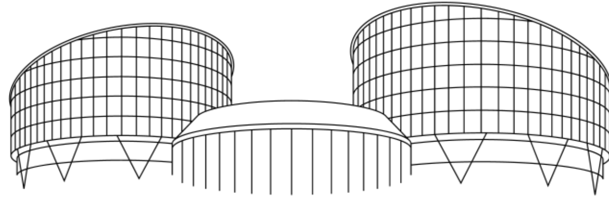

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BAZJAKS v. LATVIA

(Application no. 71572/01)

JUDGMENT

STRASBOURG

19 October 2010

FINAL

19/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Bazjaks v. Latvia,

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

Josep Casadevall, *President,*
Elisabet Fura,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 28 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 71572/01) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a “permanently resident non-citizen” of the Republic of Latvia, Mr Igors Bazjaks (“the applicant”), on 29 May 2001.

2. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that the conditions of his detention in Daugavpils prison had amounted to inhuman and degrading treatment and that he lacked an effective remedy in that regard.

4. On 26 November 2004 the President of the Third Section decided to give notice of the application to the Government and to invite them to submit written observations concerning the complaints under Articles 3 and 13 of the Convention. It was also decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Daugavpils.

A. The applicant's initial arrest and pre-trial detention

6. On 2 June 1998 the applicant was arrested by the police on suspicion of rape and brought to the Ventspils Police Department. The applicant contended that he had been beaten by police officers immediately after his arrest and later during police questioning. On the same day he was placed in custody in a cell in the Ventspils Police Department.

7. According to the applicant, the cell where he was placed was dirty and infested with fleas and bedbugs. Food was limited to one meal per day and the drinking water had a strong taste of bleach. Moreover, receiving food parcels from relatives was prohibited. It was impossible for the applicant to keep himself clean because of the lack of water and personal hygiene products. In order to prevent him from writing complaints, his pen and paper were seized.

8. Between 2 and 4 June 1998 the applicant was questioned by the police without being represented by a lawyer. A State-appointed lawyer assisted the applicant during questioning from 4 June 1998 onwards.

9. In the course of the pre-trial investigation and after its completion, the applicant allegedly filed numerous complaints with the Ventspils Public Prosecutor's Office and with other State authorities, complaining about the conditions in which he had been held and his ill-treatment by the police. However, according to him, he received only standard replies and no investigation was carried out. On 25 November 1998 the applicant filed a complaint with the Kurzeme Regional Public Prosecutor's Office complaining about the conditions of his detention. On 26 November 1998, in reply to his complaint, a prosecutor stated that the facts complained of, such as the alleged lack of personal hygiene products and the inability to wash, fell outside the competence of the Prosecutor's Office. On an unspecified date the applicant announced a hunger strike to protest against the conditions of his detention.

10. Later, the applicant was transferred to the Ventspils Police short-term detention facility. On 18 November 1998 he submitted a complaint to the Ventspils Public Prosecutor's Office complaining about misconduct on the part of one of the police officers on duty. On 26 November 1998 a prosecutor visited the applicant and found his complaints unsubstantiated.

11. According to the applicant, on 26 November 1998, immediately after the prosecutor's visit, the same police officer on duty, while giving the applicant a bottle of water through the security hatch in the cell door, sprayed gas in his face and shut the ventilation outlets. During the next six hours, at some forty-minute intervals, he poured gas into the cell from gas canisters through the ventilation outlets and subsequently shut them. The applicant and his cellmate asked for the ventilation outlets to be opened; the police officer agreed on condition that the applicant withdrew his complaint.

12. On 29 November 1998 the applicant applied to the Kurzeme Regional Public Prosecutor's Office complaining about the aforementioned facts and seeking to institute criminal proceedings against the police officer. It appears that no investigation was carried out in respect of the facts complained of and that the applicant was not provided with any reply.

B. The applicant's trial

13. On 13 January 1999 the Kurzeme Regional Court found the applicant guilty of the aggravated rape and sexual assault of a fifteen-year-old girl and sentenced him to ten years' imprisonment. The applicant appealed.

14. On 4 March 1999 the Criminal Chamber of the Supreme Court, after having held a hearing, upheld the assessment of evidence by the trial court. However, the appellate court amended the judgment, ordering the applicant to pay the victim 4,000 Latvian lati (LVL) for non-pecuniary damage. The applicant was represented by a State-appointed lawyer before the first-instance court and the appellate court.

15. The applicant then lodged an appeal on points of law. On 11 May 1999 the Senate of the Supreme Court declared the appeal inadmissible for lack of arguable points of law. The applicant sought to initiate an extraordinary supervisory review of this decision; however, on 14 June 1999 the Office of the Prosecutor General dismissed his application.

C. The applicant's detention

1. Jelgava prison

16. On 6 June 1999 the applicant was transferred to Jelgava prison to continue serving his sentence, and remained there until 22 November 2000. On admission he underwent a medical examination; according to the medical report, he was a drug addict and suffered from venereal disease, spondylosis, dermatitis and gastric problems. The Government maintained, and the applicant himself did not deny, that he received the necessary medical treatment. While in Jelgava prison, he was punished on thirty-two occasions for various disciplinary offences. The last of these penalties was imposed on him on 18 July 2000.

17. From 12 to 14 April 2000, the Prison Administration carried out a general inspection of Jelgava prison. Detainees were questioned about the conditions of their detention; no specific complaints were received.

18. According to the documents submitted by the Government, during a cell inspection carried out on 18 July 2000 the applicant behaved aggressively towards the prison guards, used threatening gestures and

obscene language. Three guards who had performed the cell inspection subsequently filled in and signed the report form intended for such purposes; however, the applicant himself refused to give explanations, he only noted that he did not speak Latvian and that he did not have trust in the prison guards. The chief supervisor of the relevant prison wing then recommended punishing him with solitary confinement in an isolation cell (*soda izolators*); the supervisor's report includes a comment according to which the prison doctor examined the applicant and found him fit to undergo the punishment. By a decision taken on the same day, 18 July 2000, the prison governor imposed a punishment of fifteen days' isolation on the applicant, starting from the next day.

19. On the next day, 19 July 2000, after having been transferred to an isolation cell, the applicant was reported again to be behaving aggressively; he also declared a hunger strike. He was then handcuffed for an unspecified amount of time. As on the previous day, three prison guards in charge of the disciplinary unit wrote a disciplinary report. The applicant explained that he had had a "nervous outburst". It appears that the applicant received no separate punishment for this incident.

20. The applicant contends that on numerous occasions he applied to various State authorities including the Specialised Public Prosecutor's Office, seeking an investigation into the allegedly unlawful disciplinary penalties imposed on him. On 4 October 2000 he was visited by a prosecutor with whom he discussed this matter. According to the Government, the applicant indeed complained to the aforementioned Prosecutor's Office – but not to any other authority – on 14, 24, 30 and 31 October 2000. However, it cannot be inferred from the case file that in his complaints he actually mentioned the numerous disciplinary penalties imposed on him. These four complaints were forwarded to the Prison Administration, which replied to him by a letter of 21 November 2000 signed by its director; there is no mention of any disciplinary penalty in it.

21. On 7 November 2000 the applicant complained about the alleged unlawfulness of the disciplinary penalty imposed on him on 18 July 2000. On 24 November 2000, a prosecutor of the Specialised Public Prosecutor's Office dismissed his complaint, finding that the impugned punishment had been justified.

22. On 4 and 14 November 2000 the applicant filed new complaints with the Specialised Public Prosecutor's Office, the content of which has not been disclosed to the Court. The Government inferred that the applicant had been complaining about management problems in Jelgava prison. By a letter of 15 December 2000 the competent prosecutor replied to him, advising him to submit details of any disputes with the chief supervisor of the wing to the prison governor prior to writing to the Prison Administration or the Prosecutor's Office.

23. According to the applicant, on an unspecified date at the end of 2000 he was again placed in a disciplinary cell, where a group of prison guards handcuffed him and then beat, clubbed and kicked him. In the course of the assault the applicant fell to the floor, hit his head against the floor and lost consciousness. After that, he suffered from a violent headache and vomited. Subsequently, a prison doctor examined the applicant and noted a traumatic displacement of his left-side facial bones; however, the applicant remained in the disciplinary cell and no medicines were given to him. The applicant provided a short synopsis of his medical history, drawn up and certified by three members of the medical staff of Grīva prison; this document does not mention any such trauma. Nevertheless, the applicant insisted that the beating had indeed taken place, despite being unable to give the exact date. He claimed to have addressed numerous complaints to various authorities, including the Prosecutor General, requesting that criminal proceedings be instituted against the prison guards allegedly involved in the beating incident; however, no investigation was carried out and the applicant did not receive any reply to his complaints. The Government denied these allegations.

24. At the request of the governor of Jelgava prison, the director of the Prison Administration on 14 November 2000 approved the applicant's transfer to Daugavpils prison to continue serving his sentence. It appears that on 22 November 2000 the applicant was transferred to the Central Prison Hospital in Rīga and that he stayed there until 11 January 2001.

25. The applicant also contended that on an unspecified date in 2001 he had undergone an X-ray examination of his skull in the Central Prison Hospital. The results of this examination allegedly confirmed the traumatic displacement of his left-side facial bones and revealed a trauma to his right hand, loss of hearing in his left ear and a damaged retina in his right eye. He claimed that doctors had refused to operate on him or even to report his injuries to the Prosecutor General. As he had expressed dissatisfaction with the conduct of the doctors, he was subsequently penalised and placed in a disciplinary cell where he allegedly did not receive any medical assistance or treatment. The medical synopsis submitted by the applicant (see paragraph 23 above) does not mention any such examination, and there is no other document in the case file to confirm these statements.

2. Daugavpils prison and subsequent imprisonment

26. Between 11 January 2001 and 26 January 2002 the applicant served his sentence in Daugavpils prison. During that period, he was punished on twenty occasions for various disciplinary offences, including on six occasions by solitary confinement, *inter alia*, for being intoxicated with drugs. The conditions of detention in Daugavpils were generally poor, the food was of poor quality and of insufficient quantity and the detainees were not provided with any personal hygiene products.

27. Between 8 November and 21 December 2001 the applicant was kept in a special segregation unit of the prison. According to him, the cell where he was placed together with other detainees was located in the prison basement and had no daylight. The cell was very humid and cold since its windows were unglazed and since the central heating pipes and radiators gave off no heat. It was in a poor state of repair, dirty and infested with insects and rats. Furthermore, it lacked hot water and was not even equipped with a washbasin; hence, the applicant was unable to keep himself clean. His clothes were never taken to the prison laundry, so that he was obliged to wear the same underwear for two months. As there was no drinking water supply, the detainees were forced to drink water from the toilet flush or from a bucket intended for the same purpose. The cell was inadequately furnished as there was no dining table or furniture for keeping personal belongings, and no cutlery. The Government did not submit any comments in this regard.

28. The applicant asserted that he had applied to the prison authorities, various State officials and the Prosecutor General complaining about the conditions of detention but had not received any answer. Moreover, according to the applicant, his complaints gave rise to abuse from prison staff: he was verbally assaulted, threatened with violence, his warm clothes were taken off him and false reports were made about him. The Government denied that the applicant ever complained about the conditions of his detention.

29. On 21 December 2001 the applicant declared a hunger strike to protest against the conditions of his detention. He was immediately punished with solitary confinement and placed in disciplinary cell no. 22. According to the applicant, this cell had no windows, no ventilation system and no washbasin. It was overrun by insects and rats. No toiletries and bedding were provided, and the applicant's request for some boiled water was refused. At night, the applicant slept on a folding bunk bed which was fixed to the wall during the day so that it was impossible to lie down or sit on it in daytime. If the applicant felt unwell during the day, he was forced to lie on the floor. Moreover, he allegedly fainted several times because of the extremely stale air in the cell and he complained about this to the prison staff, but in vain. Each morning the cell was searched; he was consequently ordered to strip naked and brought out into the corridor, where he was humiliated by the prison staff. According to the Government, the applicant's allegation of daily strip-searches was wholly unsubstantiated.

30. The applicant submitted that on the tenth day of his confinement he was visited by a prison doctor who, instead of providing any kind of medical assistance, informed him that he would be kept in these conditions until he agreed to give up his hunger strike.

31. The applicant further alleged that on the thirteenth day of his hunger strike he was transferred to disciplinary cell no. 14. This cell was very cold,

since its window contained only empty panes without glass. On the next day, the applicant allegedly fainted again, collapsed on the floor and wounded his forehead on the metal rim of the bunk bed. Shortly afterwards he was examined by a prison doctor who declared that he should lie down in bed. However, this indication appears not to have been followed and the applicant remained in the disciplinary cell in the same conditions.

32. The Government did not comment on most of the facts described above, merely observing that there were "no solitary confinements or any other special cells for those who have announced a hunger strike in Daugavpils prison".

33. On 4 January 2002 the applicant discontinued his hunger strike for health reasons. According to him, on 7 January 2002 he lodged a complaint with the Prosecutor General complaining of the allegedly unlawful disciplinary penalties imposed on him and of his inhuman treatment in Daugavpils prison. The applicant did not specify whether he received any answer to this complaint. The Government denied this assertion; according to them, the last complaint during this period was made by the applicant on 26 March 2001, was addressed to the Inspector General of the Ministry of Justice (*Tieslietu ministrijas ģenerālinspektors*) and related only to restrictions on receiving food parcels from relatives. The applicant claimed that he had subsequently been threatened by the deputy prison governor, who warned him that that he would be subjected to even worse conditions if he continued to complain.

34. On 25 January 2002 the applicant was released from the disciplinary cell. Shortly thereafter he was admitted to the Central Prison Hospital in Rīga to undergo medical treatment for tuberculosis. In April 2002 he left hospital and was transferred to Grīva prison, where he continued serving his sentence until his release on 2 June 2008. The applicant submitted that the medical assistance in that prison had not been appropriate to his condition; he did not, however, provide any details or descriptions in that regard.

II. RELEVANT INTERNATIONAL LEGAL MATERIAL AND DOMESTIC LAW

A. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

35. Following the first visit to Latvia between 24 January and 3 February 1999 the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("CPT") published its report on 22 November 2001. The relevant parts of the CPT's report concerning that visit read as follows:

"91. At the outset of the visit, the Minister of the Interior and senior officials from the Prison Department highlighted serious problems facing the Latvian prison system: a rising prison population, which had led to overcrowding and hence a deterioration in conditions of detention; lack of work, education and leisure opportunities for prisoners; shortage of staff; and a dramatic spread of tuberculosis amongst the prison population.

...

144. Tuberculosis was identified as a major problem by both the representatives of the Prison Department and the health care teams at the prisons visited. They stressed that in recent years, there had been a significant increase in the number of tuberculosis cases, attributed primarily to prison overcrowding and to the shortage of appropriate sanitary means to control the disease. It was also stated that the tuberculostatic medicines currently available on the market were costly, while the range available was decreasing. Also, the number of cases of resistance to tuberculostatic medicines in Latvia's prisons was said to be rising (at the time of the visit, approximately 22% of all prisoners suffering from tuberculosis were resistant to at least two of the first-line tuberculostatic medicines).

The CPT fully shares the concerns voiced by the above-mentioned persons. Unless adequately treated, tuberculosis is a life-threatening disease. The prison authorities therefore have a clear obligation to ensure adequate methods of prevention and detection, and to provide appropriate treatment."

36. Following its second periodic visit to Latvia between 25 September and 4 October 2002, the CPT published its report on 10 May 2005. While the principal objective of the visit to Jelgava prison was to review the conditions of detention of life-sentenced prisoners, a full visit was carried out to Daugavpils prison. At the outset, the CPT stated that it was very concerned by the lack of progress since the previous visit, which had taken place in 1999 and "[was] obliged to reiterate many of its previous recommendations concerning prison issues" (see the relevant report, document CPT/Inf (2005)8, paragraph 6).

37. The relevant parts of the CPT's report concerning the visit to Latvia between 25 September and 4 October 2002 read as follows:

"65. The CPT noted that the legal standards for the provision of living space to prisoners in Latvia had recently been slightly increased to 2.5 m² per person for male adult prisoners and to 3.5 m² per person for female and juvenile prisoners. Whilst acknowledging this development, the Committee must emphasise that the new standards still do not offer a satisfactory amount of living space (cf. also paragraph 93 of the report on the 1999 visit). **The CPT therefore recommends that the above-mentioned legal standards be raised as soon as possible, so as to guarantee at least 4 m² per prisoner in multiple-occupancy cells, and that official capacities and occupancy levels of cells in Latvian prisons be revised accordingly**.

66. **Daugavpils [p]rison**, which was built in 1861 in the city centre, is a closed prison for male prisoners (sentenced and on remand). Its official capacity had recently been increased from 543 to 800 inmates. At the time of the visit, the establishment was holding 762 prisoners, of whom 310 were sentenced and 443 on remand

(including 24 juveniles). In addition, nine sentenced prisoners, held in a semi-open regime, were assigned to work in the establishment.

...

73. At Daugavpils [p]rison, the three buildings accommodating prisoners were overall in a poor state of repair. Further, most cells were poorly ventilated, and some of them had no access to natural light (the windows being covered by metal plates). In addition, cells were frequently overcrowded, in particular those accommodating remand prisoners (*e.g.* $40m^2$ for 21 prisoners; $12.5m^2$ for six prisoners).

Material conditions were particularly poor in the “quarantine” unit, where up to six newly-arrived, sick and/or vulnerable prisoners were being held in cells measuring some 10 m^2. The cells were very humid, cold and had no access to natural light. Further, no or only very thin mattresses were supplied to prisoners, and toilets were not partitioned. The delegation, however, noted that some steps were being taken to refurbish the “quarantine” unit; this refurbishment should be completed as a matter of priority.

...

75. [In Daugavpils prison], the poor hygienic conditions were exacerbated by the fact that prisoners were not provided with any personal hygiene products (*e.g.* soap, toothbrush, toilet paper, *etc.*) and that indigent prisoners were not always provided with proper clothing.

...

77. Finally, in [Daugavpils prison], many prisoners claimed that until shortly before the CPT's visit the occupancy levels had been significantly higher and that, on occasion, the number of prisoners had exceeded the number of beds available. It is axiomatic that such a state of affairs would be unacceptable; **the principle of one prisoner - one bed should be respected at all times.**

78. At Daugavpils [p]rison, hardly any out-of-cell activities were offered to sentenced prisoners. At the time of the visit, a one-year vocational training programme for masonry and painting was organised, with an option to acquire externally recognised diplomas, but only 22 out of 310 inmates could participate. Regrettably, a four-year Latvian language course and a two-year educational programme had been discontinued in 2002. The CPT is particularly concerned that prisoners serving long sentences were excluded from the above-mentioned activities.

...

80. In [Daugavpils prison], prisoners were obliged to take their outdoor exercise in small concrete cubicles covered with a metal grille, under conditions which did not allow them to exert themselves physically (*e.g.* 15 m^2 for up to ten prisoners; less than 10 m^2 for up to six prisoners).

...

93. As already indicated (*cf.* paragraph 73), *material conditions of detention* were generally poor throughout Daugavpils [p]rison.

...

133. The Latvian authorities have failed to implement several of the urgent recommendations concerning disciplinary matters made by the CPT after the 1999 visit. Prisoners placed in disciplinary cells are still not provided with a mattress and blankets at night and... are not offered outdoor exercise... Such a flagrant disregard of the CPT's recommendations is totally unacceptable.

...

134. Frequent recourse was had at Daugavpils ... [prison] to the sanction of solitary confinement. Further, it appeared that in the majority of cases, the maximum penalty or close to it was imposed... The CPT is not convinced that the sanctions imposed were always proportional to the offence (for example, extension of the placement in the punishment cell by 15 days for folding down the wooden platform in the cell during the day).

...

135. Further, in view of the information gathered during the 2002 visit, the CPT recommends that steps be taken to ensure that all prisoners receive a copy of the decision imposing a disciplinary punishment and are informed in writing of the possibility to lodge an appeal with the Director of the establishment.

...

140. One of the most effective means of preventing ill-treatment by prison officers lies in the diligent examination of complaints of ill-treatment and the imposition of suitable penalties. Prisoners should have avenues of complaint open to them both within and outside the prison system, including the possibility of confidential access to an appropriate authority.

In all prisons visited, prisoners could, in principle, submit a complaint to the establishment's Director. In addition, complaints could be addressed to the Regional Prosecutor and the National Human Rights Office.

However, the CPT is concerned by the manner in which prisoners' complaints were processed in practice. Many prisoners interviewed in the establishments visited indicated that they did not have any trust in the current complaints system, since they were obliged to hand their complaint - even those addressed to judicial authorities - in an unsealed envelope to a prison officer. Not surprisingly, only a few complaints were recorded in the establishments visited. Means must be found of enabling complaints to be submitted to the Regional Prosecutor and the National Human Rights Office in a truly confidential manner.

...

141. The CPT has already emphasised the importance of regular visits to all prison establishments by an independent body with authority to receive - and, if necessary, take action on - prisoners' complaints and to visit the premises...

The delegation noted that, in addition to the General Prosecutor's Office, the National Human Rights Office carried out visits to Latvian prisons. Visit reports and recommendations by the latter body were submitted directly to the Ministry of Justice. ...”

38. The Latvian Government made the following comments and additional comments in response (document CPT/Inf (2005)9):

RESPONSE OF THE GOVERNMENT OF LATVIA

“The maximum number of places of imprisoned persons to be placed in prisons has been set by the Decree of the Ministry of Justice dated 25 February 2003 and it complies [with] the norms (not less than 2.5 m² for men and not less than 3 m² for women and persons under the age of 18). The shortcoming related to the overpopulation of imprisoned persons in Daugavpils as pointed out by the experts of CPT Committee prison has been eliminated.

...

During the time period from year 1999 to 2002 no complaints on physical assaults committed by the prison personnel, have been received, there have been no disciplinary or criminal cases initiated based on such complaints...”

ADDITIONAL RESPONSE OF THE GOVERNMENT OF LATVIA

“About mentioned in the letter overcrowding in Daugavpils [p]rison we have to say that maximum capacity of that prison is 543 places, on the 1st January 2004 there were 449 prisoners therefore prison density is 82.6%.

At the moment none of prisons is overcrowded.

... The Prison Administration until this year did not make statistics on registration of claims about possible ill-treatment in prisons. But according to paragraphs 125 and 126 of Criminal Law there were initiated criminal cases: 7 in 2001, 5 in 2002, 5 in 2003. Starting from this year the Prison Administration will make statistics of registration of claims about possible ill-treatment in prisons.

Because of long period that has passed since the incident of claim about ill-treatment that was mentioned in the letter, it is difficult for Prison Administration to give any elucidation on that matter...”

39. Following its *ad hoc* visit to Latvia from 5 to 12 May 2004, the CPT published its report on 13 March 2008. In its relevant part the report reads as follows:

“8. At the end of the visit, on 12 May 2004, the CPT's delegation held final talks with the Latvian authorities, in order to acquaint them with the main facts found

during the visit. On this occasion, the delegation made the following immediate observations, in pursuance of Article 8, paragraph 5, of the Convention:

...

- to take steps at Daugavpils [p]rison ... to ensure that all prisoners placed in disciplinary cells are given a mattress and blankets at night, and are offered at least one hour of outdoor exercise per day.

...

37. The CPT's delegation carried out full follow-up visits to Daugavpils [p]rison and Rīga Central [p]rison (including the Prison Hospital) and a targeted follow-up visit to Jelgava [p]rison (Unit for life-sentenced prisoners), in order to review the measures taken by the Latvian authorities after the 2002 visit.

38. All establishments visited have already been described in paragraph 66 of the report on the 2002 visit. The general descriptions contained in that report still remain valid.

Daugavpils [p]rison had recently been formally transformed into a remand institution, although it was still accommodating sentenced prisoners as well. Its official capacity had been reduced from 800 to 543 places (including 43 juveniles). At the time of the 2004 visit, the establishment was accommodating 426 inmates, of whom 101 were sentenced and 314 on remand (including 29 juveniles)....

39. In its report on the 2002 visit, the CPT made a number of remarks and specific recommendations concerning the problem of overcrowding as well as legal standards for the provision of living space to prisoners in the Latvian prison system. In particular, the Committee recommended that the existing legal standards (i.e. 2.5 m² per person for male adult prisoners and 3 m² per person for female and juvenile prisoners) be increased as soon as possible, so as to guarantee at least 4 m² per prisoner in multi-occupancy cells.

Regrettably, in their response to the 2002 report, the Latvian authorities chose to evade rather than address the above-mentioned recommendations, laconically stating that, on the basis of the existing legal standards, none of the Latvian prisons were overcrowded.

40. The CPT must stress once again that the solution to the problem of overcrowding was to be found not so much in developing the prison estate but rather in reconsidering current law and practice in relation to remand detention as well as sentencing policies.

During the 2004 visit, it became apparent that there was still room for improvement, especially as regards the imposition of non-custodial sanctions and the duration of remand detention.

41. In the light of the above remarks, **the CPT reiterates its recommendations that**:

- the existing legal standards on living space for prisoners be raised without any further delay, so as to provide for at least 4 m² per prisoner in multiple-occupancy cells, and that official capacities and occupancy levels of cells in Latvian prisons be revised accordingly;

- that the Latvian authorities continue to pursue their efforts to bring about a permanent end to overcrowding; in this context, Committee of Ministers Recommendation No. R (99) 22 on prison overcrowding and prison population inflation should be taken into account.

...

60. ... [T]he material conditions at Daugavpils [p]rison ... remained very poor (state of repair, ventilation, etc.). [In that prison] metal shutters had still not been removed from all windows, and inmates were still not provided with basic personal hygiene products (including toilet paper). Further, in a number of cells ... toilets were not (adequately) partitioned. ...

61. Regrettably, no improvements had been made at Daugavpils [p]rison ... as regards regime activities offered to sentenced and remand prisoners. As for *sentenced* prisoners at Daugavpils, only a few worked in the kitchen or as maintenance workers, and only 16 (out of 101 inmates) were provided with vocational training (bricklaying and masonry). For all other sentenced inmates, out-of-cell activities other than outdoor exercise are limited to access to a gym, twice or three times per month, for one hour. In neither of the establishments were remand prisoners offered any out-of-cell activities apart from daily outdoor exercise...

...

71. The CPT welcomes the improvements made to the conditions of detention in the punishment cells at Daugavpils [p]rison ... However, it is seriously concerned by the total failure of the Latvian authorities to implement a number of urgent recommendations made by the CPT after the 1999 visit and repeated after the 2002 visit. Adult sentenced prisoners placed in disciplinary cells were still not provided with a mattress and blankets at night and (with the exception of TB patients) were not offered outdoor exercise.

The delegation addressed these points in an immediate observation, pursuant to Article 8, paragraph 5, of the Convention, at the end of the visit (see paragraph 8).

By letter of 21 October 2004, the Latvian authorities provided the following information:

> "The Prison Department has prepared amendments to the Latvian Penal Execution Code which lay down that in sleep hours bed accessories are distributed to convicts in isolation wards and submitted them for revision under the second reading of the said amendments in the Parliament. It is not possible to ensure walks for adult prisoners in isolation wards since the walking grounds are situated separately from the imprisonment premises. It is necessary to build more walking grounds but it depends on adequate funds."

In the CPT's view, the Latvian authorities' reasons for not yet having implemented these long-standing recommendations are indefensible. **The Committee calls upon**

the Latvian authorities to take immediate steps to ensure that all prisoners placed in disciplinary cells are given a mattress and blankets at night, and are offered one hour of outdoor exercise per day. In the present context, prisoners held in disciplinary cells should be escorted daily to existing outdoor exercise areas.

...

In the light of the delegation's findings, **steps should also be taken to ensure that all prisoners placed in punishment cells are allowed access to a wider range of reading matter (i.e. not only religious literature) at Daugavpils [p]rison.**

...”

B. Relevant domestic law

40. Article 92 of the Constitution (*Satversme*) provides, *inter alia*, that “any person whose rights are violated without justification has a right to commensurate compensation”. For the relevant part of the judgment of the Constitutional Court (*Satversmes tiesa*) of 5 December 2001 in case no. 2001-07-0103 see *Kornakovs v. Latvia*, no. 61005/00, § 54, 15 June 2006.

41. The relevant parts of the Law on the Prosecutor's Office (*Prokuratūras likums*) as applicable at the material time read as follows:

Section 6 – Independence of prosecutors

“(1) In their activities prosecutors shall be independent of the influence of any other institution or official exercising State authority or administrative power, and shall be bound only by the law.

(2) The Parliament, the Cabinet of Ministers, State and local government institutions, State and local government civil servants, all types of enterprises and organisations, as well as all individuals, are prohibited from interfering in the work of the Prosecutor's Office during the investigation of a case or during the performance of other functions of the Prosecutor's Office.

(3) Prosecutors' actions may be appealed against in the cases and in accordance with the procedures specified by this law and the relevant procedural laws. Complaints regarding matters within the sole competence of the Prosecutor's Office shall be submitted to the chief prosecutor of a Prosecutor's Office one level above or, with regard to the actions of a prosecutor of the Prosecutor General's Office, to the Prosecutor General. The decisions taken by the aforementioned officials shall be final.

(4) A higher-ranking prosecutor may take over any case file but may not compel a prosecutor to carry out actions contrary his or her convictions.

...”

Section 9 – Mandatory nature of prosecutors' orders

"(1) The lawful orders of a prosecutor shall be binding on all persons in the territory of the Republic of Latvia.

(2) Persons shall be held liable as specified by law for any failure to comply with the lawful requests of a prosecutor."

Section 15 – Supervision of the execution of a sentence of deprivation of liberty

"In accordance with the procedures prescribed by law, the prosecutor shall supervise the execution of sentences of deprivation of liberty applied by the courts and the places where persons arrested, detained or under guard are kept, and shall take part in court sittings relating to changes in the specified term of a sentence or of its conditions."

Section 16 – Protection of the rights and lawful interests of persons and the State

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

...

2. the rights and lawful interests of [*inter alia*] ...detainees ... have been violated.

(2) The prosecutor has a duty to take the measures required for the protection of the rights and lawful interests of persons and the State, if:

1. the Prosecutor General or a chief prosecutor recognises the need for an examination; ..."

Section 17 – Powers of prosecutors in examining applications

"(1) In examining applications in accordance with the law, prosecutors have the right:

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

2. to assign the heads and other officials of ... institutions and organisations to carry out examinations, audits and expert examinations and to submit opinions, as well as to provide the assistance of specialists in the examinations carried out by the prosecutor;

3. to invite persons [to come] and to receive from him/her an explanation on the breach of the law...

(2) When taking a decision on a breach of the law, prosecutors ...have a duty:

1. to warn that the breach of the law is not allowed;

2. to submit an objection or a request concerning the necessity of putting an end to the breach;

3. to bring an action before the court;

4. to initiate a criminal investigation; or

5. to initiate [proceedings concerning] administrative or disciplinary liability."

Section 20 – Application by the prosecutor

"...

(3) If the requirements of a prosecutor's request are not complied with or no reply is provided, the prosecutor is entitled to submit to a court or any other competent institution an application to have the person concerned held liable as prescribed by law."

42. The former Code of Criminal Procedure (*Kriminālprocesa kodekss*), in force at the material time and until 1 October 2005, gave prosecutors the right to open criminal investigations. Under section 112, paragraph 3 a refusal by a prosecutor to institute a criminal investigation could be appealed against to a higher-ranking prosecutor.

43. Section 130 of the Criminal Law (*Krimināllikums*) reads as follows:

Section 130 – Intentional minor bodily injury

"(1) A person who intentionally inflicts bodily injury [on another person] without causing damage to health or a general ongoing loss of ability to work (minor bodily injury), or who intentionally [subjects another person] to beating, without causing the above-mentioned consequences

shall be liable to short-term imprisonment, community service or a fine not exceeding ten times the minimum monthly wage.

(2) A person who intentionally inflicts minor bodily injury [on another person] causing temporary damage to health or an insignificant general ongoing loss of ability to work

shall be liable to deprivation of liberty for a term not exceeding one year, short-term imprisonment, community service or a fine not exceeding twenty times the minimum monthly wage.

(3) A person who [subjects another person to] systematic beating amounting to torture, or any other kind of torture, provided these acts do not produce the consequences provided for in sections 125 and 126 of this Law

shall be liable to deprivation of liberty for a term not exceeding three years, short-term imprisonment, community service or a fine not exceeding sixty times the minimum monthly wage."

44. According to section 111, paragraph 2 of the Code of Criminal Procedure, the aforementioned offence fell into the category of private prosecution cases, which had to be brought by the individual concerned directly before the competent court. The statutory limitation period for this offence was six months (section 56, paragraph 1 of the Criminal Law).

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE OUT THE APPLICATION UNDER ARTICLE 37 OF THE CONVENTION

45. On 4 February 2009 the Government made the following unilateral declaration:

> "The Government of the Republic of Latvia (hereinafter – the Government) represented by [their] Agent Inga Reine admit that *Igor Bazjak's* (hereinafter – the applicant) conditions of imprisonment in the Daugavpils prison, lack of effective investigation, procedure for imposing disciplinary punishments, as well as lack of effective remedies did not meet the standards enshrined in Article 3 and Article 13 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.
>
> Taking into account that the parties have failed to reach a friendly settlement in the present case, the Government declare that they offer to pay *ex gratia* [5,000] euros to the applicant ([3,515 Latvian lati]), 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[*Bazjaks v. Latvia* (application no. 71572/01).
>
> The Government undertake to pay the above compensation within three months from the date of notification decision (judgment) taken by the Court pursuant to Article 37 [§ 1] of the Convention. In the event of failure to pay this sum within the said [three-month] period, the Government undertake to pay simple interest on it, as established in the decision (judgment) by the Court. The above sum shall be transferred to the bank account indicated by the applicant.
>
> This payment will constitute the final resolution of the case."

46. The Court observes, as it has previously stated (see *Tahsin Acar v. Turkey* (preliminary issue) [GC], no. 26307/95, §§ 74-77, ECHR 2003-VI), that a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings and, on the other, unilateral declarations – such as the present declaration – 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 submitted outside the framework of 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 *Melnic v. Moldova*, no. 6923/03, § 22, 14 November 2006).

47. The Court considers that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government. It will, however, depend on the particular circumstances 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 (Article 37 § 1 *in fine*; see also *Tahsin Acar*, cited above, § 75; *Seleckis v. Latvia*, no. 41486/04, § 21, 2 March 2010; and the case-law cited therein).

48. Relevant factors in this regard include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, 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. It may also be material whether the facts are in dispute between the parties, and, if so, to what extent, and what *prima facie* evidentiary value is to be attributed to the parties' submissions on the facts. In that connection it will be of significance whether the Court itself has already taken evidence in the case for the purposes of establishing disputed facts. Other relevant factors may include the question of whether in their unilateral declaration the respondent Government have made any admissions in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant.

49. The foregoing list is not intended to be exhaustive. Depending on the particular circumstances of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 (c) of the Convention (see *Melnic*, cited above, §§ 24 and 25).

50. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court observes that the Government conceded that there had been violations of Articles 3 and 13 of the Convention on the following four accounts: the conditions of imprisonment in Daugavpils prison, the lack of an effective investigation, the procedure for imposing disciplinary punishments and the lack of effective domestic remedies. They offered to pay the applicant *ex gratia* 5,000 euros covering pecuniary and non-pecuniary damage, costs and expenses.

51. The Court cannot fully ascertain the scope of the complaints covered by the unilateral declaration. On the one hand, it is sufficiently clear that the Government admitted that the conditions of detention in Daugavpils prison were in breach of Article 3 of the Convention. On the other hand, it is unclear in relation to which events complained of by the applicant the Government admitted to not having complied with the obligation to ensure

an effective investigation under Article 3 and effective remedies under Article 13 of the Convention. Nor is it clear whether the Government conceded that all disciplinary penalties were in breach of Article 3 of the Convention.

52. The Court observes furthermore that the Government's unilateral declaration contained an indication that they were offering to pay the compensation *ex gratia*, that is without recognising any liability or, indeed, any legal obligation, a wording which in itself contradicts the Government's admission of several breaches of the Convention. Even though in some cases the Court has, on an exceptional basis, accepted unilateral declarations submitted by the respondent Government containing such contradictory wording (see, for example, *Urtāns v. Latvia* (dec.), no. 25623/04, § 16, 7 April 2009, and *Daģis v. Latvia* (dec.), no. 7843/02, § 41, 30 June 2009), it cannot do so in the present case for the following reasons. Firstly, the amount of compensation proposed by the respondent Government in the present case is substantially less than what the Court would award in similar cases. Secondly, as noted in the above paragraph, the Court cannot fully ascertain the scope of the unilateral declaration and, therefore, cannot evaluate whether or not the Government's admissions contained in that declaration are sufficient to find that respect for human rights does not require it to examine the case further. The Court has not ruled on the conditions of detention for convicted persons in Latvian prisons and, accordingly, such issues have not been previously determined. For that reason, the Court cannot ascertain the nature and scope of any measures taken by the Latvian Government in the context of execution of judgments concerning the conditions of detention. In so far as the Latvian Government's undertaking "to adopt all necessary measures in order to avoid similar infringements in future" is concerned (see paragraph 45 above), the Court therefore considers such an assurance to be of too general a character without specifying any concrete measures to be taken in order to avoid similar infringements in future.

53. On the facts and for the reasons set out above the Court finds that the Government failed to submit a statement offering 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.

54. This being so, the Court rejects the Government's request to strike the application out under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

55. The applicant raised numerous complaints under Article 3 of the Convention, which provides:

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

56. The Court will examine separately each of the applicant's complaints.

A. Admissibility

1. Alleged violations concerning ill-treatment during and after the applicant's arrest

57. The applicant claimed that he had been beaten by the police on his arrest on 2 June 1998 and in the course of police questioning, and that he had been ill-treated by a police officer on 26 November 1998. He further complained about the poor and unhygienic conditions in the cell at the Ventspils Police Department where he was held in custody.

58. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II; *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V; and, more recently, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 68, ECHR 2009-...). Thus, the complaint submitted to the Court must first have been made to the appropriate national authorities, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. Nevertheless, the obligation to exhaust domestic remedies only requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Dalia v. France*, 19 February 1998, § 38, *Reports* 1998-I).

59. Where no effective remedy is available to the applicant, the time-limit for bringing a case to the Court expires six months after the date of the acts or measures complained of, or after the date of knowledge of that act or its effect or prejudice on the applicant (see *Younger v. the United Kingdom* (dec.), no. 57420/00, ECHR 2003-I). It may even be appropriate for the purposes of Article 35 § 1 of the Convention to take the start of the six-month time-limit from the date when an applicant first became or ought to have become aware of the circumstances which rendered the remedy ineffective (see *Keenan v. the United Kingdom*, no. 27229/95, Commission

decision of 22 May 1998, unreported, and *Paul and Aubrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).

60. In the case of a continuing situation, the time-limit usually expires six months after the end of the situation concerned (see *Agrotexim Hellas S.A. and Others v. Greece*, no. 14807/89, Commission decision of 12 February 1992, Decisions and Reports (DR) 72, p. 148, and, more recently, *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, §§ 159 et seq., ECHR 2009-...). Similarly, in respect of a complaint about the absence of a remedy for a continuing situation the time-limit under Article 35 § 1 of the Convention also expires six months after the end of that situation – for example, when an applicant is released from custody in the case of a complaint about a period of detention (see *Ječius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX).

61. In the instant case the Court notes that the applicant submitted that he had complained about the alleged ill-treatment to various domestic authorities. He contended that he had brought the issue of the conditions of detention in the Ventspils Police Department to the attention of the domestic authorities. Without examining the applicant's use of domestic remedies or the effectiveness of any such remedies, the Court observes that the first alleged violation took place on 2 June 1998 (see paragraph 6 above). The second alleged violation took place on 26 November 1998 (see paragraph 11 above). Finally, the third alleged violation was a continuing situation which ended on 6 June 1999 with the applicant's transfer to Jelgava prison (see paragraph 16 above). The Court observes that the application was lodged with the Court in 2001, that is, more than six months later.

62. It follows that these complaints were introduced out of time and must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

2. *Alleged violations concerning ill-treatment in Jelgava prison*

63. The applicant complained of two distinct violations of Article 3 of the Convention by prison staff while he was in Jelgava prison. First of all, he claimed to have been subjected to various unlawful disciplinary penalties; he particularly emphasised the illegal and unjust character of the last of these, imposed on 18 July 2000. Secondly, he complained of a brutal assault by prison guards which, according to him, took place on an unspecified date at the end of 2000 while he was again placed in a disciplinary cell. He claimed to have suffered serious injuries as a result and alleged that no adequate medical treatment had been provided to him. Finally, he alleged that there had been no effective investigation into his allegations of ill-treatment.

(a) The parties' submissions

64. Concerning the first of these allegations, the Government raised a preliminary objection of failure to exhaust domestic remedies as required by Article 35 § 1 of the Convention. They recognised that on 7 November 2000 the applicant had indeed complained to the Specialised Public Prosecutor's Office about the unlawfulness of the most recent punishment imposed on him on 18 July 2000 and that on 24 November 2000 the competent prosecutor had dismissed his complaint. However, he had failed to appeal against this decision to a higher-ranking prosecutor under section 6, paragraph 3 of the Law on the Prosecutor's Office.

65. In any case, the Government claimed that the impugned disciplinary penalty was an appropriate and proportionate response to the applicant's rude, aggressive and threatening behaviour; moreover, he himself had eventually recognised that he had been out of control. Consequently, there was nothing to suggest a possible violation of Article 3 of the Convention.

66. As to the second allegation, the Government expressed strong doubts as to the truthfulness of the applicant's statements. According to them, those statements were unproven and should be dismissed as unsubstantiated. First of all, the Government noted that the applicant was unable to recollect the date of the alleged beating, despite being very precise with regard to all the other facts mentioned in his application. Secondly, no such beating could have occurred at the time and in the circumstances described by the applicant, since it was clear from his personal file that his last disciplinary punishment in Jelgava prison had been imposed on 18 July 2000 and that he had left that prison on 22 November 2000. In other words, he could not have been "beaten in a disciplinary cell at the end of 2000". The Government submitted documents to the effect that within a two-month interval, in October and November 2000, the applicant had filed thirteen complaints with the Prosecutor's Office; however, allegedly none of them ever mentioned such episode of ill-treatment as described by the applicant. The Government wondered "why the applicant could submit so many complaints in a very short period of time about issues of a minor importance but did not complain... about the above-mentioned abuses to his health". Likewise, the last complaint concerning alleged shortcomings in the applicant's medical treatment in Jelgava had been submitted to the Prison Administration in July 1999, and he had never raised similar issues again. The Government concluded that this particular complaint should be rejected for lack of evidence, since it did not correspond to the truth.

67. Finally, the Government submitted two reports drawn up, respectively, by the governors of Jelgava and Daugavpils prisons in 2000 and 2001, which contained a very negative assessment of the applicant. The latter was described as a devious and deceitful person, immune to all educative efforts, with a strong tendency towards breaking prison rules,

exercising a negative influence over other detainees and filing numerous unsubstantiated complaints.

68. The applicant submitted in his reply to the Government that the domestic remedies were not effective. He considered them inaccessible to prisoners and inadequate. He alleged that not all complaints written by prisoners were entered in the records of Jelgava prison and thus not all of them were forwarded to the competent domestic authorities.

69. In any case, in the applicant's opinion the case file contained enough evidence in support of his allegations. He clarified his allegations concerning two separate violations of Article 3 of the Convention. He maintained his first allegation that the disciplinary penalties imposed on him, and in particular the one imposed on 18 July 2000, had been unjust and he added that excessive force had been used against him by prison guards in Jelgava prison around that date. With regard to the second allegation, he could not recall the specific date of the assault by prison guards at the end of 2000; instead, he alleged that it had taken place in the Central Prison Hospital in Rīga and not in Jelgava prison as he had submitted previously.

(b) The Court's assessment

70. The Court notes at the outset that in his reply to the Government's observations the applicant introduced a new complaint about the use of force in Jelgava prison around 18 July 2000 in essence under Article 3 of the Convention. As it has decided in previous cases, the Court need not rule on complaints raised after communication of an application to the Government (see *Ruža v. Latvia* (dec.), no. 33798/05, §§ 30-31, 11 May 2010 and the case-law cited therein).

71. With regard to the first part of the applicant's complaint about disciplinary penalties, the Court does not consider it necessary to reach any conclusion as to whether or not the applicant exhausted domestic remedies and whether or not such domestic remedies were effective, since this part of the applicant's complaint is inadmissible in any event for being manifestly ill-founded.

72. The Court notes that there is nothing in the case-file to suggest that the disciplinary penalties imposed on the applicant in Jelgava prison have been arbitrary. As regards the last of them – solitary confinement of fifteen days – the Court notes that imposition of such a penalty in itself is not a breach of Article 3 of the Convention. The applicant has presented no medical record or other evidence showing that he suffered any pain or distress as a result of those disciplinary penalties beyond the inevitable element of suffering or humiliation connected with legitimate forms of treatment or punishment, such as disciplinary sanctions against prisoners to secure good order in prisons (see *Valašinas v. Lithuania*, no. 44558/98, § 121, ECHR 2001-VIII). The Court considers, therefore, that the

disciplinary penalties at issue did not attain the level of severity amounting to treatment contrary to Article 3 of the Convention.

73. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

74. Turning to the second part of the applicant's complaint concerning the assault by prison guards, the Court reiterates that in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

75. The Court is sensitive to the subsidiary nature of its task and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom*, no. 28883/95, ECHR 2001-III). Nonetheless, where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis, Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar*, cited above, § 283).

76. The Court notes that there are two main elements in the instant case which cast doubt on the applicant's submission that he suffered treatment prohibited by Article 3 at the end of 2000. Firstly, the Court notes that the applicant has not been consistent in his allegations of ill-treatment. When introducing his complaint to the Court, he first alleged that he had been severely beaten by prison guards in Jelgava prison (see paragraph 23 above). Replying to the Government's observations, he alleged that he had in fact been beaten in the Central Prison Hospital in Rīga (see paragraph 69 above). In neither set of submissions did he specify the date of the alleged events. Secondly, the medical synopsis submitted by the applicant did not mention traces of ill-treatment on the applicant's body, contrary to his submissions (see paragraph 23 above). The Court is aware of the lack of detail in that medical record. Nevertheless, it notes that there is no material in the case file which could call into question the content of that record or add probative weight to the applicant's allegations (see *Sevgin and İnce v. Turkey*, no. 46262/99, § 57, 20 September 2005).

77. In conclusion, the evidence before it does not enable the Court to find beyond all reasonable doubt that the applicant was subjected to ill-treatment at the end of 2000 in the circumstances described by him.

78. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

79. Finally, with regard to effective investigation of the applicant's complaints about ill-treatment, the Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). In the present case the Court has concluded that the disciplinary penalties imposed on the applicant in Jelgava prison did not reach the level of severity required for Article 3 to apply (see paragraphs 72-73 above) and that the applicant's allegations of ill-treatment at the end of 2000 were unsubstantiated (see paragraphs 76-78 above). In such circumstances it cannot be said that the Latvian authorities were under a positive obligation to conduct an effective investigation into the applicant's allegations (see, by contrast, *Arat v. Turkey*, no. 10309/03, § 42, 10 November 2009, where such an obligation was incumbent on the Turkish authorities due to a reasonable suspicion that the applicant's injuries documented by evidence in that case might have been caused by an excessive use of force). Accordingly, also this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

3. *Alleged violations concerning the conditions of detention in Daugavpils prison*

80. The applicant complained, first of all, that the conditions in which he had been held in Daugavpils prison amounted to inhuman and degrading treatment. He then identified, secondly and thirdly, two successive periods when, according to him, Article 3 had been violated on account of particularly bad conditions of detention:

- in the special segregation unit where he was held between 8 November and 21 December 2001 and where he was allegedly subjected to abuse by prison staff (see paragraph 28 above), and

- in disciplinary cells nos. 22 and 14, where he was held between 21 December 2001 and 25 January 2002. In support of his allegations he submitted that, owing to the conditions of his detention, his health had been severely damaged. He also considered that the disciplinary penalties imposed on him were unlawful. Finally, he submitted that the orders to strip naked had humiliated him physically as well as mentally.

(a) The parties' submissions

81. The Government submitted that the applicant had failed to exhaust domestic remedies. Firstly, he could have submitted the relevant complaints

to the Prosecutor's Office, which was expressly designated by the law to supervise prisons and protect the rights of detained persons. Taking into account the fact that the Law on the Prosecutor's Office granted prosecutors extensive powers to deal with complaints brought, *inter alia*, by detainees, and that it guaranteed prosecutors' independence and made their orders binding on State authorities (see paragraph 41 above), such complaints constituted an effective remedy to be exhausted within the meaning of Article 35 § 1 of the Convention. Therefore, the Government considered the domestic remedies under sections 6, 9, 15, 16, 17 and 20 of that Law to be effective and accessible and to offer reasonable prospects of success. The same applied to the applicant's assertion that he had been obliged to strip naked every day and that the medical treatment provided to him had been unsatisfactory. Secondly, nothing prevented the applicant from initiating a private prosecution for minor bodily injuries under section 130 of the Criminal Law, by filing a complaint with the competent court (see paragraphs 43-44 above).

82. According to the Government, during the applicant's stay in Daugavpils the last complaint lodged by him had been on 26 March 2001; it had been filed with the Inspector General of the Ministry of Justice and related only to restrictions on receiving food parcels from relatives. At the same time, in their written observations, the Government made the following statement:

> "56. ...[I]n 2001 [a] prosecutor examined the medical record of the applicant in Daugavpils prison and concluded that there was no evidence [to indicate] that the applicant had recourse to the Medical Department of [that] prison with the signs of ill-treatment. Furthermore, the prosecutor noted that the facts of discrimination against the applicant were not established and he [was being kept in] the same conditions of detention as other convicts. The prosecutor concluded that there was no information evidencing the intentional abuse of the official position by the personnel of Daugavpils prison and there were no [complaints] received by the Prosecutor's Office from the applicant."

83. In support of that statement the Government submitted an information note drafted by a prosecutor of the Specialised Public Prosecutor's Office on an unspecified date in 2001. In the upper right-hand corner of the document the words "mid-June 2001" appear. The note reads as follows:

> "The examination of [the applicant's] medical record in Daugavpils prison did not reveal any indication that he had reported to the Medical Department of the prison with signs of ill-treatment.
>
> Currently, more than 800 convicted persons and detainees are held in the prison; however, the normal [capacity] is 500. While this leads to non-compliance with the rules on minimum standards for prisoners, the situation is not attributable to the prison administration.

> No signs of discrimination against [the applicant] have been established; he is being held under the same conditions as any other prisoner.
>
> No signs of abuse of power on the part of the prison administration in Daugavpils have been found.
>
> The Daugavpils Division of the Specialised Public Prosecutor's Office did not receive any requests from [the applicant].”

84. The applicant submitted that the domestic remedies were not effective. He considered them inaccessible to prisoners and inadequate. He argued that recourse to a prosecutor could not be considered as an effective remedy. In his view, the Government's submissions were evidence of the ineffectiveness of examination by a prosecutor.

(b) The Court's assessment

85. The Court reiterates that there is no obligation under Article 35 § 1 of the Convention to have recourse to remedies which are inadequate or ineffective. In addition, according to the “generally recognised rules of international law”, to which Article 35 of the Convention makes reference, there may be special circumstances which absolve the applicant from the obligation to exhaust domestic remedies at his disposal (see, among many other authorities, *Aksoy v. Turkey*, 18 December 1996, § 52, *Reports* 1996-VI). It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports* 1996-IV, and *Menteş and Others v. Turkey*, 28 November 1997, § 57, *Reports* 1997-VIII).

(i) Conditions of the applicant's detention in Daugavpils prison

86. The Court notes that the parties hold contradicting views with regard to exhaustion of domestic remedies. However, even in such circumstances the Government have to show that a particular domestic remedy, on which they base their non-exhaustion argument, is an effective one, available in theory and in practice at the relevant time.

87. The Court notes that the decisive question in assessing the effectiveness of a remedy concerning a complaint of conditions of detention is whether the applicant can raise this complaint before domestic authorities in order to obtain direct and timely redress, and not merely an indirect

protection of the rights guaranteed by Article 3 of the Convention. The remedy can be both preventive and compensatory in instances where persons complain about the conditions of detention (see *Melnik v. Ukraine*, no. 72286/01, § 68, 28 March 2006).

88. Concerning the applicant's alleged failure to complain to the prosecution authorities, which the Government contended was an effective remedy, the Court notes that the applicant's complaint concerns conditions of detention in one of the State's penitentiary institutions. Since its first visit in 1999 the CPT has been deeply concerned about the general conditions in prisons in Latvia. They have subsequently reiterated and specified various problems, including the problem of high occupancy levels in cells and overcrowding (see paragraph 37 above). Even more, as it appears from the case materials and in so far as the applicant is concerned – the Latvian prosecution authorities were aware of his situation in Daugavpils prison and, in particular, the problem of overpopulation and non-compliance with the minimum standards at the material time (see paragraph 83 above). Yet, the Government did not provide any material that would show that the prosecution authorities had exercised their powers under the Law on the Prosecutor's Office, which according to the Government were quite extensive, in so far as the applicant was concerned despite their apparent knowledge of the situation.

89. Irrespective of the reason for which a prosecutor of the Specialised Public Prosecutor's Office prepared the information note in 2001 (see paragraph 83 above), be it in reply to a request by the applicant or for any other reason, the Court notes that he expressly acknowledged the fact that Daugavpils prison had held more prisoners that its designed capacity allowed and that it had led to non-compliance with the rules on minimum standards for prisoners but that all prisoners, including the applicant, were kept in those conditions and thus the applicant had not been discriminated. In such circumstances the Court concludes that the proposed remedy was not effective.

90. Furthermore, even assuming that, following the applicant's complaint, a prosecutor would have been able to ensure his transfer to a different penitentiary institution or otherwise put an end to the situation of him being kept in detention under the conditions contrary to Article 3 of the Convention and would have provided further preventive redress, the Government have not shown that the applicant had at his disposal a possibility to seek compensatory redress (see paragraph 133 below).

91. As concerns an application to initiate a private prosecution for minor bodily injuries, the Court does not consider that it was capable of providing any redress to the applicant in relation to the complaint about the conditions of his detention in that prison.

92. In view of the above, the Court finds that this part of the application cannot be rejected for failure to exhaust domestic remedies.

93. The Court considers that this part of the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(ii) Conditions of detention in the special segregation unit

94. Even if the experience shows that the material conditions in segregation or disciplinary cells are generally below the overall standard of the conditions of detention in prisons, the Court observes that the only account of the conditions of detention in the special segregation unit is that furnished by the applicant. Although his account appears to be clear and concordant, it is not corroborated by any other evidence. The relevant CPT report does not provide any further details on the conditions in the special segregation unit as distinct from the conditions of detention (analysed below in paragraphs 107 to 119). It does not appear from the applicant's submissions that he was kept in the quarantine unit designed for newly arrived, sick or vulnerable persons, described by the CPT in the report on its 2002 visit as having humid and cold cells offering no access to natural light. Nor is the applicant's account corroborated by written statements from any other persons, for example his cellmates. Accordingly, the Court cannot follow the approach taken in cases where there was more evidence attesting to the particular conditions of detention (see, for example, *Khudoyorov v. Russia*, no. 6847/02, §§ 113 et seq., ECHR 2005-X (extracts), where the applicant's account was corroborated by written statements from his cellmates, and *Fedotov v. Russia*, no. 5140/02, §§ 67 et seq., 25 October 2005, where the applicant's description coincided with the findings of the CPT).

95. As far as the applicant's allegations about abuse by prison staff in the special segregation unit are concerned, the Court points out that the prosecutor's conclusion that there were no signs of ill-treatment appears to have been made in June 2001 (see paragraph 83 above), that is, before the applicant's placement in the special segregation unit on 8 November 2001, and, accordingly, is of no relevance in deciding whether the applicant suffered any ill-treatment in that unit. However, the Court observes that there is no evidence in the case file that would corroborate the applicant's allegations of abuse or, indeed, ill-treatment on the part of prison staff in that unit. The medical synopsis submitted by the applicant did not mention traces of abuse or ill-treatment on the applicant's body. Therefore, the evidence before it does not enable the Court to conclude beyond all reasonable doubt that the conditions of the applicant's detention or his treatment in the special segregation unit were contrary to Article 3 of the Convention.

96. It follows that this part of the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(iii) Conditions of detention in disciplinary cells nos. 22 and 14

97. The Court observes that, again, the only evidence before it is the applicant's account of the conditions of detention in disciplinary cells nos. 22 and 14. While his account appears to be clear and concordant, it has not been corroborated by any other evidence. The relevant CPT report does not provide any further details on the conditions in the disciplinary cells as distinct from the conditions of detention (analysed below in paragraphs 107 to 119), apart from the lack of mattresses and blankets in the disciplinary cells. The remainder of the applicant's submissions in this regard stand alone with no other proof. There is no evidence that daily full body searches were performed on the applicant (compare the CPT's findings as regards life-sentenced prisoners quoted in *Savičs v. Latvia* (dec.), no. 17892/03, 11 May 2010). Nor is there any evidence of a lack of adequate medical care or of traces of injuries on the applicant's body sustained while he was being kept in those disciplinary cells. Furthermore, there is nothing in the case-file to suggest that the disciplinary penalties imposed on the applicant in Daugavpils prison have been arbitrary. Therefore, the evidence before it does not enable the Court to conclude beyond all reasonable doubt that the conditions of the applicant's detention or his treatment in disciplinary cells nos. 22 and 14 were contrary to Article 3 of the Convention.

98. It follows that this part of the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. Alleged violation concerning the medical assistance in Grīva prison

99. The applicant expressed his dissatisfaction with the medical assistance provided to him in Grīva prison but did not substantiate his allegations or provide relevant or, indeed, any documents in support of his claims.

100. The Court observes that before the applicant's transfer to Grīva prison he appears to have been treated for tuberculosis in the Central Prison Hospital in Rīga. There is nothing in the case file to suggest that the follow-up to that treatment in Grīva prison was not provided in an adequate manner.

101. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

1. The parties' submissions

102. The Government agreed that the conditions of detention in Daugavpils prison were not ideal, but submitted that they did not reach the level of severity required for the threshold established for Article 3 to apply. In support of this argument, the Government provided a copy of a one-and-a-half page report drawn up by the Prison Administration following a general inspection of Daugavpils prison in May 2000. The relevant parts of this report read as follows:

> "The administration [of Daugavpils prison] has made efforts to improve the everyday conditions of detainees. The utmost attention has been paid to the improvement of the prison site, the cells and the auxiliary premises. The sanitary condition of the establishment's fittings is generally satisfactory; however, detainees keep too many personal items in their cells.
>
> The detainees have access to a chapel and a library in their free time. Owing to the support of the Soros foundation in Latvia, convicted prisoners may follow a Latvian language course.
>
> The prison personnel are receiving professional training, the schedule and content of which are confirmed by an order of the prison governor. The operational duties of each employee have been drawn up and approved. Attention is paid to the recreational opportunities for employees in the form of an equipped gym and a common room.
>
> ...
>
> The meeting area of the prison, the cell furniture and the maintenance facilities are morally and physically obsolete, and it is necessary to replace them..."

The Government pointed out, referring to the report, that Daugavpils prison had "special premises for the prison library, oratory, sport field and rest room" and that courses in Latvian were available to the prisoners.

103. They further submitted that there was no evidence of intimidating body searches having taken place in the corridor and that the applicant had not been ordered to strip naked. In support of their submission, they relied on the prosecutor's note quoted above (see paragraph 83 above) and asserted that the applicant had not been abused by prison staff. Finally, they stated that "there [were] no solitary confinements or any other special cells for those who have announced hunger strike in Daugavpils prison."

104. The applicant disagreed. First of all, he alleged that the general inspection of Daugavpils prison carried out by the Prison Administration in 2000 had not been impartial. Further, he had contracted tuberculosis owing to the conditions of detention. He had also felt helpless and humiliated because of the conditions of his detention and the conditions in the

disciplinary cells. Finally, he maintained that he had been put in a disciplinary cell for having announced a hunger strike.

2. *The Court's assessment*

(a) General principles enshrined in the case-law

105. As the Court has held on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita*, cited above, § 119). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI, and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III).

106. Furthermore, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, § 94, and *Valašinas v. Lithuania*, cited above, § 102). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI; and *Ostrovar v. Moldova*, no. 35207/03, § 80, 13 September 2005). The duration of detention is also a relevant factor.

(b) Application in the present case

107. The applicant complained about the conditions in which he was held in Daugavpils prison between 11 January 2001 and 26 January 2002, that is, for one year and fifteen days. The findings of the CPT, in particular in the report on its 2002 visit (see paragraph 37 above), provide at least to some degree a reliable basis for the assessment of the conditions in which the applicant was imprisoned (see, for another example of the Court's taking into account the reports of the CPT, *Kehayov v. Bulgaria*, no. 41035/98, § 66, 18 January 2005). While the Court does not discount the fact that the applicant's stay in Daugavpils prison ended in January 2002, that is, prior to

the CPT's visit in September 2002, it is unlikely that the situation changed much between those two dates.

108. The Court observes from the outset that the parties appear to be in agreement about the poor state of affairs in Daugavpils prison at the material time. Furthermore, the CPT describes the prison as being in a "poor state of repair" in 2002 and "very poor" in 2004. The Government have not denied or commented upon the applicant's allegations with regard to the conditions of his detention. The parties hold divergent views only in relation to whether or not these conditions attained the threshold of the "minimum level of severity" required to fall within the scope of Article 3 of the Convention. The Court is thus required, firstly, to establish the conditions of the applicant's detention in Daugavpils prison at the material time and, secondly, to analyse whether they reached the level of severity required for Article 3 of the Convention.

109. Even though the Government did not explicitly address this issue in their written observations, they did not deny that the prison was overpopulated. What is more, together with their written observations they submitted a document in which a prosecutor concluded that at the material time Daugavpils prison had been overpopulated by more than fifty per cent in relation to its design capacity and that this had led to non-compliance with the minimum standards (see paragraph 83 above).

110. The overpopulation of Daugavpils prison is further evidenced by findings of the CPT. The CPT observed in the report on its 2002 visit that cells were frequently overcrowded in that prison (see, for a similar reference to the CPT's observations on frequent overcrowding, *Alver v. Estonia*, no. 64812/01, § 52, 8 November 2005), and that shortly before its visit in September 2002 the occupancy levels in cells had even been significantly higher. The Court is aware of the observation contained in the CPT's report to the effect that the capacity of Daugavpils prison had been increased from 543 to 800 places; however, that observation contradicts the information submitted by the Government to the Court (see paragraph 83 above) and to the CPT itself (see paragraph 38 above), according to which the capacity of the prison was 500-543 places. The Court finds it sufficient to note that, according to the evidence before it, in June 2001 and thereafter, that is, at the time when the applicant was held in Daugavpils prison, the prison had a capacity of 500-543 places and held 800 people. The Court therefore finds it established to the standard of proof required under Article 3 of the Convention that Daugavpils prison was severely overcrowded beyond its design capacity at the material time. Such overcrowding in itself raises an issue under Article 3 of the Convention (see *Karalevičius v. Lithuania*, no. 53254/99, §§ 36-38, 7 April 2005). The Court points out that it already considered, in a case concerning the conditions in a short-term detention facility in Liepāja, that overpopulation to such an extent that four to five detainees were placed in a cell measuring 6 sq. m, of which 3.5 sq. m were

taken up by a sleeping platform, in itself raised an issue under Article 3 of the Convention (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 52, 4 May 2006).

111. Irrespective of the reasons for overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

112. As regards the personal space afforded to the applicant, even though the parties have not furnished any evidence on the measurements of the cells and the number of inmates held there together with the applicant, the Court observes that at the material time the domestic legal standard for the living space was 2.5 sq. m for male adult prisoners and that, according to the CPT, this does not offer a satisfactory amount of living space. It is inconceivable that the applicant could have been afforded more than 2.5 sq. m of personal space in Daugavpils prison in the context of severe overcrowding. The Court finds it difficult to believe that even that amount of personal space could have been afforded to a prisoner in a severely overcrowded prison. However, since the Court does not have any evidence to the contrary, it will proceed on the assumption that during the applicant's stay in Daugavpils prison he was afforded not more than 2.5 sq. m of personal space.

113. The Court reiterates that it has frequently found a violation of Article 3 of the Convention on account of a lack of personal space for detainees (see, among many other cases, *Mayzit v. Russia*, no. 63378/00, §§ 39-43, 20 January 2005; *Kantyrev v. Russia*, no. 37213/02, §§ 50-54, 21 June 2007; and *Lind v. Russia*, no. 25664/05, §§ 59-63, 6 December 2007). In this connection the Court recalls that in the *Peers* case even a cell for two inmates measuring 7 sq. m was taken as a relevant aspect in finding a violation of Article 3, in circumstances in which the space factor was coupled with an established lack of ventilation and lighting (see *Peers*, cited above, §§ 70-72).

114. The Court further finds, relying on the relevant CPT report, that the applicant was offered hardly any out-of-cell activity and that the only available outdoor activity was confined to a small concrete cubicle covered with a metal grille, which did not provide enough space for physical exercise. While it stems from the Government's submissions that prisoners had access to a library, a chapel, a gym and a common room, the internal report on which they relied in support of their submission did not fully corroborate it. According to the report (see paragraph 102 above), prisoners had access only to a chapel and a library, whereas the gym and common room were reserved for prison staff. The CPT's reports do not disclose any possibility for prisoners to visit a gym before 2004 and, accordingly, the Court is not convinced that in 2001 the applicant had such an out-of-cell

activity available to him. The Court regrets to note that the only activity with a rehabilitative purpose organised for prisoners at that time appears to have been a Latvian language course, and even that was discontinued in 2002.

115. The Court finds that the lack of space in the cells, combined with the limited freedom of movement outside the cells and the length of the period during which the applicant was subjected to these conditions, weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions reached the level of severity required in order to come within the scope of Article 3 of the Convention (see *Karalevičius*, cited above, §§ 36-39 and the case-law cited therein).

116. The Court observes that the applicant's situation resulting from the overcrowding in Daugavpils prison and the lack of sufficient personal space was further exacerbated by the poor hygiene conditions and, in particular, the fact that the applicant did not receive any personal hygiene products such as soap, toothbrush or toilet paper. The Court considers that the absence of an adequate supply of such items may raise an issue under Article 3 of the Convention (see, for example, *Valašinas*, cited above, § 104). Unlike in *Valašinas*, in the present case the Court has sufficient evidence before it to establish that the applicant was deprived of such items in practice (see paragraph 37 above). Moreover, the ventilation system did not ensure enough fresh air in the cells and in some cells the access to natural light was hampered by the metal plates that covered the windows (see, for similar reasoning, *Kadiķis*, cited above, § 53; *Aleksandr Makarov v. Russia*, no. 15217/07, § 96, 12 March 2009; and *Shilbergs v. Russia*, no. 20075/03, § 97, 17 December 2009). In addition, the Court observes that the applicant appears to have been treated for tuberculosis in the Central Prison Hospital in Rīga shortly after being released from Daugavpils prison and before being placed in Grīva prison to continue serving his sentence. While it is not possible to conclude with a sufficient level of certainty and in the absence of any relevant medical records that the applicant was infected with tuberculosis while in Daugavpils prison, the Court considers this to be a characteristic element of the conditions of detention in that prison (see, for a similarly weighted argument, *Alver*, cited above, § 54 and, as regards the problem of tuberculosis, the CPT report of its 1999 visit to Latvia, paragraph 35 above).

117. Finally, the Court has regard to its case-law in which it has held that even though the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot exclude a finding of a violation of Article 3 of the Convention (see *Peers*, cited above, § 74, and *Kalashnikov*, cited above, § 101).

118. Having regard to the cumulative effect of those factors, the Court considers that the conditions of the applicant's detention as described above

were sufficient to cause distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

119. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Daugavpils prison.

III. ALLEGED VIOLATIONS OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH THE ARTICLE 3 COMPLAINTS

120. The applicant also alleged that he did not have at his disposal an effective domestic remedy by which to complain about his treatment during and after arrest (see paragraph 57 above), his treatment in Jelgava prison (see paragraph 63 above), the conditions of detention in Daugavpils prison and the specific conditions of detention in the segregation unit and disciplinary cells nos. 22 and 14 in that prison (see paragraph 80 above). Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

121. The Court refers to its findings in paragraphs 62, 73, 78, 96 and 98 above and reiterates that the applicant has made out an arguable claim under Article 3 within the six-month time-limit only in so far as the conditions of his detention in Daugavpils prison are concerned.

122. The Government submitted in that regard that the applicant had at his disposal three remedies, each of which was effective, accessible and offered reasonable prospects of success. First of all, the Government referred to a judgment of the Constitutional Court of 5 December 2001 in case no. 2001-07-0103, according to which Article 92 of the Constitution constituted by itself sufficient basis to claim compensation in the event of a violation of a person's rights. Secondly, the Government reiterated that every detainee had the possibility to complain to the competent prosecutor under the Law on the Prosecutor's Office. The supervision of prisons was one of the prosecutor's main tasks; the Prosecutor's Office in Latvia belonged to the judiciary, and a prosecutor's orders were mandatory in principle. Thus, the applicant could have availed himself of this procedure. Thirdly, section 130 of the Criminal Law provided for criminal liability for minor bodily injuries, and the applicant had the possibility of filing a criminal complaint with the competent court under section 111 of the

former Code of Criminal Procedure. The Government pointed out that the applicant had not availed himself of any of those remedies.

123. The Government concluded that at the relevant time the applicant had had real and effective domestic remedies at his disposal, and that his complaint was manifestly ill-founded or, alternatively, that Article 13 of the Convention had been complied with.

124. The applicant disagreed.

125. The Court observes that the Government's arguments relate to the merits of this complaint and considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

126. As regards the remainder of the applicant's complaints under this Article, they must be dismissed in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

127. As the Court has held on many occasions, Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, amongst many other authorities, *Kudła*, cited above, § 157), although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (see *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII).

128. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must 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 respondent State (see *İlhan*, cited above, § 97).

129. The "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61).

130. There is a close affinity between Articles 13 and 35 § 1 of the Convention (see, for example, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The requirement of exhaustion of domestic remedies contained in the latter is based on the assumption that there exists an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła*, cited above, § 152). In other words, the notion of "effectiveness" is essentially the same in both provisions (see *Kadiķis*, cited above, § 59).

131. Further, the Court has held that the compensation for non-pecuniary damage should as a matter of principle be available as part of the range of possible remedies for a breach of Articles 2 and 3, which rank as the most fundamental provisions of the Convention (see, as concerns a violation of Article 3 on account of lack of adequate medical care of a prisoner, *Keenan v. the United Kingdom*, no. 27229/95, § 130, ECHR 2001-III; and, as concerns a violation of Article 2 on account of State's failure to intervene to safeguard the lives of the applicant's children *Kontrová v. Slovakia*, no. 7510/04, § 64, ECHR 2007-VI (extracts)). The Court has also ruled that an effective remedy within the meaning of Article 35 § 1 of the Convention for complaints about the conditions of detention can be both preventive and compensatory (see *Melnik*, cited above, § 68).

132. In the present case the Court notes that it was not suggested that any remedies were available to the applicant other than the three avenues of complaint consisting in an application to a court of general jurisdiction to claim compensation on the basis of Article 92 of the Constitution, an application to a prosecutor to exercise his powers under the Law on Prosecutor's Office and an application to a court to initiate a private prosecution for minor bodily injuries.

133. As regards the first of those remedies, the Government quoted the relevant provision of the Constitution, as interpreted by the Constitutional Court, and submitted that by invoking that provision the applicant could, in principle, apply to a court of general jurisdiction to claim compensation for any damage incurred. The Government have not demonstrated that this remedy was effective and available to the applicant in theory and practice (see, *mutatis mutandis*, *McFarlane v. Ireland* [GC], no. 31333/06, § 114, 10 September 2010) since they have not provided any examples of cases where domestic courts of general jurisdiction had admitted and examined similar claims concerning prisoners' conditions of detention at the material time. The Court reiterates that it is not for the Convention bodies to cure of their own motion any shortcomings or lack of precision in the respondent Government's arguments (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 35, Series A no. 301-B). Accordingly, the Court is not satisfied that such a remedy was effective in practice for the present purposes and could have afforded any compensatory redress to the applicant.

134. In relation to the second remedy proposed by the Government, the Court has already analysed its effectiveness in relation to the Government's preliminary objection of exhaustion of domestic remedies (see paragraph 88 et seq. above) and concluded that it was not effective in the circumstances of the present case. The Government did not provide any material that would show that the prosecution authorities had exercised their powers under the Law on the Prosecutor's Office, which according to the Government were quite extensive, in so far as the applicant was concerned despite their apparent knowledge of the situation. In addition, the Government did not provide any examples of domestic practice in which the Prosecutor's Office had examined a similar complaint and had offered any redress to individuals complaining about their conditions of detention at the material time (see *Kadiķis*, cited above, § 62 for a similar conclusion).

135. Finally, with regard to the third remedy proposed by the Government, the Court does not consider that an application to initiate a private prosecution for minor bodily injuries could constitute an effective remedy in respect of a prisoner's complaint about the conditions of his or her detention.

136. The Court finds that in the present case the Government have not shown that the applicant had at his disposal effective remedies with regard to the conditions of his detention in Daugavpils prison. The Government have failed to prove that the three venues of complaint under domestic law they invoke would have prevented a breach of the applicant's rights contained in Article 3 of the Convention, provided further preventive redress and offered compensatory redress.

137. The Court concludes, therefore, that there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law for the applicant's complaint in respect of the conditions of his detention in Daugavpils prison.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaints under Articles 5 and 6 of the Convention and under Article 2 of Protocol No. 7 to the Convention

138. Under Article 5 of the Convention, the applicant claimed that his arrest on 2 June 1998 had been unlawful in that he had not been informed of the reasons and had not been brought promptly before a judge. Under Article 6 of the Convention, he criticised the unfairness of the criminal proceedings against him, alleging that the courts had erred in their assessment of the facts and in the application of the law. He also complained that he had been deprived of his defence rights on account of the fact that following his arrest, between 2 June and 4 June 1998, he had

not been represented by defence counsel. Finally, under Article 2 of Protocol No. 7 to the Convention the applicant complained that his inability to obtain a judicial review of the final decision in his case was in breach of his right of appeal in criminal matters.

139. The Court notes that the applicant's arrest, his trial and his subsequent attempt to obtain a retrial after the final judgment had entered into force, took place in 1998 and 1999, that is, considerably more than six months before the application was lodged with the Court. It follows that these complaints were introduced out of time and must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Complaint under Article 14 of the Convention

140. The applicant complained under Article 14 of the Convention that he had been discriminated against in that he had not been able to submit his complaints to the State authorities in Russian, his mother tongue. He did not specify in relation to which Convention right he invoked this provision.

141. The Court reiterates that linguistic freedom as such is not amongst the rights and freedoms governed by the Convention, and that with the exception of the specific rights stated in Articles 5 § 2 and 6 § 3 (a) and (e), the Convention *per se* does not guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice (see *Mentzen v. Latvia* (dec.), no. 71074/01, ECHR 2004-XII). Moreover, it appears from the file in the present case that the authorities indeed examined the applicant's submissions and replied to him, despite the fact that his letters had been written in Russian and not in Latvian (see *Igors Dmitrijevs v. Latvia*, no. 61638/00, § 85, 30 November 2006).

142. It follows that this complaint is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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. Pecuniary damage

144. In respect of pecuniary damage the applicant claimed 1,000,000 euros (EUR) for the future medical expenses he considered to be necessary.

145. The Government submitted that the applicant's claim was purely hypothetical and speculative.

146. The Court, having regard to its findings concerning the applicant's complaints under Articles 3 and 13 of the Convention, considers that no causal link has been established between the damage alleged and the violations it has found (see *Kalashnikov*, cited above, § 139).

B. Non-pecuniary damage

147. The applicant claimed EUR 2,000,000 in respect of non-pecuniary damage for the suffering he had endured.

148. The Government submitted that the finding of a violation would constitute adequate compensation in the present case in view of the applicant's personality, his criminal record and his behaviour during imprisonment. Alternatively, they considered that any award should not exceed EUR 5,000, the amount awarded in the case of *Farbtuhs v. Latvia* (no. 4672/02, 2 December 2004), which they considered to be of a similar nature.

149. The Court considers that the finding of a violation does not provide sufficient just satisfaction in the circumstances of the present case. Taking into consideration all the relevant factors, including the period of time spent in the conditions of detention contrary to Article 3 of the Convention and the lack of an effective remedy in that regard, and taking the view that the circumstances of the *Farbtuhs* case were different, the Court, deciding on an equitable basis, awards the applicant EUR 11,700 in respect of non-pecuniary damage plus any tax that may be chargeable on that amount.

C. Costs and expenses

150. The applicant did not lodge any claim under this head.

D. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's request to strike the application out of its list of cases;

2. *Declares* the applicant's complaints under Article 3 of the Convention concerning the conditions of his detention in Daugavpils prison and under Article 13 in that regard admissible;

3. *Declares* the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Daugavpils prison;

5. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective domestic remedies with regard to the conditions of his detention in Daugavpils prison;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,700 (eleven thousand seven hundred euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

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

Done in English, and notified in writing on 19 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President