



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

FOURTH SECTION

CASE OF D.F. v. LATVIA

(Application no. 11160/07)

JUDGMENT

STRASBOURG

29 October 2013

FINAL

29/01/2014

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

In the case of D.F. v. Latvia,

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

David Thór Björgvinsson, *President*,

Ineta Ziemele,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 8 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 11160/07) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Latvian national, Mr D.F. (“the applicant”), on 20 February 2007. The President of the Chamber decided of his own motion to grant the applicant anonymity pursuant Rule 47 § 3 of the Rules of Court.

2. The applicant, who had been granted legal aid, was represented by Ms B. Didrihsone, a lawyer practising in Rīga. The Latvian Government (“the Government”) were represented by their Agents, Mrs I. Reine and subsequently by Mrs K. Līce.

3. The applicant alleged in particular that by delaying his transfer to Matīsa Prison the domestic authorities had failed to ensure his safety and well-being, and that he had had no effective remedy before a national authority in that respect.

4. On 24 November 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and is currently serving a prison sentence in Riga.

A. The applicant's detention and requests for his safety to be ensured

6. The applicant alleges that for an extended period of time in the 1990s he was a police informant on criminal matters in Balvi. It appears that that collaboration was officially documented by the police and the applicant was paid for his services. Over time, the criminal community in Balvi became aware of his role as an informant, and as a result he was assaulted and threatened with murder on several occasions. The applicant then moved to Rēzekne.

7. On 6 October 2005 the applicant was arrested on charges of rape of his partner's minor daughter and of indecent assault on the partner's minor son.

8. The applicant was transferred to Daugavpils Prison on 25 October 2005, and stayed there until 26 October 2006, when he was transferred elsewhere (see paragraph 20 below). During this period he was taken to Riga Central Prison on four occasions. He spent a total of approximately fifty-five days in Riga and more than 300 days in Daugavpils.

9. The Government submitted, and the applicant did not deny, that when he had arrived at Daugavpils Prison he had had the standard entry interview with a member of the security staff of the prison. It appears that during the interview the applicant gave the names of several inmates of the prison with whom he had had conflicts in the past, and the administration of the prison undertook to keep him isolated from those individuals throughout his stay in Daugavpils. On the other hand, according to the Government, the applicant did not inform the administration of the prison about his previous collaboration with the police, and did not ask to be kept isolated from any other prisoners. The Government submitted that on 21 February 2006 the applicant requested the governor of Daugavpils Prison to transfer him to a unit in which prisoners were involved in housekeeping activities (kitchen duties and laundry work) and hence often came into contact with other prisoners.

10. On 17 January 2006 the prosecutor charged with investigating the criminal charges against the applicant invited the applicant to submit his final motions concerning the criminal case. According to the applicant, on that day he requested the prosecutor to arrange for his transfer to Matīsa Prison, which has a section designated for holding detainees who have worked for law-enforcement institutions or collaborated with those institutions (see paragraph 37 below). The applicant alleged that the prosecutor agreed to order his transfer to Matīsa Prison in exchange for a plea bargain. The applicant submitted that he felt pressured to accept that arrangement, and the plea bargain was signed on 20 January 2006. The applicant's defence counsel was present when the plea bargain was signed. The Government questioned the reliability of the applicant's version of the

events, underlining that under national law the prosecutor did not have any authority to order the applicant's placement in a particular prison; the institution competent to do so was the Prisons Administration (*Ieslodzījuma vietu pārvalde*).

11. The applicant alleged, and the Government did not in substance dispute, that on 24 March 2006 a note was added to his case file that he was to be held in isolation from other detainees. The parties differ as to the precise nature and effects of such a requirement – according to the Government the applicant's case file did not contain anything in writing to the effect that he should be held in isolation prior to 1 November 2008, thus, for example, the administration of Daugavpils Prison could not have known about it. The Government submitted to the Court a copy of a document from 11 April 2006, signed by the Rēzekne chief of police, concerning the transportation of three detainees from Rēzekne to Daugavpils, on which the word “isolation” appears next to the applicant's name.

12. On 13 April 2006 the Prisons Administration refused to order the applicant's transfer to Matīsa Prison. It firstly noted that according to the applicable domestic rules (see paragraph 37 below) only “a certain category of prisoners” served their sentences in Matīsa Prison. The applicant was informed that the Prisons Administration had no information concerning his alleged links with law-enforcement institutions. The Prisons Administration further indicated that a decision to transfer the applicant could only be made after his conviction had become final (it became final on 1 February 2007: see paragraph 27 below).

13. The applicant alleged that while in Daugavpils Prison he had been subjected to repeated physical violence by other prisoners. The applicant indicated that he had lost several teeth as a result of beatings he had received. In his submission, the violence against him was a direct consequence of his earlier collaboration with the police, which had become known in the prison, which held numerous inmates from Balvi. The applicant indicated that the fact that he had been charged with sexual offences against minors also made him the target of abuse by other prisoners.

14. The applicant furthermore noted that the administration of Daugavpils Prison had frequently moved him from one cell to another, thus exposing him to an even larger number of other prisoners. When he complained about this the applicant received a response from the Prisons Administration on 19 June 2007, in which it was indicated that the placement of detainees in cells was at the discretion of the authorities of each individual prison and that in the applicant's case the administration of Daugavpils Prison had made its decisions “taking into account the available space in cells, psychological factors, and the level of education and state of health of prisoners”.

15. On 12 June 2006 the applicant wrote to the Prosecutor General and submitted rather detailed information about his collaboration with the criminal police in Balvi, such as the alias given to him by the police and the fact that he had been paid for his services. He underlined that because of the nature of the charges against him and because of his former collaboration with the police he was constantly in danger of retribution by other prisoners. The applicant's letter was forwarded to the Prisons Administration, which dismissed his request to be transferred to Matīsa Prison on 27 June 2006.

16. On 21 July 2006 the applicant once again wrote to the Prosecutor General. In his letter he essentially repeated the claims made in his previous letter, but also explicitly referred to the "isolation request" in his case file, which he stated had been respected whenever he had been transported outside Daugavpils. He also gave details of several instances of ill-treatment of other inmates of Daugavpils Prison. The applicant's letter was forwarded to the Prisons Administration, which requested additional information from Daugavpils Prison. The head of security of Daugavpils Prison denied the existence of any threats to the applicant and submitted statements from two of the inmates named by the applicant, denying that the incidents recounted by the applicant had ever taken place. In the light of this information, on 25 August 2006 the Prisons Administration rejected the applicant's request for transfer to Matīsa Prison.

17. A similar request of 24 July 2006, addressed to the Prisons Administration, was rejected on 7 August 2006.

18. On 14 August 2006 the applicant wrote to the Supreme Court (where his criminal case was pending at that time: see paragraph 26 below) and explained that that court was the only avenue through which he could still hope to obtain a transfer to Matīsa Prison. On 17 August 2006 he received a reply from a judge of the Supreme Court informing him that the Prisons Administration was the body which was competent to decide questions of transfer of prisoners.

19. On 27 August 2006 the applicant asked the Prosecutor General to initiate criminal proceedings against Balvi Criminal Police for their failure to acknowledge his collaboration with the police. On 22 September 2006 the Specialised Prosecutor's Office (*Specializētā vairāku nozaru prokuratūra*) requested information from the Security Police about the progress made with regard to the applicant's request from May 2006 in which he had asked the police to confirm his collaboration.

20. On 5 October 2006 the applicant received a response from the criminal police, informing him that his collaboration had been confirmed and that the State Police on 5 October 2006 had requested the Prisons Administration to transfer him to Matīsa Prison. The director of the Prisons Administration ordered the transfer on 13 October 2006 and on 26 October 2006 the applicant was transferred to Riga.

21. Upon a request from the Government Agent, on 11 March 2011 the Ministry of Justice provided information concerning, *inter alia*, the applicant's complaints submitted to the ministry. The ministry reported that it had received, either directly from the applicant himself or via prosecutors, numerous complaints which had principally related to unfair conviction, employment issues in prisons, and similar matters. The applicant had on one occasion (on 13 August 2007) complained about "the actions of the Prisons Administration in transferring him between cells". The Ministry of Justice had provided the applicant with a response, a copy of which has not been made available to the Court.

B. Medical records

22. According to a summary of the applicant's medical records submitted by the Government, in November and December 2006 and in January 2007 the roots of five of his teeth were extracted in Daugavpils Prison. On two occasions (on 31 January 2006 and 9 December 2010) the applicant was diagnosed with chronic periodontitis.

23. In a response given to the applicant on 28 August 2007 the Prisons Administration noted that there was nothing in the applicant's case file that would indicate that the applicant had lost his teeth during altercations with other inmates of Daugavpils Prison.

24. According to information obtained by the applicant from the medical department of Matīsa Prison, in 2007 he had visited the dentist there on no fewer than seven occasions. The reason for and the nature of these visits was not given.

C. Criminal proceedings

25. By a judgment of 22 March 2006 the Latgale Regional Court convicted the applicant of the offences with which he was charged and sentenced him to a prison term of thirteen years and one month. In deciding to convict the applicant, the first-instance court relied on statements from the two victims. The court also heard statements from two other witnesses and took into account statements from the applicant's partner and her mother. It also relied on two reports from expert psychologists. The applicant's statements were summarised in the judgment and were followed by a note that he had retracted his confession before the hearing. The applicant alleged that he had tried to submit to the court a written statement of his reasons for confessing (namely, that he had wished to be transferred to Matīsa Prison). However, given the choice of either having his statement read out at the hearing and admitted in evidence or not having it admitted in evidence, he had chosen the latter, since he had not wanted to disclose his previous collaboration with the police in a public forum.

26. On 5 December 2006 the Supreme Court rejected the applicant's appeal against the judgment of the first-instance court by agreeing with the lower court's reasoning. With regard to the applicant's confession, the appeal court noted that he had given conflicting accounts as to why it had been written. Specifically, on one occasion he had explained that it had been done to ensure his transfer to another prison, while in a letter to the president of the first-instance court he had explained that he had confessed because his psychological state had been such that he did not care what happened. Taking into account the differing explanations, the appeal court chose not to believe them.

27. The Senate of the Supreme Court on 1 February 2007 refused to accept an appeal by the applicant on points of law, since it was held that he had failed to substantiate his appeal with any indication of significant violation of substantive or procedural law.

28. On 16 July 2007 the applicant asked the Senate of the Supreme Court to reopen the proceedings in his case because of violations of procedural law and the Convention which had allegedly been committed during the original proceedings. That request was refused on 10 August 2007, since requests for reopening of proceedings could only be submitted by a prosecutor or by an attorney acting on behalf of a convicted person. No State-provided legal aid was available for applications for reopening of proceedings.

29. The applicant eventually secured legal representation, and on 14 March 2008 the Senate considered his request for reopening of the proceedings, and rejected it on the merits.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND COUNCIL OF EUROPE MATERIALS

A. The relevant documents of the Council of Europe

30. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "the CPT") has developed standards relating to the treatment of persons deprived of their liberty. The following are its standards concerning violence between prisoners (document no. CPT/Inf/E (2002) 1, Rev. 2009, paragraph 27):

"The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks.

Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority

and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority. Specific security measures adapted to the particular characteristics of the situation encountered (including effective search procedures) may well be required; however, such measures can never be more than an adjunct to the above-mentioned basic imperatives. In addition, the prison system needs to address the issue of the appropriate classification and distribution of prisoners.

Prisoners suspected or convicted of sexual offences are at a particularly high risk of being assaulted by other prisoners. Preventing such acts will always pose a difficult challenge. The solution that is often adopted is to separate such prisoners from the rest of the prison population. However, the prisoners concerned may pay a heavy price for their – relative – security, in terms of much more limited activities programmes than those available under the normal prison regime. Another approach is to disperse prisoners suspected or convicted of sexual offences throughout the prison concerned. If such an approach is to succeed, the necessary environment for the proper integration of such prisoners into ordinary cell blocks must be guaranteed; in particular, the prison staff must be sincerely committed to dealing firmly with any signs of hostility or persecution. A third approach can consist of transferring prisoners to another establishment, accompanied by measures aimed at concealing the nature of their offence. Each of these policies has its advantages and disadvantages, and the CPT does not seek to promote a given approach as opposed to another. Indeed, the decision on which policy to apply will mainly depend on the particular circumstances of each case.”

31. In its report on its visit to Latvia in 2002, the CPT expressed serious concern about the frequent occurrence of violence between prisoners in Daugavpils Prison (paragraph 69). In this regard, it reiterated that the prison authorities had a duty to take proactive measures to prevent such violence (paragraph 71).

32. Similar concerns were expressed in the wake of the CPT’s 2004 visit to Latvia. The report once again expressed concern about the frequency and severity of allegations of violence between prisoners in Daugavpils Prison (paragraph 43). The Latvian authorities were repeatedly called upon “to take special precautions to protect ... vulnerable prisoners from all forms of abuse” and “to develop strategies with a view to addressing the problem of inter-prisoner violence”.

33. While the CPT did not visit Daugavgrīva Prison during its 2011 visit to Latvia, its report on this visit called the Latvian authorities “to develop a comprehensive strategy with a view to addressing the problem of inter-prisoner violence” (paragraph 55).

34. In their response to the CPT’s report on the 2011 visit the Government outlined several safeguards for preventing inter-prisoner violence, indicating that the security departments of prisons “in some cases request the [Prisons Administration] to displace the prisoner to another

prison due to security reasons”. In deciding on the placement of prisoners in particular prisons, the responsible authorities take into account, among other things, the nature of criminal offences committed by him and “the psychological compatibility of prisoners”.

35. The relevant part of Recommendation Rec (2005)9 of the Committee of Ministers of the Council of Europe to member states on the protection of witnesses and collaborators with justice provides as follows.

“II. General Principles

... 2. While respecting the rights of the defence, the protection of witnesses, collaborators of justice and people close to them should be organised, where necessary, before, during and after the trial.

3. Acts of intimidation of witnesses, collaborators of justice and people close to them should, where necessary, be made punishable either as separate criminal offences or as part of the offence of using illegal threats”.

B. Relevant domestic law

1. Placement of detainees

36. At the time of the applicant’s arrest the placement of individuals who had been detained but not convicted was governed by Regulation of the Cabinet of Ministers no. 211 (2003), entitled “The rules of internal order in remand prisons” (*Ministru kabineta noteikumi Nr. 211 “Izmeklēšanas cietumu iekšējās kārtības noteikumi”*), which remained in force until 1 April 2006. Paragraph 19 provided that detained persons were to be placed in cells, and decisions on when and whether to move them were to be based on internal security, the offence on which the detention was based, personal characteristics and psychological factors.

37. From 20 April 2006 the placement of detainees was governed by the Law on Detention Procedure (*Apcietinājumā turēšanas kārtības likums*), section 11(4) and (5), which provided that detained persons were to be held separately from those who had been convicted, and that employees and former employees of certain institutions, of which an exhaustive list was provided (the Prisons Administration and others), as well as their spouses and immediate family, were to be placed separately from other detainees.

38. On 18 July 2006 the Law on Detention Procedure was amended. In the version in force until 26 October 2006 (when the applicant was moved to Matīsa Prison) a new section, 11(6), was added, which provided that first-time detainees were to be held separately from others. The same paragraph also provided that “detainees are placed in cells taking into account internal security as well as (as far as possible) [their] personal characteristics and psychological factors”.

39. The Prisons Administration Order no. 114 of 6 August 2004 “On placement of convicted persons in institutions of deprivation of liberty” (*Ieslodzījuma vietu pārvaldes 2004. gada 6. augusta rīkojums Nr. 114 “Par notiesāto izvietošanas kārtību brīvības atņemšanas iestādēs”*) provided that among the categories of convicted persons who could be placed in Matīsa Prison after their conviction had become final were the following: convicted persons in need of special isolation pursuant to the Law on Operational Activities (paragraph 3.7) and, in particular cases, pursuant to a decision of the security division of the Prisons Administration, first-time convicts whose crimes were not related to physical violence or distribution of narcotic substances.

2. Administrative Procedure Law

40. The Administrative Procedure Law (*Administratīvā procesa likums*) took effect on 1 February 2004. It provides, among other things, for the right to challenge administrative acts (*administratīvais akts*) and actions of public authorities (*faktiskā rīcība*) before the administrative courts.

41. At the relevant time section 1(3) of the Administrative Procedure Law defined an administrative act as

“a decision ... [that] significantly interferes with the human rights of a person specially subordinated [*īpaši pakļauta*] to a public authority. [A]n internal decision of a public authority that only concerns that authority itself [or] a specially subordinated person is not an administrative act. Neither are criminal procedural decisions administrative acts”.

42. Under section 92 of the Administrative Procedure Law everyone has the right to receive appropriate compensation for pecuniary and non-pecuniary damage caused by an administrative act. Under section 93 of the same Law, a claim for compensation can be submitted either together with an application to the administrative courts to have an administrative act declared unlawful, or to the public authority concerned following a judgment adopted in such proceedings.

43. In addition, chapter 22 of the Administrative Procedure Law provides for the possibility of interim measures being applied. As in force at the time relevant for the present case, section 195 of that Law provided for the possibility of interim measures being applied if there was “a reason to consider that the implementation of the court decision might become difficult or impossible”. At the time section 197 did not set down a time-limit for examining requests for the application of interim measures.

3. Case-law of the administrative courts

44. On 7 November 2007 the Senate of the Supreme Court adopted a decision (no. SKA-576/2007), in paragraph 19 of which it was explicitly stated that

“a refusal by the Prisons Administration to transfer the petitioner to [another] prison ... is not ... an administrative act. It is an internal decision of a public authority ... As an internal decision it is not amenable to a review in administrative proceedings, unless it significantly interferes with the human rights of a person specially subordinated to a public authority”.

45. On 19 December 2010 the Senate was once again called to examine whether a decision of the Prisons Administration to refuse to transfer a prisoner to a different prison could be reviewed in the administrative courts (decision no. SKA-267/2010). The Senate, in paragraph 7 of that decision, held that if a refusal to transfer a prisoner significantly interfered with his human rights it would be an administrative act.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

46. The applicant complained that he had been unable to obtain a transfer to Matīsa Prison, to which he had been entitled by law, and that as a result he had been subjected to violence, humiliation and physical and mental suffering in Daugavpils Prison. He also complained that he had had no effective remedy before a national authority in that respect. He relied upon Articles 3 and 13 of the Convention. The Court, however, finds it appropriate to examine these complaints under Article 3 alone. This Article reads as follows:

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

47. The Court will examine two aspects of the applicant’s complaints. First, his allegation that he was ill-treated by other prisoners in Daugavpils Prison, and second the alleged violation of Article 3, which was due to the delay in ordering his transfer to Matīsa Prison and the alleged unavailability of an effective remedy in that regard.

A. Ill-treatment in Daugavpils

Admissibility

48. The Government argued that the applicant’s claim was inadmissible because he had not exhausted the domestic remedies; specifically, he had not complained about the alleged ill-treatment to prosecutors. Alternatively, the Government submitted that the applicant’s complaint was manifestly ill-

founded, in that he had failed to submit coherent and detailed proof of his ill-treatment to any domestic authorities or to the Court.

49. The applicant maintained that he had been assaulted by other prisoners.

50. The Court does not need to examine whether the applicant has complained about his alleged ill-treatment to any domestic authorities or whether a complaint to prosecutors could indeed be considered an effective domestic remedy, since this complaint is in any case manifestly ill-founded.

51. Referring to the case-law in the area of burden and standard of proof in Article 3 cases (summarised in, for example, *Igars v. Latvia* (dec.), no. 11682/03, §§ 64-67, 5 February 2013), the Court notes that the applicant has failed to submit any particulars of his alleged ill-treatment (such as when, where, by whom and how he was ill-treated) as well as failing to submit any proof that he had suffered any injuries (see, in contrast, *J.L. v. Latvia*, no. 23893/06, §§ 71-75, 17 April 2012). This is in stark contrast with, for example, the detailed accounts of ill-treatment of other inmates of Daugavpils Prison that the applicant presented to the Prosecutor General (see paragraph 16 above). The Court takes into account that the applicant would have had an opportunity to complain about the alleged ill-treatment. For example, he could have done so during his interview with a prosecutor on 17 January 2006 (see paragraph 10 above). The applicant did not allege that he had submitted any such complaints, and it does not appear from the materials in the case file that he had. Accordingly, and in contrast with the above-mentioned case of *J.L. v. Latvia*, the Court does not have in its possession any direct information about any injuries allegedly sustained by the applicant, nor is it aware of any facts from which such inferences could be drawn.

52. As regards the dental treatment received by the applicant (see paragraph 22 above), the Court finds that nothing in the case file (including the applicant's submissions) casts any reasonable doubt on the Prisons Administration's conclusion (see paragraph 23 above) that it was the applicant's chronic periodontitis, and not any acts of violence, that was the cause of the loss of the applicant's teeth.

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

B. Failure to ensure the applicant's safety

1. Application of Articles 34 and 37 § 1 (b) of the Convention

54. The Government argued that the applicant could not or could no longer claim to be a victim of a violation of Article 3 of the Convention, or, alternatively, that the matter had been successfully resolved at the national level.

55. With regard to the alleged loss of victim status the Government stressed that the present application had been lodged with the Court only on 20 February 2007, which was almost four months after the applicant's transfer to Matīsa Prison. The Government referred to the Court's decision in *Pančenko v. Latvia* ((dec.), no. 40772/98, 28 October 1999).

56. The applicant did not submit any observations in this respect.

57. The Court notes that it has had occasion to clarify the scope of the ruling in the above-cited *Pančenko* case, and has explained that the regularisation of a person's situation is of itself a sufficient remedy only in exceptional cases, such as those relating to the deportation or extradition of non-nationals (see, for example, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 261, ECHR 2012 (extracts), and *Gebremedhin [Gaberamadhién] v. France* (dec.), no. 25389/05, § 36, 10 October 2006). In the context of almost all other cases the Court has held the traditional view that an applicant's "victim" status may also depend on the level of compensation awarded at the domestic level, where appropriate, or at least on the possibility of seeking and obtaining compensation for the damage sustained, having regard to the facts about which he or she complains before the Court (see *Kurić*, cited above, § 262, with further references).

58. In the circumstances of the case and even assuming that the applicant's transfer to Matīsa Prison is an implicit admission of the need to change the applicant's situation, the Government have not submitted any explanation as concerns the compensation for the suffering that the applicant claims to have experienced during the period during which his safety had not (yet) been guaranteed. Therefore the Government's argument about the loss of victim status cannot be upheld in the present case.

59. In the alternative, the Government invited the Court to strike the case out of its list of cases in accordance with Article 37 § 1 (b) of the Convention. The Government relied in this connection on the fact that on 26 October 2006, that is before the applicant lodged his application with the Court, he had been transferred to Matīsa Prison, and therefore the situation complained of had ceased to exist and the matter giving rise to the applicant's Article 3 complaint had thereby been resolved.

60. The applicant did not submit any observations in this regard.

61. The Court notes that it has already examined a similar argument raised by the Government in another case (*Melnītis v. Latvia*, no. 30779/05, §§ 31-38, 28 February 2012). As in *Melnītis*, the Court agrees with the Government that the situation that the applicant complained about no longer pertains. However, taking into account its conclusion concerning the applicant's victim status (see paragraph 58 above), the Court is unable to agree with the Government that the applicant's situation has been resolved.

62. The Court therefore rejects the Government's request that it strike the application out of its list of case in application of Article 37 § 1 (b) of the Convention.

2. Admissibility

a. The parties' submissions

63. The Government claimed that the applicant had failed to exhaust domestic remedies. In particular, he could have complained about the refusal of the Prisons Administration to transfer him to Matīsa Prison, either to the Ministry of Justice or to the administrative courts.

64. As regards the former alternative the Government explained that the Prisons Administration is subordinate to the Ministry of Justice and that that ministry has a right to review decisions taken by the Prisons Administration or to order that a decision be issued in the event of an unjustified failure to act.

65. In order to substantiate the alternative argument that the administrative courts would have been capable of adequately remedying the shortcomings complained of by the applicant, the Government referred to several rulings of the Senate of the Supreme Court.

66. They cited a decision of 7 March 2008 (no. SKA-310/2008), in which the Senate disagreed with the reasons given by the Administrative Regional Court for its refusal to accept a complaint for adjudication which had been submitted to the first-instance court on 11 July 2007, about a decision of the Prisons Administration to transfer the petitioner to another prison in which he would fear for his safety. In its decision the Senate held that in principle such decisions were amenable to review in the administrative courts as administrative acts if the petitioners were able to prove that the decisions in question had significantly interfered with their fundamental rights, which would be the case if a petitioner were able to prove that a decision on transfer could affect or had affected his life or health. The Senate then refused to accept the complaint for examination because it found that the facts of the specific case did not disclose a possibility of an interference with the petitioner's life or health.

67. The Government further relied on a decision of the Senate, adopted on 23 May 2006 (no. SKA-300/2006), in which the Senate had held that actions (*faktiskā rīcība*) of prison authorities which significantly interfered with prisoners' fundamental rights were in principle amenable for review in the administrative courts.

68. In the light of these decisions, and taking into account that the Administrative Procedure Law provided for the possibility of claiming compensation for pecuniary and non-pecuniary damage (see paragraph 42 above), that the administrative courts have a duty to carry out an objective investigation, and that they can rely on reports drawn up by national and international human rights organisations, the Government argued that a recourse to the administrative courts was an effective remedy.

69. The applicant argued that he had duly addressed his grievances to the Ministry of Justice. In this regard he referred to a letter sent by the said ministry to the Government Agent on 11 March 2011, which stated that the proper avenue for appealing against a refusal to transfer a prisoner to another prison, which was an internal decision of a public authority and which furthermore did not significantly interfere with a subordinated person's human rights, was a complaint to the Ministry of Justice. The same letter also noted that the Ministry of Justice had examined two complaints from the applicant (of 13 and 16 August 2007; see also paragraph 21 above).

70. In addition, the applicant referred to a letter he had received from a Supreme Court judge on 17 August 2006, in which he had been informed that the proper authority for deciding on issues connected with the placement of prisoners was the Prisons Administration (see paragraph 18 above). Thus, the applicant considered that he had not been given any information about the possibility of making a complaint to the administrative courts.

b. The Court's assessment

71. The Court has often held that in the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy is an effective one available in theory and practice at the relevant time, that is to say that it is accessible, capable of providing redress in respect of the applicant's complaints, and offers reasonable prospects of success. However, once this requirement has been met it falls to the applicant to establish that the remedy advanced by the Government has in fact been used, or is for some reason inadequate and ineffective in the particular circumstances of the case, or that there exist special circumstances absolving him or her from the requirement (see *Melnītis*, cited above, § 46, with further references).

72. The Court notes the applicant's argument that he had never been informed of the possibility of an appeal to the administrative courts against the Prisons Administration's refusal to have him transferred. It does indeed appear that a Supreme Court judge indicated in a letter to the applicant that it was the Prisons Administration which retained the ultimate authority in questions of transfer of prisoners. In addition, it appears that even as late as 2011 the Ministry of Justice (the institution which in Latvia is responsible for, among other things, ensuring the functioning of the court system) was of the opinion that complaints about refusal of prison transfers fell outside the scope of administrative court review (see paragraph 69 above).

73. However, even assuming that in theory the administrative courts were accessible to the applicant, the Court notes that the case-law of those courts discloses the existence of significant uncertainty as to the approach to

be taken in examining questions of prison transfers. At the outset it does not appear that the Government has argued or that the domestic courts have ever held that decisions concerning prison transfers are actions of public authorities. Therefore the Senate decision in case no. SKA-300/2006 is of no obvious relevance to the examination of the present case. On the other hand, it appears that the opinion of the administrative courts, at least at the relevant time, has been inconsistent as to whether an order to transfer a prisoner to another prison (or a refusal to order such a transfer) constitutes an administrative act, an internal decision of a public authority or even a criminal procedural decision. The second uncertainty relates to the question of whether an internal decision of a public authority or a criminal procedural decision, should they be found to interfere significantly with an individual's human rights, would be amenable to a review in the administrative courts. Lastly, as the Court has already held in the above-cited *Melnītis* case (§ 51), it remains uncertain which complaints would satisfy the "significant interference" test as developed by the administrative courts to be accepted for review (also see paragraphs 44 and 45 above), and whether that test is similar or equal to that of the "minimum level of severity" as developed by the Court in relation to Article 3 of the Convention.

74. The Court is of the opinion that, at least at the material time, the case-law of the administrative courts concerning prison transfers was so unclear that the applicant, even if he had been given full and unrestricted access to all the relevant rulings of the administrative courts, could not reasonably have been expected to predict that a complaint against the Prisons Administration's refusal to order his transfer to Matīsa Prison might be accepted for examination and might eventually lead to an award of compensation. The Court therefore concludes that an appeal to the administrative courts at the material time and in the specific situation of the applicant was not a remedy that was accessible to him.

75. As regards the Government's assertion that the applicant ought to have complained to the Ministry of Justice, the Court notes that the applicant did submit several complaints to the Ministry of Justice, including one that apparently concerned his transfer between cells in an unspecified prison (see paragraph 21 above). Since the Court has not been provided with a copy of the response apparently given by that ministry, it cannot but hold that the Government have failed to shed any more light on the effectiveness or otherwise of a complaint to the Ministry of Justice.

76. The Court therefore concludes that the Government's objection of non-exhaustion of domestic remedies is to be dismissed. It furthermore considers, in the light of the parties' submissions, that the applicant's complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within

the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

3. *Merits*

a. **The parties' submissions**

77. At the outset the Government conceded that individuals suspected or convicted of sexual offences and individuals with a history of collaboration with law-enforcement authorities were at a heightened risk of inter-prisoner violence. For that reason in most cases prisoners belonging to one of those categories were detained separately from the general prison population, although on occasion efforts were made to integrate them with regular prisoners. It was only in some cases, where the circumstances of the specific case required it, that it was necessary to transfer such prisoners to another prison in order to conceal their previous collaboration with the police or the nature of the offences they were suspected or convicted of.

78. The Government considered the applicant's "insistent request" to be transferred to Matīsa Prison unjustified. The Government argued that a transfer to Matīsa Prison was not the only means of securing a potentially vulnerable prisoner's safety, and that a transfer to Matīsa Prison in any case would not be an absolute guarantee of safety. In the specific case of the applicant the Government suggested that his isolation from the inmates of Daugavpils Prison who were aware of his former collaboration with the Balvi police could have been ensured by transferring him to any prison located "sufficiently far away" from Balvi and Daugavpils.

79. In any case, there had been no "objective reasons" for the applicant's transfer to Matīsa Prison, since the administration of Daugavpils Prison had not been informed either of the applicant's previous collaboration with the police or of the danger of inter-prisoner violence with respect to him. The Government furthermore considered that the applicant's request to be transferred to a unit involved in housekeeping activities (see paragraph 9 above) attested to the fact that he did not fear being in contact with other prisoners.

80. The applicant argued that his safety had not been guaranteed in Daugavpils Prison. He pointed out that in order to minimise the risk of being subjected to violence he had refused to take outdoor exercise for more than seven months.

b. **The Court's assessment**

81. At the outset the Court notes that the parties are in agreement that prisoners suspected or convicted of sexual offences and prisoners who have previously collaborated with law-enforcement authorities are at a particular risk of inter-prisoner violence in Latvian prisons. The link between charges

of sexual offences and the risk of inter-prisoner violence has also been confirmed by the CPT (see paragraph 30 above). In such circumstances it is clear that every day the applicant had to spend with the general prison population only served to increase the risk of violence against him, as knowledge of the nature of the charges against him and his past ties with the police spread to more and more prisoners. The Court also cannot disregard the fact that the CPT has repeatedly expressed particular concern about inter-prisoner violence in Daugavpils Prison (see paragraphs 31 and 32 above) and in Latvian prisons more generally (see paragraph 33 above). Therefore the Court is of the opinion that there might be some merit to the Government's suggestion that transferring the applicant to Matīsa Prison was not the only possible way to deal with his situation in so far as the threat of violence caused by the nature of the criminal charges against him is concerned. The Court has more difficulty in accepting the Government's assertion that transferring the applicant to any other prison than Matīsa would have been an effective way to eliminate threats arising from his previous collaboration with the police. The Latvian Government is clearly aware of problems faced by detainees who have worked for law-enforcement authorities, and by their relatives. The solution chosen by the Government has been to place such prisoners in a special wing of Matīsa Prison (see paragraphs 37 and 39 above).

82. However, the Court cannot but observe that the domestic authorities not only refused what the Government have characterised as the applicant's "insistent request[s]" to be transferred to Matīsa Prison, but they appear to have considered that the applicant's grievances did not require any kind of response, including, as has been suggested by the Government, transferring him to another prison. The Court will now examine whether the authorities were right to come to that conclusion.

83. In its case-law the Court has consistently held that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or to inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see *Kovaļkovs v. Latvia* (dec.), no. 35021/05, § 47, 31 January 2012, with further references). These measures should provide effective protection, in particular, of vulnerable persons in custody under the exclusive control of the authorities, and should also include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Durđević v. Croatia*, no. 52442/09, § 102, 19 July 2011, with further references).

84. The extent of this obligation of protection depends on the particular circumstances of each case (see *Stasi v. France*, no. 25001/07, § 79,

20 October 2011). The Court, in its case-law with regard to the protection of vulnerable prisoners, has clarified that the national authorities have an obligation to take all steps reasonably expected to prevent real and immediate risks to prisoners' physical integrity, of which the authorities had or ought to have had knowledge (see, among many other examples, *Pantea v. Romania*, no. 33343/96, § 190, ECHR 2003-VI (extracts), and *Preminyin v. Russia*, no. 44973/04, § 84, 10 February 2011). The CPT has already indicated (see paragraph 30 above) that prison authorities ought to take specific security measures to deal with the phenomenon of inter-prisoner violence. This obligation is all the more true in cases when prisoners run a particularly heightened risk of ill-treatment by their fellow inmates, such as is the case with sexual offenders and police collaborators.

85. With regard to the minimum severity of treatment required to trigger the authorities' responsibility to protect an individual, the Court's approach has evolved. Initially, the Court held that "the mere feeling of stress of a detained person" (see *I.T. v. Romania* (dec.), no. 40155/02, 24 November 2005) and "the mere fear of reprisals from the [applicant's] cellmates" (see *Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006) were not of themselves sufficient to bring the situation within the scope of Article 3. When the fear of reprisals was combined with additional elements, the Court has found, for example, that "the cumulative effect of overcrowding and the intentional placement of a person in a cell with persons who may present a danger to him may in principle raise an issue under Article 3 of the Convention" (see *Gorea v. Moldova* no. 21984/05, § 47, 17 July 2007). In two more recent cases (*Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, 27 May 2008, and *Alexandru Marius Radu v. Romania*, no. 34022/05, 21 July 2009) the Court has held that "the hardship the applicants endured, in particular the constant mental anxiety caused by the threat of physical violence and the anticipation of such ... must have exceeded the unavoidable level inherent in detention". Therefore, a breach of Article 3 of the Convention was found.

86. Turning to the present case, the Court notes that the State authorities were aware that the applicant belonged to a category of prisoners at a heightened risk of inter-prisoner violence. The prison authorities were clearly aware of the nature of the charges against the applicant and the risk associated with such charges. In addition, there was information within the State apparatus about the applicant's past collaboration with the police (see paragraphs 6 and 20 above) but such information was not systematically passed on between the relevant authorities. Furthermore, and unlike in another recent case against Latvia where the Court had occasion to apply the principles outlined above (see *Aleksejeva v. Latvia*, no. 21780/07, §§ 38-39, 3 July 2012), the Government themselves have admitted that the applicant had repeatedly requested to be transferred elsewhere because of threats to his life and health in Daugavpils Prison.

87. While the Government have submitted general information concerning how prisoners in situations comparable to that of the applicant are treated in Latvian prisons, the Court lacks information on any specific steps taken by the administration of Daugavpils Prison to address the applicant's vulnerability. The applicant asserted, and the Government did not dispute, that he had frequently been moved between different cells (see paragraph 14 above). The Government have not submitted any convincing justification for these frequent transfers. Moving a prisoner away from a cell in which he has been exposed to threats would certainly be an appropriate and, at least in the short term, adequate measure. On the other hand, the Court finds that if such transfers take place frequently and on a regular basis without any clearly identified purpose, that appears to be an approach that is at odds with the policy outlined by the Government of protecting vulnerable prisoners from the general prison population. In any case, any transfers of vulnerable prisoners should form part of a carefully designed strategy for dealing with inter-prisoner violence (see the recommendations of the CPT in paragraph 30 above), the existence and the details of which the Government have not explained.

88. The Court will now turn to the applicant's complaint about the absence of specific safety measures (see paragraph 84 above) that would have allowed him to obtain a transfer to Matīsa Prison. The applicant in particular criticised the length of time it had taken for his previous collaboration with the police to be officially acknowledged and for his transfer to Matīsa Prison to be ordered.

89. The Government submitted that the existing system for ensuring police informers' safety was sufficient to correspond to the requirements of the Convention. According to the Government, individuals who felt that their safety was compromised in prison because of their previous collaboration with law-enforcement authorities could request the police or the Prosecutor General to confirm that this collaboration had taken place, after which the appropriate authorities would ensure the prisoner's isolation by, for example, transferring them to Matīsa Prison.

90. The Government argued that despite a certain delay by the police in processing the applicant's request of May 2006, the system had worked in his case too, and his transfer had been requested on 5 October 2006 (see paragraphs 19 and 20 above).

91. The Court considers that, in order for a domestic preventive mechanism to be effective, it should allow the authorities concerned to respond as a matter of particular urgency, in a manner proportionate to the perceived risk faced by the person concerned.

92. As has been made clear by the applicant's example, a request to the law-enforcement agencies to confirm that there had been previous collaboration with the police can turn into a lengthy and heavily bureaucratic procedure. The lack of sufficient coordination among

investigators, prosecutors and penal institutions to prevent possible ill-treatment of detainees who, owing to a record of informing in respect of criminal offences, have become particularly vulnerable and liable to be attacked violently in prison, contributed to that to a significant extent. The Court has previously identified and criticised the absence of a systematic approach to dealing with the difficulties faced by police informers in Latvian prisons (see *J.L. v. Latvia*, cited above, § 87).

93. The Court has examined the possibility of requesting the administrative courts to order interim measures. In addition to the problems identified above (see paragraphs 72 to 74), it notes that at the relevant time chapter 22 of the Administrative Procedure Law did not impose any time-limits on the courts dealing with requests for interim measures (see paragraph 43 above). Thus, even assuming that such a request might have been declared admissible, the timing of its examination would have been left entirely to the courts' discretion.

94. Hence, the Court is unable to conclude that the legal regulation that was in force at the time when the applicant was seeking to be transferred to Matīsa Prison was effective, either in law or in practice.

95. Taking into account the protracted fear and anguish of the imminent risk of ill-treatment experienced by the applicant during the period of more than one year he spent in Daugavpils Prison, and the unavailability of a domestic remedy that would have enabled that situation to be resolved, the Court comes to the conclusion that there has been a violation of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

96. Lastly, the applicant submitted various other complaints under Articles 6, 13 and 14 of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

98. The applicant claimed 50,000 Latvian lati (approximately 71,360 euros (EUR)) in compensation for non-pecuniary damage.

99. The Government considered the applicant's claim excessive.

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

B. Costs and expenses

101. The applicant did not submit any claims in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the delay in ordering the applicant's transfer to Matīsa Prison and the alleged unavailability of an effective remedy in that regard admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

David Thór Björgvinsson
President