

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

FOURTH SECTION

CASE OF BANNIKOV v. LATVIA

(Application no. 19279/03)

JUDGMENT

STRASBOURG

11 June 2013

FINAL

11/09/2013

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



In the case of Bannikov 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,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 21 May 2013,

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

PROCEDURE

1. The case originated in an application (no. 19279/03) 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 Russian national, Mr Igor Bannikov ("the applicant"), on 12 June 2003.

2. The applicant was represented by Mr A. Manov, a lawyer practising in Moscow. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine and subsequently by Mrs K. Līce.

3. On 17 January 2012 the application was declared partly inadmissible and the complaints concerning the length of the applicant's pre-trial detention and the refusals of long-term visits were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and, having been sentenced by the Latvian courts and subsequently transferred to Russia, is currently serving a prison sentence in the Russian Federation.

A. The applicant's arrest and detention

5. On 27 May 2002 the applicant was arrested on suspicion of murder.

6. On 29 May 2002 a judge authorised the applicant's remand in custody, citing the following reasons: the applicant might abscond and impede the investigation; and in view of the severity of the offence, his prior convictions and his absence of a registered place of residence.

7. On 19 July 2002 another judge authorised the applicant's detention for two months and eight days, citing the following reasons: the gravity of the offence, the circumstances surrounding it and the applicant's character. The judge saw no reason to change the preventive measure imposed on the applicant.

8. On 13 September 2002 the same judge authorised the applicant's detention for a further two months (until 27 November 2002), citing the following reasons: the applicant's character, the circumstances of the case and the need to carry out a forensic psychiatric examination. The judge saw no reason to change the preventive measure imposed on the applicant. The applicant complained about this decision to a prosecutor and pointed out that he had a wife and minor children who were dependent on him.

9. On 3 October 2002 the prosecutor examined his complaint and rejected it on the grounds that the applicant was charged with a serious crime. His character (the applicant's two prior convictions were noted) and his family responsibilities had not dissuaded him from committing a serious crime. The applicant lodged another complaint challenging his preventive measure; the same prosecutor rejected it on 24 October 2002.

10. On 25 November 2002 another judge authorised the applicant's detention for a further month, citing the following reasons: the applicant's character and the circumstances of the case.

11. On 17 December 2002 the final indictment was issued against the applicant.

12. On 24 December 2002 the case file was sent for trial to the Rīga Regional Court.

13. On 6 January 2003 the applicant was committed for trial and the first hearing was scheduled for 10 May 2004. The preventive measure imposed on the applicant (remand in custody) remained unchanged; no reasons were given.

14. No more detention orders were issued in respect of the applicant.

B. The applicant's trial

15. Between 10 and 14 May 2004 the trial hearings before the Rīga Regional Court took place, and the trial was concluded on the latter date.

16. On 14 May 2004 the Rīga Regional Court pronounced the judgment. It convicted the applicant of aggravated murder and hooliganism; he was

sentenced to sixteen years' imprisonment. As an additional penalty the court ordered his expulsion from Latvia.

17. On 2 March 2005 the appellate court upheld the ruling of the first-instance court.

18. On 18 May 2005 the applicant's appeal on points of law was dismissed.

19. On an unspecified date the applicant was transferred to a prison in Daugavpils to serve his sentence, where he was detained until 16 June 2011.

C. The applicant's family visits

20. On several occasions the prison authorities refused long-term visits in prison by the applicant's partner, M.B., and her daughter, R.B., born in 2000, who he considered to be his only family in Latvia. The applicant lodged complaints against these refusals.

21. On 16 June 2006 the administration of Daugavpils Prison referred to section 45 of the Sentence Enforcement Code and observed that the applicant had a right to receive a long-term visit by R.B. if he was noted as her father on her birth certificate. The applicant could not receive a long-term visit from M.B. because she was not considered to be a close family member. It appears that the applicant further complained to the Prisons Administration (*Ieslodzījumu vietu pārvalde*) and the Daugavpils prison administration informed that authority that the applicant had not received any short-term visits from M.B. during his imprisonment.

22. According to the Government, on 4 July 2006 the applicant requested a long-term visit by his partner and her daughter. They did not have more information concerning this request.

23. On 12 October 2006 the applicant requested a long-term visit by his partner and her daughter. In reply, he received the following statement written on his request: "You have received an answer in writing in this respect".

24. According to the applicant, he received a short-term visit from M.B. and R.B. in Daugavpils prison in June 2007.

25. The applicant was refused a short-term visit during his admission to the Prison Hospital in Rīga. He complained about the refusal and on 13 June 2007 he received a reply that only tuberculosis patients were allowed to receive short-term visits with the permission of a doctor, or seriously ill patients with the permission of the head of the hospital.

26. According to the Government, on 9 August 2007 the applicant requested another long-term visit by his partner and her daughter. On 17 August 2007 this request was refused, given that M.B. was not a "close family member" of his within the meaning of section 45 of the Sentence Enforcement Code. The applicant was informed that he could be visited by R.B. if he was recorded as her father on her birth certificate.

1. Review by the Ombudsman

27. Subsequently, a complaint by the applicant concerning long-term visits was accepted for review by the Ombudsman's office.

28. On 18 April 2008 the Ombudsman delivered his opinion, which was not binding on the domestic authorities. He noted that the application of section 45 of the Sentence Enforcement Code was not uniform among the domestic authorities, but that in Daugavpils Prison, in particular, long-term visits were often refused in the form of a simple reply using vague phrases such as "to be refused in accordance with the law" or "impossible to determine the visit's usefulness". The refusal in the applicant's case had been given in one sentence, informing him that M.B. was not considered to be a close family member of his. No other options had been considered, such as, for example, whether the applicant could receive a long-term visit by M.B. in another capacity (and not only on the basis of their relationship centred on R.B.). No individual assessment had been made in his case, which had breached the rules of administrative procedure.

29. On the one hand, the Ombudsman observed that even if the applicant had complained to the Prisons Administration and the administrative courts about the refusal of long-term visits, it was most likely that he would not have been granted such visits; rather, he could only have received compensation. On the other hand, the Ombudsman informed the applicant that he could lodge a complaint with the Constitutional Court (*Satversmes tiesa*) about the compliance of the legal provision concerning such long-term visits with the Constitution (*Satversme*).

2. Review by the Constitutional Court

30. On 12 May 2008 the applicant lodged a complaint with the Constitutional Court. By a decision of 4 June 2008 it was dismissed on formal grounds for non-compliance with the applicable admissibility criteria.

3. Review in accordance with the Law of Administrative Procedure

31. On 23 September 2008 the applicant forwarded a complaint to the Prisons Administration, which it received on 6 October 2008, about the refusals by the administration of Daugavpils Prison to allow long-term visits by his partner and her daughter. He claimed that had been told orally that visits by them would not be allowed, and he considered this blanket refusal to be in violation of Article 8 of the Convention. He pointed out that he had not received any long-term visits since his conviction.

32. On 3 November 2008 the Prisons Administration examined and dismissed the applicant's complaint.

33. On 22 November 2008 the applicant applied to the administrative courts with his complaint concerning long-term visits.

34. On 22 January 2009 the Administrative District Court exempted the applicant from the payment of court fees and admitted the complaint for examination in part, in so far as it concerned an action of a public authority (*faktiskā rīcība*) (namely the refusal to allow long-term visits by M.B. and R.B.). The applicant's compensation claim for 20,000 Latvian lati (LVL) was not admitted, as he had not lodged such a claim with the Prisons Administration (in contrast to his complaint concerning an action of a public authority). The applicant lodged an ancillary complaint against this decision with the Administrative Regional Court, which was rejected on 8 April 2009.

35. On 5 August 2010 the Administrative District Court examined and dismissed the applicant's complaint. The applicant was present during the hearing and submitted that his relationship with M.B. and R.B. had broken down owing to the refusal by the prison authorities to allow long-term visits. The district court found that the applicant had on numerous occasions asked for permission to receive long-term visits by M.B. and R.B. It considered that the authorities' refusals to allow such visits had constituted an interference with the applicant's rights under Article 8 of the Convention and Article 96 of the Constitution and as also established by section 45 of the Sentence Enforcement Code. Notwithstanding that, the district court held as follows:

> "The court notes that the applicant could prove his father-daughter relationship by showing the birth certificate of R.B., where he is recorded as her father. The defendant [the Prisons Administration] confirmed during the hearing that the applicant could receive a long-term visit by his daughter, if he produced her birth certificate. The applicant, for his part, considered that he did not need to prove anything.
>
> The court finds that the prison administration has not set an insurmountable obstacle by asking the applicant to provide documents attesting to his family relationships. The case file shows that the applicant has received several short-term visits by his partner, M.B., and her daughter, R.B., during which they could [in principle] have complied with the formal requirement to show R.B.'s birth certificate in order to receive a long-term visit [by her].
>
> In view of the above, the court concludes that the applicant and the people from whom he has asked to receive a long-term visit have not taken minimal steps to prove the applicant's relationship with R.B. This created doubts that the applicant had a family relationship with R.B. Thus the defendant's refusal to allow long-term visits by M.B. and R.B was justified."

36. The applicant lodged an appeal against this ruling, which was refused on several occasions on formal grounds (failure to pay court fees and failure to provide a translation of the statement of appeal in Latvian). After several unsuccessful ancillary complaints about these procedural decisions, on 9 June 2011 the Administrative Regional Court examined his appeal against the first-instance court's refusal to exempt him from the

payment of court fees. The case was sent back to the first-instance court to decide on the exemption.

37. On 23 August 2011 the Administrative District Court partially exempted the applicant from the payment of court fees for an appeal and set a time-limit for payment of the reduced court fees in the amount of LVL 5. This decision was sent to the applicant's address in prison in Latvia, as he had not informed the district court that he had been transferred to a prison in Russia (see below).

38. On 29 September 2011 the Administrative District Court found that the applicant had not paid the reduced court fees for lodging an appeal and had also not informed it of his transfer to another prison. As the applicant had failed to rectify the procedural shortcomings in his appeal (he had not paid the reduced court fees), his appeal against the 5 August 2010 ruling was therefore considered as not submitted. This decision took effect on 18 October 2011, as the applicant did not lodge an ancillary complaint against it on time.

C. The applicant's transfer to Russia

39. On 23 November 2009 the applicant asked to be transferred to Russia to continue serving his sentence there.

40. On 5 January 2010 the applicant was informed that a request had been sent to the Russian authorities in accordance with applicable law.

41. On 27 April 2011 the applicant was informed that the Russian authorities had accepted the request and that he would be transferred to Russia to continue serving his sentence.

42. On 16 June 2011 the applicant was transferred to a prison in Rīga, in view of his scheduled transfer to Russia.

43. On 22 June 2011 the applicant was handed over to the Russian authorities at Rīga International Airport.

44. On 10 August 2012 the applicant informed the Court that he intended to pursue his application in Strasbourg.

II. RELEVANT DOMESTIC LAW

45. A full description of the law and practice as concerns pre-trial detention at the relevant time may be found in *Svipsta v. Latvia* (no. 66820/01, §§ 53-66, ECHR 2006-III (extracts)) and *Vogins v. Latvia* (no. 3992/02, §§ 22-23, 1 February 2007).

46. Section 45 of the Sentence Enforcement Code, concerning visits in prison, can be found in *Aleksejeva v. Latvia* (no. 21780/07, § 28, 3 July 2012).

47. With legislative amendments that took effect on 11 August 2011, that provision now reads:

> "The administration of a prison may also authorise long-term visits by another individual, provided that prior to his or her imprisonment the convicted person had a common household or a child with that individual."

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

49. The applicant complained about the length of his pre-trial detention. The Court will examine this complaint under Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

50. The Government contested the admissibility of this complaint on several grounds. First of all, they submitted that the applicant had failed to comply with Article 34 of the Convention and Rule 47 of the Rules of Court because he had failed to provide relevant documents, to fill in an application form, and to inform the Court of the change of his address resulting from his transfer to a prison in Russia. Secondly, they contended that the applicant had not wished to pursue his application and invited the Court to strike it out of the Court's list of cases. Thirdly, they considered that the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They did not, however, provide more detail with respect to this argument.

51. The applicant offered no comment.

52. In response to the Government's submission that the applicant did not properly lodge his complaints before the Court, it suffices to note that the Court has already examined and rejected similar arguments in other cases (see *Marina v. Latvia*, no. 46040/07, §§ 34-44, 26 October 2010, and *Petriks v. Latvia*, no. 19619/03, §§ 18-20, 4 December 2012). It sees no reason to decide otherwise in the present case. As concerns the applicant's change of address, the Court takes note of his letter of 10 August 2012,

whereby he provided this information to the Court. Accordingly, the Government's objection has to be dismissed.

53. As concerns the Government's second objection, the Court refers to the letter of 10 August 2012 and notes that the applicant clearly stated that he intended to pursue his application. Consequently, Article 37 § 1 (a) of the Convention does not apply.

54. In response to the Government's third objection, the Court notes that Article 20 of Protocol No. 14 to the Convention provides as follows:

> "1. From the date of the entry into force of this Protocol, its provisions shall apply to all applications pending before the Court as well as to all judgments whose execution is under supervision by the Committee of Ministers.
>
> 2. The new admissibility criterion inserted by Article 12 of this Protocol in Article 35, paragraph 3.b of the Convention, shall not apply to applications declared admissible before the entry into force of the Protocol. In the two years following the entry into force of this Protocol, the new admissibility criterion may only be applied by Chambers and the Grand Chamber of the Court."

55. The present application is not one of those declared admissible before 1 June 2010. It follows that, under the terms of Article 20 of Protocol No. 14, the Court is not prevented from considering it under the "no significant disadvantage" criterion.

56. Article 35 § 3 (b) of the Convention provides as follows:

> "3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> ...
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

57. The Court has clarified its understanding of the "no significant disadvantage" criterion in *Korolev v. Russia* (dec.) (no. 25551/05, ECHR 2010), in the following terms:

> "Inspired by the ... general principle *de minimis non curat praetor*, the new criterion hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. The assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case (see, *mutatis mutandis*, *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161). The severity of a violation should be assessed, taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case."

58. This means that the Court will examine whether: (1) the applicant has suffered a significant disadvantage; (2) whether respect for human rights as defined in the Convention and the Protocols attached thereto requires an examination of the application on the merits; and (3) whether the case was

duly considered by a domestic tribunal (see *Zwinkels v. the Netherlands* (dec.), no. 16593/10, § 24, 9 October 2012). Firstly, the Court notes that it has not yet applied this admissibility criterion in cases relating to complaints under Article 5 § 3 of the Convention (compare with *Van Velden v. the Netherlands*, no. 30666/08, §§ 33-39, 19 July 2011, where the Court rejected the application of the new admissibility criterion in relation to a complaint under Article 5 § 4 of the Convention). As the Court understands the Government's reliance on Article 35 § 3 (b) of the Convention, they consider that the applicant did not suffer a significant disadvantage by virtue of the length of his pre-trial detention that lasted for one year, eleven months and eighteen days. Furthermore, the Court has reiterated on many occasions the importance of personal liberty in a democratic society (see *Storck v. Germany*, no. 61603/00, § 102, ECHR 2005-V, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 120, ECHR 2012). Taking into consideration the length of the applicant's pre-trial detention in the present case, the Court considers that in such circumstances the *de minimis* criterion could hardly be applied.

59. Finally, the Court finds that in the circumstances where the very essence of the applicant's complaint relates to the proper examination by the domestic courts of relevant and sufficient reasons for his continued deprivation of liberty and in view of the fact that the Court has found serious shortcomings in such examination at the material time in Latvia (see paragraph 65 below), the Court cannot consider whether the case has been "duly considered" by domestic courts without examining the merits of the case. It follows that the present application cannot be dismissed under Article 35 § 3 (b) of the Convention.

60. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

61. The Government considered that the grounds justifying the applicant's continued detention had been relevant and sufficient and that the authorities had therefore complied with Article 5 § 3 of the Convention. They argued that the initial period of the applicant's pre-trial detention had been justified by his character and the severity of the charges brought against him, as well as by the fact that he had not had a registered domicile in Latvia.

62. As for the domestic authorities, the Government argued that they had displayed special diligence, as they had completed the pre-trial investigation in six months and had also taken a number of steps such as arranging the forensic psychiatric examination of the applicant. Concerning the period

from 24 December 2002 to 10 May 2004, they admitted that there had been a certain delay in the proceedings. However, the trial hearings had taken place as initially scheduled and the trial had been concluded within the time-limit set by domestic law.

63. The applicant did not comment.

64. The Court notes that the applicant's pre-trial detention, for the purposes of Article 5 § 3 of the Convention, lasted from 27 May 2002, when he was arrested, until 14 May 2004, when he was found guilty and sentenced by the Rīga Regional Court. Therefore, the applicant spent one year, eleven months and eighteen days remanded in custody. The Court considers such a length to be sufficient to raise an issue under Article 5 § 3 of the Convention (see *Vogins*, cited above, § 40, where the applicant's pre-trial detention lasted for an even shorter period – one year, seven months and two days).

65. The Court reiterates at the outset that in a number of Latvian cases which concerned the corresponding period of time, it has found a violation of Article 5 § 3 of the Convention because of the extremely basic and summary reasoning of court orders and decisions extending the applicants' pre-trial detention (see *Svipsta*, cited above, §§ 108-113; *Estrikh v. Latvia*, no. 73819/01, §§ 122-127, 18 January 2007; *Nazarenko v. Latvia*, no. 76843/01, §§ 59-61, 1 February 2007; *Ž. v. Latvia*, no. 14755/03, §§ 72-75, 24 January 2008; *Gasiņš v. Latvia*, no. 69458/01, §§ 64-66, 19 April 2011; *Zandbergs v. Latvia*, no. 71092/01, §§ 72-73, 20 December 2011). Moreover, the Court has expressly noted that it has found violations of Article 5 § 3 of the Convention in several cases brought against Latvia on the grounds of insufficient reasoning and inadequate proceedings in deciding on continued detention, and that "these cases as well as the fact that there are dozens of similar applications pending before the Court seems to disclose a systemic problem in relation to the apparently indiscriminate application of detention as a preventive measure in Latvia" (see *Estrikh*, cited above, § 127) under the former Code of Criminal Procedure.

66. Turning to the present case, the Court observes that despite the fact that the preliminary investigation was completed within less than seven months of the applicant's arrest, his criminal case was dormant before the Rīga Regional Court from 6 January 2003, when the applicant was committed for trial, to 10 May 2004, when the first trial hearing took place. No procedural actions were taken during this period. It was therefore merely a waiting time – albeit one that lasted for one year, four months and three days. Only the most compelling reasons could justify keeping a person in custody for such a period of inactivity (see also the above-cited *Vogins* case, § 41). The national courts have not provided such reasons in their decisions and the Court cannot detect such reasons in the present case.

67. In the light of the above, the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

68. The applicant further complained that he had not been able to receive long-term visits in prison by his partner and her daughter. The Court will examine this complaint under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Admissibility

69. The Government contested the admissibility of this complaint on two grounds. Firstly, they argued that the applicant had failed to exhaust domestic remedies, in that he had not lodged complaints with the administrative courts, he had not appealed against the 29 September 2011 decision, and he had not complained to the Constitutional Court. In their submission, the administrative courts provided an effective and easily accessible remedy for the applicant's complaints, capable of rendering judgments forbidding a public authority to carry out a particular action (*faktiskā rīcība*) and awarding compensation. They submitted two examples of domestic case-law whereby complaints concerning long-term visits had been examined on the merits but had been rejected (case no. A420506911, 28 December 2011; case no. A42499106, 22 February 2008). Secondly, the Government considered that the Court could only review the applicant's allegations which had been reviewed by the administrative courts in response to his complaint about a particular visit. They highlighted that each request for a long-term visit was subject to obtaining permission from the administration of the relevant prison. If that permission was not granted, the decision could be made by the Prisons Administration, whose decision could itself be subject to review by the administrative courts.

70. The applicant offered no comment.

71. The Court notes at the outset that it cannot subscribe to the Government's view that the present case relates to a series of discrete acts by the administration of the prison that ought to have been reviewed by the administrative courts on separate occasions. The applicant did not complain about one or several isolated incidents where his right to receive long-term visits, which was established by the applicable provision of the Sentence Enforcement Code (see paragraph 46 above), had been infringed. It

transpires from the applicant's submissions that he was not allowed to receive any long-term visits by his unmarried partner, M.B., and her daughter, because of the mere fact that their relationship had not been registered and because of what he submitted was a formalistic approach adopted by the domestic authorities. Moreover, the Court notes that the applicant, in his application lodged with the administrative courts, clearly noted his dissatisfaction with the fact that he had never received long-term visits by his partner and her daughter. The Government's submission that these administrative proceedings were solely related to one refused visit is therefore misconceived. The Government's preliminary objection in this regard is therefore rejected.

72. As concerns recourse to the administrative courts, the Government did not deny that the applicant had indeed lodged a claim, but contended that he should have pursued it further before the Administrative Regional Court. The Court observes in this regard that it took nearly two years for the first-instance court, that is, for the Administrative District Court, to accept the applicant's claim and to examine it on the merits. Furthermore, it took the district court a further year to deal with a procedural issue (payment of court fees for lodging an appeal). Eventually, on 23 August 2011 it was decided to reduce the court fees to be paid by the applicant in respect of his appeal, but in the meantime the applicant had been transferred to serve his prison sentence in Russia. As the applicant did not pay the aforementioned fees and did not inform the court about his change of address, on 29 September 2011 the court determined that his appeal would be considered as not submitted. The applicant did not complain to the Administrative Regional Court about this decision.

73. The Court refers to the established principles of the distribution of the burden of proof in the area of exhaustion of domestic remedies (see, among many others, *Estrikh*, cited above, § 94; *Bazjaks v. Latvia*, no. 71572/01, § 85, 19 October 2010; *Leja v. Latvia*, no. 71072/01, § 48, 14 June 2011; and *Melnītis v. Latvia*, no. 30779/05, § 46, 28 February 2012). In the present case, the Government have made reference to the relevant provisions of domestic law and, most importantly, their application in practice by the administrative courts in comparable cases. It stems from the rulings provided by the Government that the domestic first-instance courts have accepted and examined complaints about the refusals of long-term visits by the prisoner's wife's son in one case (case no. A420506911) and by the prisoner's brother and son in another case (case no. A42499106). These rulings have become final as far as the refusals of long-term visits are concerned. Unlike in other cases, there is no suggestion that the notions of "action of a public authority" or "significant interference with human rights" have been applied by the domestic courts in a manner that is non-compliant with Article 8 of the Convention in so far as they relate to complaints about long-term visits (compare and contrast *Melnītis*, cited

above, § 51, and *Savičs v. Latvia*, no. 17892/03, § 106, 27 November 2012). The Court also notes that one of these rulings (in case no. A42499106) related to a situation that obtained in and around July and August 2006; the first refusal to allow the present applicant to receive a long-term visit was made in the same period.

74. The Court therefore considers that the Government have shown that recourse to the administrative courts could, in principle, be considered an effective remedy for a complaint under Article 8 of the Convention such as in the present case (see also the Court's acceptance of the effectiveness of recourse to the administrative courts for a complaint related to the opening of correspondence in a prison, *Čuprakovs v. Latvia*, no. 8543/04, § 67, 18 December 2012). The Court reiterates that it falls to the applicant to establish that he exhausted the proposed remedy or that it was inadequate or ineffective in the particular circumstances of his case, or that there existed special circumstances absolving him from the requirement (see *Melnītis*, cited above, § 46). The Court notes that the applicant has failed to advance any argument in this connection, contrary to Mr Melnītis and Mr Savičs in the above-mentioned cases. He has therefore failed to convince the Court that he did not need to further pursue his complaint before the Administrative Regional Court.

75. The Court would also note at this point that the mere fact that the applicant has been transferred to Russia to continue serving his sentence is not sufficient for the Court to conclude that the applicant was exempted from the requirement to exhaust domestic remedies in Latvia. The Court has already found that borders, factual or legal, are not an obstacle *per se* to the exhaustion of domestic remedies and as a general rule applicants living outside the jurisdiction of a Contracting State are not exempted from exhausting domestic remedies within that State, practical inconveniences or understandable personal reluctance notwithstanding (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and others, § 98, ECHR 2010). The Court would require serious arguments from the applicant if it were to accept that the general rule could not be applied in his case. None were provided by the present applicant.

76. In view of the above-mentioned considerations, the Court upholds the Government's preliminary objection as regards recourse to the administrative courts. There is thus no further need to examine the other part of that objection as regards recourse to the Constitutional Court.

77. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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."

79. The applicant did not submit a claim for just satisfaction in time. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the applicant's pre-trial detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention.

Done in English, and notified in writing on 11 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	David Thór Björgvinsson
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Vincent A. De Gaetano, joined by Judge Ziemele, is annexed to this judgment.

D.T.B.
F.E.P.

CONCURRING OPINION OF JUDGE DE GAETANO, JOINED BY JUDGE ZIEMELE

1. The period of deprivation of liberty – pre-trial detention – in issue in this case is of one year, eleven months and eighteen days. How the respondent Government could, with a straight face, submit that the applicant was to be considered as having suffered no "significant disadvantage" according to Article 35 § 3 (b) is beyond my powers of comprehension.

2. What I find even more strange is that in this case the Court thought fit to devote four substantial paragraphs – §§ 56 to 59 – in order to dismiss the Government's third preliminary plea on inadmissibility, suggesting in the process (see the last sentence of § 58) that a pre-trial detention in breach of Article 5 § 3 may be caught by the *de minimis* criterion. My concern is if this attitude were transposed generally to deprivations of liberty in breach of Article 5 § 1. It is difficult for me to conceive of a situation where a deprivation of liberty in breach of Article 5 § 1 can ever be regarded as a non-significant violation. At most a given situation may amount to a mere temporary restriction of one's liberty, as was implicit in *Austin and Others v. the United Kingdom* ([GC] nos. 39692/09, 40713/09 and 41008/09, 15 March 2012). In *Ostendorf v. Germany* (no. 15598/08, 7 March 2013) – where a person was detained for *four hours* – it never crossed anyone's mind even to suggest that this was a *de minimis* case (even though the "no significant disadvantage" admissibility criterion was applicable in virtue of the transitory provisions of Protocol No. 14). But then perhaps the Court's imagination in that case, like my imagination, is not fertile enough!

3. It would be a sad day indeed for fundamental human rights if, in order to reduce its backlog, the Court were to begin applying Article 35 § 3 (b) to Article 5 § 1 situations, instead of confining the said ground of inadmissibility to violations with a financial or patrimonial impact considered to be trivial (as, for example, in *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010; and *Cecchetti v. San Marino* (dec.), no. 40174/08, 9 April 2013). Were that to happen, cases like those of sexagenarian Mrs Sofiika Vasileva, who was illegally detained overnight in a police cell for failing to reveal her identity to a bus ticket inspector after she was caught riding the bus without a valid ticket (*Vasileva v. Denmark*, no. 52792/99, 25 September 2003), would probably be declared *de minimis*.