

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

FOURTH SECTION

CASE OF SAVIČS v. LATVIA

(Application no. 17892/03)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

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



In the case of Savičs 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 Lawrence Early, *Section Registrar*,

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 17892/03) 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 Latvian national, Mr Valerijs Savičs ("the applicant"), on 21 May 2003.

2. The applicant, who had been granted legal aid, was represented by Mr A. Laizāns, 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 that the regime for life-sentenced prisoners in the Daugavpils Prison, his isolation and the full body searches he had been subjected to had violated Article 3 of the Convention.

4. On 11 May 2010 the application was declared partly inadmissible and the complaint concerning Article 3 (see the above paragraph) was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). Both parties were subsequently invited to submit further observations (Rule 54 § 2 (c) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and is currently serving a life sentence in Jelgava Prison.

A. The applicant's conviction

6. On 24 September 2002 the applicant was arrested.

7. On 25 September 2003 the Zemgale Regional Court (*Zemgales apgabaltiesa*) convicted the applicant on eleven charges, including aggravated murder, robbery, rape and sexual assault, and sentenced him to life imprisonment.

8. On 24 February 2004 the Criminal Chamber of the Supreme Court (*Augstākās Tiesas Krimināllietu tiesu palāta*) upheld the verdict on appeal.

9. On 18 May 2004 the Criminal Department of the Senate of the Supreme Court (*Augstākās tiesas Senāta Krimināllietu departaments*) dismissed the applicant's appeal on points of law.

B. The applicant's detention in Daugavpils Prison

10. On 16 December 2004 the applicant was transferred from Jelgava Prison to Daugavpils Prison, where a new unit for life-sentenced prisoners, located in the former disciplinary block, had recently been constructed. The applicant, like all life-sentenced prisoners, was initially detained at the maximum security level (see paragraph 63 below), with additional security measures and certain restrictions being imposed under domestic law (see paragraphs 64, 65 and 67 below) and under internal prison regulations (see paragraphs 68 to 71 below).

11. The applicant worked in the prison from 9 March to 5 August 2005. The parties are in disagreement as to the reasons for which he stopped working.

1. Isolation

12. According to the applicant, throughout his detention in Daugavpils Prison he had been kept alone in a cell, save for between 28 February and 4 April 2005, when he had been kept together with another inmate.

13. The Government disagreed. They noted that during his detention he had been accommodated either in a double or a triple occupancy cell, either alone or together with other inmates. He had never been kept alone for more

than six months. It was their submission that the other inmates had refused to be accommodated together with the applicant.

14. On 25 August 2005, following numerous complaints by the applicant, the Ministry of Justice replied that under the applicable law maximum security prisoners could be kept in a single occupancy cell for a period of up to six months (see paragraph 64 below). He had not been kept in such a cell for longer than that.

15. On 25 April 2006 the administration of Daugavpils Prison again explained the situation to the applicant.

16. On 5 September 2006 the Prisons Administration (*Ieslodzījuma vietu pārvalde*) replied to the applicant that the applicable domestic law had not been contravened in this regard.

17. On 24 April 2007 the Prisons Administration again replied to the applicant stating that in 2005 he had been kept in a cell together with other prisoners twice, and in 2006 three times, and accordingly there had been no contravention of domestic law.

2. The full body searches

18. Throughout his detention in Daugavpils Prison the applicant was subject to full body searches, that is, he was ordered to strip naked and to submit to a visual inspection of his genitals in his cell on a regular basis. The applicant mentioned, by way of example, the following dates:

- from 9 March to 5 August 2005 two to four times daily when going to work and upon his return;
- 6 and 20 May 2005;
- 3 June 2005;
- 19 and 26 July 2005;
- 6, 24 and 30 August 2005;
- 1 June 2006;
- from 8 to 23 June 2006 twice daily while being kept in an isolation cell;
- 28 December 2006;
- 26 January 2007; and
- 23 February 2007.

19. The applicant submitted that he had often refused to submit to such searches and, in particular, to undress, and his refusal had been punished with special measures and disciplinary penalties.

20. The applicant stated that he had been subjected to the following special measures, by way of example:

- he was handcuffed and forcibly undressed (6 and 20 May, 26 July 2005);
- electric shocks and blows with truncheons were used when he had refused to obey the instructions of the prison guards to

undress for a full search, had used offensive language, had refused to hold his hands out for handcuffing and had physically resisted when handcuffs were being put on him (24 and 30 August 2005).

21. Following these incidents, reports had been drawn up and disciplinary action had been taken against the applicant. The applicant provided some examples:

- cancellation of the next telephone call (10 May and 3 August 2005);
- cancellation of the next scheduled family visit (26 May and 29 August 2005);
- a reprimand (31 August 2005); and
- detention in an isolation cell for fifteen days (8 June 2006).

22. The Government did not dispute that the applicant had been subjected to full body searches, but argued that the use of special measures had been justified by the applicant's own aggressive and provocative behaviour.

23. On 5 August 2005, in response to the applicant's complaint about the full searches, the Ministry of Justice explained that the execution of custodial sentences under the Sentence Enforcement Code was supervised by the Prosecutor General and his subordinate prosecutors.

24. On 26 July 2005 the applicant applied to the prosecutor's office with a complaint about the full search carried out in his cell and on his person that day. His complaint was forwarded to the Prisons Administration and on 22 August that authority replied that the administration of Daugavpils Prison had not contravened domestic law.

25. On 20 September 2005 the prosecutor's office replied to a complaint by the applicant of ill-treatment. No evidence of ill-treatment was found. The applicant himself, during a meeting with a prosecutor, had not mentioned any instances of ill-treatment. It was noted that pursuant to domestic law, searches of prisoners' cells and bodies were to be performed at least twice a month. It was also noted that the search of the applicant had been performed in accordance with the law.

26. On 15 February 2007 the prosecutor's office replied to a complaint by the applicant about the full body search of 26 January 2007 in the following terms: "I have examined your application and I have discovered breaches of [order no. 56] concerning the searches of sentenced persons. I have sent 'a prosecutor's application' to the governor of Daugavpils Prison about future compliance with legal acts."

3. Legal review

27. The applicant initiated several legal proceedings with a view to nullifying a number of internal prison regulations, all of which were unsuccessful.

(a) By the administrative courts

28. On 27 December 2006 the applicant applied to the Administrative District Court (*Administratīvā rajona tiesa*) to have order no. 2 ("order no. 2 is extralegal and unlawful because it has not been approved by the Cabinet of Ministers") and the disciplinary penalties imposed on him under it nullified. He alleged that this order contravened the Sentence Enforcement Code and Regulation no. 243 and noted, among other things, that on the basis of this order it was "prohibited to sit on the bed in the daytime, contrary to Regulation no. 243", "prohibited to move about – any movement [will be] considered an attack and special measures [will be] used as a result" and that it was "prohibited to look around, move and talk". He considered that the regime enforced under this order amounted to torture. He submitted that he had been "constantly humiliated by public undressing and torture in the [prison's] common room (in the presence of ten to twenty prison guards), that it [was] contrary to the Sentence Enforcement Code and Regulation. With a view to hiding the facts about the torture, the prison administration had fabricated reports, in which [he] had been slandered." He enumerated these reports: no. 156 dated 6 August 2005; no. 180 dated 30 August 2005; no. 67 dated 6 May 2005; no. 72 dated 20 May 2005; no. 131 dated 26 July 2005; no. 177 dated 24 August 2005; no. 132 dated 9 June 2006; and no. 133 dated 9 June 2006. He further stated that "in these reports none of [his] actions, expressions and gestures had shown aggression or [had constituted] an attempt to attack [anyone]. On all occasions [he] had been handcuffed [with his hands] behind [his] back, in accordance with unlawful order no. 2, pushed around and kicked on the floor in the common room and [his] clothes had been torn off". He further noted that "there are no special premises in the Daugavpils Prison to carry out a full body search of life-sentenced prisoners". Finally, the applicant stated that he had been "held in a single occupancy cell for one year and eight months and, through the use of threats and physical ill-treatment, subjected to full body searches in the common room".

29. On 28 December 2006 the Administrative District Court did not proceed with the application. A judge noted that "the application contains information about the applicant's living conditions in Daugavpils Prison and about the actions of the administration of Daugavpils Prison and the Prisons Administration, but it is not clear which administrative acts or actions of a public authority he challenges". The applicant was asked to specify which administrative acts or actions of a public authority he challenged.

30. On 24 January 2007 the applicant provided more details: he wished to challenge order no. 2 and order no. 75, issued by the prison governor as administrative acts, and to challenge the actions of a public authority. He specified that on the basis of these orders unlawful action had been taken against him.

31. On 26 January 2007 the Administrative District Court refused to accept the applicant's application to have the orders issued by the prison governor nullified, as they were internal acts and therefore not amenable to review by the administrative courts. The court did not proceed with the part of the application that concerned the allegedly unlawful actions of a public authority and the applicant was required to give more details as to "when exactly" and "what kind of action of a public authority" had been taken, within a specified time-limit. He also had to prove that he had complained about this to a hierarchically higher authority: if it concerned the actions of prison officers he had to complain to the Prisons Administration, and if it concerned the actions of the Prisons Administration he had to complain to the Ministry of Justice.

32. On 12 February 2007 the applicant appealed against that decision and submitted that order no. 2 and order no. 75 had been issued in violation of the Sentence Enforcement Code and of Regulation no. 423. He noted that the Prisons Administration and the Ministry of Justice had been informed of the situation in Daugavpils Prison. On 21 February 2007 he supplemented his appeal.

33. On 27 March 2007 the Administrative Regional Court (*Administratīva apgabaltiesa*) upheld the lower court's decision and set a new time-limit within which the applicant was required to give more details. As the applicant did not comply with this time-limit, on 11 May 2007 the Administrative District Court decided to regard the applicant's complaints as not submitted. The applicant did not lodge an appeal against that decision, which accordingly became final, and the documents he had submitted were sent back to him on 7 June 2007.

(b) By the Constitutional Court

34. On 6 October 2006 the Constitutional Court (*Satversmes tiesa*) refused to admit the applicant's constitutional complaint against order no. 2, as it was not a normative act but merely a guideline for implementing Regulation no. 423.

35. On 2 April 2008, 6 March 2009 and 9 June 2010 the Constitutional Court refused to admit several unrelated constitutional complaints brought by the applicant.

(c) Other

36. The applicant complained about order no. 75 to the Supreme Court, which forwarded his complaint to the Ministry of Justice, where it was

received on 21 December 2006. The Ministry of Justice also received another complaint from the applicant about both orders and replied on 1 March 2007 that he should address such complaints to the Prisons Administration, which was the competent institution in that regard. However, the Prisons Administration had already replied to the applicant on 23 February 2007, stating, *inter alia*, that order no. 75 had replaced order no. 2. The applicant's substantive complaints remained unaddressed.

C. Subsequent detention

37. On 1 November 2008, following an administrative reform, Daugavpils Prison was merged with Grīva Prison, and the newly established prison has since been called Daugavgrīva Prison.

38. On 13 August 2009, upon the applicant's request, he was transferred to Jelgava Prison in order to serve his sentence there.

II. RELEVANT INTERNATIONAL AND DOMESTIC LAW AND PRACTICE

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

39. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "CPT") has voiced serious concerns about the regime and the security measures applied to life-sentenced prisoners in Latvia on several occasions.

1. Visit to Jelgava Prison from 25 September to 4 October 2002

40. After its second periodic visit in 2002, the CPT noted that all life-sentenced prisoners at that time were held in Jelgava Prison. The only activity offered for them was daily outdoor exercise (one hour). For the remaining twenty-three hours of the day they were usually locked in a cell. They could only listen to a radio programme, read or play board games. Occasionally, they could watch TV, which was made available on a rota basis. They could only interact with their cell mate. The CPT stressed that life-sentenced prisoners were not necessarily more dangerous than other prisoners and called upon the domestic authorities to make individual risk assessments to allow decisions concerning security, including degree of contact with others, to be made on a case-by-case basis. The CPT concluded that the regime applicable to life-sentenced prisoners should be fundamentally revised (see paragraphs 86 to 88 of the relevant report: CPT/Inf (2005) 9).

41. The CPT also noted with concern that draconian security measures were applied whenever life-sentenced prisoners were removed from their cells (e.g. to be taken to the shower area or for outdoor exercise). They were systematically handcuffed with their hands behind their backs and escorted by three prison guards accompanied by a muzzled dog. It was the CPT's view that there could be no justification for routinely handcuffing life-sentenced prisoners outside their cells; they found these arrangements disproportionate and punitive and recommended the revision of these security measures without delay (see paragraph 89 of the report).

2. Visit to Jelgava Prison and Daugavpils Prison from 5 to 12 May 2004

42. During an *ad hoc* visit in 2004, the CPT also visited the new unit for life-sentenced prisoners in Daugavpils Prison (located in the former disciplinary block), which was in an advanced stage of reconstruction, but had not been finished, and expressed misgivings about certain aspects of the design of those facilities (see paragraph 59 of the relevant report: CPT/Inf (2008) 15).

43. After this visit, the CPT was seriously concerned by the failure of the Latvian authorities to implement the specific recommendations made after its 2002 visit. Apart from daily exercise, prisoners continued to be constantly locked in their cells, alone or with one cellmate, without any purposeful activities. They could not interact with inmates from other cells. The CPT reiterated its recommendation that the regime applicable to life-sentenced prisoners be fundamentally revised (see paragraphs 53 to 55 of the report).

44. The draconian security measures (hands cuffed behind the back, escorted by three prison guards with a dog, which would sometimes be muzzled) continued to be systematically applied whenever the life-sentenced prisoners left their cells. At the end of its visit, the CPT made an immediate observation requesting the Latvian authorities to carry out an individual risk assessment in respect of all life-sentenced prisoners and to adjust the security measures applied to them accordingly. The Government refused to do so. In its report of the 2004 visit, the CPT called upon the Latvian authorities to take immediate steps in this regard (see paragraph 56 of the report).

3. Visit to Jelgava Prison and Daugavpils Prison from 27 November to 7 December 2007

45. After its third periodic visit in 2007, the CPT expressed serious concern about the almost total failure of the Latvian authorities to improve the conditions under which life-sentenced prisoners were being held in

Latvian prisons, despite the specific recommendations made after its two previous visits (see paragraph 61 of the relevant report: CPT/Inf (2009) 35).

46. The CPT confirmed that not only in Jelgava Prison, but also in Daugavpils Prison, life-sentenced prisoners were locked in their cells for twenty-three hours per day, alone or with a cellmate, without being offered any purposeful activities. They were not allowed to interact with life-sentenced prisoners from other cells. The CPT found such a state of affairs unacceptable. The CPT saw encouraging signs in Daugavpils Prison, where one cell had been converted into a computer room and work to create new facilities had started (a workshop, a recreation area and a small gym). They noted, however, that additional steps were required to offer a sufficiently large area for these facilities, in order to allow all life-sentenced prisoners to spend a reasonable part of the day outside their cells. The CPT called upon the Latvian authorities to take steps without any further delay to devise and implement a comprehensive regime of out-of-cell activities in respect of all life-sentenced prisoners at Daugavpils and Jelgava Prisons (ibid.).

47. Overall, the material conditions of detention were adequate in the new unit for life-sentenced prisoners at Daugavpils Prison. All cells were of a reasonable size and well equipped. However, the CPT had certain misgivings about access to natural light (frosted glass bricks) and the ventilation system (considerable noise). The prison authorities informed the CPT that steps were being taken to resolve these issues (see paragraph 62 of the report).

48. As regards the security measures, the CPT reiterated once again that there could be no justification for routinely handcuffing life-sentenced prisoners whenever they were outside their cells, all the more so when this measure was applied in an already secure environment. Further, the use of dogs to escort this category of prisoner whenever they were taken out of their cells was unnecessary from a security standpoint and could only be regarded as a means of intimidating and humiliating the prisoners. The CPT welcomed the recent decision of the management of Daugavpils Prison to no longer use dogs when life-sentenced prisoners were being escorted within the confines of the prison (see paragraph 64 of the report).

49. As regards the individual risk assessment of life-sentenced prisoners in Daugavpils Prison, the CPT noted that panels to undertake these assessments had been set up but the proceedings carried out by them were, to a very large extent, devoid of any meaning. In practice, they met once a year and did not hear the views of the prisoners concerned, many of whom were apparently not even aware of the existence of such proceedings. As a matter of fact, a relaxation of the draconian security measures had been rejected in virtually every case, mainly on account of the nature of the crime(s) for which the prisoners concerned had been sentenced; and the fact that many of them had already spent several years in a remand prison

without posing any particular security problems did not seem to be taken into account. The CPT called upon the Latvian authorities to take immediate steps to carry out a proper individual risk assessment on a regular basis for all life-sentenced prisoners and to alleviate the security measures applied to them accordingly (see paragraph 65 of the report).

50. Furthermore, the CPT stated that life-sentenced prisoners were subject to some anachronistic rules. By way of example, they were not allowed to sit or lie on their bed during the day. If this rule was not respected, the prisoners usually received a disciplinary punishment. In addition, several prisoners alleged that, whenever the cell door was opened by a prison officer, they were required to recite their full name and the section of the Criminal Law under which they had been sentenced. The CPT recommended the abolition of the above-mentioned rules/practices without delay (see paragraph 66 of the report).

51. Lastly, the CPT also had misgivings about the systematic practice of strip-searches for life-sentenced prisoners. The CPT noted that while prison officers had indicated that strip-searches were only carried out on entry or return to the prison, after visits or "on suspicion", all the prisoners interviewed by the CPT had given consistent accounts of routine, systematic strip-searches and searches of their cells every ten days. Every prisoner was required to undress completely and to hand each item of clothing through the bars of the cell in order for it to be searched by the guards. They remained standing and fully naked in view of the guards and the prisoner sharing the cell for about five minutes. In the CPT's opinion, such a practice could be considered as amounting to degrading treatment. The CPT recommended that strip-searches only be conducted on the basis of a concrete suspicion and in an appropriate setting (see paragraph 66 of the report).

52. Summing up, the CPT noted that its delegation had gained the distinct impression that senior prison officers, including at the management level, had deeply rooted negative attitudes towards life-sentenced prisoners, which explained their resistance to any change in regime, providing work opportunities or even medical care. Their mindset was focused on the heinous, and sometimes sordid, offences committed by the life-sentenced prisoners, rather than their prospects for long-term rehabilitation and reintegration into society. Indeed, many of the officers concerned appeared to be psychologically unsuited to be put in charge of life-sentenced prisoners. It was the CPT's view that there was an urgent need for senior prison officers to receive clear guidance and special training on how to deal with life-sentenced prisoners in a contemporary prison system (see paragraph 69 of the report).

53. The CPT also noted the following:

> "70. The CPT also wishes to draw the Latvian authorities' attention to Section 7 of Recommendation Rec (2003) 23 on the Management by Prison Administrations of

Life-Sentenced and Other Long-Term Prisoners (adopted by the Committee of Ministers of the Council of Europe on 9 October 2003), which emphasises that life-sentenced prisoners should not be segregated from other prisoners on the sole ground of their sentence (non-segregation principle).

The Explanatory Report of the afore-mentioned recommendation further states that:

"41. [t]he special segregation of life-sentenced or long-term prisoners cannot be justified by an unexamined characterisation of such prisoners as dangerous. As a general rule, the experience of many prison administrations is that many such prisoners present no risks to themselves or others. And if they do present such risks, they may only do so for relatively limited periods or in particular situations. In consequence, while it is fully recognised that time and resources are needed to implement this principle; these prisoners should only be segregated if, and for as long as, clear and present risks exist.

42. Life-sentenced and long-term prisoners are thought in some countries to pose serious safety and security problems in the prison. The violence and dangerousness manifested in the criminal act is considered to carry over to their lives in prison. Offenders who, for example, have committed murder are among those most likely to receive life or long sentences. This does not necessarily mean that they are violent or dangerous prisoners. Indeed, prison authorities can refer to individual murderers with a life or long sentence as "good prisoners". They exhibit stable and reliable behaviour and are unlikely to repeat their offence. The likelihood of an offender engaging in violent or dangerous behaviour frequently depends not only on personality characteristics but also on the typical situations that permit or provoke the emergence of such behaviour.

43. Descriptions in terms of violence and dangerousness should, therefore, always be considered in relation to the specific environments or situations in which these characteristics may – or may not – be exhibited. In the management of long-term and life prisoners, a clear distinction should be drawn between safety and security risks arising within the prison and those that may arise with escape into the community. The classification and allocation of long-term and life-sentenced prisoners should take account of these differing kinds of risks (...)".

The CPT recommends that the Latvian authorities reconsider their segregation policy vis-à-vis life-sentenced prisoners, in the light of the above remarks. The existing plans to construct a new detention block for life-sentenced prisoners at Jelgava Prison should also be revised accordingly.

Further, the Committee invites the Latvian Prison Administration to establish a co-operation programme with another prison administration which has experience in applying alternative approaches to dealing with life-sentenced prisoners."

4. Visit to Jelgava Prison and Daugavgrīva Prison from 3 to 8 December 2009

54. After its *ad hoc* visit in 2009, the CPT noted on a positive note that some improvement in the attitude of staff was observed as compared to its previous visits and this observation was generally confirmed by the

prisoners themselves. However, the CPT expressed some misgivings about the quality of staff-prisoner relations (see paragraph 29 of the relevant report: CPT/Inf (2011) 22).

55. As regards the material conditions of detention, the CPT noted that despite the assurances given by the prison governor during the 2007 visit two main problems remained unresolved in Daugavgrīva Prison. Firstly, the frosted glass bricks which rendered access to natural light in the cells inadequate had still not been replaced by transparent glass panels. Secondly, the ventilation system did not function properly (this was all the more worrying as there were no windows in the cells that could be opened) and created considerable noise in many cells. The CPT recommended these shortcomings be remedied without further delay (see paragraph 30 of the report).

56. As regards the regime, the CPT was seriously concerned that despite its previous specific recommendations in this respect the life-sentenced prisoners at the maximum security level continued to be locked in their cells for most of the day without being offered any purposeful activities. Although there was a small gym at Daugavgrīva Prison, it could only be used for 1.5 hours every day and it was very modestly equipped (two exercise bicycles, a table game and a TV set). In fact, it was mostly used to watch TV (in groups of up to three persons), as this was the only occasion for life-sentenced prisoners to meet prisoners other than their cellmates. The CPT reiterated its previous recommendation in this regard (see paragraph 31 of the report).

57. As regards the security measures, the CPT noted with serious concern that the practice of systematic handcuffing of all life-sentenced prisoners continued whenever they were escorted inside the prison. It reiterated that the systematic handcuffing of prisoners cannot be justified, and all the more so when applied in an already secure environment. Such a practice could only be seen as disproportionate and punitive (see paragraph 32 of the report).

58. The CPT recalled its previous recommendations as concerns the individual risk assessment of prisoners and that the proceedings did not function properly in practice. The CPT noted, furthermore, that not a single individual risk assessment of life-sentenced prisoners had been carried out in Daugavgrīva Prison since March 2008. It reiterated its previous conclusions and expressed a wish to receive copies of all the decisions taken following the risk assessment (see paragraph 33 of the report).

59. The CPT stressed once again that there was no justification for keeping life-sentenced prisoners apart from other prisoners solely on the basis of their sentence (see paragraph 35 of the report).

60. Lastly, as regards discipline in relation to prisoners in general, despite a specific recommendation made by the CPT, lying on the bed during the day was still considered a disciplinary offence and was punished

accordingly. The CPT reiterated its recommendation that this anachronistic rule be abolished without further delay (see paragraph 36 of the report).

B. European Prison Rules

61. The European Prison Rules, adopted on 11 January 2006, are recommendations of the Committee of Ministers to member States of the Council of Europe as to the minimum standards to be applied in prisons. States are encouraged to be guided in legislation and policies by those rules and to ensure wide dissemination of the Rules to their judicial authorities, as well as to prison staff and inmates. The relevant parts read as follows:

"*Prison regime*

25.1 The regime provided for all prisoners shall offer a balanced programme of activities.

25.2 This regime shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction. ..

Exercise and recreation

27.1 Every prisoner shall be provided with the opportunity of at least one hour of exercise every day in the open air, if the weather permits.

27.2 When the weather is inclement alternative arrangements shall be made to allow prisoners to exercise.

27.3 Properly organised activities to promote physical fitness and provide for adequate exercise and recreational opportunities shall form an integral part of prison regimes.

27.4 Prison authorities shall facilitate such activities by providing appropriate installations and equipment.

27.5 Prison authorities shall make arrangements to organise special activities for those prisoners who need them.

27.6 Recreational opportunities, which include sport, games, cultural activities, hobbies and other leisure pursuits, shall be provided and, as far as possible, prisoners shall be allowed to organise them.

27.7 Prisoners shall be allowed to associate with each other during exercise and in order to take part in recreational activities. ...

Special high security or safety measures

53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners.

Searching and controls

54.1 There shall be detailed procedures which staff have to follow when searching:

...

b. prisoners;

...

54.2 The situations in which such searches are necessary and their nature shall be defined by national law."

C. Recommendation concerning life-sentenced and other long-term prisoners

62. The Recommendation on the Management by Prison Administrations of Life-Sentenced and Other Long-Term Prisoners (Rec (2003) 23), adopted on 9 October 2003, is a recommendation of the Committee of Ministers to member States of the Council of Europe. States are encouraged to be guided in legislation and policies by these principles and to ensure the wide dissemination of this recommendation. The relevant parts read as follows:

"General principles for the management of life sentence and other long-term prisoners

3. Consideration should be given to the diversity of personal characteristics to be found among life sentence and long-term prisoners and account taken of them to make individual plans for the implementation of the sentence (individualisation principle).

...

7. Consideration should be given to not segregating life sentence and other long-term prisoners on the sole ground of their sentence (non-segregation principle).

...

Risk and needs assessments

12. A careful appraisal should be made by the prison administration to determine whether individual prisoners pose risks to themselves and others. The range of risks assessed should include harm to self, to other prisoners, to persons working in or visiting the prison, or to the community, and the likelihood of escape, or of committing another serious offence on prison leave or release.

13. Needs assessments should seek to identify the personal needs and characteristics associated with the prisoner's offence(s) and harmful behaviour ("criminogenic needs"). To the greatest extent possible, criminogenic needs should be addressed so as to reduce offences and harmful behaviour by prisoners both during detention and after release.

14. The initial risk and needs assessment should be conducted by appropriately trained staff and preferably take place in an assessment centre.

15. a. Use should be made of modern risk and needs assessment instruments as guides to decisions on the implementation of life and long-term sentences.

b. Since risk and needs assessment instruments always contain a margin of error, they should never be the sole method used to inform decision-making but should be supplemented by other forms of assessment.

c. All risk and needs assessment instruments should be evaluated so that their strengths and weaknesses become known.

16. Since neither dangerousness nor criminogenic needs are intrinsically stable characteristics, risk and needs assessments should be repeated at intervals by appropriately trained staff to meet the requirements of sentence planning or when otherwise necessary.

17. Risk and needs assessments should always be related to the management of risks and needs. These assessments should therefore inform the choice of appropriate interventions or modifications of those already in place.

Security and safety in prison

18. a. The maintenance of control in prison should be based on the use of dynamic security, that is the development by staff of positive relationships with prisoners based on firmness and fairness, in combination with an understanding of their personal situation and any risk posed by individual prisoners.

b. Where technical devices, such as alarms and closed circuit television are used, these should always be an adjunct to dynamic security methods.

c. Within the limits necessary for security, the routine carrying of weapons, including firearms and truncheons, by persons in contact with prisoners should be prohibited within the prison perimeter.

19. a. Prison regimes should be organised so as to allow for flexible reactions to changing security and safety requirements.

b. Allocation to particular prisons or wings of prisons should be based on comprehensive risk and needs assessments and the importance of placing prisoners in environments that, by taking account of their needs, are likely to reduce any risk posed.

c. Particular risks and exceptional circumstances, including requests by prisoners themselves, may necessitate some form of segregation of individual prisoners. Intensive efforts should be made to avoid segregation or, if it must be used, to reduce the period of its use.

20. a. Maximum security units should be used only as a last resort and allocation to such units should be regularly reviewed.

b. Within maximum security units, regimes should distinguish between the handling of prisoners who pose an exceptional risk of escape or danger should they succeed, and the handling of those posing risks to other prisoners and/or to those working in or visiting the prison.

c. With due regard to prisoner behaviour and security requirements, regimes in maximum security units should aim to have a relaxed atmosphere, allow association between prisoners, freedom of movement within the unit and offer a range of activities.

d. The management of dangerous prisoners should be guided by the principles embodied in Recommendation No. R (82) 17 concerning custody and treatment of dangerous prisoners."

D. Relevant domestic law and practice

1. Legislation and regulations relating to detention of life-sentenced prisoners

63. Until the 27 November 2008 amendments to the Sentence Enforcement Code (effective from 23 December 2008), all life-sentenced prisoners were subject to the maximum security level for at least the first five years of their sentence (section 50^4, paragraph 5). Since then, the relevant period is at least the first seven years of their sentence.

64. Life-sentenced prisoners are accommodated in a separate prison unit with additional security. No contact with other prisoners is allowed. They can be held in single-occupancy cells for a period not exceeding six months (section 50^4, paragraph 6 of the Sentence Enforcement Code).

65. While being subject to the maximum security level, life-sentenced prisoners may receive three long-term (from six to twelve hours) and four short-term (from one to two hours) visits per year, one telephone conversation per month, have a daily walk or exercise for no less than one

hour, receive books from a library via prison staff and watch TV (section 50^4, paragraph 9 of the Sentence Enforcement Code).

66. With the amendments of 27 November 2008 a new provision was included in section 50 of the Sentence Enforcement Code to the effect that:

(i) complaints by convicted persons concerning the circumstances of the execution of a custodial sentence (*brīvības atņemšanas soda izpildes apstākļi*) shall be examined by the prison governor under the procedure established by the Law on Enquiries; and

(ii) complaints by convicted persons concerning administrative acts or actions of a public authority (*faktiskā rīcība*) shall be examined by the Head of the Prisons Administration under the procedure established by the Law of Administrative Procedure.

According to the explanatory report accompanying the amendments, these amendments were necessary with a view to laying down coherent procedures for prisoners' complaints, as the law had not provided with sufficient clarity that prisoners should first address their complaints to the prison governor (and the Prisons Administration).

67. Regulations of the Cabinet of Ministers no. 73 (2002) (effective until 2 June 2006) and no. 423 (2006) (effective from 3 June 2006) lay down the internal rules of order in prisons (*Brīvības atņemšanas iestādes iekšējās kārtības noteikumi*). They contain no provision concerning handcuffing. They contain no express prohibition on sitting or lying on a bed during daytime. However, they mention that beds should be made "to a common standard".

2. Internal prison regulations relating to life-sentenced prisoners

68. On 29 March 2004 the Prisons Administration issued order no. 56 thereby approving the relevant instruction (*Instrukcija par apcietināto un notiesāto uzraudzības kārtību*) (effective until 28 February 2007), under which, among other things, all life-sentenced prisoners were to be handcuffed whenever taken outside their cells and accompanied by at least two prison guards with dogs. Two types of searches on persons were permissible: full body searches, where the person in question is requested to undress completely; and partial searches, when this is not requested. There were no provisions concerning full body searches of life-sentenced prisoners.

69. On 4 January 2005 the Daugavpils Prison governor issued order no. 2 thereby establishing the rules of conduct for prisoners serving life sentences (*Uz mūžu notiesāto uzvedības noteikumi Daugavpils cietumā*). Among other things, the following rules were contained therein:

- a prohibition on sitting or lying on a bed in the daytime;
- an obligation on each prisoner to recite his name, the name of his father, ID code and the section of the Criminal Law under which he had been sentenced during daily morning and evening checks;

– a prohibition on moving "during the course of various [security] measures in the cell or elsewhere"; any unauthorised movement would be considered as an attempt to attack which called for the use of special measures (handcuffs, truncheons, electric shocks, a dog or tear gas); and
– a prohibition on talking, looking around or moving without permission when taken outside the cell (accompanied by guards with dogs).

70. On 6 September 2006 the Daugavpils Prison governor issued order no. 75 thereby establishing the daily schedule and the rules of conduct for prisoners serving life sentences (*Daugavpils cietuma notiesāto ar brīvības atņemšanu uz visu mūžu dienas kārtība un uzvedības noteikumi*). These rules did not significantly differ from the previous ones; all of the above-mentioned rules remained in place. However, the presumption of an attempt to attack in case of unauthorised movement by a prisoner was no longer expressly included.

71. On 9 March 2006 the Prisons Administration adopted procedure no. 1/12-1 concerning searches in prisons (*Kratīšanas kārtība ieslodzījuma vietās*). Under this procedure, planned searches in cells and premises are carried out in accordance with a schedule made by the prison governor, but not less than twice per month (paragraph 5). There is no similar provision on the frequency of searches of a person. Another provision, however, provides that extraordinary searches of a person and in a cell (premises) are carried out "upon a reasonable suspicion of prohibited items or substances or such objects that might be used for crime or escape attempt" (paragraph 7). Under the procedure two types of searches of a person are available: full body searches, where the person in question is requested to undress completely; and partial body searches, when this is not requested (paragraph 12). The procedure does not contain any provision as to how often body searches should be made, nor does it include any special provision on body searches of life-sentenced prisoners. The only pertinent provision reads: "if a prisoner's behaviour raises suspicion during a partial body search, a full body search should be carried out" (paragraph 14).

3. Administrative proceedings and case-law

72. The relevant parts of the Law of Administrative Procedure (*Administratīvā procesa likums*), which took effect on 1 February 2004, have been summarised elsewhere (see *Melnītis v. Latvia*, no. 30779/05, §§ 24 – 26, 28 February 2012). The Law took effect on 1 February 2004.

73. In addition, on 19 October 2009 the Administrative District Court (in case no. A42519807) adopted a judgment in a case concerning full searches of a prisoner held in a disciplinary cell in Jēkabpils Prison from 6 to 16 October 2006. The district court ruled that in order to establish a significant interference with human rights and thereby bring an action of a

public authority under the administrative courts' scrutiny, the grounds adduced for a full search and the manner in which it had been carried out were to be examined. The district court found that the full searches in that case had been unjustified and humiliating. Accordingly, they had been unlawful actions of a public authority. The district court awarded 1,000 Latvian lati (LVL) (approximately 1,423 euros (EUR)) in damages.

74. Following this ruling, the case was examined by two appellate courts. First of all, the Administrative Regional Court upheld the ruling but reduced the damages award to LVL 110 (approximately EUR 157). Then the Administrative Department of the Senate of the Supreme Court sent the case back for fresh examination in so far as it concerned the damages award. On 11 July 2011 the Administrative Regional Court, after its second examination of the case, awarded LVL 1,000 (approximately EUR 1,423) in damages. This ruling took effect on 11 August 2011.

4. Constitutional proceedings and case-law

75. The relevant provisions of the Law on the Constitutional Court (*Satversmes tiesas likums*) have been quoted elsewhere (see *Grišankova and Grišankovs v. Latvia* (dec.), no. 36117/02, ECHR 2003-II (extracts)). The most relevant provision for the purposes of the present case reads as follows:

Section 19^2 – Constitutional Complaint (an application)

> "1. Any person who considers that a legal provision which is not in compliance with a provision having superior legal force has infringed his or her fundamental rights under the Constitution may lodge a constitutional complaint with the Constitutional Court."

76. In addition, it ought to be noted that under this law the interpretation of a legal provision provided by the Constitutional Court (*Satversmes tiesa*) in a judgment (section 32, paragraph 2) or in a decision to terminate proceedings (section 29, paragraph 2^1, effective from 14 March 2008) is binding on all domestic authorities, including the courts.

77. On 8 March 2011 the Constitutional Court delivered its decision in case no. 2010-52-03 on the compliance of the provision contained in Regulation no. 423 (2006) that beds should be made "to a common standard" with the Constitution (*Satversme*), in particular with the right to a private life. This case had been brought before the Constitutional Court by the Administrative Department of the Senate of the Supreme Court. It had been their view that Regulation no. 423 (2006) contained a prohibition on lying down (remaining) on one's bed in the daytime and that such a restriction was incompatible with prisoners' right to a private life contained in the Constitution.

78. During these proceedings the Prisons Administration expressed their view that the contested provision did not allow prisoners to lie down on

their bed in the daytime. Conversely, the Cabinet of Ministers contended that it was not prohibited. The Ombudsman added that the contested provision was wrongly interpreted and applied in prisons.

79. Having examined the various views of the domestic authorities, the Constitutional Court concluded that the provision in question did not prohibit prisoners from resting on their bed, if it had been made, in the daytime. It reached that conclusion by using the teleological method of interpretation. The Court noted that the application of the contested provision was not uniform in prisons. However, this was insufficient to declare the provision unconstitutional. Taking into account that the case related to the interpretation and application of the contested provision, the proceedings before the Constitutional Court were terminated on the grounds that it was no longer possible to continue them (section 29, paragraph 1, part 6 of the Law on the Constitutional Court).

5. Domestic reports on the regime for life-sentenced prisoners

80. The Latvian Centre for Human Rights (*Latvijas Cilvēktiesību centrs*) published a monitoring report on closed institutions in Latvia in 2006. These are their findings as concerns life-sentenced prisoners in Daugavpils Prison:

> "In order to establish a separate unit for life prisoners, premises were reconstructed and remodelled and double cells were constructed on two floors. All the cells are similar: there are two single beds, a table, two chairs, and a wardrobe in two sections. The cells have glass block windows, barred on the inside. The windows cannot be opened, airing is ensured by ventilation. The cell walls are painted in light shades, the equipment is new. The cells have a toilet behind a screen and a metal sink. Above the sink [are] a mirror in a wooden frame and a small shelf on the wall. [There are] heating system pipes along the wall. The unit has two prison-owned TV sets and one video player, which the cells receive in the morning according to a schedule and return in the evening. At the time of the visit there were eight life prisoners in the unit. Two of them live in the same cell by choice, the rest [are] by themselves.
>
> The prison provides a common uniform for this category of prisoner including footwear, underwear, socks and all the hygiene items prescribed by Regulations of the Cabinet of Ministers. In specific cases and at the request of the prisoner, the administration permits a personal item to be worn, for example, [one's] own training suit while engaged in a sport in the cell. Life prisoners have practically no contact with their family. During the period from October 2004 to March 2005 there had been one short visit and one longer visit had been requested.
>
> To provide life prisoners with the opportunity to earn [money] and spend time outside their cells, the administration has signed an agreement with a Daugavpils firm [for prisoners] to [be employed] folding cartons. Beginning on 9 March 2005, all life prisoners are offered this work. Some have refused to work, according to the prison administration, because the pay is too low and they receive money from their family. The prisoners work in pairs. Four employed prisoners were interviewed during the visit. One of these pairs gave up their walk for work, the other couple said they took advantage of the opportunity to walk for an hour. Walks are taken alone. Life

prisoners are brought out of their cells in handcuffs, escorted by two guards and a dog. They may meet with medical personnel, the chaplain and others (for example reporters) in a separate room, where their seating area is separated [from the rest of the room] by bars, and which has a door and a small window. Medical personnel may go behind the bars. While in this room, [their] handcuffs may be removed.

According to the prison administration, all life prisoners plan to be pardoned after twenty-five years and return to freedom. However, at present they all have violations and disciplinary punishments which prevent a transfer from the maximum security regime to the medium security regime. The chaplain also visits life prisoners. Out of eight sentenced prisoners in this category, seven wish to meet with him. Meetings are held in a special room, where the prisoner and the chaplain are separated by bars. In cooperation with the prison administration, the chaplain wants to establish a separate church and film room for this category of sentenced prisoner."

81. According to a yearly public report issued by the Prisons Administration, on 31 December 2011 there were fifty-one inmates sentenced to life imprisonment in Latvia. According to a public report on the needs of life-sentenced prisoners prepared by the Prisons Administration, on 1 September 2009 there were forty-six inmates sentenced to life imprisonment in Latvia, of which twenty-two were in Daugavgrīva Prison. For the purposes of that report all inmates in Daugavgrīva Prison were interviewed. It was noted that they spend their days watching TV, reading books, magazines and newspapers, writing letters and doing exercises and were generally satisfied with these activities.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

82. The applicant raised a number of complaints under Article 3 of the Convention, which provides:

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

83. First, on 23 May 2005 the applicant introduced and in his further correspondence elaborated on a complaint about the stringent regime in Daugavpils Prison for life-sentenced prisoners. In particular, he complained about the prohibition on sitting on his bed in the daytime, the requirement to recite on a daily basis his name, the name of his father and the article of the Criminal Law under which he had been sentenced, about the presumption that any movement by a prisoner without prior authorisation from prison guards was considered an attempt to attack and was punished accordingly with special measures (blows with truncheons), and about the use of dogs to escort prisoners whenever they were taken out of their cells.

84. Second, on 26 September 2005 the applicant introduced a complaint about being subject to full body searches on a regular basis.

85. Third, on the same date the applicant alleged that he was being kept in isolation in a cell for long periods of time. He argued that he had only been kept with another inmate between 28 February and 4 April 2005.

86. The Government contested these complaints.

A. Admissibility

1. Parties' submissions

87. The Government argued that the applicant had failed to use the remedies established by the Law of Administrative Procedure and the Law on the Constitutional Court. They asserted that the remedies provided therein had been effective, accessible and had offered reasonable prospects of success.

(a) The administrative courts

88. The Government argued that the applicant should have made an application to the administrative courts had he considered that the prison regime, the full body searches and the isolation in Daugavpils Prison significantly interfered with his human rights (unlawful action of a public authority). They relied on information provided by the Senate of the Supreme Court on 11 August 2010, which among other things explained:

> "A prisoner may challenge before the administrative courts [...] activities (action or inaction) of a prison administration as an action of a public authority that significantly interferes with his or her human rights. If the prison regime of a life-sentenced prisoner significantly interferes with his or her human rights, an application to the administrative courts about such actions would come within its jurisdiction.
>
> However, the prison administration's decision to approve internal prison regulations that prisoners have to abide by while serving their sentences cannot be a separate subject of an application to the administrative courts. Such a decision is an internal decision and the rules that establish a schedule [for prisoners] and regulate prisoners' conduct are internal normative acts. Internal decisions cannot be challenged in the administrative courts...
>
> This does not mean, however, that the administrative courts could not, if necessary, examine the effects of internal normative acts on prisoners, such examination would be merely carried out in view of the actual circumstances and not *in abstracto*. Namely, if [a prisoner] were to lodge an application ... about an administrative act or an action of a public authority that is based on an internal normative act, the administrative courts ... would examine among other things whether the relevant internal provisions were lawful and applicable."

89. The Government also referred to information provided by the Supreme Court of Latvia, according to which the Administrative District

Court had examined some ten cases about actions of a public authority in prisons on the merits in 2007. In particular, the Government mentioned one specific example of a case concerning full body searches in a prison: in its ruling of 19 October 2009 the Administrative District Court had found that daily full body searches of a prisoner had been unlawful and had awarded LVL 1,000 in damages (see paragraph 73 above).

90. The Government acknowledged that the applicant in the present case had lodged an application with the Administrative District Court. However, they argued that he had failed to specify which actions of a public authority he was complaining of. He had also failed to lodge a complaint against the decision of 11 May 2007 and had therefore himself been responsible for failing to comply with the domestic rules of procedure. At the same time, the Government acknowledged that order no. 2 and order no. 75 were not, in principle, amenable to the administrative courts' review, unless the concerned person specified in which particular manner the act in question had interfered with his or her lawful rights and legitimate interests.

91. The applicant disagreed. He considered that the administrative courts could not be considered as having been an effective remedy for his complaints at the material time. In this respect he referred to the ruling of the Administrative Department of the Senate of the Supreme Court of 29 August 2006 (case no. SKA-498) and noted that it had been the first decision where a prisoner's right to appeal to the administrative courts against the decisions taken by the Prisons Administration had been recognised, if there had been a "significant interference" with human rights. Prior to this, proceedings under the Sentence Enforcement Code (a complaint to the prison administration) had been considered the only appropriate remedy. Furthermore, the applicant stressed that new legislation or any legislative developments, as well as subsequent case-law, were not accessible to detainees such as him.

92. In their additional observations, the Government accepted that the existing practices in prisons had not changed overnight following the entry into force of the Law of Administrative Procedure on 1 February 2004. In their view, however, this law had introduced an effective remedy allowing individuals such as the applicant to contest unlawful actions of the prison administration. In support of this argument the Government referred to two rulings of the administrative courts. The first had been adopted by the Administrative District Court on 7 December 2005 (case no. A42278805), whereby it had ordered the Prisons Administration to ensure that a prisoner received personal hygiene products. The second had been adopted by the Administrative Department of the Senate of the Supreme Court on 23 May 2006 (SKA-300), concerning a complaint about a refusal to permit daily outdoor exercise in a prison. The Senate had established that "in order to admit for examination within administrative proceedings an act or an action of a public authority *vis-à-vis*, *inter alia*, persons deprived of their

liberty, it is necessary to establish whether the act or action concerned has significantly interfered with human rights". In that case the Senate of the Supreme Court had set aside the conclusions of two lower administrative courts that all complaints arising out of a public authority's action should be examined following a "subordination procedure", that is to say, by lodging a complaint with a hierarchically higher institution and not through administrative proceedings in court.

93. In addition, the Government referred to six other examples of domestic case-law. The first of those related to administrative proceedings concerning the conditions of detention (insufficient light, no sink, toilet not separated from the rest of the cell) in a disciplinary cell in Jēkabpils Prison from 6 to 16 October 2006 (case no. A42645308). On 15 June 2009 the first-instance court had rejected the complaint on its merits, but on 8 July 2011 the Administrative Regional Court had quashed that judgment and had upheld the complaint, finding that there had been significant interference with the claimant's human rights, and had awarded LVL 200 in damages. On 11 May 2012 the Administrative Department of the Senate of the Supreme Court had found that the damages award had been insufficient and had noted that:

> "The Senate has observed that notwithstanding the well-established case-law of the Court as regards conditions of detention not complying with Article 3 of the Convention, the settled case-law of the administrative courts and the CPT's conclusions after its first visits since 1999, the State refrains from solving recurrent problems in a complex manner... In the Senate's view more emphasis should be made on the preventive function of determining compensation in Latvia so that the State would sooner avert the repetition of similar cases in future."

It sent the case back for fresh examination in so far as it concerned the damages award.

94. The second, third and fourth rulings had concerned unlawful actions concerning prisoners' correspondence (cases no. A42306606 and no. A42424207) and postal delivery (case no. no. A42491406). Final rulings on the merits in those cases had been adopted on 7 November 2011, 30 July 2007 and 6 April 2009, respectively.

95. The fifth and sixth rulings had concerned unlawful disciplinary punishments imposed in prison (cases no. A42554906 and no. A42456306). Final rulings on the merits in those cases had been adopted on 16 June 2008 and 18 January 2008, respectively.

96. In reply to the Government's additional observations, the applicant added that full body searches and other actions of the prison administration were carried out pursuant to the procedures established by the legislation, regulations and internal prison regulations; neither of those provided for a right to lodge a complaint with the administrative courts about the administration's actions. The provisions contained in the Sentence Enforcement Code had overridden, as *lex specialis*, the provisions of the

Law of Administrative Procedure. The applicant claimed that this conflict of laws had only been resolved with the 2008 amendments (see paragraph 66 above), which had expressly provided for a prisoner's right to contest actions of the prison administration and the procedure to be followed by making reference to the Law of the Administrative Procedure.

97. In addition, the applicant argued that in 2005 and 2006 the case-law of the administrative courts as concerns conditions of detention and compensation had been contradictory. He maintained that the ability for detainees to protect their rights in prisons had only been established in practice after 2007 by the rulings handed down by the Administrative Department of the Senate of the Supreme Court (as the highest court). The applicant noted that the decisions cited by the Government mainly covered the period after 2007 and proved that these issues had not been unambiguously resolved in the courts of first instance until after that time.

98. Lastly, the Government submitted the explanatory report accompanying the 2008 amendments to the Sentence Enforcement Code and argued that they had merely clarified the applicable procedure (see paragraph 66 above). The applicant disagreed and submitted that it had only been following these amendments that the administrative courts could be considered an effective remedy; otherwise such amendments would not have been necessary. In support of his argument the applicant submitted a compilation and analysis report issued by the Supreme Court on the domestic case-law on definition and interpretation of the administrative law concept of an action of a public authority (see *Melnītis*, cited above, § 28).

(b) The Constitutional Court

99. The Government considered that the prohibition on sitting or lying on a bed in the daytime had been implied from a normative act – Regulation no. 423. By the same token, they argued that the applicant's isolation had resulted from a normative act – section 50^4 of the Sentence Enforcement Code. It was their view that that the applicant should have lodged a complaint with the Constitutional Court about the compliance of these legal provisions with provisions of superior legal force, had he considered that they breached Article 3 of the Convention. The Government relied on the Court's decision in the case of *Grišankova and Grišankovs* (cited above), where the Court had accepted that recourse to the Constitutional Court was an effective remedy. The Government stressed that the Constitutional Court's interpretation of a legal provision was binding on the domestic authorities.

100. The applicant disagreed. As concerns the prohibition on sitting or lying on his bed in the daytime, he drew the Court's attention to the 8 March 2011 decision by the Constitutional Court to terminate the proceedings in a similar case (see paragraph 77 above). He emphasised that this prohibition – allegedly contained in Regulation no. 423 – had been

interpreted and applied incorrectly in prisons; he relied on the Constitutional Court's decision in support of his argument. He had not needed to exhaust the proposed remedy because the provision itself had been held to be compatible with the Constitution.

101. In their additional observations, the Government stressed that recourse to the Constitutional Court was also an effective remedy in circumstances in which the interpretation of a legal provision was at stake, not only in cases regarding a provision's compatibility with the Constitution. In this regard they referred to two rulings of the Constitutional Court, where it had found a legal provision to be compatible with the Constitution and had provided its interpretation in a judgment of 11 May 2011 (case no. 2010-55-0106) and in a decision to terminate proceedings of 8 June 2010 (case no. 2009-115-01). The Government pointed out that an interpretation given by the Constitutional Court was binding on the domestic authorities.

102. In reply to the Government's additional observations, the applicant maintained that it had been the application of a legal provision that had violated his rights.

2. The Court's assessment

103. The Court notes at the outset that even though the applicant described the conditions of his detention as a life-sentenced prisoner at Daugavpils Prison in three separate complaints lodged with the Court over a period of more than a year, they stand to be examined together as it is their cumulative effects, as well as the particular allegations advanced by the applicant, which have to be taken into consideration when assessing the State's compliance with Article 3 of the Convention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). It is for this reason that the Court will examine if the remedies proposed by the Government were effective and available to the applicant at the material time for all of his complaints taken together.

104. The Court refers to the applicable principles in the area of the exhaustion of domestic remedies and, in particular, concerning complaints under Article 3 of the Convention (see *Melnītis v. Latvia*, no. 30779/05, §§ 46-48 and 50, 28 February 2012). The purpose of Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The obligation to exhaust domestic remedies is, however, limited to making use of those remedies which are likely to be effective and available, meaning that their existence is sufficiently certain and they are capable of directly redressing the alleged violation of the Convention.

(a) The administrative courts

105. The Court observes that in the present case the Government argued that recourse to the administrative courts was an effective remedy for the applicant's complaints. The Court acknowledges that at the time of lodging the applicant's complaints, the administrative courts in Latvia had been operating for one to two years. To meet the burden incumbent on the Government to prove the effectiveness of the newly established remedy in theory and practice, they submitted information about several rulings of the administrative courts. The applicant, however, insisted that at the time of the submission of his complaints, the procedure established under the Sentence Enforcement Code (a complaint to the prison administration) had overridden the more general rules contained in the Law of Administrative Procedure, as it had been considered the *lex specialis*. He alleged that this issue had only been resolved with the 2008 amendments to the Sentence Enforcement Code.

106. The Court has already noted that the application of the notion of the "action of a public authority" was not uniform among the administrative courts at the material time (see *Melnītis*, cited above, § 51). While in the present case the Government have submitted two more rulings adopted by the administrative courts at the material time, the Court does not consider them to be sufficient for the purposes of the present case. In the first of those, the district court did not elaborate either on the notion of the "action of a public authority" or the "significant interference" test; it merely ordered the Prisons Administration to ensure that a prisoner received personal hygiene products, to which he had been entitled as a matter of fact under national law. As concerns the second decision, even though the Senate of the Supreme Court referred to the "significant interference" test, this ruling did not attest to the application of this test in practice; it merely set aside the apparently incorrect conclusions of two lower administrative courts (like in the *Stāmers* case, which was examined by the Court in the above-cited *Melnītis* case).

107. While the Court can accept that the Senate of the Supreme Court in connection with the present case has shed light on the scope of the administrative courts' review, their statement to the effect that the administrative courts would examine prisoners' complaints arising from the application of internal prison regulations (see paragraph 88 above) is contradicted by the administrative courts' decisions adopted in respect of the present applicant. The Court finds that in the specific circumstances of this case the administrative courts took a rather formalistic approach in not accepting the applicant's claims for examination (see paragraphs 29, 31 and 33 above) and asked him to submit more information, despite the clarity of his submissions as concerns the facts of the regime applied to him (see paragraph 28 above). In such circumstances, the Court cannot hold

against the applicant that he did not lodge an appeal against the decision of 11 May 2007.

108. The Court observes that the applicant had explained his claims to the domestic courts on three separate occasions (on 27 December 2006 and 24 January 2007 before the first-instance court and on 12 February 2007 before the appellate court); they were not examined on the merits but were merely refused for lack of detail. The decision of 11 May 2007 was not a decision on the merits; the conclusion was "to regard the applicant's complaints as not submitted" which is particularly striking given that the applicant had described his complaints in quite some detail. Taking into account the fact that the administrative courts did not accept such complaints for examination for want of more detail, the Court cannot but conclude that the notion of the "action of a public authority" and the "significant interference" test were not applied by the administrative courts with a sufficient degree of clarity in practice at the material time and as concerns the present applicant.

109. Furthermore, the Court observes that the applicant's complaints concerning his isolation and the full body searches were examined by the Ministry of Justice (see paragraphs 14 and 23 above), the administration of Daugavpils Prison (see paragraph 15 above), the Prisons Administration (see paragraphs 16, 17 and 24 above) and the prosecutor's office (see paragraph 26 above). None of these replies contained any indication that the applicant could apply to the administrative courts regarding these issues. Given that at the material time the relevant domestic authorities themselves did not consider that the applicant's grievances could be examined by the administrative courts, the Court is not in position to hold otherwise.

110. In view of these circumstances, the Court is not convinced that an application to the administrative courts about the conditions of detention for life-sentenced prisoners, including the prison regime, isolation and full body searches, was a remedy accessible at the time of lodging of the applicant's complaints with the Court.

111. That being said, the Court cannot leave unnoticed the 2008 amendments to the Sentence Enforcement Code (see paragraph 66 above) and the subsequent practice of the administrative courts (see paragraphs 73 and 74 above), highlighted by the parties to the present case. Irrespective of the ultimate reason behind the adoption of these legislative amendments, regarding which the parties disagree, the Court notes that they were followed by the ruling of 19 October 2009 (in case no. A42519807), whereby the first-instance administrative court applied the notion of an "action of a public authority" and the "significant interference" test in respect of a complaint by a detainee concerning full body searches. This ruling was subsequently upheld by two higher courts, has taken effect and the person concerned has received compensation. Moreover, the Court takes

note of the Senate's observation in 2012 that the administrative courts' case-law as concerns conditions of detention has been consistent (see paragraph 93 above); which statement is further supported by more examples of the administrative courts' rulings (see paragraph 94 above).

112. The Court notes with satisfaction the improved clarity of the applicable legislation as of 23 December 2008 and the subsequent practice of the domestic courts. However, these developments intervened after the relevant domestic decisions had been taken in respect of the applicant and the Court considers that they are not relevant for the purposes of the present case.

(b) The Constitutional Court

113. The Court has already examined the scope of the Constitutional Court's review in Latvia and noted that it examines, *inter alia*, individual complaints lodged to challenge the constitutionality of a legal provision or its compliance with a provision of superior legal force. An individual constitutional complaint can only be lodged against a legal provision where an individual considers that the provision in question infringes his or her fundamental rights as enshrined in the Constitution. Thus, the procedure of an individual constitutional complaint cannot serve as an effective remedy if the alleged violation resulted only from erroneous application or interpretation of a legal provision which, in its content, is not unconstitutional (see *Liepājnieks v. Latvia* (dec.), no. 37586/06, § 73, 2 November 2010).

114. In the present case, the Government argued that recourse to the Constitutional Court also provides an effective remedy when the interpretation of a legal provision is at stake. The Court, however, considers that the wording of the relevant provision of the Law on the Constitutional Court explicitly provides for a right to lodge a constitutional complaint only in circumstances in which an individual considers that a legal provision is incompatible with a legal provision of superior force (see paragraph 75 above).

115. The Court notes that the applicant's complaint concerning the prohibition on sitting or lying on his bed in the daytime does not concern the compatibility of a legal provision with another legal provision of superior force. As was established by the Constitutional Court in case no. 2010-52-03, Regulation no. 423 does not contain such a prohibition (see paragraph 77 et seq. above) and, therefore, it cannot be said that any issues of compatibility arise. Instead, the interpretation and application of a legal provision was at stake, and in such circumstances the Court considers that the applicant need not have exhausted the proposed remedy. In reaching this conclusion, the Court has had regard to the Constitutional Court's practice of terminating proceedings and not examining the merits of the case when no issues of compatibility or "constitutionality" arise.

116. Similarly, as concerns the alleged isolation of the applicant, his complaint relates to the application of the relevant provision since, in his submission, he had been kept alone in a cell for more than six months. In such circumstances he did not need to exhaust the proposed remedy.

(c) Conclusion

117. Having regard to the above considerations, the Court concludes that the applicant's complaints under Article 3 of the Convention cannot be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies; it dismisses the Government's preliminary objections in that regard. The applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Parties' submissions

118. First, the applicant complained of the stringent regime in Daugavpils Prison for life-sentenced prisoners, which had been established by internal prison regulations that he considered unlawful. Pursuant to these regulations, he had not been allowed to sit on his bed in the daytime. The relevant piece of legislation (Regulation no. 423) had not contained such a prohibition. In response to the Government's submission (see paragraph 123 below), the applicant argued that recreational facilities had only been made available after July 2008, following the construction works in the unit for life-sentenced prisoners in Daugavpils Prison. He maintained that dogs had been used to escort him within Daugavpils Prison until 2007 and considered that to have been excessive.

119. Second, the applicant submitted that the full body searches to which he had been subjected on a weekly basis in Daugavpils Prison had contravened Article 3 of the Convention. During those searches he had been ordered to strip naked and to assume humiliating poses that had involved lifting and displaying his genitals in the presence of seven to twelve prison guards, other inmates, and a specially trained dog. He alleged that no illegal objects had ever been found during these searches and that he had never resisted them. The applicant submitted that the presence of a specially trained escort dog during the full body searches in an already secure environment such as the prison had been unjustified and excessive.

120. The applicant stressed, furthermore, that he had merely verbally objected to the manner in which these searches had been carried out: this had been misinterpreted as resistance, calling for the use of special measures (use of multiple handcuffs, blows with truncheons, use of electric shocks

and kicking) and had resulted in disciplinary penalties (for example, solitary confinement). The applicant alleged that he had often lost consciousness while being beaten and that he had later regained consciousness in the cell, usually finding himself on the floor and fully undressed.

121. The applicant contended that while under solitary confinement and while working in prison, he had been subject to full body searches at least once per day. He had considered this excessive, as during his solitary confinement he had not been in contact with any other inmates and during his working hours he had not left the prison grounds. In fact, he had stopped working because he had found these searches humiliating.

122. Third, the applicant argued that he had been kept alone in his cell for longer than six months. In fact, he submitted that only once had he shared a cell with another inmate – from 28 February to 4 April 2005. Given that at that time he had been subject to full body searches on a daily basis, they had been carried out in the presence of his cellmate. They had decided to refuse to be held together due to the degrading nature of those searches.

123. The Government first argued that the applicant's regime in Daugavpils Prison had not exceeded the minimum threshold to fall within the ambit of Article 3 of the Convention. They submitted that the construction works in the unit for life-sentenced prisoners in Daugavpils Prison had been finished by July 2008. They argued that the applicant could have taken part in recreational and educational activities, such as daily exercise (for one hour), use of the gym with a TV set (one and a half hours), use of the computer room (one and a half hours) and use of the library. Moreover, he had been offered an opportunity to work in prison, but as he had refused to come to work on a number of occasions, he had been fired. The Government also submitted that the constant use of escort dogs had been stopped in 2007 and that "their use is limited to emergency cases". In addition, panels conducting the individual risk assessment of life-sentenced prisoners had commenced their work.

124. Second, the Government submitted that searches, including full body searches, were necessary to ensure general order and security in prison, including the safety of convicted persons, and to prevent crime. They considered that a full body search by itself could not be regarded as unlawful or humiliating. They referred to the internal prison regulations (see paragraphs 68 and 71 above) and noted that in Daugavpils Prison "the search of life-sentenced prisoners is carried out pursuant to a schedule approved by [the governor] of Daugavpils Prison, but at least twice a month; full body searches are carried out either in a specially designated room or in the prison's cell, provided that the convicted person is not accompanied by other inmates". They were not in a position, however, to provide detailed information on the frequency and the manner in which full body searches had been carried out in respect of the applicant from 2004 to 2008 in Daugavpils Prison as the relevant document storage time-limit

had expired. At the same time, they did not contest the systematic nature of such searches, save for alleging a contradiction in the applicant's submissions concerning their regularity. It was their submission that in his application he had alleged that full searches had been carried out once every ten days in the presence of five to ten prison guards and that in his subsequent submissions he had referred to weekly searches in the presence of seven to twelve prison guards. The Government did not agree that the applicant had not shown any physical resistance or that no illegal objects had been found during searches. In so far as year 2009 was concerned, the Government submitted that the applicant had been subjected to three full body searches.

125. The Government admitted that special measures (the use of handcuffs) had been used on the applicant, but asserted that they had only been used "when he had refused to comply with the legitimate demands" of the administration of Daugavpils Prison. The Government stated that: "having regard to the applicant's personality, his dangerous and violent behaviour towards other inmates and prison [staff] during the entire period of his [detention] in Daugavpils Prison, his intention to escape, as well as the applicant's position of principle in systematically refusing to undergo searches, it had been necessary, for the purpose of ensuring order and safety in the prison, for the prison authorities to use physical force and special measures (handcuffs, truncheon blows) [...] and to take disciplinary [action] against him". At the same time, the Government did not submit any evidence attesting to this characterisation of the applicant, save for a description of him by the prison governor dated 10 August 2005 as being "provocative, sometimes aggressive and shameless" and making reference to the applicant's full body search on 24 and 30 August 2005.

126. The Government acknowledged the CPT's observation about the inhuman and degrading nature of the systematic strip-searches in Daugavpils Prison, but stressed that the particular facts of the case, the extent to which the applicant had been personally affected, including his personal circumstances, the context in which the acts had been carried out and their aims had to be examined. In so far as the present applicant was concerned, the Government argued that the full body searches had not been intended to degrade or humiliate him, their frequency and the manner in which they had been carried out had been proportionate to the level of the applicant's resistance and they had been justified.

127. Third, the Government pointed out that the applicant had not been subject to sensory deprivation or total social isolation – he had enjoyed the benefit of contact with the prison's staff, medical doctors, a physiologist and the prison's chaplain. Although on certain occasions he had been placed alone in a double or triple occupancy cell, his isolation had not exceeded six months. The Government did not agree that the applicant had shared a cell with another cellmate on only one occasion. They were not in a position,

however, to provide documents relating to his detention in Daugavpils Prison as their storage time-limit had expired. They relied on the information provided by the Prisons Administration to the applicant, which the latter did not contest, that in 2005 he had shared a cell with another inmate at least on two occasions and in 2006 on three occasions (see paragraph 17 above). In addition, they submitted that other inmates had refused to share a cell with the applicant due to his aggressive and rude behaviour.

128. Although the Government acknowledged the CPT's recommendation concerning the segregation policy vis-à-vis life-sentenced prisoners (see paragraph 53 above), they considered that the present applicant's physical and mental well-being had not been compromised.

2. The Court's assessment

(a) General principles enshrined in the Court's case-law

129. While measures depriving a person of his liberty often involve an element of suffering or humiliation, it cannot be said that detention in a high-security prison facility, be it on remand or following a criminal conviction, in itself raises an issue under Article 3 of the Convention. The Court's task is limited to examining the personal situation of the applicant who has been affected by the regime concerned (see *Van der Ven v. the Netherlands*, no. 50901/99, § 50, ECHR 2003-II). Public-order considerations may lead the State to introduce high-security prison regimes for particular categories of detainees and, indeed, in many State Parties to the Convention more stringent security rules apply to dangerous detainees (see *Horych v. Poland*, no. 13621/08, § 88, 17 April 2012, and *Piechowicz v. Poland*, no. 20071/07, § 161, 17 April 2012). These arrangements, intended to prevent the risk of escape, attack or disturbance of the prison community, are based on separation of such detainees from the prison community together with tighter controls (see, for instance, *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 80-82, ECHR 2006-IX; *Messina v. Italy (no. 2)*, no. 25498/94, §§ 42-54, ECHR 2000-X; *Labita v. Italy* [GC], no. 26772/95, §§ 103-109, ECHR 2000-IV; *Rohde v. Denmark*, no. 69332/01, § 78, 21 July 2005; *Van der Ven*, cited above, §§ 26-31, 50; and *Csüllög v. Hungary*, no. 30042/08, 7 June 2011, §§ 13-16).

130. While, as stated above, those special prison regimes are not *per se* contrary to Article 3, under that provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94,

ECHR 2000-XI; *Van der Ven*, cited above, § 50; and, more recently, *Horych*, citred above, § 89, and *Piechowicz*, cited above, § 162).

131. The Court, making its assessment of conditions of detention under Article 3, will take account of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). In that context, it will have regard to the stringency of the measure, its duration, its objective and consequences for the persons concerned (see *Van der Ven*, cited above, § 51).

132. Although the prohibition of contacts with other prisoners for security, disciplinary or protective reasons can in certain circumstances be justified, solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. It would also be desirable for alternative solutions to solitary confinement to be sought for persons considered dangerous and for whom detention in an ordinary prison under the ordinary regime is considered inappropriate (see *Ramirez Sanchez*, cited above, §§ 145-146; and, more recently, *Horych*, cited above, § 91, and *Piechowicz*, cited above, § 164).

133. The Court has already examined the compatibility of strip and intimate body searches with the Convention in a number of cases. It has found that whilst strip-searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified (see *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII; *Iwańczuk v. Poland*, no. 25196/94, § 59, 15 November 2001; and *Yankov v. Bulgaria*, no. 39084/97, § 110, ECHR 2003-XII (extracts)). However, where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation of the procedure, Article 3 has been engaged: for example, where a prisoner was obliged to strip in the presence of a female officer, and his sexual organs and food were touched with bare hands (see *Valašinas*, ibid.), and where a search was conducted in front of four guards who derided and verbally abused the prisoner (*Iwańczuk*, ibid.). Similarly, where the search has no established connection with the preservation of prison security and the prevention of crime or disorder, issues may arise (see, for example, *Iwańczuk*, cited above, §§ 58-59, where a search of the applicant, a remand prisoner detained on charges of non-violent crimes, was conducted when he wished to exercise his right to vote; and *Van der Ven*, cited above, §§ 61-62, where strip-searching was a systematic and long-term practice without convincing security needs).

(b) Application to the present case

134. The Court notes that the detention regime imposed on the applicant following his transfer to Daugavpils Prison was based on the Sentence Enforcement Code (see paragraphs 63 to 66 above), the relevant regulations

of the Cabinet of Ministers (see paragraph 67 above) and the internal prison regulations issued by the Prisons Administration or the governor of Daugavpils Prison (see paragraphs 68 to 71 above). The Court notes that the CPT has criticised the regime applicable to life-sentenced prisoners on several occasions (see paragraphs 40 and 41, 43 and 44, 46 and 48, 56 and 57 above) and has repeatedly called on the Latvian authorities to revise it. However, whether or not the applicant suffered treatment proscribed by Article 3 depends on the extent to which he was personally affected by that regime (see *Van der Ven*, cited above, § 53 *in fine*). Indeed, in cases arising from individual applications, the Court must as a rule focus its attention not on the law itself but on the manner in which it has been applied to the applicant (see, among other authorities, *Sommerfeld v. Germany* [GC], no. 31871/96, § 86, ECHR 2003-VIII).

135. The Court observes from the outset that the parties appear to be in agreement about the regime applicable to life-sentenced prisoners and the conditions in Daugavpils Prison at the material time, save for the availability of out-of-cell activities and the applicant's alleged isolation. For the most part, the parties hold divergent views in relation to whether in the applicant's case the threshold of the "minimum level of severity" required to fall within the scope of Article 3 of the Convention was reached.

136. There is no dispute over the fact that for nearly five years, the applicant was detained at the maximum security level in Daugavpils Prison. At the same time, the present applicant's complaint does not concern the material conditions of detention in that prison, which the CPT found to be largely adequate albeit with certain misgivings in 2007 (see paragraph 47 above). Nor does the applicant's complaint concern the handcuffing of prisoners when they leave their cells, which according to the CPT was routinely applied to life-sentenced prisoners.

137. The Court observes that the applicant complained about three particular aspects of the conditions of his detention as a life-sentenced prisoner. First, he considered that his regime had been too stringent and pointed out particular aspects of the regime applied to him: the prohibition on sitting on his bed in the daytime and the use of dogs to escort him whenever he was taken out of his cell. The Court notes that in his observations following the communication of the present application to the Government, the applicant did not maintain his complaints as concerns the requirement to recite his name and the presumption of an attempted attack. It will therefore not examine the two latter allegations. The second aspect of the conditions of his detention complained of concerned the full body searches he was subjected to on a regular basis. Third, the applicant argued that he had been kept alone in the cell for most of his detention in Daugavpils Prison.

(i) The applicant's prison regime

138. Firstly, as concerns the prison regime, the applicant claims to have been particularly affected by the prohibition on sitting on his bed in the daytime. The Court notes that the CPT has confirmed that life-sentenced prisoners were prohibited from sitting on their bed in the daytime at Daugavpils Prison; the CPT has described this rule as being "anachronistic" and called for its abolition (see paragraph 50 above). Moreover, it appears from the material before the Constitutional Court that the relevant domestic authority mistakenly considered that this prohibition was contained in the applicable regulation issued by the Cabinet of Ministers and that in practice that regulation was erroneously implemented and applied in prisons (see paragraph 77 above). The Court considers that the CPT and the domestic material are sufficient to prove the veracity of the applicant's allegations as concerns Daugavpils Prison. Furthermore, the Court takes note of the CPT's findings that in Daugavpils Prison life-sentenced prisoners were locked up in their cells for twenty-three hours per day, without being offered any purposeful activities, for most of the time in which the applicant was detained there (see paragraphs 40, 46 and 56 above). While the Government submitted that recreational and educational activities (daily exercise, use of the gym, TV, computer and library) had been put in place, the Court notes that most of those activities were only made available in July 2008, meaning that the applicant would have spent nearly four years in Daugavpils Prison before he could have benefited from any of them. In addition, these activities can be hardly considered as constituting a comprehensive regime of out-of-cell activities (on which the CPT have repeatedly insisted) or appropriate in-cell stimulus (compare, for example, with the stimulus provided in ADX Florence, see *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, § 222, 10 April 2012). Indeed, following its 2009 visit the CPT noted that no purposeful activities were offered in Daugavpils Prison; the gym was small and largely used to watch TV and to interact with other life-sentenced prisoners, as this was the only occasion when they could do so (see paragraph 56 above). In fact, for the purposes of its report on the needs of life-sentenced prisoners in 2009 the Prisons Administration itself interviewed all life-sentenced prisoners in Daugavpils Prison, who confirmed the limited range of activities offered (watching TV, reading books, magazines and newspapers, writing letters and exercise). Even though it appears that they themselves did not express dissatisfaction with the range of activities offered, the Court considers such a state of affairs unacceptable.

139. At this point, the Court considers it necessary to turn to the third part of the applicant's complaint, namely, his alleged isolation. The Court notes that the applicant was not subjected to complete sensory deprivation or total social isolation, but relative social isolation, being prevented from

communicating with prisoners subject to different prison regimes (see paragraph 64 above). Nevertheless, automatic segregation of life-sentenced prisoners from the rest of the prison population has been criticised by the CPT, which has stressed that life-sentenced prisoners are not necessarily more dangerous than other prisoners and has called for individual risk assessments to be carried out (see paragraphs 40 and 53 above and contrast with the above-mentioned *Horych* and *Piechowicz* cases, where the applicants were classified as "dangerous detainees" following assessments by a penitentiary commission, which classification was reviewed, albeit in a summary fashion, every three months). Even assuming that the applicant shared a cell with another inmate for certain periods of time, he was segregated from the rest of the prison population and could only engage in largely limited social contact with other life-sentenced prisoners during daily exercise and, from around July 2008, while watching TV in the gym. In the Court's view, automatic and thus arbitrary segregation of life-sentenced prisoners from the rest of the prison population and from communication among themselves, in particular in circumstances in which no comprehensive out-of-cell activities or in-cell stimulus are available, may raise an issue under Article 3 of the Convention. In the present case, the applicant's segregation from the prison population and limited contact with other life-sentenced prisoners was in no way examined to determine if such restrictions were necessary and proportionate; there appear to have been no safeguards in place to scrutinise the effects of such restrictions on the applicant's physical and mental health. The Court considers the authorities' approach manifestly arbitrary and notes that its view in this regard is in line with the repeated criticism expressed by the CPT towards the Latvian prison system as set out above, as well as with the European Prison Rules (see paragraph 61 above) and the Council of Europe recommendations (see paragraph 62 above) on this matter.

140. In addition, the applicant was dissatisfied with the use of dogs for escorting life-sentenced prisoners whenever they left their cells in Daugavpils Prison. These security measures have been criticised by the CPT and labelled as "draconian", together with the systematic handcuffing of prisoners such as the applicant (see paragraph 41, 43 and 48 above). The Court observes that the applicant has not alleged that he was particularly affected by the latter. However, it can take this factor into account as background information when examining the security measures imposed on the applicant. These measures, like the applicant's isolation, were applied automatically and in respect of all life-sentenced prisoners. The Court cannot but conclude that in the circumstances of the present case the use of dogs whenever the applicant was being escorted was arbitrary. At the same time, the Court notes that the CPT has confirmed that this practice was discontinued in Daugavpils Prison in 2007 (see paragraph 48 above).

141. In view of the above considerations, the Court finds that the regime that the applicant was required to comply with in Daugavpils Prison, namely, the prohibition on sitting on his bed in the daytime, arbitrary segregation with no comprehensive regime of out-of-cell activities or appropriate in-cell stimulus, as well as arbitrary isolation and the use of dogs to escort the applicant within the confines of the prison, reached the threshold of severity to fall within Article 3 of the Convention and amounted to inhuman and degrading treatment. Accordingly, there has been a violation of that provision.

(ii) The full body searches of the applicant

142. The Court will now examine the second aspect of the applicant's complaint. The Court notes that it is undisputed that the applicant regularly underwent full body searches and that in that connection he was required to strip naked in the presence of several prison guards, to hand them his clothes and to display his genitals for inspection. The Court notes in this respect that it is the regularity of these searches that the applicant complained of and, for this reason, the alleged discrepancies in his submissions as concerns the exact number of searches per month are minor. The Court notes that the Government submitted that in 2009 only three full searches had been carried out in respect of the applicant, to which the applicant disagreed. The Court will proceed on the assumption that between 2004 and 2008 the applicant was subject to full body searches at least twice per month, which is the frequency to which the Government admitted, even though there is some evidence that during certain periods the searches might have been carried out more often (see the relevant CPT report at paragraph 51 above; and the applicant's submissions at paragraph 121 above). Similarly, the Court considers that for the purposes of the present case it is not necessary to establish the exact number of prison guards in whose presence the applicant was ordered to strip naked; there is no evidence that there was a female officer among them (contrast the above-cited *Valašinas* case) or that there were several prison guards who derided and verbally abused the applicant (contrast the above-cited *Iwańczuki* case). The Court also does not consider it necessary to establish the frequency of full body searches in 2009 and it will confine its analysis to the preceding period.

143. The Court notes from the outset that the applicant was subjected to full body searches on a regular basis, at least once every two weeks, from 16 December 2004 to 31 December 2008. The only piece of evidence contained in the case material to which the Government referred in arguing that illegal objects had been found during body searches of the applicant is the report following the 20 May 2005 search that contains a note on previous disciplinary action as follows: "21 December 2004. Illegal objects. A reprimand". Even assuming that full body searches of the applicant might initially have been justified in view of a reasonable suspicion of illegal

objects immediately after his transfer to Daugavpils Prison, the Court considers that such a suspicion may not last for an indefinite period of time and, after the initial period, cannot by itself serve as the basis for systematic searches of the applicant.

144. In actual fact, the full body searches were carried out as a matter of routine and were not linked to any concrete security needs throughout the period under consideration. Nor were they carried out on the basis of any specific suspicion concerning the applicant's conduct. While the Government noted that the applicant was a dangerous person with violent behaviour, they did not provide more substance to this argument. They based their claim on the prison governor's description of the applicant as being "provocative, sometimes aggressive and shameless", which dated back to 2005 and which, in the Court's view, cannot be sufficient to justify systematic full body searches in the absence of convincing security needs or any specific suspicion that carrying out a search would prevent disorder or crime. In the applicant's submission, his resistance to the prison guards during the full body searches had been directed at what he considered the humiliating nature of exactly these searches, which is the matter now before the Court. The Government argued that the work of the panels conducting individual risk assessments of life-sentenced prisoners had been started in Daugavpils Prison. It is clear from the Government's submissions, however, that those panels only examine the need for the use of special measures, i.e. handcuffs (see paragraphs 49 and 58 above for a summary of the CPT's findings as concerns the adequacy of these panels). It does not appear from the parties' submissions that any examination whatsoever has been carried out in respect of the applicant and whether systematic full body searches of him could be justified on the basis of prison security or for other reasons.

145. Moreover, the Court is struck by the arbitrary nature of the full body searches of the applicant at the material time. The Court notes that the applicable internal prison regulation does not provide any clear guidelines as concerns the full body searches of life-sentenced prisoners save in cases of "a reasonable suspicion" of illegal objects. The Court may only wonder on what basis "a reasonable suspicion" was established during the period under examination in respect of the applicant. While the Court does not discount the fact that the applicant was convicted of violent crimes and sentenced to life imprisonment, these elements alone are not sufficient to justify the systematic, intrusive and exceptionally embarrassing full body searches that were undertaken fortnightly in the present case.

146. In view of the cumulative effects of the above-mentioned considerations and of the conditions of the prison regime concerned (see paragraph 142 above), the Court considers that the applicant's full body searches were sufficient to cause distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention for him as a life-sentenced prisoner and reached the threshold of severity to fall within

Article 3 of the Convention, and amounted to inhuman and degrading treatment. As a result, there has been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

149. The Government contested this claim.

150. The Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Default interest

151. 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 remainder of the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the regime that the applicant was detained under, including his isolation, and the full body searches to which he was subjected in Daugavpils Prison;

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 5,000 (five thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

David Thór Björgvinsson
President