, without examining the discrepancy between the medical record drawn up upon the applicant's admission to the police station and the ambulance medical record drawn up some eight hours later. This is sufficient to cast doubt on the effectiveness of the investigation by the Liepāja police.

65. It remains to be examined whether the above-mentioned shortcomings could, to a certain extent, be counterbalanced by an effective supervision of the investigation (see *Vovruško*, cited above, § 51, and *Grimailovs*, cited above, § 114).

66. The case material indicates that the supervising prosecutor questioned the applicant's acquaintance V.S. at that stage and that the higher-ranking prosecutor of the Office of the Prosecutor General obtained further statements from the police officers. However, the conclusions reached by the prosecutors resemble to a certain extent those made by the police in so far as they all found that the applicant's injuries "could have been sustained" earlier. Such a conclusion, which shed no further light on the discrepancies in the applicant's injuries as recorded before and after detention, is not sufficient. The Court reiterates that it is incumbent on the domestic authorities to provide a plausible explanation for any injury that is documented upon an applicant's release from custody which was not recorded upon admission (see *Türkan*, cited above, § 42).

67. That being said, the Court finds that the domestic authorities did not consider the significance of the lack of a proper medical examination upon his placement in custody at any point during the investigation and whether it had any implications for the police officers' obligations under domestic law and the Convention.

68. Furthermore, neither the Liepāja police nor the supervising or superior prosecutors appear to have paid any attention to the contradiction in the police officers' statements that the applicant had not been able to identify himself upon admission to the police station. In accordance with the administrative detention report, the applicant was detained at 8.55 p.m. (see paragraph 16 above). It was alleged that only about three hours later he was able to reveal his identity and complained about pain in his leg (see paragraph 23 above). No attempts appear to have been made to find out what happened between midnight, when the applicant made his health-related complaint, and 5 a.m., when the medical orderly called the ambulance.

69. The afore-mentioned considerations are sufficient for the Court to conclude that the domestic authorities did not ensure an effective investigation into the applicant's allegations of ill-treatment by the municipal police officers. Accordingly, there has been also been a procedural violation Article 3 of the Convention.

2. Effective remedy

70. The applicant also complained that he had had no effective remedy in respect of his complaint of ill-treatment, contrary to Article 13 of the Convention.

71. The Government disagreed.

72. In his observations in reply to those of the Government, the applicant did not maintain this complaint.

73. The Court considers that the complaint made under Article 13 of the Convention essentially repeats the complaint about the lack of an effective investigation made under Article 3 and examined above. Accordingly, it does not consider it necessary to examine this complaint separately.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

74. The applicant alleged a violation of Article 5 § 1 of the Convention. He submitted that section 171 (1) of the Code of Administrative Violations could not provide a legal basis for his detention. The relevant part of Article 5 § 1 of the Convention reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

A. Admissibility

1. The parties' submissions

75. The Government, firstly, argued that the applicant had failed to use the remedies established under the Code of Administrative Violations. They referred to section 259, which enabled the applicant to appeal to a prosecutor regarding his administrative detention. They considered this to be an effective remedy and capable of providing redress because the prosecutor had to examine whether the detention was lawful, reasonable and legitimate. It was the Government's view that if the administrative detention had been found unlawful, the applicant would have had an arguable complaint for compensation under section 289 of the Code.

76. Secondly, the Government argued that the applicant should have lodged a complaint with the Constitutional Court if he had considered that section 259 did not provide for an effective remedy, and if that was because of the actual wording of the provision. The Government relied on the Court's decision in the case of *Grišankova and Grišankovs* (no. 36117/02, ECHR 2003-II (extracts)), in which the Court accepted that recourse to the Constitutional Court was an effective remedy.

77. The applicant disagreed, noting that section 289 of the Code of Administrative Violations did not provide for a right to claim compensation in his case. He had been subject to administrative detention and not to

administrative arrest. The provision relied on by the Government applied only to administrative arrests (see paragraph 37 above). In his submission, reference to section 171(1) as the legal basis for his administrative detention had effectively barred him from any possibility of a remedy, judicial or otherwise.

2. The Court's assessment

78. The Court refers to its well-established case-law according to which the application of the rule of exhaustion of domestic remedies should be applied with some degree of flexibility and without excessive formalism (see, among many others, *Estrikh v. Latvia*, no. 73819/01, § 94; *Leja v. Latvia*, no. 71072/01, § 50, 14 June 2011; *Timofejevi v. Latvia*, no. 45393/04, § 102, 11 December 2012; and *Sorokins and Sorokina*, no. 45476/04, § 77, 28 May 2013).

79. The Court considers that in the present case the question whether the applicant exhausted domestic remedies established under the Code of Administrative Violations is closely linked to the merits of the applicant's complaint under Article 5 § 1 of the Convention. It should therefore be joined to the merits.

80. As regards the Government's suggestion that the applicant should have lodged a complaint with the Constitutional Court, the Court notes that it does not appear from the applicant's submissions that he considered that section 259 did not provide for an effective remedy. Rather, he insisted that the reference to section 171 in his administrative detention report had deprived him of the possibility to use the procedure enshrined in section 259. This being a situation of the application of the domestic law, the Court considers that the applicant was not required to apply to the Constitutional Court and dismisses the Government's preliminary objections in this regard.

81. 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, subject to the question joined to the merits. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

82. The applicant argued that according to the administrative detention report he had been subject to administrative detention under section 171 (1) of the Code of Administrative Violations. However, that provision did not provide for such a sanction as "administrative detention".

83. The Government submitted that the applicant had been subject to administrative detention for committing the offence of "indecent public

behaviour while being in a state of alcohol intoxication". They relied on section 171 of the Code of Administrative Violations. They further pointed out that under section 254 (1) the police officials were authorised to institute administrative proceedings and to administratively detain individuals for "consuming alcohol in public places or for being in a state of alcohol intoxication and appearing in public in a state offending human dignity, public morals or decency". They were further of the view that the applicant had, in fact, acknowledged that his detention had had a basis in national law, namely, sections 171, 253 and 254 of the Code of Administrative Violations.

84. The Government insisted that in view of the applicant's intoxicated state, the national law had provided a legal basis for his administrative detention and transportation to the sobering-up room in the municipal police station in Liepāja.

2. The Court's assessment

85. Taking into account that the parties have not disputed this, the Court finds that the applicant's confinement in the Liepāja municipal police sobering-up room from approximately 8.55 p.m. on 19 August 2003 to 5.25 a.m. on 20 August 2003 amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

86. The first question to be considered is whether the detention was covered by any of the permitted grounds of deprivation of liberty listed exhaustively in paragraph 1 of the Article. Noting that the Government centred their arguments on the ground set out in sub-paragraph 1 (e), the Court will first examine whether the deprivation was "the lawful detention of ... alcoholics" within the meaning of this provision.

87. The Court reiterates that, according to its case-law, Article 5 § 1 (e) of the Convention, when read in the light of its object and purpose cannot be interpreted as only allowing the detention of "alcoholics" in the limited sense of persons in a clinical state of "alcoholism". Under this provision, persons who are not medically diagnosed as "alcoholics", but whose conduct and behaviour under the influence of alcohol pose a threat to public order or themselves, can be taken into custody for the protection of the public or their own interests, such as their health or personal safety. It does not, however, permit the detention of an individual merely because of his alcohol intake. However, in the text of Article 5 there is nothing to suggest that this provision prevents that measure from being applied by the State to an individual abusing alcohol, in order to limit the harm caused by alcohol to himself and the public, or to prevent dangerous behaviour after drinking (see *Witold Litwa*, cited above, §§ 61-2).

88. Therefore, the Court is prepared to accept that the applicant's detention fell within the ambit of Article 5 § 1 (e) of the Convention.

89. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. Moreover, an essential element of the "lawfulness" of detention within the meaning of Article 5 § 1 (e) is the absence of arbitrariness. The detention of an individual is such a serious measure that it is only justified where other, less stringent measures have been considered and found to be insufficient to safeguard the individual or the public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law, it must also be necessary in the circumstances (see *Witold Litwa*, cited above, §§ 72-3 and 78, and *Hilda Hafsteinsdottir v. Iceland*, no. 40905/98, § 51, 8 June 2004, and, more recently, *Kharin v. Russia*, no. 37345/03, § 35, 3 February 2011).

90. In laying down that any deprivation of liberty must be effected "in accordance with a procedure prescribed by law", Article 5 § 1 also relates to the "quality of the law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. "Quality of law" in this sense implies that where a national law authorises deprivation of liberty it must be sufficiently accessible, precise and foreseeable in its application, in order to avoid all risk of arbitrariness (see, *mutatis mutandis*, *Longa Yonkeu v. Latvia*, no. 57229/09, § 120, 15 November 2011).

91. The Court will begin its analysis with establishing whether there was legal basis in national law to detain the applicant. The Government referred to two provisions of national law, which in their opinion authorised the applicant's detention in the present case, namely, sections 171 and 254 of the Code of Administrative Violations. The applicant, however, disagreed and argued that his administrative detention had no legal basis in Latvian law since section 171 did not provide for such a sanction for the administrative offence proscribed therein.

92. The Court first notes that both provisions relied on by the Government to justify the applicant's detention refer, among other things, to such cases when a person is appearing in public places in an intoxicated state, which is an affront to human dignity. The Government considered that the applicant's conduct was constitutive of the offence of "indecent public behaviour while being in a state of alcohol intoxication". The Court notes, however, that it does not follow from materials in the case-file that he was officially held liable for any offence under section 171. The Court observes that this provision provides for the following sanctions: a warning, a monetary fine and an administrative arrest. The applicant did not receive any warning, nor was any monetary fine imposed on him. Furthermore, an administrative arrest was not imposed on him; the case-file material does not reveal that a judge had ordered his administrative arrest. It appears that the only reason mentioned for the applicant's detention was to "sober up",

as it stems from the contents of his administrative detention report as reproduced in expert report no. 352 of 13 November 2003 (see paragraph 16 above). It cannot therefore be considered that the applicant's detention was carried out pursuant to this provision; all the more so as administrative detention was not one of the applicable sanctions for the administrative offence proscribed in section 171, as pointed out by the applicant.

93. The Government further argued that the applicant's detention was authorised under section 254 of the Code of Administrative Violations. It suffices to note in this respect that the measure of administrative detention pursuant to this provision could only be imposed on a person, who had committed an administrative offence (see paragraph 37 above). The Court notes that there is no indication, in the documents submitted by the parties to the Court, that the applicant had committed the administrative offence under section 171 or indeed any other administrative offence. The Government have not sufficiently explained the application of section 254 in practice to the applicant's situation and have not, accordingly, justified his detention on the basis of the latter provision. Taking into account this conclusion, the Court also rejects the Government's preliminary objection of non-exhaustion of domestic remedies as the legal grounds for the applicant's detention and any appeals thereof remain unclear.

94. The above considerations are sufficient for the Court to conclude that the applicant's administrative detention was not lawful as it did not have the legal grounds in national law.

95. The Court further observes that the other requirements of Article 5 § 1 (e) were not satisfied in the present case either. In this regard the Court notes that in the present case, similarly to the circumstances in *Witold Litwa*, no consideration appears to have been given to the fact that the Code of Administrative Violations provides for several different measures which might be applied to an intoxicated person. There are specific administrative sanctions for the offence of "appearing in public places in an intoxicated state, which is an affront to human dignity" which can range from a mere warning to a monetary fine. The applicable sanctions are harsher for a repeated offence – they range from a bigger monetary fine to an administrative arrest for up to 15 days, which can only be imposed by a judge (see paragraph 37 above). It does not appear from the documents made available to the Court that some of these sanctions, which are less stringent than a deprivation of liberty (for example, a warning or a monetary fine), were considered and found to be inappropriate before the decision was made to apply administrative detention, a measure depriving the applicant of his liberty for around eight hours. Even if the Court were to accept what it understands to be the Government's argument that the applicant could reasonably have been considered to pose a threat to public order or to himself, as it has already noted above, the domestic authorities would also have needed to consider seeking a medical opinion as to his state of health

before placing him in custody, or call an ambulance without undue delay, given the circumstances.

96. In the absence of the legal grounds in national law and any consideration justifying the necessity of the applicant's administrative detention, the Court concludes that it cannot be considered to have been "lawful" within the meaning of Article 5 § 1 of the Convention. There has accordingly been a violation of that provision.

V. 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 258.67 Latvian lati (approximately 367.31 euros (EUR)) in compensation in respect of pecuniary damage on account of unspecified medical expenses, and EUR 200 per month for the rest of his life or a lump sum of EUR 200,000 in respect of non-pecuniary damage on account of irreparable moral and psychological suffering caused.

99. The Government disagreed with these claims.

100. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

101. The applicant did not lodge a claim for costs and expenses in time.

102. The Court therefore makes no award under this head.

C. Default interest

103. 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. *Joins to the merits* the Government's first preliminary objection that the applicant had failed to exhaust domestic remedies under the Code of Administrative Procedure in relation to his complaint under Article 5 § 1 of the Convention;

2. *Declares* the complaints under Articles 3, 5 § 1 and 13 of the Convention admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural aspects;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention and *dismisses* the Government's preliminary objection in this regard;

6. *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, EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President