FOURTH SECTION

DECISION

Application no. 11682/03  
Ansis IGARS  
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 5 February 2013 as a Chamber composed of:

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

Having regard to the above application lodged on 31 March 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Mr Ansis Igars, is a Latvian national, who was born in 1977. He was represented before the Court by Mr J. Pastille and Mrs A. Bergmane, lawyers practising in Rīga.

2.  The Latvian Government (“the Government”) were represented by their Agents, Mrs I. Reine and subsequently by Mrs K. Līce.

3.  On 9 March 2006 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).

4.  The facts of the case, as submitted by the parties, may be summarised as follows.

A.  The pre-trial investigation and the criminal proceedings against the applicant

5.  At 7.50 p.m. on 12 March 2001 the Ventspils police apprehended the applicant on suspicion of having kidnapped a fifteen-year-old boy. It later turned out that the victim had died. Three other suspects (A.P., L.S. and M.Ē.) were apprehended on the same day, while another (J.M.) was arrested shortly after midnight.

6.  The applicant was taken to the Ventspils police station. According to his version of events, upon arriving there he was hit several times with a baton and then handcuffed to the handle of a safe. One of the police officers hit him between the eyes. The applicant alleges that he was then hit and kicked by unidentified police officers for three to four hours until he agreed to sign a confession dictated by the police. The applicant asked the police to inform his mother and a lawyer of his arrest but to no avail.

7.  He argued that the beating had damaged his kidneys and that for a whole week afterwards he had been unable to bend down or sleep and that his urine had resembled blood. The applicant alleged that his request to see a doctor had been ignored.

8.  At the police station, the applicant was held in what he reports to have been overcrowded and appalling conditions without adequate sanitation.

9.  According to the official police records, the applicant was first questioned between 9.45 p.m. and 11.30 p.m. on 12 March 2001. According to the Government, the applicant had agreed to be questioned without a lawyer.

10.  The following morning from 10.15 a.m. to 11.40 a.m., the applicant was questioned in the presence of a State-appointed lawyer. From the documents submitted by the Government, it appears that on 14 March 2001 the applicant and his lawyer had a private meeting, which lasted an hour and forty minutes.

11.  On 15 March 2001 the applicant, together with his lawyer, appeared before the Ventspils Court which decided that he would be taken into custody. The court’s decision notes that the applicant remained silent throughout the hearing.

12.  The Government submitted a video recording lasting approximately forty minutes, which was allegedly made on 19 March 2001, less than a week after the applicant’s arrest. The video itself does not contain any indication as to the date when it was made. It shows the applicant, who is handcuffed and dressed in a leather jacket, being interviewed by a man and a woman who do not appear in the shot themselves. The identities of the interviewers are unclear, although on two occasions they identify themselves as employees of the police. No traces of violence or any visible injuries can be seen on the applicant. In answer to questions from the interviewers, the applicant admits that he participated in the commission of the crime but refuses to talk about the act of murder itself. He says that he regrets his actions and asks the victim’s parents to forgive him.

13.  On 22 March 2001 the applicant was questioned as a murder suspect. According to the police interview record, his lawyer was present, having signed the record to that effect. The applicant gave highly detailed statements, explaining his role in the kidnapping and the murder of the victim.

14.  On 2 April 2001 the applicant was again questioned in the presence of a lawyer. He gave additional detailed explanations about the planning and execution of the kidnapping.

15.  On 11 April 2001 the applicant was formally charged with murder, extortion and kidnapping. The charges were explained to him by a prosecutor and the applicant signed a document confirming that his rights as an accused had been explained to him. The decision on charges was also signed by the lawyer representing him.

16.  On 22 June 2001 the applicant was questioned by a prosecutor. It appears that the interview record was also signed by the applicant’s lawyer. The applicant confirmed his previous statements in full and gave some additional details.

17.  On 21 August 2001 the applicant was informed that the pre-trial investigation had been completed and that, in addition to the existing charges, he had also been charged with the unlawful possession of a knife.

18.  On the same day the prosecutor met with the applicant. The applicant’s lawyer was also present. The applicant confirmed his previous statements in full, admitted that he was guilty and gave a few further details. The applicant’s lawyer added a partially illegible note to the end of the interview record, the gist of which appears to be that he considered that the applicant had given his statements while in ill health (“*atrodoties slimīgā stāvoklī*”).

19.  On 27 August 2001 an expert panel consisting of four psychiatrists issued a report on the applicant’s mental health. The report also described the applicant’s physical health, noting the existence of a small wound (*brūce*) of 1.5 cm above his left eyebrow. No other injuries were mentioned. As regards the applicant’s mental health, he was found to be clinically sane. The report noted that while under observation by the psychiatrists, the applicant had vigorously denied that he was guilty, arguing that he had only dug the pit in which the victim had eventually been buried, but denying that he had taken any part in killing him. The applicant had protested his innocence.

20.  On 5 and 6 September 2001 the applicant and his counsel read the case file. They submitted a number of requests, casting doubt on the accuracy of the psychiatric report. They further complained that the report had not addressed the circumstances in which the applicant had received the “head trauma” and the effect that the injury had had on his general health.

21.  On 12 September 2001 the investigating prosecutor rejected the complaints submitted by the defence. As regards the applicant’s injury, he explained that the expert report contained information to suggest that the applicant had injured his forehead during a fall while playing tennis. The copy of the expert report submitted to the Court does not contain such information.

22.  On 14 September 2001 the prosecutors drafted the final indictment (*apsūdzības raksts*). The applicant was charged with extortion and aggravated murder. The charges were later amended with the permission of the trial court and the applicant was also charged with the unlawful possession of a knife. The indictment indicated that the applicant and his co-defendants had fully admitted their guilt and had given detailed statements about the circumstances of the kidnapping and the subsequent murder of the victim.

23.  The trial in the Kurzeme Regional Court lasted from 13 November to 6 December 2001. From the transcripts of the trial it appears that the court asked the applicant if he admitted his guilt, to which he replied in the affirmative. The applicant then went on to say: “Because of the article in the newspaper *Час*, I consider that I cannot give evidence, since [the article] is completely wrong. I refuse to give evidence today; I can only give explanations.” In his application submitted to the Court, the applicant argued that he had refused to give evidence because he had hoped that the court would notice the discrepancies in the case materials. The court proceeded to read out the statements given by the applicant during the pre-trial investigation in accordance with section 279 of the Code of Criminal Procedure as in force at the material time (Kriminālprocesa kodekss), which authorised the reading out of pre-trial statements if the person on trial refused to give evidence at court. The applicant later agreed to answer questions from his counsel, the prosecutor and other participants in the hearing. He gave detailed statements about how the crimes had been committed. In response to a question from the prosecutor, the applicant specifically confirmed the statements he had given during the pre-trial investigation.

24.  On 6 December 2001 the Kurzeme Regional Court delivered its judgment, finding the applicant guilty of kidnapping, aggravated murder, aggravated extortion and unlawfully carrying a knife. He was sentenced to sixteen years’ imprisonment. In finding the applicant guilty, the court relied on his statements given during the pre-trial investigation, noting that during the trial he had “refused to give evidence but in general confirmed” his earlier statements. The court also took into account the statements given by the applicant’s four co-defendants as well as material evidence (a pair of handcuffs, a pneumatic weapon, a chain and a knife) that had been seized from the applicant’s residence, which he had explained had belonged to him and had been used for the kidnapping and extortion.

25.  On 6 December 2001 the applicant lodged a preliminary appeal, in which he disputed the presentation of certain facts in the first-instance court’s judgment and asked the appellate court to reduce his sentence. On 25 February 2002 the applicant amended his appeal. He emphasised that the first-instance court had erred in attributing to him a central role in the events, since he had in fact been a reluctant participant at the most. The applicant also stated as follows:

“I want to draw your attention to the fact that the public opinion about the events has been artificially created. We can see that even at the very beginning of the investigation, before the facts had been established, the printed media were given information which was radically different from the truth. In addition, the first statements that I made were given under pressure; I confessed to everything that the investigators wanted me to confess to. We were also denied legal representation, and since we were subjected to serious physical abuse, I do not consider that [my statements] can be seriously taken into account.”

26.  The Supreme Court held appeal hearings between 13 and 15 May 2002. At the hearing the applicant stated the following:

“I was forced to give false statements. [The investigators and detainees] told [me] to maintain the first statements. The statements given during the pre-trial investigation were false – in several places I am saying things about [other] people, which [those people] had not said. I gave such statements out of fear, I cannot explain it; the statements given during the pre-trial investigation were partly untrue. It is hard to explain what I was thinking at that moment.”

27.  In response to a question from the presiding judge of the appellate court, the applicant stated that he had been beaten up in prison but had not submitted any complaints since there was no one to complain to.

28.  On 15 May 2002 the Supreme Court delivered its judgment, in which it fully upheld the applicant’s conviction and increased his prison sentence to a term of twenty years. The judgment did not in any way address the applicant’s allegations of the use of physical force against him.

29.  On 28 May 2002 the applicant lodged an appeal on points of law in which he complained about the severity of his sentence and about the legal qualification of his actions. On 10 June and 18 August 2002 he amended his original appeal on points of law, further disputing the assessment of evidence by the appellate court. The amended appeal of 10 June 2002 contained the following paragraph:

“Throughout the proceedings the only circumstances read [*sic*] were those which form the opinion created in society, without mentioning anything about the fact that all these statements are only rumours and gossip, without any basis”.

In another paragraph the applicant argued that the victim’s mother’s witness statement had been influenced by “the artificially created public opinion”.

30.  The hearing concerning, *inter alia*, the applicant’s appeal on points of law was scheduled for 3 September 2002. The day before the hearing, the applicant’s counsel, who had been representing him since the pre-trial investigation, submitted a letter to the Senate of the Supreme Court, in which he explained that he was unable to represent the applicant before the Senate because of illness and also because the applicant had apparently submitted a complaint to the President of Latvia alleging that a lawyer had told him that his acquittal could be bought for 10,000 units of an unspecified currency. Upon receiving the letter from the applicant’s counsel, the Senate postponed the hearing in order to clarify the issues concerning the applicant’s representation.

31.  On 8 September 2002 the applicant responded to questions he had been asked by the Senate of the Supreme Court, indicating that he understood his former counsel’s “well-founded fear to disclose the truth about the case” and would therefore be waiving his right to legal representation before the Senate.

32.  On 13 September 2002 the date of the Senate hearing was rescheduled for 1 October 2002.

33.   The applicant submitted that he had been assigned a court-appointed lawyer to represent him before the Senate either on the day of the rescheduled hearing or very shortly beforehand. As a result, his counsel had been wholly unprepared for the hearing and could not ensure an adequate defence.

34.  On 1 October 2002 the Senate of the Supreme Court adopted a decision, summarising the statements made by the applicant at the hearing before the Senate. The applicant had stated that his confession was false, that it had been obtained by pressuring him (*izspiešanas ceļā*) and that he had not reported this fact to the first- and second-instance courts because he “could not guarantee the safety of [his] relatives”. The Senate addressed the allegation by pointing out that the applicant had not made any allegations of violence to either the first- or the second-instance courts. He had been free to speak; he had not been interrupted. Furthermore, he had made no such allegations in the amendments to his appeal on points of law, even though he had had more than four months prior to the hearing before the Senate to do so. The Senate of the Supreme Court upheld the appellate court’s judgment in full.

B.  Complaints to the domestic authorities

35.  On 3 July 2002 the Chancery of the President forwarded a letter by the applicant to the Office of the Prosecutor General which appeared to contain allegations of an illegal practice by the Ventspils police and prosecutors. It further alleged that judges of the Supreme Court had requested a bribe in order to adopt a decision favourable to him (see also paragraph 30 above). The accompanying letter stressed that the applicant’s letter did not refer to any specific facts or criminal acts committed by the Ventspils police or prosecutors. The applicant’s letter was not made available to the Court.

36.  A prosecutor visited the applicant in prison in relation to that complaint. The Government maintained that during the private visit the applicant did not provide any relevant information to the prosecutor, nor did he refer to the alleged events of 12 March 2001.

37.  On 11 October 2002 the applicant’s mother submitted a request for the criminal proceedings against her son to be reopened because new information had come to light. A copy of the request was not made available to the Court. It appears that the request described in detail why the events could not have taken place in the manner established by the courts and that all the evidence in the case had been based on statements obtained from suspects as a result of physical violence and threats from police officers.

38.  On 26 December 2002 a prosecutor rejected the request to reopen the proceedings. As regards the allegations of violence and threatening behaviour, it was indicated that no such complaints had been received from the applicant or his co-defendants during the pre-trial investigation or during their trial and that no traces of violence or injuries had ever been revealed.

39.  On 18 February 2004 the applicant wrote to the Prosecutor General and requested that the criminal proceedings against him be reopened. The applicant informed the Prosecutor General that he had been beaten up and ill-treated in various ways after his arrest and had been forced to sign a confession. He also complained about the conditions of his detention at the Ventspils police detention facility.

40.  On 25 March 2004 a prosecutor of the Office of the Prosecutor General forwarded the applicant’s complaints to the Internal Security Office of the State Police (*Valsts policijas Iekšējās drošības birojs*), calling for an investigation (*pārbaude*) into the allegations of undue use of force against the applicant and his co-defendants. The complaint regarding his inadequate conditions of detention was not mentioned in that letter or in any of the subsequent decisions.

41.  On 28 May 2004 the Internal Security Office refused to initiate criminal proceedings. It held that it had not been objectively established that the applicant had suffered any bodily injuries, since no such injuries had been recorded during his stay at the Ventspils police station or while he was in Liepāja and Grīva Prisons. The applicant had not submitted any complaints of violence to his counsel or to any of the authorities. In the video recording of the interview with the applicant made on 19 March 2001 (see paragraph 12 above) no injuries or traces of violence could be seen.

42.  On 3 June 2004 the applicant’s mother lodged an appeal. She explained that the reason why no traces of violence could be seen in the video recording of the applicant’s interview was that most of the blows and kicks had been aimed at the parts of his body which were covered with clothes and therefore the injuries were not visible. No injuries had been logged during the applicant’s stay in Ventspils because realistically it would have been impossible to request a medical examination. The applicant had been transferred to Liepāja Prison more than a month after the alleged beatings and it was for that reason that no traces of violence had been found. In addition, the applicant’s mother named two witnesses who she believed ought to have been questioned – one of them being a person who had shared the same cell as the applicant in Ventspils.

43.  On 28 June 2004 a prosecutor of the Office of the Prosecutor General quashed the decision of 28 May 2004 and referred the case back to the Internal Security Office. That office was instructed to obtain statements from all the officers who had taken part in questioning the applicant, as well as from everyone who had shared a cell with him in Ventspils.

44.  On 5 October 2004 the Internal Security Office once again refused to initiate criminal proceedings for lack of *corpus delicti*. Following the prosecutor’s instructions, the investigators had questioned four people who had been in the Ventspils police detention facility at the same time as the applicant. One of the witnesses indicated that he had seen a police officer giving a, not very hard, blow to the applicant’s chest. Two other witnesses, who claimed that they had known the applicant since childhood, stated that they had seen injuries on his body: one of them had seen haematomas and stripe marks on his back as well as bruises left by handcuffs; the second witness indicated that he had seen two or three small round haematomas on his back. The fourth witness stated that the applicant had not shown him any injuries. The two counsel who had represented the applicant claimed that he had not complained of any injuries. The Internal Security Office’s decision did not lend credence to the statements of the two witnesses who had allegedly seen the applicant’s injuries, since it was noted that the witnesses were his acquaintances and that their statements had been contradictory and also contrary to the statements made by the applicant himself. Furthermore, the applicant’s own written statements to the police indicated that he had voluntarily made a confession. The Office’s decision was upheld by a prosecutor of the Office of the Prosecutor General on 9 December 2004. It appears that the latter decision was not appealed against.

C.  Newspaper reports

45.  The following are excerpts from articles published in four newspapers and on the website of a news agency within eight days of the arrest of the applicant and his co-defendants. The excerpts are limited to reported quotes from two officials of the Ventspils police, A.Dz., the chief of the police and J.B., the chief of the criminal police.

46.  On 14 March 2001 *Diena*, the leading daily newspaper in Latvia, under the headline “Sadistically tortured and buried alive”, published the following information:

“... [A.Dz.] informed *Diena* that the information available suggests that the murder was committed out of greed. ...

... [J.B.] told *Diena* that from the accused’s statements it appeared that the principal motive for the crime had been to obtain money. ... the torturers were afraid to release [the victim] because if they did they would be caught; therefore, with the intention of keeping the offence quiet they had killed the [teenager]. ... They killed [him] with a stone near the shallow grave ...

[A.Dz.] described [the contents of] a medical report ...”

47.  On 14 March 2001 the newspaper *Rīgas Balss*, under the headline “Brothers of the order bury a boy alive”, published the following information:

“... [J.B.] told [*Rīgas Balss*] that all five detainees have been placed under arrest and have confessed. ...

‘It seems that afterwards they understood that they had gone too far and would not get away with it if the events were found out’ [J.B.] told [*Rīgas Balss*]. ... All the circumstances suggest that the criminals ... were fully aware of their actions. ... They intentionally brought [the victim] to [a remote] place in order to murder him.

[J.B.] reports that ‘they were initially strangling the victim but when they did not succeed [in killing him], they took a large stone and hit him [with it]. They threw the boy in the pit and began to cover him with soil but the victim was still alive and moved. One of the gang members then jumped on top of him to try to stop him from moving, while the others were covering him with soil. Later, our experts discovered that the victim’s tongue was in a position typical for asphyxiation – he had been buried alive’.

[J.B.] said that the detainees had been very calm, albeit obviously surprised at having been caught so quickly – they had thought that everything had been planned well and that all traces had been hidden. ... ”

48.  On 14 March 2001 the newspaper *Jaunā Avīze*, under the headline “Group of murderers caught”, published the following information:

“[A.Dz.] reported that five youngsters who ... kidnapped and later cruelly murdered [the victim] had been questioned and have confessed ...

[A.Dz.] emphasised that these youngsters were a ‘mature, fully-formed group of murderers’ ...

During interrogations that lasted for twelve hours it became evident that the murder was committed in order to obtain money. [A.Dz.] stressed that the youngsters had only committed the crime in question ‘out of greed’ ...

[A.Dz.] predicted that the youngsters could spend up to fifteen years in prison for this crime. He added, however, that since none of the youngsters had prior convictions and because there will be ‘snivelling’ in the courtroom, the sentence might be more lenient. However, if it were up to him, the youngsters would ‘be in for a long, long time’. He conceded that in a conversation with the [victim’s] mother, she had damned the murderers, asking for ‘lightning to strike them so that none of them would survive’.”

49.  On 15 March 2001 the Baltic News Service, under the headline “Teenager cruelly murdered in Ventspils”, published the following information:

“... Four out of the five members of the gang are liable to life imprisonment. ‘The detained persons are a serious group of murderers who have previously committed several other serious crimes, which we will prove’, [A.Dz.] stated earlier ...”

50.  On 20 March 2001 the newspaper *Lauku Avīze* published an article entitled “Murders by a crowd”. A portion of the article consisted of a verbatim report of an interview with A.Dz., the relevant excerpts of which are as follows:

“[Journalist]: Have the detained persons confessed to having committed murder?

[A.Dz.]: Yes, everyone has confessed. ... Everything seems to be clear as regards the ... murder. ...

We continue to work very seriously with the detainees. Six people are accused in this case and each of them wants to save their own skin. It is very important whether they will get ten or fifteen years in prison. ... [After murdering the victim], hours pass, they sleep at home like animals and in the morning they begin to blackmail the parents, they want to get money for a child who has been killed.”

COMPLAINTS

51.  The applicant complained under Articles 3 and 13 of the Convention about his ill-treatment during the pre-trial investigation and the lack of effective domestic remedies in that regard. He also complained that the Senate of the Supreme Court had not reacted adequately to the information contained in his appeal on points of law regarding his alleged ill-treatment. Without invoking any Articles of the Convention the applicant complained about the conditions of his pre-trial detention.

52.  The applicant also complained under Article 6 § 1 of the Convention that he was deprived of the right to a fair trial because of the use of evidence obtained by an infringement of his rights guaranteed by Article 3 of the Convention.

53.  The applicant further alleged that his right to be presumed innocent, guaranteed by Article 8 of the Convention had been breached by the public statements made by the police officers prior to the start of the trial.

54.  Lastly the applicant submitted various other complaints under Articles 1, 5 and 6 of the Convention.

THE LAW

A.  Alleged violations of Article 3 of the Convention

55.  The applicant complained that he had been ill-treated by the police during the pre-trial investigation, in violation of Article 3 of the Convention. Relying upon Article 13 of the Convention, the applicant also complained that, at the relevant time, the Latvian legal system did not provide an effective mechanism for investigating allegations of ill-treatment of detainees, and that the Senate of the Supreme Court had not reacted adequately to the information contained in his appeal on points of law regarding his alleged ill-treatment.

56.  The above complaints were communicated to the respondent Government under Articles 3 and 13 of the Convention. The Court, however, deems it appropriate to examine the complaints raised by the applicant under the substantive and procedural aspects of Article 3 (for this approach see, among many other examples, *Maslova and Nalbandov v. Russia*, no. 839/02, § 110, 24 January 2008; *Members of the Gldani Congregation of Jehovah’s Witnesses and Others v. Georgia*, no. 71156/01, § 137, 3 May 2007; and *Colibaba v. Moldova*, no. 29089/06, § 58, 23 October 2007).

57.  Article 3 of the Convention reads as follows:

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

Admissibility

(a)  The parties’ submissions

58.  The applicant insisted that he had been ill-treated by the Ventspils police. He conceded that years after the alleged incidents it was no longer possible to obtain irrefutable evidence of the alleged ill-treatment; however, he submitted that the lack of investigation, attributable to the Government, had been to blame for that. The applicant further submitted that even if his ill-treatment had only resulted in some minor bruising, the very recourse to physical force, which had not been strictly necessary given his conduct, had diminished his human dignity and was therefore in violation of Article 3.

59.  With regard to the investigation that was carried out after 18 February 2004, the applicant submitted that prosecutors were unable to independently investigate allegations of ill-treatment by the police, since prosecutors were in charge of pre-trial investigations in ordinary criminal cases and thus worked very closely with the police.  In the applicant’s opinion, the fact that an investigation had eventually been launched years after the events in question was irrelevant. If an investigation had been carried out promptly, it would have been capable of establishing the truth of his allegations; however, that had not happened.

60.  The Government asserted that the medical logbook of the Ventspils police station had not contained any entries concerning any medical problems experienced by the applicant. The Government further referred to the video recording of the applicant’s interview (see paragraph 12 above), in which no traces of violence could be seen on the applicant’s face; this, in the Government’s opinion, was incompatible with the applicant’s account of having been hit in the face. The Government also referred to information provided by forensic experts that bruises (haematomas) were normally visible for one to two weeks after their appearance, and in the case of larger bruises, for several weeks or even months. It was the Government’s view that if the applicant had indeed been beaten up for three to four hours, he would inevitably have had significant bruising which would have been revealed during the medical examination carried out upon his arrival at Liepāja Prison.

61.  The Government further relied upon the statements given to the investigator of the Internal Security Office by the people who had shared a cell with the applicant and by other witnesses (see paragraph 44 above) and submitted that they did not lead to a clear and convincing conclusion that the applicant had been ill-treated. Even if the small bruises mentioned by one of the applicant’s cellmates had existed, there was no reason to believe that they had been inflicted by a State agent.

62.  In respect of the investigation into the applicant’s allegations the Government argued that the appropriate body for dealing with complaints of ill-treatment by police was the prosecutor’s office. The first time the applicant had explicitly complained about the alleged incident of March 2001 had been on 25 March 2004, more than three years later (it appears that the Government are referring to the date on which the Office of the Prosecutor General forwarded the applicant’s complaint of 18 February 2004 to the Internal Security Office). The Internal Security Office, with input from the Office of the Prosecutor General, had fully investigated the applicant’s allegations and had collected all the information available at the time, taking into account the fact that almost three and a half years had passed since the alleged incident. The Government submitted that the fact that no criminal prosecution had resulted from the investigation was irrelevant; the effectiveness of an investigation had to be measured against its success in establishing the truth.

63.  The Government disputed the applicant’s argument that prosecutors were not sufficiently independent from the police and thus were incapable of ensuring an effective investigation into allegations of ill-treatment by the police. In this regard the Government cited a judgment adopted by the Constitutional Court on 11 October 2004 (case no. 2004‑06‑01), in which it had been established that the office of prosecutor formed part of the judiciary and was an independent institution offering protection to individuals at the pre-trial investigation stage.

(b)   The Court’s assessment

64.  The Court reiterates that Article 3 of the Convention enshrines an absolute prohibition of torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim’s behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000‑IV). The ill-treatment must attain a minimum level of severity in order to fall within the scope of Article 3 of the Convention. The assessment of this minimum level depends on all the circumstances of the case, such as the stringency of the measure complained of, the objective pursued and its effects on the person concerned (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000‑XI).

65.  In the Court’s view, there is little doubt that if the alleged treatment of the applicant happened as described by him and was unprovoked by his behaviour, this would constitute ill-treatment in violation of Article 3 of the Convention. The salient issue is, however, whether such physical ill-treatment took place.

66.  The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see *Labita*, cited above, § 121). To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt”, but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25).

67.  The Court has held on many occasions that where a person was healthy before being taken into custody and has thereafter sustained injuries, the Government are under an obligation to provide a plausible explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999‑V). However, some proof of the existence of injuries is indispensable (see, for example, *Tomasi v. France*, 27 August 1992, Series A no. 241‑A; *Indelicato v. Italy*, no. 31143/96, 18 October 2001; and *Hristovi v. Bulgaria*, no. 42697/05, §§ 73-78, 11 October 2011).

68.  The only indications in the case file about any physical injuries caused to the applicant are a remark concerning a small wound above his eyebrow in the forensic psychiatric report, which was issued more than five months after his alleged ill-treatment (see paragraph 19 above) and the statements of two witnesses who had been held at the Ventspils police station together with the applicant, one of whom reported having seen haematomas and stripe marks on his back as well as bruises left by handcuffs, and the second of whom indicated that he had seen two or three small round haematomas on his back (see paragraph 44 above). The applicant himself, in his observations to the Court, submitted that the alleged ill-treatment had resulted in only minor bruising (see paragraph 58 above).

69.  Whereas in his original application to the Court the applicant alleged that he had been denied access to a doctor after being beaten up (see paragraph 7 above and contrast *Hristovi*, cited above, § 75), that allegation was not further substantiated in his observations. Furthermore, the applicant failed to specify when he had supposedly made the request to see a doctor or to give any other details in that regard (see *Ksenzov v. Russia* (dec.), no. 75386/01, 27 January 2005).

70.  The Court also cannot ignore the fact that the applicant appears not to have complained of ill-treatment either during the first private meeting he had with a lawyer (see paragraph 10 above and *Sharkunov and Mezentsev v. Russia*, no. 75330/01, § 77, 10 June 2010), during the hearing before the Ventspils Court when it was deciding which preventive measure to impose (see paragraph 11 above), or during his trial at the Kurzeme Regional Court (see paragraph 23 above). The first hint of any allegations of wrongdoing appears to have been his lawyer’s handwritten remark that the applicant had given statements while in ill health (see paragraph 18 above). That remark was made more than five months after the alleged ill-treatment. In the amended appeal submitted by the applicant more than eleven months after the alleged incident in Ventspils (see paragraph 25 above) he mentioned that he had been subjected to “serious physical abuse” but no details of the alleged abuse were given.

71.  The Court has also had regard to the conclusions reached by the Internal Security Office (see paragraph 44 above). The Court agrees with the investigators that the witnesses questioned appear to have provided inconsistent statements about the nature and the extent of the applicant’s injuries. In addition, the relatively modest extent of the injuries reported by those witnesses appears to be at odds with the applicant’s account of having been hit and kicked by several policemen for more than three hours. Moreover, and as noted earlier, the complaints, such as they were, were submitted by the applicant a long time after the ill-treatment had allegedly taken place (see paragraphs 25, 27, 34, 35 and 37 above).

72.    Having regard to the above considerations, the Court finds that the applicant has failed to lay the basis of an arguable complaint that he was ill-treated as alleged. On that account the complaint is manifestly ill-founded and therefore inadmissible in accordance with Article 35 §§ 3(a) and 4 of the Convention. Furthermore, it is not open to the applicant to contest the effectiveness of the domestic investigation since he failed to provide the authorities with any serious and reasonably credible information about his alleged ill-treatment. In any event, the Court finds that there is no appearance of a breach of the respondent State’s procedural obligations (see, for a recent survey of the relevant case-law and statement of principles, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 182-184, ECHR-2012-...) to carry out an independent, prompt and effective investigation.

73.  In the light of the above considerations the Court concludes that the applicant’s complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II.  ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE USE OF UNLAWFULLY OBTAINED EVIDENCE

74.  The applicant complained of a violation of his right to a fair trial owing, in particular, to the use of his confession, which had allegedly been obtained by ill-treatment, in the criminal proceedings against him. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Admissibility

75.  The Government argued that the applicant’s complaint was inadmissible because his application was only submitted to the Court on 6 September 2004, almost two years after the Senate of the Supreme Court had adopted its final decision in his criminal case.

76.  The applicant disagreed and explained that he had lodged his application with the Court on 30 March 2003 and thus had clearly complied with the six-month time-limit.

77.  The Court notes that in his first letter addressed to the Court, sent on 31 March 2003, the applicant, among other things, relied on Article 6 of the Convention and alleged that the police had obtained a false confession from him through torture. That preliminary complaint, being similar in substance to the complaint the Court is called upon to examine now, was submitted within six months of the final decision adopted by the domestic courts. The Government’s objection is therefore dismissed.

78.  As regards the substance of the applicant’s complaint, the Government emphasised that in the course of the criminal trial the applicant had failed to argue explicitly and consistently that unlawfully obtained evidence was being used against him. He had submitted no such arguments to the first-instance court. While he had raised the issue in his amended appeal (see paragraph 25 above), it was the Government’s view that the applicant had not maintained his arguments regarding the issue of unlawfully obtained evidence either at the hearing before the Supreme Court or later in the proceedings before the Senate.

79.  The Government further submitted that neither the applicant nor his co-defendants had ever retracted or attempted to alter the statements they had given during the pre-trial investigation.

80.  The applicant insisted that his confession had been obtained by using methods that violated Article 3 of the Convention and therefore their use in the criminal proceedings against him violated Article 6 § 1.

81.  The Court reiterates that it is not its role to determine, as a matter of principle, whether particular types of evidence, such as evidence obtained unlawfully in terms of domestic law, may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the “unlawfulness” in question (see *Jalloh v. Germany* [GC], no. 54810/00, § 95, ECHR 2006‑IX, with further references).

82.  Particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use of such evidence, secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *Gäfgen v. Germany* [GC], no. 22978/05, § 165, ECHR 2010, with further references).

83.  In the more specific context of confessions obtained as a result of torture or of other ill-treatment in breach of Article 3 the Court has found that their admission as evidence to establish the relevant facts in criminal proceedings always renders the proceedings as a whole unfair. This finding applies irrespective of the probative value of the statements and irrespective of whether their use is decisive in securing the defendant’s conviction (*Gäfgen*, § 166, with further references).

84.  However, as a preliminary issue, the Court has to determine the standard of proof that an accused person’s claim before the national courts has to meet in order to request that the tainted evidence be excluded. The Court has previously held that the person concerned should make an “arguable claim” of ill-treatment (see, for example, *Lopata v. Russia*, no. 72250/01, § 140, 13 July 2010).

85.  In the light of how the applicant formulated his complaints of ill-treatment to the domestic courts (see, in particular, paragraphs 25, 26 and 34 above), the Court is unable to conclude that he has put forward an “arguable claim”. Furthermore, taking into account the fact that the applicant never fully and coherently retracted his initial confession, the Court is unable to conclude that the domestic courts had an obligation to carry out a detailed analysis of the admissibility of evidence based on his confession. The Court must also give due weight to its finding under Article 3 of the Convention that the applicant’s allegation that he had been ill-treated is manifestly ill-founded. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION ON ACCOUNT OF THE PUBLIC STATEMENTS BY THE POLICE OFFICERS

86.  The applicant further complained that his right to be presumed innocent had been breached by the public statements made by the police officers prior to the start of his trial. He relied on Article 8 of the Convention. That complaint was communicated to the respondent Government under Article 6 §§ 1 and 2 of the Convention, which, in so far as relevant, provides as follows:

“1.  In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

2.  Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

Admissibility

87.  The Government submitted that the applicant’s complaint was inadmissible for non-exhaustion of domestic remedies. The applicant should have lodged a defamation claim against either the police officers who had made statements about him or the media outlets which had published those statements. Such action could have resulted in compensation for non-pecuniary damage as well as in a retraction of the statements at issue.

88.  The Government further submitted that, had the applicant feared that the information published in the media might have affected the impartiality of the court, he could have asked for the judge or judges in question to be removed from the case. The Government insisted that during the entire proceedings the applicant had “never made any allegations or complaints with regard to the alleged breach of the presumption of innocence”.

89.  Lastly, the Government were of the opinion that the applicant’s complaint was inadmissible as having been lodged out of time. The last of the articles in question had been published on 20 March 2001, which was therefore the date on which the six-month period for lodging a complaint with the Court had started to run.

90.  The applicant disagreed with the suggestion that a defamation claim in the civil courts would have been an effective remedy to address his grievances. He noted that the main purpose of the presumption of innocence was to prevent a prejudicial effect on the outcome of a criminal trial. Consequently, civil proceedings could not have remedied the effect that the statements at issue had had on the investigation and trial relating to the criminal case against him. As to the effectiveness of complaints within the context of the criminal proceedings, the applicant submitted that he had “avail[ed] himself of all criminal appeals available under Latvian law” and thus had both exhausted the domestic remedies and complied with the six-month time-limit.

91.  The Court reiterates that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial guaranteed by Article 6 § 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). For this reason the Court has often held that applicants are expected to raise allegations of a breach of the presumption of innocence within the context of criminal proceedings against them (see, for example, *Shagin v. Ukraine*, no. 20437/05, § 71, 10 December 2009, and *Dovzhenko v. Ukraine,* no. 36650/03, § 42, 12 January 2012), in order to give the criminal courts an opportunity to place the applicants, as far as possible, in the position they would have been in had the requirements of Article 6 not been disregarded (see, *mutatis mutandis*, *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005).

92.  It is for this reason that in previous cases the Court has found that recourse to civil courts is not an effective remedy to be exhausted with regard to complaints under Article 6 § 2 of the Convention (see, for example, *Konstas v. Greece*, no. 53466/07, § 29, 24 May 2011, and *Shuvalov v. Estonia*, no. 39820/08 and 14942/09, § 73, 29 May 2012; see to the contrary, *Marchiani v. France* (dec.), no. 30392/03, 27 May 2008). The Court notes that in an earlier case similar to the present one it found that the applicant had lost his victim status when the domestic civil courts ordered the public official who had made the statements alleged to have violated the applicant’s right to be presumed innocent to make an official apology in the press and awarded the applicant compensation. However, in that case the criminal charge in respect of which the impugned statement had been made had eventually been dropped, and for that reason the Court considered that the public official’s statement could not have had any adverse impact on the fairness of the ongoing criminal proceedings against the applicant (*Mirosław Garlicki v. Poland*, no. 36921/07, § 138, 14 June 2011). The circumstances of the present case being different, the Court dismisses the Government’s suggestion that a defamation claim could have constituted an effective domestic remedy to be exhausted in the applicant’s situation.

93.  In so far as the effectiveness of complaints of infringement of the presumption of innocence in criminal proceedings is concerned, the Court notes that the applicant complained to the domestic courts that the information about his case contained in newspaper articles was inaccurate (see paragraphs 23 and 25 above) and that it had contributed to manipulating public opinion (see paragraphs 25 and 29 above). On the other hand, it appears that he never formulated his complaint directly in relation to the specific statements made by the Ventspils police officers and the possible effects that such statements could have on the criminal proceedings against him.

94.  Having found that the applicant did not bring his complaints to the attention of the criminal courts sufficiently explicitly and clearly, the Court is not called upon to speculate on the possible effectiveness of such a remedy. It is sufficient to note that the applicant submitted his complaint to the Court more than two years after the date of publication of the last of the newspaper articles complained of. It follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see also *Van Deilena v. Latvia* (dec.), no. 50950/06, § 73, 15 May 2012).

IV.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

95.  Lastly, the applicant submitted various other complaints under Articles 3, 6 and 8 of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Fatoş Aracı David Thór Björgvinsson  
 Deputy Registrar President