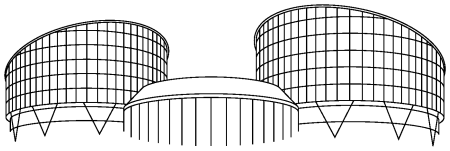

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF JERONOVIČS v. LATVIA

(Application no. 44898/10)

JUDGMENT

STRASBOURG

5 July 2016

This judgment is final but it may be subject to editorial revision.

In the case of Jeronovičs v. Latvia,

The European Court of Human Rights sitting as a Grand Chamber composed of:

Guido Raimondi, *President,*
Işıl Karakaş,
Josep Casadevall,
Mirjana Lazarova Trajkovska,
Mark Villiger,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Kristina Pardalos,
Paulo Pinto de Albuquerque,
André Potocki,
Paul Mahoney,
Aleš Pejchal,
Johannes Silvis,
Krzysztof Wojtyczek,
Jon Fridrik Kjølbro, *judges,*
Jautrīte Briede, ad hoc *judge,*

and Lawrence Early, *Jurisconsult,*

Having deliberated in private on 1 July 2015 and 9 May 2016,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 44898/10) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Viktors Jeronovičs ("the applicant"), on 26 July 2010.

2. The applicant, who had been granted legal aid, was represented by Ms I. Nikuļceva, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the public prosecutor's refusal to reopen the two sets of criminal proceedings covered by the Government's unilateral declaration made in his previous application, no. 547/02, had deprived him of effective remedies in respect of his allegations under Articles 3 and 13 of the Convention.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court).

On 9 October 2012 a Chamber of that Section composed of Danutė Jočienė, President, Ineta Ziemele, Dragoljub Popović, Işıl Karakaş, Guido Raimondi, Paulo Pinto de Albuquerque and Helen Keller, judges, and Stanley Naismith, Section Registrar, examined the case. The Chamber, by a majority, decided to give notice to the respondent Government of the complaints under Articles 3 and 13 of the Convention regarding the lack of an effective investigation into the applicant's ill-treatment and the lack of an effective remedy in respect thereof, and declared the remainder of the application inadmissible.

5. Following a change in the composition of the Court's Sections (Rule 25 § 1 of the Rules of Court), the case was assigned to the newly composed Fourth Section (Rule 52 § 1 of the Rules of Court).

On 3 February 2015 a Chamber of that Section composed of Guido Raimondi, President, Päivi Hirvelä, George Nicolaou, Ledi Bianku, Zdravka Kalaydjieva, Paul Mahoney and Krzysztof Wojtyczek, judges, and Françoise Elens-Passos, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court. Judge Ineta Ziemele, the judge elected in respect of Latvia, having withdrawn on 31 December 2014, the President of the Grand Chamber appointed Ms Jautrīte Briede on 31 March 2015 to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1).

On 9 May 2016 Jon Fridrik Kjølbro, substitute judge, replaced Dean Spielmann, who was unable to take part in the further consideration of the case (Rule 24 § 3).

7. The applicant and the Government each filed a memorial on the admissibility and merits of the application.

8. In addition, third-party comments were received from the Helsinki Foundation for Human Rights, a non-governmental organisation based in Warsaw, Poland, which had been granted leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 1 July 2015 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mrs K. LĪCE, *Agent*,
Mrs R. RŪSE, *Counsel*,
Mr A. MICKEVIČS, *Adviser*;

(b) *for the applicant*
MRS I. NIKUĻCEVA, *Counsel*.

The Court heard addresses by Ms Līce and Ms Nikuļceva.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1962 and is detained in Daugavpils Prison.

A. Factual background

11. On 25 April 1998 the applicant and another individual, A. Vovruško, were arrested by the police on suspicion of having committed, *inter alia*, aggravated assault against P.M.

12. Criminal proceedings were initiated in that connection, throughout which the applicant and his co-defendant pleaded their innocence.

13. On 27 September 2000 the applicant and his co-defendant were found guilty of the charges and were sentenced to nine and twelve years' imprisonment respectively by the Riga Regional Court.

14. The applicant lodged an appeal on points of law and unsuccessfully sought leave to attend the hearing on his appeal before the Supreme Court.

15. Following his questioning at the police station after his arrest, the applicant complained to the public prosecutor's office that he had been ill-treated by police officers who had tried to obtain a confession from him (for details concerning similar allegations of ill-treatment made by the applicant's co-defendant, see *Vovruško v. Latvia*, no. 11065/02, 11 December 2012).

16. As a result, criminal proceedings (case no. 50207598) were initiated against the police officers for abuse of official power. On 19 March 2001 those criminal proceedings were discontinued by the Riga police station investigator (*Rīgas rajona policijas pārvalde*) on grounds of insufficient evidence. The investigator found, *inter alia*, that the applicant's allegations were incoherent, and concluded that the "light" injuries he had sustained could have been caused during his arrest.

B. Application no. 547/02 and the Court's decision of 10 February 2009

17. On 8 October 2001 the applicant lodged an application (no. 547/02) with the Court. He alleged a breach of Article 3 of the Convention, complaining of having been subjected to ill-treatment during the pre-trial investigation and of the lack of an effective investigation into those allegations. He also alleged breaches of Article 3 (conditions of detention following his conviction), Article 5 § 3 (duration of pre-trial detention), Article 5 § 5 (lack of compensation), Article 6 § 1 (refusal to grant him leave to attend the Supreme Court hearing and overall duration of the criminal proceedings), and Article 6 § 1 taken in conjunction with Articles 13 and 14 of the Convention (lack of legal assistance). He lodged a further complaint under Article 6 § 1 alleging that the criminal proceedings which had resulted in his conviction had been unfair as his confession had been obtained from him as a result of ill-treatment in breach of Article 3.

18. On 22 February 2007 the Government were given notice of the applicant's complaints concerning, *inter alia*, his ill-treatment and the lack of an effective investigation into his allegations in that regard.

19. On 30 April 2008 the Government submitted the following unilateral declaration:

> "The Government of the Republic of Latvia (hereinafter – the Government) represented by [their] Agent Inga Reine admit that the physical treatment of Viktors Jeronovičs (hereinafter – the applicant) by the police officers, as well as the effectiveness of the investigation of the respective applicant's complaints, the access to legal aid and effective remedies to apply for the compensation of damages, the length of criminal proceedings [against the applicant], as well as the lack of effective remedy did not meet the standards enshrined in Article 3, Article [5 § 5], Article [6 § 1], Article 13 and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention). Being aware of that, the Government undertake to adopt all necessary measures in order to avoid similar infringements in future, as well as to provide an effective remedy.
>
> Taking into account that the parties have failed to reach a friendly settlement in this case, the Government declare that they offer to pay *ex gratia* to the applicant compensation in the amount of 4,500 EUR ([approximately] 3,163 LVL]), this amount being the global sum and covering any pecuniary and non-pecuniary damage together with any costs and expenses incurred, free of any taxes that may be applicable, with a view to terminat[ing] the proceedings pending before the European Court of Human Rights (hereinafter – the Court) in the case [of] *Jeronovičs v. Latvia* (application no. 547/02).
>
> ...
>
> This payment will constitute the final resolution of the case."

20. On 10 February 2009 the Chamber of the Court's Third Section to which the case had been allocated adopted a decision in which, *inter alia*, it took note of the terms of the Government's declaration and, by virtue of

Article 37 § 1 of the Convention, struck out the complaints mentioned in the unilateral declaration. The relevant paragraphs of the decision read as follows:

> "48. The Court observes at the outset that the parties have not reached agreement on the terms of a friendly settlement of the case. It reiterates however that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement negotiations and, on the other, unilateral declarations – such as the one at issue – made by a respondent Government in public and adversarial proceedings before the Court. In accordance with Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, the Court will proceed on the basis of the Government's unilateral declaration and the parties' observations submitted outside the framework of the friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement (see *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, § 74, ECHR 2003-VI).
>
> 49. The Court further refers to Article 37 § 1 of the Convention, the relevant parts of which provide:
>
> '1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.'
>
> 50. The Court reiterates that in certain circumstances it may be appropriate to strike an application out of the list under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government even though the applicant wishes the examination of the case to be continued. In each instance, it is the specific circumstances of the case which will determine whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar*, cited above, § 75; see also, for example, *Van Houten v. the Netherlands* (striking out), no. 25149/03, § 33, ECHR 2005-IX; *Swedish Transport Workers' Union v. Sweden* (striking out), no. 53507/99, § 24, 18 July 2006; *Kalanyos and Others v. Romania*, no. 57884/00, § 25, 26 April 2007; *Kladivík and Kašiar v. Slovakia* (dec.) (striking out), no. 41484/04, 28 August 2007; *Sulwińska v. Poland* (dec.) (striking out), no. 28953/03, 18 September 2007; *Stark and Others v. Finland* (striking out), no. 39559/02, § 23, 9 October 2007; *Feldhaus v. Germany* (dec.) (striking out), no. 10583/02, 13 May 2008; and *Kapitonovs v. Latvia* (dec.) (striking out), no. 16999/02, 24 June 2008).
>
> ...
>
> 52. As to the ill-treatment to which the applicant was allegedly subjected in police custody and the effectiveness of the investigations carried out, although the Court has not to date found a violation of Article 3 by the Latvian police in that specific context, it nevertheless points to its clear and very extensive case-law in this regard (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 95-106, ECHR 1999-V; *Dikme v. Turkey*, no. 20869/92, §§ 73-104, ECHR 2000-VIII; and

Karaduman and Others v. Turkey, no. 8810/03, §§ 64-82, 17 June 2008). The same is true as regards the principles governing the granting of legal aid as a component of the right of access to a court (see, for example, *Aerts v. Belgium*, 30 July 1998, §§ 59-60, *Reports of Judgments and Decisions* 1998-V; *P., C. and S. v. the United Kingdom*, no. 56547/00, §§ 88-91, ECHR 2002-VI; *Bertuzzi v. France*, no. 36378/97, §§ 23-32, ECHR 2003-III; and *Staroszczyk v. Poland*, no. 59519/00, §§ 127-129, 22 March 2007).

53. In their declaration in the present case the Government have recognised that the treatment to which the applicant was subjected by the police officers while in police custody, the manner in which the investigations were carried out in that regard, the handling of the applicant's claims for compensation and in particular the refusal of his applications for legal aid in order to gain access to the compensation procedure, as well as the length of the criminal proceedings against him, infringed Articles 3, 5 § 5, 6 § 1, 13 and 14 of the Convention. They have offered to pay the applicant EUR 4,500 in compensation and undertake to take all necessary measures to prevent similar violations in the future.

54. In view of the nature of the undertakings contained in the Government's declaration, the Court considers that it is no longer justified to continue the examination of the complaints in question. That decision is without prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain redress. The same applies to the complaint under Article 2 of Protocol No. 7, which is identical in substance to the complaint under Article 6 § 1 of the Convention concerning the length of the criminal proceedings in question (paragraph 38 *in fine*). The Court is further satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of this part of the application (Article 37 § 1 *in fine*).

55. Accordingly, the case should be struck out of the list in so far as it concerns the complaints referred to in paragraphs 28, 37 and 38 of this decision."

21. In the same decision, the Court declared admissible the complaints concerning the applicant's conditions of detention (Article 3) and the refusal to grant him leave to attend the Supreme Court hearing (Article 6), and dismissed all the other complaints, including the complaint that the criminal proceedings had been unfair owing to the admission of evidence obtained under duress (Article 6). On the latter point the Court found as follows:

"39. Relying on Articles 6 §§ 1 and 2, 7 and 14 of the Convention, the applicant complained of the overall unfairness of his conviction for the armed robbery allegedly committed in April 1998. He maintained in that connection that a confession had been obtained from him under duress and that the courts had refused several requests made by him for a confrontation. Lastly, the applicant contended that he had been convicted solely on account of his ethnic and social origin and his previous convictions.

...

84. The Court, having regard to all the evidence in its possession and in so far as it has jurisdiction to examine the allegations made, finds no appearance of a violation of the rights and freedoms guaranteed by the provisions on which the applicant relies. In particular, it reiterates that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention, which is not the case here

(see, among many other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V).

85. It follows that these complaints are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention."

22. On 1 December 2009 the Court adopted a judgment – *Jeronovičs v. Latvia* (no. 547/02) – finding a violation of Article 3 of the Convention (conditions of detention) and Article 6 § 1 (refusal to grant leave to attend the Supreme Court hearing) and awarding 5,000 euros [EUR] in compensation for the non-pecuniary damage suffered on account of the Article 3 violation.

C. Subsequent proceedings before the Latvian authorities for the reopening of the criminal proceedings

23. On 11 October 2010 the applicant requested the public prosecutor's office to reopen the criminal proceedings in which he had been convicted (see paragraph 13 above) as well as the proceedings concerning his alleged ill-treatment by police officers (see paragraph 16 above). He relied on the terms of the Government's unilateral declaration of 30 April 2008 and on sections 655(3), 656(3) and 657 of the Criminal Procedure Law (see paragraphs 28 to 31 below).

24. On 17 November 2010 a prosecutor attached to the Riga Regional Court dismissed the applicant's request, finding that none of the grounds for the reopening of criminal proceedings set out in section 655(2) of the Criminal Procedure Law applied. The prosecutor also found as follows:

"...The case of *Jeronovičs v. Latvia* (no. 547/02) contains the Government's unilateral declaration, the conclusions of which are applicable only to the circumstances and the events examined within the scope of that case. It cannot be concluded from the judgment of 1 December 2009 adopted by the European Court of Human Rights that the Court examined and assessed any activities carried out by the law-enforcement officers during the pre-trial investigation in the criminal proceedings ... Accordingly, the conclusions reached in [the Court's] judgment of 1 December 2009 and the Government's unilateral declaration of 30 April 2008 cannot be applied or connected to the criminal proceedings..."

25. In an appeal lodged on 9 December 2010 the applicant reiterated that there was a legal basis for reopening the criminal proceedings concerning his ill-treatment, on account of the fact that the Government's unilateral declaration had expressly recognised the violation of Article 3 of the Convention, a circumstance which had led the Court to strike out that complaint. He further argued that at the time his criminal case was examined by the domestic courts, the judicial authorities had been unaware that the investigation into his allegations of ill-treatment was in breach of Article 3.

26. In a final decision of 20 December 2010 a higher-ranking prosecutor upheld the decision of 17 November 2010. The prosecutor noted that, under section 655(2) of the Criminal Procedure Law, only criminal proceedings that had ended with a valid court judgment or decision could be reopened, and only provided that the ground for requesting such reopening was among those listed in that provision. The prosecutor further found as follows:

> "Having examined the foregoing, I find that the conclusion of the prosecutor in her decision of 17 November 2010 is valid and well-founded, to the effect that your application dated 11 October 2010 requesting the reopening of the criminal proceedings in cases nos. 06725198 and 50207598 on the basis of new circumstances does not comply with any of the conditions prescribed by section 655(2) of the Criminal Procedure Law which could serve as grounds for reopening the above-mentioned criminal proceedings. The prosecutor did not establish the existence of any such conditions during the examination of your application, which is why I regard as reasonable her decision to refuse the reopening of the criminal proceedings in cases nos. 06725198 and 50207598 on the basis of newly disclosed circumstances.
>
> As already mentioned, the Criminal Procedure Law prescribes in detail all the circumstances which shall be recognised as newly disclosed and on the basis of which criminal proceedings ending in a valid court judgment or decision may be reopened. The Criminal Procedure Law does not make any provision for these circumstances to be expanded. In examining your complaint I did not find established any of the newly disclosed circumstances prescribed by section 655(2) of the Criminal Procedure Law. Likewise, I did not find any opinion by an international judicial authority relating to the decision of the Latvian court in case no. 50207598 and finding that the judgment of the Criminal Division of the Riga Regional Court which came into force on 27 September 2000 did not comply with international law and regulations binding on Latvia. The European Court of Human Rights did not express such an opinion in its judgment of 1 December 2009 or in the decision of 10 February 2009 in which that international court examined your application. I would also like to point out that, contrary to your allegations, the European Court of Human Rights in its decision of 10 February 2009 stated that in the adoption of its decision concerning inhuman treatment by police officers during the criminal investigation it did not find any violation of international laws or regulations.
>
> In your application you emphasised that the criminal proceedings in cases nos. 06725198 and 50207598 should be reopened in connection with the unilateral declaration of the Government of the Republic of Latvia mentioned by the Latvian Republic Government Agent on 30 April 2008, in which the Government of the Republic of Latvia recognised that the physical treatment of Viktors Jeronovičs by police officers, the effectiveness of the investigation into the applicant's complaints, his access to legal aid and to effective remedies by which to apply for compensation for damage, the length of the criminal proceedings, and the lack of an effective remedy, did not meet the standards enshrined in Articles 3, 5 § 5, 6 § 1, 13 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. I would like to make clear that, according to section 655(2) of the Criminal Procedure Law, the above-mentioned unilateral declaration by the Government of the Republic of Latvia is not recognised as a newly disclosed circumstance and cannot therefore be regarded as a basis for reopening the criminal proceedings in cases nos. 06725198 and 50207598.

In view of the above-mentioned considerations, there is no reason to quash the decision [...] dated 17 November 2010 concerning the refusal to reopen the criminal proceedings in the light of newly disclosed circumstances..."

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND DOCUMENTS

A. Relevant domestic law

1. The relevant parts of the Criminal Procedure Law

27. Section 393, which is part of Title 7 concerning pre-trial criminal proceedings, provides for the reopening of terminated criminal proceedings or a terminated criminal prosecution. It reads as follows:

"(1) Procedurally authorised persons may reopen terminated criminal proceedings or a terminated criminal prosecution against an individual by revoking the decision terminating those proceedings, where it has been established that there were no lawful grounds for the taking of the decision or where new circumstances have been disclosed which were unknown to the person directing the proceedings at the time the decision was taken and which substantially influenced the taking of the decision.

(2) Pre-trial criminal proceedings and criminal prosecutions may be reopened provided that criminal liability is not time-barred."

28. Sections 655 to 657 are part of Title 13, which covers the fresh examination of court judgments and court decisions in force.

29. Section 655 lays down the grounds on which terminated criminal proceedings may be reopened on the basis of newly disclosed circumstances:

"(1) Criminal proceedings ending in a valid court judgment or decision may be reopened on the basis of newly disclosed circumstances.

(2) The following circumstances shall be recognised as newly disclosed

1) false testimony knowingly provided by a victim or witness, false findings or a false translation knowingly provided by an expert, forged material evidence, forged decisions or forged records of an investigation or court procedure, and other forged evidence on the basis of which the unlawful adjudication of a case has been recognised by a valid court judgment;

2) criminal malice on the part of a judge, public prosecutor or investigator, on the basis of which the unlawful adjudication of a case has been recognised by a valid court judgment;

3) other circumstances which were unknown to the court when rendering its decision and which, taken on their own or together with previously established circumstances, indicate that a person is not guilty or has committed a less serious or more serious criminal offence than the offence of which he or she has been convicted, or which are evidence of the guilt of an acquitted person or a person in respect of whom criminal proceedings have been terminated;

4) findings, or an interpretation, by the Constitutional Court regarding the non-conformity of statutory provisions with the Constitution, on the basis of which a judgment or decision has entered into effect;

5) findings by an international judicial authority that a judgment or decision by Latvia that has taken effect does not comply with international laws and regulations binding on Latvia.

(3) If the rendering of a judgment is not possible due to the fact that a limitation period has expired, an act of amnesty has been issued, individual persons have been granted clemency or an accused has died, the existence of the newly disclosed circumstances referred to in paragraph 2, sub-paragraphs 1 and 2 of this section shall be determined by an investigation which shall be carried out in accordance with the procedures provided for in this section.

..."

30. Under section 656(1), the fresh adjudication of an acquittal or a court decision terminating criminal proceedings is permitted only during the statutory limitation period for criminal liability specified in the Law, and not later than one year from the date of establishment of the newly disclosed circumstances.

31. In accordance with section 657, the public prosecutor has the right to reopen criminal proceedings on the basis of newly disclosed circumstances. If the public prosecutor refuses to reopen criminal proceedings in the light of such circumstances, he or she must state the reasons for that decision and notify the applicant accordingly by sending him or her a copy of the decision and explaining his or her right to appeal against the decision, within ten days of receipt, to a higher-ranking public prosecutor whose decision is not subject to appeal.

*2. The relevant parts of the Law on the Prosecutor's Office (*Prokuratūras likums*)*

32. Section 16 provides as follows:

"(1) After receiving information concerning a breach of the law, the prosecutor shall carry out an examination in accordance with the procedures prescribed by law if

i) the information concerns a crime;

...

(2) The prosecutor shall have a duty to take the necessary measures to protect the rights and lawful interests of persons and the State if

i) the Prosecutor General or a chief prosecutor recognises the need for such examination; ...

ii) such a duty is provided for by other laws ...

(3) The prosecutor shall also carry out an examination if a submission is received from a person regarding a violation of his or her rights or lawful interests, and that submission has already been reviewed by a competent State institution which has

refused to rectify the breach of the law referred to in the submission or has given no reply within the statutory time-limit. ...”

33. Section 17 sets out the powers of prosecutors in examining applications:

“(1) When examining an application in accordance with the law, the prosecutor shall have the right

i) to request and receive regulatory enactments, documents and other information from the administrative authorities ..., and to enter the premises of such authorities without hindrance;

ii) to order the heads and other officials of ... institutions and organisations to carry out examinations, audits and expert examinations and submit opinions, and to provide the assistance of specialists in the examinations carried out by the prosecutor;

iii) to summon persons and obtain explanations from them for the breach of the law...

(2) When taking a decision on a breach of the law the prosecutor, depending on the nature of the breach, shall have a duty

...

iii) to bring an action before a court;

iv) to initiate a criminal investigation; or

v) to initiate [proceedings on grounds of] administrative or disciplinary liability.”

B. Vienna Convention on the Law of Treaties (1969)

34. The Vienna Convention on the Law of Treaties, which came into force on 27 January 1980, provides in Article 27:

Internal law and observance of treaties

“A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.”

C. Relevant Council of Europe documents

35. Recommendation No. R (2000) 2 of the Committee of Ministers to member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights provides as follows:

“The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to bring about a closer union between its members;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ‘the Convention’);

Noting that under Article 46 of the Convention on Human Rights and Fundamental Freedoms ('the Convention') the Contracting Parties have accepted the obligation to abide by the final judgment of the European Court of Human Rights ('the Court') in any case to which they are parties and that the Committee of Ministers shall supervise its execution;

Bearing in mind that in certain circumstances the above-mentioned obligation may entail the adoption of measures, other than just satisfaction awarded by the Court in accordance with Article 41 of the Convention and/or general measures, which ensure that the injured party is put, as far as possible, in the same situation as he or she enjoyed prior to the violation of the Convention (*restitutio in integrum)*;

Noting that it is for the competent authorities of the respondent State to decide what measures are most appropriate to achieve *restitutio in integrum*, taking into account the means available under the national legal system;

Bearing in mind, however, that the practice of the Committee of Ministers in supervising the execution of the Court's judgments shows that in exceptional circumstances the re-examination of a case or a reopening of proceedings has proved the most efficient, if not the only, means of achieving *restitutio in integrum;*

I. Invites, in the light of these considerations the Contracting Parties to ensure that there exist at national level adequate possibilities to achieve, as far as possible, *restitutio in integrum*;

II. Encourages the Contracting Parties, in particular, to examine their national legal systems with a view to ensuring that there exist adequate possibilities of re-examination of the case, including reopening of proceedings, in instances where the Court has found a violation of the Convention, especially where:

i. the injured party continues to suffer very serious negative consequences because of the outcome of the domestic decision at issue, which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening, and

ii. the judgment of the Court leads to the conclusion that

a. the impugned domestic decision is on the merits contrary to the Convention, or

b. the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of."

36. The Explanatory Memorandum to Recommendation No. R (2000) 2 of the Committee of Ministers contains, *inter alia*, the following comments:

"...10. The practice of the Convention organs has demonstrated that it is primarily in the field of criminal law that the re-examination of a case, including the reopening of proceedings, is of the greatest importance. The recommendation is, however, not limited to criminal law but covers any category of cases, in particular, those satisfying the criteria enumerated in sub-paragraphs (i) and (ii). The purpose of these additional criteria is to identify those exceptional situations in which the objectives of securing the rights of the individual and the effective implementation of the Court's judgments prevail over the principles underlying the doctrine of res judicata, in particular that of legal certainty, notwithstanding the undoubted importance of these principles.

11. Subparagraph (i) is intended to cover the situation in which the injured party continues to suffer very serious negative consequences, not capable of being remedied

by just satisfaction, because of the outcome of domestic proceedings. It applies in particular to persons who have been sentenced to lengthy prison sentences and who are still in prison when the Convention organs examine the 'case'. ...

... Examples of situations aimed at under item (b) are where the injured party did not have the time and facilities to prepare his or her defence in criminal proceedings, where the conviction was based on statements extracted under torture or on ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

37. The applicant complained that, despite the fact that in its decision of 10 February 2009 in the case of *Jeronovičs v. Latvia* (no. 547/02) the Court had accepted the Government's unilateral declaration in which the latter had admitted various violations of his rights protected under the Convention, including his ill-treatment by police officers, the public prosecutor's office had refused to reopen the two sets of criminal proceedings in that connection. This refusal had deprived him of any remedy in respect of his allegations under Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

"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. Scope of the Court's examination

38. The Court notes at the outset that in his observations the applicant also complained about the authorities' refusal to reopen the criminal proceedings which had led to his conviction. The Government also addressed this matter. However, this complaint was dismissed in the Court's decision of 9 October 2012 (see paragraph 4 above).

The Court will therefore assess only those facts which relate to the applicant's complaints under Articles 3 and 13 concerning the domestic authorities' refusal to reopen the criminal investigation into his allegations of ill-treatment by police officers.

B. Admissibility

39. The Court notes that the Government raised a number of objections to the admissibility of the present application. They submitted that the applicant's complaints were incompatible *ratione materiae* with the Convention; that the applicant had not exhausted the domestic remedies available to him in domestic law; that he had failed to lodge his application within the six-month time-limit provided for in Article 35 § 1 of the Convention; and that he did not have victim status.

1. The parties' submissions

(a) The Government

(i) Compatibility of the complaints with the Convention

40. The Government submitted that the applicant's complaints were incompatible *ratione materiae* with the provisions of the Convention since the Convention neither conferred any right as such to have third parties prosecuted or sentenced for a criminal offence, nor did it guarantee an enforceable right to obtain the reopening of criminal proceedings that had been terminated. Any interpretation to the contrary would run counter to the principles of legal certainty and subsidiarity.

41. In the Government's view, the procedural aspect of Article 3 did not require the reopening of proceedings where the Court had found a violation of that Article. In the present case, unlike that of *Cēsnieks v. Latvia* ((dec.) no. 9278/06, 6 March 2012), no issue arose as to the impact of the applicant's ill-treatment on the fairness of the criminal proceedings brought against him, since the applicant's complaint under Article 6 of the Convention had been declared inadmissible.

42. The Government admitted that, in certain circumstances, the Court had indicated that the re-examination of a case or the reopening of proceedings would constitute the most effective, if not the only, means of achieving *restitutio in integrum.* However, they stressed that the majority of cases in which the Court had acknowledged that a retrial or the reopening of a case would be an appropriate way of redressing the violation had concerned proceedings which gave rise to breaches of the requirements of Article 6 of the Convention and which had been decisive for the applicant concerned (the Government referred to *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 89, ECHR 2009, and *Davydov v. Russia*, no. 18967/07, § 27, 30 October 2014). The Government further stressed that unlike, for example, the awarding of just satisfaction, the reopening of proceedings was a measure to be used in exceptional cases, having regard to the rights of third parties and the principle of *res judicata*.

With regard to criminal cases they also emphasised that the reopening of a case could prove problematic in view of the passage of time and the resulting loss of evidence.

43. The Government considered that Recommendation No. R (2000) 2 of the Committee of Ministers (see paragraph 35 above), although not directly applicable in the present case, contained provisions which set out the grounds for the reopening of proceedings and which could be used by way of guidance in the present case. However, regard being had to the exceptional character of such a measure and to the absence of exceptional circumstances in the present case, they concluded that the applicant could not rely on a right to obtain the reopening of the criminal proceedings concerning his complaints of ill-treatment.

44. The Government further submitted that the unilateral declaration they had made in application no. 547/02 had not given rise to an obligation to reopen the proceedings against the police officers. Nothing in their unilateral declaration suggested that the Government had assumed an obligation to reopen the investigation. Moreover, the Court's decision itself did not require that the criminal proceedings against the police officers be reopened. The only redress offered to the applicant by the Government in their unilateral declaration, as accepted by the Court, had been the payment of compensation. Their declaration clearly stated that such payment constituted the final resolution of the case.

45. Furthermore, their declaration had fully satisfied the Court's criteria as defined in the case of *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI.

46. Finally, no obligation to reopen the criminal proceedings against the police officers arose from the Court's decision of 10 February 2009, since that decision could not *per se* be considered as a newly disclosed circumstance within the meaning of the relevant domestic provisions, as it contained neither new facts nor additional evidence that could help remedy the flaws in the investigation (see paragraphs 29 and 31 above).

(ii) Alleged failure to exhaust domestic remedies and to observe the six-month rule

47. The Government contended, on the one hand, that the applicant had not exhausted all the domestic remedies available to him, in that he could have claimed compensation from the perpetrators of the ill-treatment under sections 1635 and 1779 of the Civil Law. They submitted that the discontinued criminal proceedings were independent from any civil proceedings, since the outcome of criminal proceedings, although relevant, was not as such decisive for the outcome of civil proceedings. They relied in this respect on the case of *Y v. Latvia* (no. 61183/08, § 71, 21 October 2014) as well as on domestic case-law, including a judgment of 31 October 2012

of the Riga Regional Court which had awarded a claimant compensation for ill-treatment by police officers in the amount of approximately EUR 1,420.

48. On the other hand, the applicant's request for the reopening of proceedings based on sections 393 and 655 to 657 of the Criminal Procedure Law was not an effective remedy and could not be taken into account in the calculation of the six-month time-limit.

More precisely, relying on the Court's case-law as established in *H. v. Iceland* ((dec.) no. 29785/07, 27 September 2011), the Government alleged that the domestic provisions relied on by the applicant, that is to say, sections 393 and 655 to 657 of the Criminal Procedure Law, although representing in general the legal basis for the reopening of discontinued proceedings, were not appropriate in the applicant's case since his request for reopening had been based on the unilateral declaration made in his case. Section 393 was intrinsically linked to section 655, in that section 655(2)(3) referred to the definition of "newly disclosed circumstances", namely those circumstances which had been unknown to the court or prosecutor at the time the judgment or decision was adopted and which, taken by themselves or together with previously established circumstances, indicated that the person concerned was or was not guilty or had committed a less serious or more serious offence than the one of which he or she had been convicted (see paragraph 29 above). Neither the unilateral declaration submitted in case no. 547/02, which was relied on by the applicant as a basis for reopening the investigation, nor the Court's strike-out decision of 10 February 2009 could be regarded as newly disclosed circumstances, since they did not contain new information or facts that would be material to the investigation into the applicant's ill-treatment, that is to say, capable of remedying the flaws in that investigation.

Therefore, having lodged his application on 26 July 2010, that is, more than six months after the discontinuation of the impugned criminal proceedings, the applicant could not be considered to have complied with the six-month rule laid down in Article 35 of the Convention.

(iii) Loss of victim status

49. The Government submitted that the applicant could no longer claim to be a victim of any violations of his rights under Articles 3 and 13 of the Convention. They pointed out that they had admitted the violations of the said Articles in the unilateral declaration accepted by the Court's decision of 10 February 2009 and had paid compensation in the amount of EUR 4,500, thereby ensuring adequate redress for the violations acknowledged in their unilateral declaration.

(b) The applicant

(i) Compatibility of the complaints with the Convention

50. The applicant submitted that the Latvian Government, notwithstanding the recognition of the breach of his rights under Article 3 and the payment of compensation, were under an obligation to remedy the said breach in so far as this was possible in practice. The fact that the Convention did not include a mechanism for supervision of the execution of a decision by which the Court struck an application out of its list of cases (save for situations in which an award of costs was made in the decision) did not mean that a strike-out decision following a unilateral declaration should be left without any supervision by the Council of Europe. Articles 1, 19 and 32 of the Convention and the spirit of the Convention in general were to be interpreted to that effect. It would be contrary to the very essence of the Convention to consider that States had a legal obligation to put an end to a breach of the Convention and make reparation for its consequences only where the Court had adopted a judgment, and not where the State had itself recognised a breach of the applicant's rights by means of a unilateral declaration. A Government should not be free to choose whether or not to provide redress for the breach of an applicant's rights.

51. Where the Government submitted a unilateral declaration and the Court took note of it and struck the application out of its list of cases against the wishes of the applicant, the Government should guarantee that individual measures would be taken to remedy the breach of the applicant's rights. In their unilateral declaration, the Government had given an undertaking "to provide an effective remedy".

The reopening of the criminal proceedings in case no. 50207598 concerning the applicant's ill-treatment by police officers was the only remedy capable of rectifying the decision to terminate the criminal proceedings against the police officers concerned and of recognising the responsibility of the police officers and ensuring their punishment.

52. The applicant also referred to the following sentence in paragraph 54 of the Court's decision of 10 February 2009 (application no. 547/02) striking out the applicant's complaints about ill-treatment and the lack of an effective investigation: "That decision is without prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain redress" ("*Cette décision ne préjuge en rien de la possibilité pour le requérant d'exercer, le cas échéant, d'autres recours afin d'obtenir réparation*").

He considered that the wording of the unilateral declaration submitted in application no. 547/02 had given the Court reason to believe that the Government would provide an effective remedy not only in the form of payment of the sum of money mentioned in the unilateral declaration, but also in the form of an effective investigation into the applicant's complaint

of ill-treatment by police officers. It was on the basis of that assumption that the Court had considered it unnecessary to continue the examination of this part of the application.

53. The Court's case-law concerning the State's choice as to the means by which it discharged its positive obligations under Article 46 of the Convention applied *mutatis mutandis* to the obligations of the State with regard to the execution of a strike-out decision following a unilateral declaration (the applicant referred to *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Broniowski v. Poland* [GC], no. 31443/96, § 194, ECHR 2004-V; *Assanidze v. Georgia* [GC], no. 71503/01, §§ 202-203, ECHR 2004-II; *Del Río Prada v. Spain* [GC], no. 42750/09, § 138, ECHR 2013; *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 176-177, 22 April 2010; and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 208, ECHR 2013).

54. This was also true in the present case, especially having regard to the fact that the Court had found a violation of Article 3 in respect of similar allegations of ill-treatment and a lack of effectiveness of the domestic investigation submitted to it by the applicant's co-defendant (the applicant referred to *Vovruško v. Latvia*, no. 11065/02, 11 December 2012). The decision of 19 March 2011 discontinuing the criminal proceedings against the police officers concerned both the applicant and Mr Vovruško. To find otherwise would result in the applicant being treated differently from Mr Vovruško, although they were both in a similar situation with regard to their ill-treatment and the lack of an effective investigation. The applicant alleged in this connection that as a result of the Court's judgment concerning the application lodged by Mr Vovruško, the latter was entitled, under section 655(2)(5) of the Criminal Procedure Law, to obtain the reopening of both sets of proceedings against the police officers alleged to have ill-treated the two men.

55. While *restitutio in integrum* was not necessary in all cases, the Latvian Government should choose a means which was both effective and capable of remedying the breach. The Government should take general and individual measures to put an end to the violations acknowledged in their unilateral declaration. It was for the Court to examine whether the nature of the breach left the respondent Government any choice as to the use of means other than the reopening of the investigation concerning the police officers responsible.

56. The Government had never suggested that any other mechanism was available for investigating the applicant's complaints.

57. The relevant sections of the Criminal Procedure Law, in particular section 655, were to be interpreted in such a way as to provide for the reopening of criminal proceedings following a strike-out decision by the Court based on a unilateral declaration.

58. The applicant further submitted that the principle of legal certainty should not prevent the Government from reopening the investigation.

The Latvian authorities had never examined the merits of the applicant's complaints and had never had an opportunity to find the right balance between the need to ensure *restitutio in integrum* and the requirement of legal certainty. Although the obligation of legal certainty might prevail over the need to ensure *restitutio in integrum*, the State nevertheless had an obligation to find a balance between these two requirements in examining the applicant's request to reopen the criminal proceedings against the police officers concerned.

59. In any event, the Court was competent to decide whether a Government's actions or inactivity constituted a breach of any of the Articles of the Convention. The refusal to investigate the applicant's complaints had led to a situation in which the prohibition enshrined in Article 3 became ineffective in practice. Moreover, his complaint that he did not have an effective remedy before a national authority by which to obtain reparation for the consequences of the breach of his rights fell to be examined under Article 13 of the Convention.

(ii) Alleged failure to exhaust domestic remedies and to observe the six-month rule

60. The applicant requested the Court to reject these submissions.

He submitted in the first place that he was not seeking compensation, but rather the reopening of the criminal proceedings concerning his ill-treatment by police officers. In this connection he contended that the reopening of the proceedings was the only remedy capable of providing him with an opportunity to establish the responsibility of the police officers involved and to have them punished. He further submitted that the Government had never alleged that any other mechanism was available allowing his complaints to be investigated.

Thus, he had exhausted the remedies available to him in theory, namely a request for reopening of the proceedings under sections 655 and 657 of the Criminal Procedure Law. However, this remedy had proved to be ineffective, having regard to the interpretation given to it by the prosecutor's office. In this connection he criticised the formalistic approach taken in dismissing his request for reopening, and stated that section 655(2)(5) should be interpreted in the light of the general principle contained in section 655(3), thereby providing for the reopening of the criminal proceedings.

61. The applicant submitted that, for the reasons set out above, the situation in his case was completely different from that in the case of *H. v. Iceland*, cited above. He reiterated that in the present case the reopening of the criminal proceedings based on sections 655 to 657 of the Criminal Procedure Law was not to be regarded as "an extraordinary

remedy" (he referred to *Withey v. the United Kingdom* (dec.), no. 59493/00, ECHR 2003-X), but in fact appeared to be the only remedy available to him by which to obtain redress for the breach of his rights enshrined in Article 3 of the Convention.

62. Thus, for the purposes of the present application the request for the reopening of the criminal proceedings which had been dismissed by the final decision of 20 December 2010 ought to be taken into account. In the applicant' submission, his application had therefore been submitted within the six-month period required by Article 35 of the Convention.

(iii) Loss of victim status

63. The applicant maintained that he was a victim of a violation of Article 3 and Article 13 of the Convention because the payment of compensation by the Government following the unilateral declaration did not represent adequate redress for the violations acknowledged in that unilateral declaration. He had never been provided with an individual remedy for the breach of his rights enshrined in Article 3, in the form of an investigation into his complaints concerning his alleged ill-treatment by police officers. The respondent Government were required to put an end to the violation recognised by the unilateral declaration and to redress as far as possible the effects of the violation. This included the Article 13 requirement to provide an appropriate procedure in the national legal system enabling aggrieved individuals to ask for and obtain reparation of the consequences of the breach of their rights.

2. The Court's assessment

(a) Introductory remarks on the Court's case-law and practice on unilateral declarations

64. The Court reiterates the considerations to be taken into account when deciding whether to strike out a case, or part thereof, under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration. These are: the nature of the complaints made, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases and the impact of these measures on the case at issue; the nature of the concessions contained in the unilateral declaration, in particular the acknowledgment of a violation of the Convention and the payment of adequate compensation for such violation; the existence of relevant or "clear and extensive" case-law in that respect, in other words, whether the issues raised are comparable to issues already determined by the Court in previous cases; and the manner in which the Government intend to provide redress to the applicant and whether this makes it possible to eliminate the effects of an alleged violation (see *Tahsin Acar*, cited above, §§ 75-77).

If the Court is satisfied with the answers to the above questions, it then verifies whether the conditions set out in Article 37 § 1 (c) and § 1 *in fine* of the Convention are met (that is to say, that it is no longer justified to continue the examination of the application, or the part in question, and that respect for human rights does not require it to continue its examination). If these conditions are met it then decides to strike the case, or the relevant part, out of its list.

For this purpose, the Court scrutinises carefully the Government's undertakings referred to in their unilateral declaration (see *Tahsin Acar*, cited above, §§ 76-79 and 83-85) and, where appropriate, interprets the extent of these undertakings in the light of its case-law (see, in the context of an application concerning the State's obligations under Article 2, *Žarković and Others v. Croatia* (dec.), no. 75187/12, 9 June 2015).

65. In some cases, the Court ruled that its strike-out decision was without prejudice to the applicant's right to pursue other remedies available at the domestic level in order to obtain redress (see, for instance, *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008; *Žarskis v. Latvia* (dec.), no. 33695/03, § 38, 17 March 2009; and *Ielcean v. Romania* (dec.), no. 76048/11, 7 October 2014). In other cases, it even indicated the domestic provisions that would allow the applicant to seek the reopening of domestic proceedings (see *Sroka v. Poland* (dec.), no. 42801/07, 6 March 2012).

66. In the recent case of *Žarković and Others* (cited above), the Court stated that its decision to strike out the complaints under Articles 2 and 14 of the Convention (concerning the lack of an effective investigation into a killing) following a unilateral declaration was without prejudice to the "Government's continuing obligation to conduct an investigation in compliance with the requirements of the Convention".

67. Even after it has accepted a unilateral declaration and decided to strike an application (or part thereof) out of its list of cases, the Court has reserved the right to restore that application (or part of the application, as appropriate) to its list as provided for in Article 37 § 2 of the Convention and Rule 43 § 5 (former Rule 44 § 5) of the Rules of Court (see, among many other authorities, *Josipović,* cited above). It is therefore not uncommon practice for the Court to indicate at the end of its strike-out decision that it may decide to restore the application (or part thereof) to its list of cases in the event of failure by the Government to comply with the terms of their unilateral declaration as accepted by the Court (see, among the most recent authorities, *Canbek v. Turkey* (dec.), no. 5286/10, 13 January 2015; *Schulz v. Germany* (dec.), no. 4800/12, 31 March 2015; *Bonomo and Others v. Italy* (dec.), nos. 17634/11 and 164 other applications, 9 April 2015; and *Union of Jehovah's Witnesses and Others v. Georgia* (dec.), no. 72874/01, 21 April 2015).

68. In exercising such power, the Court not only carries out a thorough examination of the scope and extent of the various undertakings referred to in the Government's declaration as accepted in the strike-out decision, but also anticipates the possibility of verifying the Government's compliance with their undertakings.

So far, the Court has restored one case to its list of cases following a strike-out decision made in the light of a unilateral declaration. In the case of *Aleksentseva and Others v. Russia* (nos. 75025/01, 75026/01, 75028/01, 75029/01, 75031/01, 75033/01, 75034/01, 75036/01, 76386/01, 77049/01, 77051/01, 77052/01, 77053/01, 3999/02, 5314/02, 5384/02, 5388/02, 5419/02 and 8192/02, decisions of 4 September 2003, 23 March 2006, and judgment of 17 January 2008, §§ 14-17), the Court decided to restore the applicants' case to its list on the grounds that the Government's unilateral declaration, which had been accepted by the Court in its strike-out decision of 4 September 2003, was conditional, in that its implementation, that is to say, the payment of compensation, was subject to the withdrawal of the applications. As the applicants had not withdrawn their applications, the Government refused to pay the compensation referred to in their declaration. On 23 March 2006 the Court found that the failure by the Government to pay the compensation represented exceptional circumstances justifying the restoration of the applications to its list of cases.

69. It thus appears that a Government's unilateral declaration may be submitted twice to the Court's scrutiny. Firstly, before the decision is taken to strike a case out of its list of cases, the Court examines the nature of the concessions contained in the unilateral declaration, the adequacy of the compensation and whether respect for human rights requires it to continue its examination of the case according to the criteria mentioned above (see paragraph 64 above). Secondly, after the strike-out decision the Court may be called upon to supervise the implementation of the Government's undertakings and to examine whether there are any "exceptional circumstances" (Rule 43 § 5 of the Rules of Court) which justify the restoration of the application (or part thereof) to its list of cases.

70. In supervising the implementation of the Government's undertakings the Court has the power to interpret the terms of both the unilateral declaration and its own strike-out decision.

71. However, in the instant case, the Court must first consider the Government's preliminary objections.

(b) Preliminary objections

(i) The objection that the applicant has lost his victim status

72. The Court notes at the outset that in the present case the applicant raised complaints under Articles 3 and 13 of the Convention distinct from those which he had raised in application no. 547/02 and which were covered

by the Government's unilateral declaration. He complained that, despite the payment by the Government of the amount mentioned in their unilateral declaration, his right to an effective investigation into his ill-treatment had been breached by the Government's refusal, subsequent to the Court's strike-out decision, to reopen the discontinued proceedings.

Thus the question arises as to whether these complaints, although related to the factual situation examined in the Court's strike-out decision of 10 February 2009, are distinct from, and did not originate in, that situation.

73. In this connection the Court observes that it is undisputed in the present case that no investigation was carried out into the applicant's ill-treatment after the Court's decision of 10 February 2009. The question whether the applicant was actually a victim of a breach of his rights under the Convention on account of the Government's refusal to reopen the discontinued proceedings involves determining whether the latter had such an obligation by virtue of their unilateral declaration or of the Court's strike-out decision, or for any other reason.

Since this question appears inextricably linked to the substance of the applicant's complaint, the Court joins the Government's objection concerning the applicant's victim status to the merits.

(ii) The objections that the applicant failed to exhaust domestic remedies and to observe the six-month rule

74. The six-month rule stipulated in Article 35 § 1 is intended to promote security of the law/legal certainty and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. It protects the authorities and other persons concerned from uncertainty for a prolonged period of time (see *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 258, ECHR 2014 (extracts)). Finally, it ensures that, in so far as possible, matters are examined while they are still fresh, before the passage of time makes it difficult to ascertain the pertinent facts and renders a fair examination of the question at issue almost impossible (see *Kelly v. the United Kingdom*, no. 10626/83, Commission decision of 7 May 1985, Decisions and Reports (DR) 42, p. 205; *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002; *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004; and *Williams v. the United Kingdom* (dec.) no. 32567/06, 17 February 2009).

75. In assessing whether an applicant has complied with Article 35 § 1, it is important to bear in mind that the requirements contained in that Article concerning the exhaustion of domestic remedies and the six-month period are closely interrelated (see *Galstyan v. Armenia*, no. 26986/03, § 39, 15 November 2007, and *Williams*, cited above).

Thus, where no effective remedy is available to an applicant, the time-limit expires six months after the date of the acts or measures about which he or she complains (see *Hazar and Others v. Turkey* (dec.), no. 62566/00

et seq., 10 January 2002). However, special considerations may apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware, of the circumstances which make that remedy ineffective. In such a situation the six-month period could be calculated from the time when the applicant becomes aware, or should have become aware, of these circumstances (see, among other authorities, *Bulut and Yavuz v. Turkey*, (dec.) no. 73065/01, 28 May 2002; *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I; *Volokhy v. Ukraine*, no. 23543/02, § 37, 2 November 2006; and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009). The pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the purposes of establishing the date of the "final decision" or calculating the starting point for the running of the six-month rule (see *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002; *Sapeyan v. Armenia*, no. 35738/03, § 21, 13 January 2009; and *Tucka v. the United Kingdom (no. 1)* (dec.), no. 34586/10, § 14, 18 January 2010).

It follows that if an applicant has recourse to a remedy which is doomed to failure from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (see, for example, *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006, and *Rezgui v. France* (dec.), no. 49859/99, ECHR 2000-XI).

76. In ruling on the issue of whether an applicant has complied with the obligation to exhaust domestic remedies having regard to the specific circumstances of his or her case, the Court must first identify the act of the respondent State's authorities complained of by the applicant (see *Haralambie v. Romania*, no. 21737/03, § 70, 27 October 2009). In this connection the Court has held that, in the area of unlawful use of force by State agents – and not mere fault, omission or negligence – civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, were not adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Articles 2 and 3 of the Convention (see, *inter alia*, *Yaşa v. Turkey*, 2 September 1998, § 74, *Reports of Judgments and Decisions* 1998-VI, and *Mocanu and Others*, cited above, § 227).

77. The Contracting Parties' obligation under Articles 2 and 3 of the Convention to conduct an investigation capable of leading to the identification and punishment of those responsible in cases of assault could be rendered illusory if, in respect of complaints under those Articles, an applicant were required to bring an action leading only to an award of damages (see *Mocanu and Others*, cited above, § 234).

78. The Court will therefore examine the Government's objections having regard to the complaint as specified by the applicant.

It notes that the present case concerns the applicant's request for reopening of the criminal proceedings in respect of his ill-treatment by police officers. The applicant alleges that, having regard to the Government's acknowledgment of his ill-treatment after the discontinuation of the domestic proceedings, he had a right under Articles 3 and 13 of the Convention to an effective investigation into his ill-treatment, and that the only remedy available to him in that respect was the reopening of the discontinued proceedings based on the provisions of sections 655 to 657 of the Latvian Criminal Procedure Law.

79. The Court considers that the question whether the applicant exhausted all effective remedies by requesting the reopening of the discontinued proceedings based on the aforementioned domestic provisions, and the question whether he has complied with the six-month rule are closely linked to the effectiveness of that remedy and thus to the merits of his complaints. It therefore joins these objections to the merits.

(iii) The objection that the complaint is incompatible ratione materiae

80. The questions whether the applicant was a victim of a breach of his rights on account of the Government's refusal to reopen the discontinued proceedings, whether he exhausted all effective remedies by requesting the reopening of the discontinued proceedings based on the aforementioned domestic provisions, and whether he complied with the six-month rule, are bound up with the wider question raised by the Government's preliminary objection on *ratione materiae* grounds to the effect that the applicant could not claim a right under the Convention to the reopening of terminated criminal proceedings. This question is closely linked to the effectiveness of that remedy and thus to the merits of the applicant's complaints. Accordingly, the Court also joins this objection to the merits.

3. Provisional conclusions on the Government's preliminary objections

81. For the reasons set out above, the Court finds that the Government's objections are so closely linked to the substance of the applicant's complaints that they should be joined to the merits of the case. That being so, the complaints cannot be declared inadmissible on the grounds set out above.

82. The Court further finds that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible having been established, they must therefore be declared admissible.

C. Merits

1. The submissions of the parties and the third-party intervener

(a) The Government

83. The Government reiterated their submission (see paragraphs 40 to 46 above) to the effect that there was no obligation under Article 3 or any other Article of the Convention to reopen domestic proceedings in every instance where a violation of the Convention had been established. The individual facts of each case alone would determine whether the need to ensure *restitutio in integrum* required the reopening of the proceedings and whether this need prevailed over the principle of legal certainty. The Government also stressed that the applicant had manifestly failed to disclose the nature of the "very serious consequences" he allegedly continued to suffer as a result of the ineffective investigation into his ill-treatment. While the discontinuation of the criminal proceedings against the police officers might have led to some disappointment for the applicant, it had not entailed serious consequences for him. In that connection the Government submitted that in the present case, unlike that of *Cēsnieks*, cited above, no issue arose as to the impact of the applicant's ill-treatment on the fairness of the proceedings determining the charges brought against him, since the Court had declared the complaint under Article 6 of the Convention inadmissible.

84. The Government also reiterated that the reason why the domestic authorities had refused to reopen criminal case no. 50207598 was not because the violation of Article 3 of the Convention had been established in a unilateral declaration submitted by the Government and accepted by the Court, but because the unilateral declaration did not and could not contain any new facts or evidence that could be used in the investigation to remedy the shortcomings which had led the Government to concede a violation of Article 3.

85. In the light of the above considerations, the Government requested the Court to conclude that the applicant's complaint alleging a violation of the procedural aspect of Article 3 did not disclose a violation of that provision.

86. With regard to Article 13 of the Convention, the Government pointed to the Court's consistent case-law according to which Article 13 required a remedy in domestic law only to deal with the substance of an "arguable complaint" under the Convention.

They stressed that the applicant did not have an "arguable claim" under Article 3 of the Convention and that there was therefore no room for the Court to examine further the complaint under Article 13.

They submitted that there had been no violation of Article 13.

(b) The applicant

87. The applicant submitted that the Republic of Latvia had never carried out an official investigation into his complaints of ill-treatment by police officers. The fact that the Government had admitted in their unilateral declaration that the physical violence to which he had been subjected and the ineffectiveness of the investigation into his complaints had breached Article 3 did not mean that the Republic of Latvia had been released from its obligation to investigate his complaints on the merits.

88. On the contrary, Article 3 of the Convention enshrined a continuing obligation on the part of the Latvian authorities to provide an effective, independent and impartial investigation capable of leading to the punishment of those responsible. This investigation did not necessarily have to lead to a particular sanction, but it entailed an obligation for the State to examine the applicant's complaints on the merits.

89. The refusal to investigate the applicant's complaints had led to a situation in which the general legal prohibition of torture and inhuman and degrading treatment and punishment became ineffective in practice. The police officers responsible had abused the applicant's rights but had gone unpunished.

90. The applicant referred to both Recommendation No. R (2000) 2 of the Committee of Ministers and section 655 of the Latvian Criminal Procedure Law and argued that these provided for an obligation to reopen criminal proceedings in cases where the Court had found a violation of the Convention. However, the very formalistic approach taken by the prosecutor attached to the Riga Regional Court had led to the refusal to reopen the criminal proceedings.

According to the applicant, neither the Recommendation nor section 655 of the Criminal Procedure Law should be interpreted narrowly as meaning that criminal proceedings should be reopened only in some (exceptional) cases. He also considered that paragraphs (i), (ii)(a) and (ii)(b) of the Recommendation listed only particular instances of violations of the Convention and that the list was not exhaustive.

91. The applicant alleged that he continued to suffer very serious negative consequences as a result of the lack of any effective, independent and impartial investigation. The identification of the police officers responsible and the acknowledgement of their responsibility were very important to the applicant even though, owing to the expiry of the statutory limitation period, they could no longer be punished. These consequences could be remedied only by a decision to reopen the criminal proceedings in case no. 50207598. Although the applicant had already served nine years' imprisonment for robbery, it was of paramount importance to him to receive recognition that his conviction had been based on criminal proceedings in which he had been ill-treated by police officers contrary to Article 3 of the Convention at the investigation stage.

92. In the applicant's view, although Article 13 did not provide that the State necessarily had to reopen criminal proceedings in all cases, there should be an appropriate procedure for examining an individual case on its merits.

(c) The third-party intervener

93. The Helsinki Foundation for Human Rights (HFHR) requested the Court to clarify the rules governing the possibility to strike out a case on the basis of a unilateral declaration.

94. The HFHR submitted that the unilateral declaration procedure was particularly problematic where a unilateral declaration had been filed by a government immediately after an applicant had refused to settle the case under Rule 43 of the Rules of the Court (friendly settlement). Thus, applicants, despite having sent a clear message that they wished to proceed with their cases as they were dissatisfied with the proposed terms of the settlement, were seeing their cases struck out by the Court. This sometimes created a difficult situation for applicants and their representatives, as the latter were unable to explain to their clients the approach taken by the Court.

95. The HFHR further pointed out that the Court's practice of inserting certain additional obligations in strike-out decisions above and beyond the obligations undertaken by a government in their unilateral declaration (they referred to *Sroka*, cited above) was crucial for any remedial steps to be taken at the national level after the Court's decision.

96. Experience with Polish cases had revealed the absence of strict rules governing the selection of cases for unilateral declarations, combined with an increased number of strike-out decisions based on unilateral declarations. These proceedings and their potential consequences were difficult to explain to applicants, who moreover had no possibility of challenging such decisions which, unlike judgments, could not form the subject of an appeal to the Grand Chamber. This undermined the Court's authority and confidence among applicants. Also, the information provided by the Court when striking a case out of its list was insufficient and confusing to applicants. In order to eliminate the inconsistencies in practice, the standards emerging from the Court's case-law should be incorporated in the Rules of Court.

97. The intervener was concerned that the use of unilateral declarations had been extended to a great variety of cases, including important cases originating in abusive practices or deficient legislation. The lack of strict rules allowed governments to attempt to have important cases struck out by means of unilateral declarations.

98. There were situations in which unilateral declarations were being used in cases concerning not only complaints of repetitive violations (for instance, length of detention) but also other complaints such as overcrowding in places of detention, ill-treatment and lack of an effective

investigation. The common use of unilateral declarations might lead to situations in which cases disclosing not just systemic problems but also specific and complex violations might be treated by the Court as repetitive. This gave the impression that the Court was forcing parties to resolve the case through a friendly settlement or a unilateral declaration.

99. One of the conditions in order for the Court to accept a unilateral declaration was that it should provide applicants with adequate redress for the alleged human rights violation. However, it was very often the case that the measures proposed by a government in their unilateral declaration failed to cover the damage suffered by the applicant.

100. Whilst the reopening of a case was one of the most effective means of redress, in some cases it was unclear whether the domestic provisions allowed for the possibility of reopening the case on the basis of a strike-out decision following a unilateral declaration.

101. The HFHR recommended that the Committee of Ministers be vested with the power to supervise all strike-out decisions following a unilateral declaration, not just those where the Court had made an award of costs and expenses in the strike-out decision.

102. Finally, the HFHR asked the Court to decline to accept unilateral declarations in certain types of cases, notably those that could create a precedent of importance for the development of domestic law, those where no established judicial practice in respect of a particular matter existed in national law and those where the government were unable to present a detailed action plan to the Committee of Ministers for dealing with similar cases.

2. The Court's assessment

(a) The principles established in the Court's case-law

103. The obligation to carry out an effective investigation into allegations of treatment infringing Article 3 suffered at the hands of State agents is well established in the Court's case-law (see, for the most recent authority, *Bouyid v. Belgium* [GC], no. 23380/09, §§ 114-123, 28 September 2015, and for a full statement of principles by the Grand Chamber, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, §§ 182-185, ECHR 2012, and *Mocanu and Others*, cited above, §§ 316-326). In order to be "effective", such an investigation, as with one under Article 2, must firstly be adequate (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 324, ECHR 2007-II, and *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 172, 14 April 2015). This means that it must be capable of leading to the establishment of the facts and to a determination of whether the force used was or was not justified in the circumstances and of identifying and – if appropriate – punishing those responsible (see, *inter alia*, *Assenov and Others*

v. Bulgaria, 28 October 1998, § 102, *Reports* 1998-VIII; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 301, ECHR 2011 (extracts); and *Mustafa Tunç and Fecire Tunç*, cited above, § 172).

104. In addition to a thorough and effective investigation it is necessary for the State, in order to remedy a breach of Article 3 at national level, to have made an award of compensation to the applicant, where appropriate, or at least give him or her the possibility of seeking and obtaining compensation for the damage he or she sustained as a result of the ill-treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 118, ECHR 2010).

105. In cases of wilful ill-treatment the breach of Article 3 cannot be remedied only by an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see *Gäfgen*, cited above, §§ 116 and 119).

106. Furthermore, the outcome of the investigations and of the ensuing criminal proceedings, including the sanction imposed as well as disciplinary measures taken, has been considered decisive. It is vital in ensuring that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined (ibid., § 121).

107. The Court has also stated, in the context of the obligation under Article 2 to investigate violent or suspicious deaths, that where information purportedly casting new light on the circumstances of a death comes into the public domain, a new obligation to investigate the death may arise (see *Hackett v. the United Kingdom* (dec.), no. 34698/04, 10 May 2005; *Brecknell v. the United Kingdom*, no. 32457/04, §§ 66-67, 27 November 2007; and *Williams*, cited above). The nature and extent of any subsequent investigation required by the procedural obligation will inevitably depend on the circumstances of each particular case and may well differ from that to be expected immediately after the death has occurred (see *Stanimirović v. Serbia*, no. 26088/06, § 29, 18 October 2011, and *Harrison and Others v. the United Kingdom*, nos. 44301/13, 44379/13 and 44384/13, § 51, 25 March 2014).

The principles regarding the procedural obligation to investigate under Article 2, outlined above, apply similarly to the procedural obligation to investigate under Article 3 (see *Tuna v. Turkey*, no. 22339/03, §§ 58-63, 19 January 2010). The domestic authorities' obligation under the Convention to carry out a thorough and effective investigation in respect of

arguable Article 3 claims does not necessarily require the punishment at all cost of the State agents involved in the alleged ill-treatment. The Convention only requires that there should be "an investigation capable of leading to the punishment of those responsible" (see *Egmez v. Cyprus*, no. 30873/96, § 70, ECHR 2000-XII).

108. With regard to Article 13 of the Convention, the Court reiterates that it guarantees the availability at national level of a remedy by which to complain about a breach of the Convention rights and freedoms. Although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention, but the remedy must in any event be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the State (see *Büyükdağ v. Turkey*, no. 28340/95, § 64, 21 December 2000, with the cases cited therein, especially *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports* 1996-VI).

109. Furthermore, the Court's rulings serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties. Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (see *Rantsev v. Cyprus and Russia*, no. 25965/04, § 197, ECHR 2010 (extracts), with further references).

(b) Application of the above principles to the present case

(i) Article 3 of the Convention

110. Under Article 19 of the Convention, it is the Court's duty to ensure the observance of the engagements undertaken by the Contracting States to the Convention.

111. The applicant alleged that the respondent Government had an obligation to investigate the ill-treatment to which he had been subjected, on account of their recognition of a violation of Article 3 coupled with the undertaking contained in their unilateral declaration "to provide an effective remedy" and with the Court's decision to accept that unilateral declaration.

The Government alleged, on the contrary, that neither the terms of their unilateral declaration nor the wording of the Court's decision accepting the declaration could be construed in such a way as to generate an obligation to reopen the discontinued proceedings into the applicant's ill-treatment.

112. The Court's task is to determine in the first place whether the respondent State had an obligation to reopen the discontinued proceedings and whether the refusal to do so gave rise to an issue under the Convention.

It would observe in this connection that in its strike-out decision of 10 February 2009 the Court did not expressly indicate to the Government whether they remained under an obligation to conduct an effective investigation or whether such obligation was extinguished by the acknowledgment of a breach and the payment of compensation**.**

The Court will therefore examine whether such an obligation could arise from the Government's undertaking contained in their unilateral declaration and from the Court's decision of 10 February 2009 in so far as it struck out the applicant's complaint under the procedural limb of Article 3 in application no. 547/02 (see paragraph 20 above), or whether the refusal in question disclosed a failure to comply with any procedural obligation that continued to exist after that strike-out decision.

113. The Court reiterates that, as is clear from the structure of Article 37 of the Convention and from its case-law with regard to unilateral declarations (see paragraphs 64 to 69 above), the reasons underlying a decision by the Court to accept a unilateral declaration and to strike an application (or part thereof) out of its list of cases are intimately linked to the nature of the applicant's complaint and, therefore, to the obligations of the respondent Government under the Convention in respect of the rights infringed.

114. It is in the light of the foregoing that the Court assessed in its decision of 10 February 2009 the undertakings of the Latvian Government contained in their unilateral declaration of 30 April 2008 in respect of application no. 547/02. The outcome of the Court's assessment is reflected in the arguments and observations which were advanced in support of striking out the relevant complaints under Article 3 of the Convention on 10 February 2009 and which are part of that decision.

115. In the current application, the parties did not allege that the Court had committed a manifest error of procedure or substance when it accepted the Government's unilateral declaration as a basis for striking out the relevant complaints. On the other hand, they disagreed as to the conclusions to be drawn from the wording of:

(a) the Government's undertaking "to adopt all necessary measures in order to avoid similar infringements in future, as well as to provide an effective remedy", and

(b) the sentence contained in paragraph 54 of the decision regarding the possibility of making use of other remedies: "That decision is without

prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain redress" ("*Cette décision ne préjuge en rien de la possibilité pour le requérant d'exercer, le cas échéant, d'autres recours afin d'obtenir réparation")*.

116. The Court finds no exceptional circumstances in the present case (see paragraph 69 above) that could justify restoring to its list of cases the part of application no. 547/02 that it struck out on 10 February 2009.

The Government's undertaking under point (a) above to "provide an effective remedy" should be interpreted as a general measure and not a specific, individual measure, suggesting that the refusal to reopen infringed that condition.

Nevertheless, the Court considers particularly relevant the reference in point (b) above to the fact that the applicant retained the possibility to exercise "any other available remedies in order to obtain redress" as a pre-condition of the Court's decision to strike the relevant part of the application out of its list of cases.

Such possibility is to be seen against the background of the Court's case-law in respect of ill-treatment by State agents. The applicant's right to avail himself of existing remedies in order to obtain redress has to be accompanied by a corresponding obligation on the part of the respondent Government to provide him with a remedy in the form of a procedure for investigating his ill-treatment at the hands of State agents (see paragraph 105 above).

The payment of compensation, be it a result of a unilateral declaration or following domestic proceedings for damages, cannot suffice, having regard to the State's obligation under Article 3 to conduct an effective investigation in cases of wilful ill-treatment by agents of the State (see *Gäfgen*, cited above, §§ 116 and 119).

117. Therefore, the Government's interpretation, as stated in their unilateral declaration, that the payment of compensation constituted the final resolution of the case cannot be accepted. Such an interpretation would extinguish an essential part of the applicant's right and the State's obligation under the procedural limb of Article 3 of the Convention (see paragraphs 104 and 105 above).

Whilst it is true that its decision of 10 February 2009 involved a final disposal for Convention purposes of the applicant's procedural complaint under Article 3 of the Convention in application no. 547/02, the Court stresses in this context that the unilateral declaration procedure is an exceptional one. As such, when it comes to breaches of the most fundamental rights contained in the Convention, it is not intended either to circumvent the applicant's opposition to a friendly settlement or to allow the Government to escape their responsibility for such breaches.

118. The Court thus considers that, in the absence of an effective investigation into the applicant's ill-treatment by police officers, the strike-

out decision of 10 February 2009 did not and could not extinguish the Latvian Government's continuing obligation to conduct an investigation in compliance with the requirements of the Convention (see also *Žarković and Others*, cited above). Accordingly, it cannot be said that by paying the amount of compensation indicated in their unilateral declaration and by acknowledging a violation of the various Convention provisions, the respondent State discharged the continuing procedural obligation incumbent on it under Article 3 of the Convention.

119. Under the relevant Latvian law it was possible for the applicant to submit a request to the public prosecutor for the reopening of the investigation, and he availed himself of this possibility. Subject to the fulfilment of the conditions in sections 393 and 655 to 657 of the Criminal Procedure Law (see paragraphs 27 to 31 above), the public prosecutor was empowered to reopen proceedings on the grounds of newly disclosed circumstances (see, conversely, *Rezgui*, cited above). The Court observes that according to section 655(2)(5) a finding by an international judicial authority that a decision by Latvia which has taken effect did not comply with international law binding on Latvia "shall" constitute a newly disclosed circumstance. The applicant's request was dismissed by the prosecuting authorities at two levels, on the ground that the Government's unilateral declaration did not constitute a newly disclosed circumstance for the purposes of section 655(2).

120. The Court also reiterates that, according to its established case-law, an application for the reopening of proceedings or the use of similar extraordinary remedies cannot, as a general rule, be taken into account for the purposes of Article 35 § 1 of the Convention (see, for instance, *Withey v. the United Kingdom* (dec.), no. 59493/00, ECHR 2003-X, and *H. v. Iceland*, cited above, with further references). Such an approach would in the instant case entail the consequence that the Court would be prevented on formal grounds from examining the substance of the applicant's complaint about the lack of an effective investigation.

However, in the specific circumstances, the Court finds reason to depart from this rule, having regard to the following factors: the Government's unreserved and unequivocal acknowledgment that the applicant had been ill-treated and that the investigation failed to satisfy the requirements of effectiveness enshrined in Article 3 of the Convention; the Court's own assessment of that declaration and, in the light of its findings in that connection, its decision to strike this part of the application out of its list of cases by a final decision of 10 February 2009, thus putting an end to its review of the matter (see paragraph 54 of that decision) – while noting that it was open to the applicant to pursue any national remedies available to him; and the fact that, in the absence of an effective investigation, the respondent State's Article 3 procedural obligation continued to exist.

121. Turning to the substance of the said complaint, the Court observes at the outset that it will not express a view on whether the Latvian prosecutors were justified or not in deciding to refuse the applicant's request for the reopening of the investigation. According to long-standing and established case-law, the Convention does not in principle guarantee a right to have a terminated case reopened (see, *mutatis mutandis*, *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 44, ECHR 2015). The Court may nevertheless review whether the manner in which the Latvian authorities dealt with the applicant's request produced effects that were incompatible with their continuing Article 3 obligation to carry out an effective investigation.

122. In any event, even assuming that the investigating authorities were unable within the existing national legal framework to resume the investigation that had been discontinued on 19 March 2001, the Court does not consider that any national legal obstacles of the kind referred to in the higher-ranking prosecutor's decision of 20 December 2010 could detract from the respondent State's continuing obligation under Article 3 of the Convention to carry out an effective investigation (see also paragraph 34 above). Were it otherwise the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, making it possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and rendering the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, ineffective in practice (see *Gäfgen*, cited above, § 119).

123. Having regard to the authorities' refusal to reopen the discontinued criminal proceedings concerning the applicant's ill-treatment as acknowledged by the Government's unilateral declaration in application no. 547/02, the Court considers in the instant case that the applicant did not have the benefit of an effective investigation as required by Article 3 of the Convention.

124. The Court therefore dismisses the Government's preliminary objection that the application is incompatible *ratione materiae* with the Convention, as well as their objections of lack of victim status, non-exhaustion of domestic remedies and non-compliance with the six-month rule. Ruling on the merits, it finds that there has been a violation of Article 3 of the Convention under its procedural head.

(ii) Article 13 of the Convention

125. Having regard to its findings in paragraphs 119 and 122 and its conclusion in paragraph 124 above, the Court considers that no separate issue arises concerning the alleged breach of Article 13 taken in conjunction with Article 3 (see, among other authorities, *Nachova and Others*

v. Bulgaria [GC], nos. 43577/98 and 43579/98, § 123, ECHR 2005-VII; *Stanev v. Bulgaria* [GC], no. 36760/06, § 252, ECHR 2012; and *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 220, ECHR 2015).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

128. The Government argued that, in the light of the arbitrarily expanded scope of the application, the claim for compensation should be dismissed as manifestly unfounded. In any case, the amount claimed was excessive and exorbitant.

129. The Court considers it undeniable that the applicant sustained non-pecuniary damage on account of the violation of Article 3 of the Convention under its procedural head. Making its assessment on an equitable basis as required by Article 41 of the Convention, it awards him EUR 4,000.

B. Default interest

130. 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

1. *Joins to the merits*, by a majority, the Government's objections that the applicant's remaining complaints under Articles 3 and 13 are incompatible *ratione materiae* with the provisions of the Convention and are inadmissible on grounds of lack of victim status, non-exhaustion of domestic remedies and non-compliance with the six-month rule, and *dismisses* those objections;

2. *Declares*, by a majority, the remainder of the application admissible;

3. *Holds*, by ten votes to seven, that there has been a violation of Article 3 of the Convention under its procedural head;

4. *Holds*, unanimously, that there is no need to examine the complaint under Article 13 of the Convention taken in conjunction with Article 3 of the Convention;

5. *Holds*, by nine votes to eight,
(a) that the respondent State is to pay the applicant, within three months, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 5 July 2016.

Lawrence Early	Guido Raimondi
Jurisconsult	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) partly dissenting opinion of Judge Nicolaou;

(b) dissenting opinion of Judge Silvis, joined by Judges Villiger, Hirvelä, Mahoney, Wojtyczek, Kjølbro and Briede;

(c) dissenting opinion of Judge Wojtyczek.

G.R.
T.L.E.

PARTLY DISSENTING OPINION OF JUDGE NICOLAOU

The background

1. The salient facts which led to the present application may be briefly stated. In 1998 the applicant was arrested on a serious criminal charge and then taken to a police station where, following questioning, a confession was obtained from him. Immediately afterwards he complained that the confession had been the result of ill-treatment by the police officers questioning him.

2. As a result of the complaint criminal proceedings were commenced against those who appeared to have been involved. However, in March 2001 the proceedings were discontinued by an investigator who took the view that there was insufficient evidence to proceed. In the discontinuance decision it was noted, *inter alia*, that the applicant's allegations were incoherent and that the injuries he sustained, which were described as light, could have been caused in the course of the arrest.

3. Meanwhile, in September 2000, the applicant and a co-defendant who had made a similar complaint of ill-treatment were convicted and sentenced to long terms of imprisonment, after a trial in which they had pleaded not guilty and in which their purported confessions were used in evidence. Their appeals were unsuccessful and, subsequently, both men lodged applications with the Court.

4. The applicant, in his first application (*Jeronovičs v. Latvia*, no. 547/02, 1 December 2009), complained, *inter alia*, (a) that while he was being questioned in custody the police had subjected him to ill-treatment, in breach of Article 3 of the Convention, for the purpose of extracting a confession from him; and (b) that a statement so obtained had subsequently been used in evidence against him at his trial, in breach of the fairness requirement inherent in Article 6 § 1 of the Convention.

5. The Government were given notice of those complaints in 2007, together with certain others which have no significance in the present context. Following unsuccessful attempts at a friendly settlement, the Government submitted a unilateral declaration in 2008, the terms of which can be found in paragraph 19 of the present judgment. They admitted that the "physical treatment" received by the applicant at the hands of the police, as well as the "effectiveness of the investigation" that ensued, "did not meet the standards enshrined in Article 3", and offered to pay him *"ex gratia"* a certain amount of money by way of compensation for pecuniary and non-pecuniary damage, costs and expenses. They added, by way of final statement, that such payment "[would] constitute the final resolution of the case".

6. By a Chamber decision of 10 February 2009 the Court, acting on the unilateral declaration and relying on Article 37 § 1 (c) of the Convention,

struck out the applicant's Article 3 complaint under both its substantive and procedural heads (see paragraph 20 of the present judgment). Further, the Court proceeded to dismiss, *inter alia*, the Article 6 § 1 fairness complaint as being inadmissible (see paragraph 21 of the present judgment). Two other complaints which were declared admissible at the same time and on which final judgment was given on 1 December 2009 do not concern what is now at stake.

7. After the Court had finally determined that first application, the applicant went back to the domestic authorities and requested, on the basis of the unilateral declaration which had acknowledged the violation of his Article 3 rights, (a) that the authorities comply with the procedural requirements of Article 3 by reopening and continuing the proceedings concerning his ill-treatment, and (b) that they reopen the proceedings leading to his conviction, as they had been flawed by the admission of confession evidence obtained in violation of Article 3.

8. The Latvian Criminal Procedure Law provided that, subject to certain requirements and conditions, criminal proceedings or a criminal prosecution which had been terminated might be reopened either where there were no lawful grounds for termination or where new circumstances had been disclosed (section 393); it also provided that criminal proceedings which had ended in a valid court judgment or decision might be reopened on the basis of newly disclosed circumstances, enumerated therein (sections 655-657).

9. The applicant's requests for reopening were examined in a two-tier system and rejected by a final decision on 20 December 2010. The reasoning of the decisions turned solely on the application and interpretation of sections 655-657, which were relevant only to the applicant's conviction. The discontinued criminal proceedings against the police officers were not addressed at all, neither was there any mention of the possible need to resume the investigation into the applicant's ill-treatment.

The present application

10. In his present application the applicant complained under Article 13 that the refusal of the authorities to reopen the criminal proceedings concerning the investigation into his ill-treatment demonstrated the absence of a remedy by which to have his rights under the procedural limb of Article 3 vindicated, given that the authorities were not otherwise disposed to carry out a proper investigation into his ill-treatment. He also complained of the authorities' refusal to reopen the criminal proceedings which had led to his conviction so that the Article 6 § 1 fairness issue might be reconsidered; however, this latter complaint, which was declared inadmissible by the Court's decision of 9 October 2012, can obviously no longer be examined.

My own assessment

11. In my opinion, the only real matter now at issue is whether Latvia remains in violation of its obligation to investigate the applicant's – already acknowledged – ill-treatment by police officers. There can only be one answer to that and it is clearly in the affirmative. Whether domestic law did or did not provide machinery whereby an applicant could request the authorities to act in this regard is utterly without significance. Consequently, it is also without significance whether, as a matter of domestic law, the applicant's requests for reopening were rightly or wrongly determined. Once the authorities had become aware of the applicant's ill-treatment they were duty-bound to act without any prompting; they should have proceeded, without further ado, to carry out an Article 3-compliant investigation, the meaning of which is made abundantly clear by firmly established and undisputed case-law. Member States are expected to be aware of their duty in this regard.

12. There was, therefore, no need in the present case to look for the existence of a domestic remedy which might have been used by the applicant in order to secure his acknowledged right to an investigation. Consequently, Article 13 of the Convention did not come into play. I would add, with the utmost respect, that I fail to understand why the majority judgment dwells – and does so at such great length – on the question of reopening and is then, in the process, drawn into examining preliminary objections about victim status, compatibility *ratione materiae*, exhaustion and the six-month rule, when the first three are quite irrelevant if one focuses on the State's obligation to investigate and, as regards the fourth, an altogether different hue has been cast on it by the majority's approach to the matter (although, fortunately, this has not led to an adverse result). The fact that the parties have chosen to argue the case from that angle is no reason at all to take that path when, moreover, to do so may be at variance with the Convention and create uncertainty in a particularly sensitive area. The point I am trying to make is illustrated by paragraph 120 of the judgment, where the Court relies on a general rule against reopening and then finds reason to depart from it:

> "The Court also reiterates that, according to its established case-law, an application for the reopening of proceedings or the use of similar extraordinary remedies cannot, as a general rule, be taken into account for the purposes of Article 35 § 1 of the Convention (see, for instance, *Withey v. the United Kingdom* (dec.), no. 59493/00, ECHR 2003-X, and *H. v. Iceland*, cited above, with further references). Such an approach would in the instant case entail the consequence that the Court would be prevented on formal grounds from examining the substance of the applicant's complaint about the lack of an effective investigation.
>
> However, in the specific circumstances, the Court finds reason to depart from this rule, having regard to the following factors: the Government's unreserved and unequivocal acknowledgment that the applicant had been ill-treated and that the

> investigation failed to satisfy the requirements of effectiveness enshrined in Article 3 of the Convention; the Court's own assessment of that declaration and, in the light of its findings in that connection, its decision to strike this part of the application out of its list of cases by a final decision of 10 February 2009, thus putting an end to its review of the matter (see paragraph 54 of that decision) – while noting that it was open to the applicant to pursue any national remedies available to him; and the fact that, in the absence of an effective investigation, the respondent State's Article 3 procedural obligation continued to exist."

13. In my view, the last three lines of this excerpt contain all that needed to be said. The view of the majority, that to reach that result one had to go through the reopening argument, is summarised further down, in paragraph 123, which reads as follows:

> "Having regard to the authorities' refusal to reopen the discontinued criminal proceedings concerning the applicant's ill-treatment as acknowledged by the Government's unilateral declaration in application no. 547/02, the Court considers in the instant case that the applicant did not have the benefit of an effective investigation as required by Article 3 of the Convention."

14. With the conclusion of the majority that there has been a violation of Article 3 of the Convention under its procedural head, I am prepared to agree. I would, however, have arrived at this conclusion only after restoring the first application to the Court's list of cases under Article 37 § 2 of the Convention, which provides that the Court may do so if "it considers that the circumstances justify such a course." Rule 43 § 5 of the Rules of Court, which is also relevant, must be read in the light of the wording of the Convention. I do not share the majority view, expressed in paragraph 116 of the judgment, that the circumstances here do not justify such a course.

15. I am respectfully of the view that the Court was ill-advised to accept the unilateral declaration in the terms in which it was couched. It must be borne in mind that the Government's admission that the investigation carried out into the ill-treatment of the applicant did not comply with Article 3 standards clearly meant that a further investigation was needed that would be compliant with those standards, even if ultimately it might not yield any positive results. Yet the Court did not require the Government to make the relevant undertaking, as it had done in *Žarković and Others v. Croatia* ((dec.), no. 75187/12, 9 June 2015), which should not be regarded as an isolated case. At the same time it appeared to accept the condition laid down to the effect that "payment [would] constitute the final resolution of the case", and merely stated that the strike-out decision was "without prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain redress", when there was nothing to indicate the existence of any applicable remedy and, as it transpired, none in fact existed. I will say nothing about the inclusion of the "*ex gratia*" phrase which, although obviously attenuating the admission of a violation – quite inappropriately in my view – is not infrequent and, regrettably, seems to be accepted by our case-law. In the leading case cited in the Court's strike-out

decision, namely *Tahsin Acar v. Turkey* (preliminary objection) ([GC], no. 26307/95, § 84, ECHR 2003-VI), it is made clear that the Court should require a relevant undertaking:

> "... where there is prima facie evidence in the case-file supporting allegations that the domestic investigation fell short of what was necessary under the Convention, a unilateral declaration should at the very least contain an admission to that effect, combined with an undertaking by the respondent Government to conduct, under the supervision of the Committee of Ministers in the context of the latter's duties under Article 46 § 2 of the Convention, an investigation that is in full compliance with the requirements of the Convention as defined by the Court in previous cases ..."

16. Once the first application had been restored to the Court's list I would then have found a violation within that context, and I would have regarded the compensation already paid by the Government pursuant to the strike-out decision as the award to which the applicant was entitled under that judgment.

17. As things are now, I have little choice but to accept the finding of a violation within the context of the present application; however, taking a similar approach to the matter, I would not award a separate, additional amount of compensation. In my view, the majority makes an award of compensation to the applicant twice for what is essentially the same violation. The present case is not, as I see it, a case where a subsequent application raises or supposedly raises a new issue in relation to a previous application, as for example in *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* ([GC], no. 32772/02, ECHR 2009); nor is it a case of a continuing violation divisible into temporal parts for which compensation is adjudged separately, as in *Ivanţoc and Others v. Moldova and Russia* (no. 23687/05, 15 November 2011), or a case where the time element, being relevant to a proper investigation, is singled out and dealt with separately before the examination of other aspects that are still pending in an ongoing investigation, as in *McCaughey and Others v. the United Kingdom* (no. 43098/09, ECHR 2013). All those cases involved just one complaint, complete in its own right, and awarding compensation for it was not incompatible with awarding compensation in another case with which it had an affinity or connection, irrespective of which came to the Court first. It is not, however, possible to do that when, as in the present case, the Court has treated the complaint as just one event.

DISSENTING OPINION OF JUDGE SILVIS, JOINED BY JUDGES VILLIGER, HIRVELÄ, MAHONEY, WOJTYCZEK, KJØLBRO AND BRIEDE

1. What is the status of a strike-out decision of the Court? There can be little doubt that, in the case of an inadmissibility decision or a strike-out decision, the Court is to be considered as having "examined" the matter brought to its attention for the purposes of Article 35 § 2 (b) (see, for instance, in the context of inadmissibility decisions, *Previti v. Italy* (dec.), no. 45291/06, §§ 291-94, 8 December 2009, and *Manuel v. Portugal* (dec.), no. 62341/00, 31 January 2002, and in the context of a strike-out decision following a friendly settlement, *Kezer and Others v. Turkey* (dec.), no. 58058/00, 5 October 2004). It would not make any sense to give a different status to a strike-out decision following a unilateral declaration. In the present application, the parties do not allege that the Court committed a manifest error of procedure or substance when it accepted the Government's unilateral declaration as a basis for striking out the application.

2. The main issue in the present case is whether or not the respondent Government have a continuing obligation under Articles 3 and 13 of the Convention, despite the Court's strike-out decision of 10 February 2009, to reopen the discontinued criminal proceedings concerning the applicant's allegations of ill-treatment. Such an obligation could have been included in the strike-out decision, but it was not.

In this context it should be noted that the supervision of the execution of the Court's strike-out decision in the present case is a matter that falls outside the scope of the Committee of Ministers' supervisory role under Article 46 of the Convention, as the decision was neither based on a friendly settlement (Article 39 of the Convention and Rule 43 § 3) nor were the complaints struck out by way of a judgment after being declared admissible (Rule 43 § 3). Nor were any costs awarded by the Court (see also Rule 43 § 4).

On the other hand, under Article 37 § 2 of the Convention the Court has powers to restore an application to the list of cases if it considers that "the circumstances justify such a course". Under Rule 43 § 5 of the Rules of Court, it may do so if "it considers that exceptional circumstances so justify". This of course refers to newly discovered circumstances. The Court finds no such circumstances (see paragraph 116 of the judgment), and rightly so.

3. The Government consider that the Court accepted in its strike-out decision of 10 February 2009 that the unilateral declaration submitted by the Government complied with the requirements established in the Court's case-law, especially in the case of *Tahsin Acar v. Turkey* ([GC], no. 26307/95, §§ 75-76, ECHR 2004-III). Nothing in the Government's unilateral declaration suggested an undertaking to reopen the proceedings.

On the contrary, the only redress offered by the Government in their unilateral declaration, as accepted by the Court, was the payment of compensation. The Court's decision did not require the reopening of the proceedings in the applicant's case. Therefore, the Government see no reason to restore it to the list.

4. Is this situation altered by the fact that the strike-out decision of the Court contained the following clause?

> "That decision is without prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain redress" (in French: "*Cette décision ne préjuge en rien de la possibilité pour le requérant d'exercer, le cas échéant, d'autres recours afin d'obtenir réparation*").

To my mind this cannot reasonably imply an obligation to reopen the criminal proceedings in the absence of any newly discovered fact following the unilateral declaration; this is in line with the possibilities available under domestic law. But the Court finds in the terms of the strike-out decision itself an event triggering an obligation to continue investigations (see paragraph 116, which refers to such an obligation as a *precondition* of the strike-out decision). I cannot but see this judgment as a departure from case-law on the status of complaints that have been dealt with by the Court in a final judgment or decision. This standing case-law concerns not only Article 6 complaints (as in *Fischer v. Austria* (dec.), no. 27569/02, ECHR 2003-VI; *Komanicky v. Slovakia* (dec.), no. 13677/03, 1 March 2005; and *Öcalan v. Turkey* (dec.), no. 5980/07, 6 July 2010). In *Egmez v. Cyprus* ((dec.), no. 12214/07, 18 September 2012), the Court did not find any new events that could revive a procedural obligation under Article 3 and thus trigger a possible breach of that provision. That path should have been followed in this case. The reasoning of the Court now accepted by the majority could apply also to applications that have been determined by the Court in a judgment (and not a strike-out decision), and where the State, in the view of the applicant, has failed to comply with the earlier judgment finding a violation. In other words, if the Court finds in a judgment that the State has failed to conduct an effective investigation in violation of Article 2 or 3 of the Convention, and if the State subsequently does not ensure that a new investigation is carried out meeting the requirements of the Convention, the applicant may lodge a fresh application and the Court may find a fresh violation.

5. Tracing the steps taken in this case will demonstrate how it came about that an allegation of ill-treatment made by the applicant following his arrest on 25 April 1998 on suspicion of having committed several criminal acts is still occupying the Court in 2016. The applicant lodged complaints of ill-treatment on 8 October 2001. More than five years later, on 22 February 2007, the Government were given notice of the application and on 30 April 2008 they issued a unilateral declaration admitting an Article 3 violation and awarding the applicant compensation for it. On 10 February 2009 the

Court accepted this unilateral declaration by the Government and struck out the case in respect of the ill-treatment covered by the declaration. In accordance with that declaration the applicant received 4,500 euros (EUR). Subsequently, on 1 December 2012, the Court found violations concerning the applicant's conditions of detention following the above-mentioned arrest, as well as a violation of Article 6 § 1 because the applicant, while in detention, had not been given the opportunity to appear in person before the Supreme Court during the proceedings in his case. He was awarded EUR 5,000. All these complaints were already part of the original application in 2001. However, in 2010 the applicant reiterated his complaints in a new application and included a fresh complaint to the effect that the investigation into his ill-treatment had not resumed after the acceptance of the unilateral declaration, despite his efforts to that end at domestic level. On 9 October 2012 the Court declared the old complaints partly inadmissible, but relinquished jurisdiction to the Grand Chamber with regard to the complaint concerning the decision not to resume the investigation into the applicant's ill-treatment after the acceptance of the unilateral declaration. Three out of the five Sections of the Court have, in one way or another, dealt with the applicant's complaints following the events of 25 April 1998, and now the Grand Chamber has as well. The majority of the Grand Chamber has still not succeeded in bringing this case to an end. Instead it looks as if a *perpetuum mobile* of never-ending court proceedings has been set in motion. What purpose is being served? Is it the theoretical notion of a continuing obligation? I cannot imagine serious investigations into a case like this being taken up or resumed after the many years that have passed.

6. This judgment erodes the certainty that should prevail after the Court has completed its examination. The continuing obligation to respect legal certainty is too precious a matter to be sacrificed in an attempt to correct an earlier acceptance of a unilateral declaration even if, with hindsight, it may be thought that the Court should have been more reluctant to deprive the applicant of the benefit of an effective examination in an Article 3 case.

DISSENTING OPINION OF JUDGE WOJTYCZEK

(Translation)

The main objections in relation to the present judgment have been expressed in the separate opinion of Judge Silvis, joined by Judges Villiger, Hirvelä, Mahoney, Kjølbro, Briede and myself. For my part, I would like to highlight two additional points.

1. The effective operation of the Convention mechanism presupposes a minimum of loyalty in the relationship between the Court and the parties to the proceedings. In particular, the Court must indicate with sufficient precision in its judgments and decisions the obligations to which these give rise for the parties. In the event of a unilateral declaration, in order to satisfy the requirement of legal certainty and prevent further disputes between the parties, the various obligations arising for the respondent State out of the Convention violation that has been acknowledged should be spelled out clearly in the text of the declaration. It is for the Court to ensure that the unilateral declaration observes the requisite minimum in terms of clarity and precision. In particular, in the present case, if the Court considered that the respondent State had a duty to reopen the criminal investigation, it would have been preferable for it not to accept a unilateral declaration that did not contain an express clause to that effect. Given that the Court accepted a unilateral declaration not containing such a clause, it is difficult to blame Latvia for not complying with its obligations in the present case.

2. The judgment in this case directly concerns the rights of third parties. A criminal investigation may affect the interests of a number of persons suspected by the authorities of committing an offence. Some of those suspects may be innocent. All those concerned, whether they are guilty or innocent, are entitled to have their case determined by a final decision within a reasonable time. If the obligation to carry out a criminal investigation, which flows from Articles 2 and 3 of the Convention, cannot be extinguished with the passage of time and if the national authorities have a duty to reopen investigations that have been closed until such time as they satisfy all the requirements of the Convention, this could result, in a large number of cases, in innocent persons being left in a state of permanent uncertainty as to their fate, and hence in a violation of their rights under Article 6 of the Convention. I note with regret that the Court omitted to take into consideration this aspect of the case.