

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

SECOND SECTION

CASE OF TAUTKUS v. LITHUANIA

(Application no. 29474/09)

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 Tautkus v. Lithuania,

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

Ineta Ziemele, *President,*
Danutė Jočienė,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 29474/09) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Andrius Tautkus ("the applicant"), on 20 May 2009.

2. The applicant was represented by Mr M. Kukaitis, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. Relying on Article 3 of the Convention, the applicant alleged that the prison authorities had failed to protect him from being severely injured whilst detained.

4. On 25 March 2011 the application 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Šiauliai.

6. In 1996 the Kaunas Regional Court convicted the applicant of soliciting for prostitution and the murder of a prostitute, committed in a particularly cruel way by a group of persons. The applicant was sentenced to fourteen years' imprisonment. This was his first conviction. Eight of his

accomplices were also sentenced to between eight and fifteen years' imprisonment.

A. The applicant's injury and the criminal proceedings

7. When the applicant arrived in Pravieniškės Prison to serve his sentence in May 1996, he was placed in Wing 4, Section 1 of the prison (*IV būrys, 1 brigada*). Subsequently, he was moved to Wings 8, 7, 13 and again to Wing 7. He spent roughly a year in each of those parts of the prison.

8. On 22 November 2001 the applicant was moved to Wing 2, Section 2 of the prison. He did not sustain any injuries while residing there, nor did he complain to the doctors about health issues that could have shown any traces of prison violence.

9. R.J., who was born in 1979, arrived in Pravieniškės Prison on 25 August 2000. He was placed in Wing 2, Section 2 of the prison. Notwithstanding R.J.'s three convictions for crimes ranging from theft (in 1995) and attempted murder (in 2000) to hooliganism (in 2001), he was considered as serving an imprisonment penalty for the first time, given that following his first conviction the court had suspended the imposed sentence and the sentences for the second and third convictions had been combined.

10. The five character reports drawn up by Pravieniškės Prison administration in 1997-2002 describe the applicant as tactful with other inmates and respectful to the guards; he was also said to have had "certain authority" with other prisoners. The authorities noted that the applicant had breached the prison's internal rules fourteen times (for keeping his hands in his pockets in the presence of guards, being intoxicated, and staying at prison quarters he was not assigned to). Nonetheless, he had also been commended thirteen times for positive behaviour and good work in prison.

As it appears from the documents submitted by the parties, in 2002 R.J. had been assessed twice by the prison administration. He was described as having authority among other inmates and tactful with them, capable of easily adapting in prison.

11. On 2 October 2002 at about 11 p.m., a fight broke out between the applicant and R.J. As a consequence, the applicant suffered severe head injuries; his skull was fractured. The next day he underwent an operation in a public hospital. He was later placed in the prison hospital in a coma.

According to a doctor's report, R.J. sustained an injury to his forehead and had blood on his face. His leg was broken and he had bruises on his arms.

12. On 4 October 2002 the prison governor started a pre-trial investigation into the incident.

13. On 12 May 2003 the Kaišiadorys District Court convicted R.J. of having caused the applicant severe bodily injury (*sunkus kūno sužalojimas*).

The court established that on 2 October 2002, at around 10.50 p.m., R.J. had hit the applicant no less than five times over the head and other parts of the body while in their living quarters at the prison. R.J. confessed to the crime. Two guards who testified before the court stated that once they had learned of the fight, which happened at around 11 p.m., after the evening check-up, they had run to the applicant's cell and found him lying on the floor with his head covered in blood. The guards also stated that R.J. had smelled of alcohol.

14. The transcript of the trial hearing states that R.J. testified that "the quarrel between me and the applicant had been spontaneous", and "the fight had been short". He also stated that he had punched and kicked the applicant's body and head, and that as a result the applicant had fallen down and hit his head on an aquarium. Another inmate, Ž.L., had attempted to separate them. "Afterwards the guards had run in and it had all been over". In answer to a question by a prosecutor, R.J. stated that "he had had no prior conflicts with the applicant". He added that "everything had happened very fast; until the guards had run into the cell, the applicant had only managed to reach the bed and lie down".

Ž.L. testified that the conflict had taken place after the evening check-up. He said "I tried to separate R.J. and the applicant ... the conflict happened very fast".

15. The medical report stated that R.J. had not been intoxicated when blood samples had been taken from him "on 3 October 2002". The court therefore decided to remove from the charges against him the accusation that he had been intoxicated when the crime was committed.

The doctor's report reads that R.J. was tested for alcohol at 11.40 a.m. on 3 October 2002. The test showed 0,00% of alcohol in his blood.

16. When imposing the sentence, the court took into consideration R.J.'s young age and the fact that he had confessed to the crime. R.J. was sentenced to two years and six months' imprisonment, with confiscation of all his property. The court added that term of imprisonment to his prior conviction, and R.J. was ordered to spend in total ten years and two months in prison. Upon a civil claim by a prosecutor, R.J. was also ordered to reimburse the costs which the State had paid for the applicant's hospitalisation and treatment, which amounted to 9,021 Lithuanian litai (LTL). At that time the applicant had not submitted a civil claim for non-pecuniary damages from R.J.

17. By a ruling of 3 September 2003, the Kaunas Regional Court dismissed R.J.'s appeal. The court found that there were no grounds for lowering the sentence imposed on R.J. The crime was particularly grave, with very serious consequences.

18. In May 2003 a doctors' commission declared the applicant Category I disabled (most severe condition of disability) and unfit to work.

19. On 3 June 2003 the Vilnius City Second District Court released the applicant from the remainder of his sentence. The court noted that after the incident of 2 October 2002, the applicant had become totally disabled. He could walk only by leaning on furniture and with the help of others and was unable to adequately assess his surroundings. Moreover, he had already served two thirds of his sentence.

20. After the incident, the applicant was treated in numerous hospitals and rehabilitation centres. According to a report from Šiauliai municipality of 28 November 2006, the applicant could not speak clearly, had poor balance, and had trouble shaving, washing himself and climbing stairs. He required constant care from his family.

B. Civil proceedings for damages

21. On 16 April 2007 the applicant, who believed that he was eligible for pecuniary and non-pecuniary damages on account of his injury while in prison, lodged a civil claim against the State. He argued that the prison authorities were under an obligation to maintain order in the correctional facility and should have protected and defended him from the injury that nearly cost him his life. He submitted that there was a direct causal link between his injury and the prison authorities' alleged failure to act and guarantee safe conditions in which to serve a sentence.

R.J. was a third interested party in those proceedings, given that the outcome of the litigation for damages directly affected his pecuniary situation.

22. When the case was examined before the Vilnius Regional Administrative Court, the applicant's lawyer also argued that the administration of Pravieniškės Prison had failed to observe prison rules stipulating that certain prisoners should be kept separately. In that context, the lawyer referred to a letter of 19 December 1994 in which the prosecutor said that R.J. had to be kept in isolation. The lawyer also argued that R.J., who had three convictions in total, was a more hardened criminal than the applicant, so the two should have been held separately. He also submitted that although, after the incident, R.J. had smelled of alcohol, blood samples had not been taken from him until twelve hours later. In the past the applicant had also been punished for consuming alcohol while in prison. The lawyer argued that the guards on duty had not kept the prisoners under constant observation, as they were obliged to do under the prison regulations. He also maintained that the administration's decision to move an inmate from one section of the prison to another had to be justified, which had not happened in the applicant's case. Lastly, the lawyer argued that his client had not started the proceedings for damages earlier because of his state of health.

23. R.J. testified before the Vilnius Regional Administrative Court that he had been serving his sentence in the same section of Pravieniškės Prison since 28 September 2000. In his view, "it was the State that should bear responsibility for the injuries the applicant had sustained". He also argued that his relations with the applicant had always been tense, that "the applicant did not fit in [in Wing 2, Section 2]", "the applicant was a 'simple' person and the other inmates in that section were 'offenders'" and "the fight between the two of them would have occurred sooner or later". In his opinion, "the prison administration could have foreseen the tension between him and the applicant if it had wanted". R.J. did not answer the judge's question about the reasons for the fight. Nor did he reply to her question whether he had been under the influence of alcohol at the time of the fight. He nevertheless submitted that prisoners could obtain as much alcohol in the prison "as they wanted". The guards caught them with alcohol very rarely and, as far as R.J.'s recalled, the applicant had been sober at the time of the fight. R.J. also said that after the evening check-up, the guards carried out the first night-time check at around 11-12 p.m., and the second at a later time.

24. The Pravieniškės Prison administration and the Department of Prisons, the defendants in the case, asked the court to dismiss the civil claim, arguing that the fight had been spontaneous and the conflict could not have been foreseen. They submitted that the applicant had never informed the prison administration that he had been in danger. Accordingly, the State was not liable for the incident that had caused the applicant's incapacity.

The prison authorities also pointed out that the inmates should have been in bed by 10 p.m., and that at night the guards checked the sleeping quarters twice.

25. On 21 February 2008 the Vilnius Regional Administrative Court dismissed the applicant's civil claim. It noted, firstly, that the applicant had missed a statutory three-year deadline for lodging a claim for damages. Nevertheless, the court proceeded with the examination of whether the complaint was founded.

26. As to the merits of the complaint, the Vilnius Regional Administrative Court held that there was no evidence, either written or factual, of the applicant having ever approached the authorities claiming that he was unsafe in Pravieniškės Prison, even though such a right was guaranteed by Article 50 of the Code of Correctional Works (see Relevant Domestic Law and Practice below). The court also emphasised that the prison administration had properly executed its duties as concerns the placement of inmates. Both the applicant and R.J. had been serving a prison sentence for the first time, so they could be held in the same wing and section. As to the suggestion by the applicant's lawyer that the applicant had been moved from one part to another of the prison without a valid reason, the court held that "the applicant could have challenged those actions [but

had failed to do so]". Moreover, the applicant himself had not been an exemplary prisoner and had been punished a number of times for breaching internal rules (ranging from alcohol consumption to leaving his living quarters). The court found weighty the prison administration's argument that the applicant had never approached them claiming, either verbally or in writing, that he was unsafe in prison in general or that he had had any conflicts with a particular inmate. Consequently, there were no grounds for finding the prison administration liable for not preventing the incident. According to the case-file, the fight was spontaneous and took place after the evening check-up, when all the inmates, including the applicant and R.J., should have been sleeping or at least in bed. Overall, there was no legal basis for granting the applicant's civil claims.

27. The applicant appealed, invoking Article 3 of the Convention and reiterating his earlier arguments that the State had not protected him from serious injury in prison, as a consequence of which his health had been permanently damaged. He also submitted that the prison administration had failed to ensure that prisoners could not obtain alcohol, arguing that alcohol made prisoners unpredictable and aggressive.

The Department of Prisons asked that the civil claim be dismissed as unfounded. They pointed out that there was no objective evidence that R.J. had been under the influence of alcohol during the incident. That fact had not been established in the criminal proceedings.

28. On 24 November 2008 the Supreme Administrative Court examined the applicant's appeal but dismissed it on the merits. There was no evidence in the case file that any action or inaction on the part of staff at Pravieniškės Prison had contributed to the incident between the applicant and R.J. During the criminal proceedings, it had been established that it was R.J. who had injured the applicant, and R.J. had been convicted accordingly. Therefore, as it had not been possible to establish any illegal acts or failure to act on the part of the prison staff, the State could not be held responsible for the non-pecuniary damage the applicant had sustained.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. The Code of Correctional Works (*Pataisos darbų kodeksas*), as in force at the relevant time, reads as follows:

Article 18. Accommodating convicts separately or in isolation in correctional institutions

"The purpose of accommodating convicts separately or in isolation in correctional institutions is:

to separate convicts who, due to the nature of their crimes or their character, might negatively influence other inmates;

to facilitate the social rehabilitation of convicts;

to help ensure the supervision and safety of convicts;

to help safeguard the requirements of security and administration of the correctional institutions ...

The following categories of convict should be isolated from each other within the same correctional institutions, or if possible placed in different institutions: convicts sentenced to imprisonment for the first time; those convicted for intentional and negligent crimes, ... very dangerous recidivists; those convicted for serious crimes ...

If a convict, serving his sentence at a correctional prison, addresses the administration in writing with a request to be isolated from other inmates for important reasons, the director of the prison has a right to transfer the convict to a cell and to hold him in isolation or with other inmates transferred to the cell for the same reasons. The duration of such a transfer shall be fixed by the prison administration. A transfer to a cell is not considered as a penalty ...”

Article 41. Main obligations of prison authorities

“The main obligations of prison authorities are the following: where necessary, the isolation of convicts and their constant supervision; ... guaranteeing different conditions of custody for convicts having regard to the nature of their crime and their dangerousness, character of a convict and his or her behaviour.”

Article 50. Right of convicts to address State and municipal officials with requests, proposals and complaints

“The convicts have the right to address the State and municipal officials ... submitting requests, proposals and complaints...”

30. The Internal Regulations of Correctional Institutions (*Pataisos darbų įstaigų vidaus tvarkos taisyklės*), approved by decision no. 172 of the Minister of Justice on 16 August 2000, read as follows:

“4. Convicts must be treated in such a way as to safeguard their health ...

20. Prisons may be divided into sectors. In accordance with Recommendation No. R (87) 3 of the Committee of Ministers of the Council of Europe, the purposes of allocating prisoners to separate sectors are:

20.1. to separate from others those prisoners who, by reasons of their criminal records or their personality, are likely to benefit from that or who may exercise a bad influence;

20.2. to facilitate their treatment and social resettlement taking into account the management and security requirements ...

94. Psychologists, heads of wing, internal investigation officers, supervisors and staff ... conduct investigatory and explanatory work upon the arrival of new prisoners who are placed in quarantine ... While placed in quarantine, prisoners must be

provided with adequate information about their rights, duties, prison regulations and the conditions in which their sentence will be carried out ...

122. In order to guarantee internal order at the correctional institution, safeguard the security of the institution, their personnel and prisoners, and also to ensure the discipline of prisoners, the latter are forbidden:

(...)

122.10. to obtain, produce, consume and distribute alcoholic drinks, their substitutes, toxic, psychotropic and narcotic substances ...

493. Health care staff shall examine a convict who has sustained bodily injury and shall make a note of the nature of the convict's injury, describing the circumstances (according to the convict's statements) under which the injury was inflicted, also indicating place and time. The medical personnel shall make an entry in a special journal and inform the [prison administration]."

31. On 22 August 2000 the Minister of Justice issued an Instruction for the Security and Supervision of Detention Facilities, which sets out the measures prison authorities must take to ensure continuous supervision of prisoners, isolation where necessary and the implementation of regime requirements. Supervision is also aimed at preventing possible breaches of discipline and crimes. For that purpose, the guards watch and count the prisoners, and search the prisoners and premises. The guards supervise the prisoners and premises from their posts located throughout the prison and while moving around the prison. They must ensure that the prisoners obey the daily schedule and that they remain in the sectors allocated to them. The prisoners are counted three times a day. In order to find and collect prohibited items, the guards perform both scheduled and surprise searches of the inmates and premises.

32. Under the Civil Code, an abridged three-year statutory time-limit applies to claims for damages (Article 1.125 § 8). The Code also provides:

Article 6.246. Unlawful actions

"1. Civil liability shall arise from the non-performance of a duty established by law or by contract (unlawful failure to act), or from the performance of actions that are prohibited by law or by contract (unlawful action), or from the violation of the general duty to behave with care."

Article 6.271. Liability to compensation for damage caused by the unlawful action of public authority institutions

"1. Damage caused by the unlawful action of a public authority institution must be compensated by the State from the resources of the State budget, irrespective of any fault on the part of a particular public servant or other employee of the public authority institution ...

2. For the purposes of this Article, the notion 'public authority institution' shall mean any subject of public law (State or municipal institution, official, public servant or any other employee of these institutions, etc.), as well as a private person performing the functions of a public authority.

3. For the purposes of this Article, the notion 'action' shall mean any action (or inaction) by a public authority institution or its employees that directly affects the rights, liberties and interests of persons ...

4. Civil liability of the State or a municipality subject to this Article shall arise where employees of public authority institutions fail to act in the manner prescribed by law for those institutions and their employees."

III. RELEVANT INTERNATIONAL INSTRUMENTS

33. Recommendation no. R(87)3 of the Committee of Ministers to member states on the European Prison Rules of 12 February 1987 ("the European Prison Rules") includes in its basic principles:

The allocation and classification of prisoners

"11. 1. In allocating prisoners to different institutions or regimes, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of the special requirements of their treatment, of their medical needs, their sex and age.

2. Males and females shall in principle be detained separately, although they may participate together in organised activities as part of an established treatment programme.

3. In principle, untried prisoners shall be detained separately from convicted prisoners unless they consent to being accommodated or involved together in organised activities beneficial to them.

4. Young prisoners shall be detained under conditions which as far as possible protect them from harmful influences and which take account of the needs peculiar to their age ...

12. The purposes of classification or reclassification of prisoners shall be:

a. to separate from others those prisoners who, by reasons of their criminal records or their personality, are likely to benefit from that or who may exercise a bad influence; and

b. to assist in allocating prisoners to facilitate their treatment and social resettlement taking into account the management and security requirements.

13. So far as possible separate institutions or separate sections of an institution shall be used to facilitate the management of different treatment regimes or the allocation of specific categories of prisoners."

34. Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, adopted on 9 October 2003, reads as follows:

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 ...

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 ....”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant complained that the Pravieniškės Prison authorities had failed to protect his physical well-being when he was serving his sentence and that, as a result, he had been severely injured. He relied on Article 3 of the Convention, which reads as follows:

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

A. The parties’ submissions

1. The applicant

36. The applicant submitted that the State should be held responsible for failing to protect him from prison violence that caused his total incapacity. He argued that persons deprived of their liberty were less able to protect themselves from violence than the general public. For example, a prisoner was not able to hide from aggression, call the police or simply run away; thus it was practically impossible for an inmate to physically defend himself from a stronger prisoner. As a result, the State was under an obligation to be diligent and vigilant when locking up convicted persons, and should guarantee their safety during their sentence.

37. The applicant complained that the Pravieniškės Prison administration had been negligent in his particular case. He noted, firstly, that in Wing 2, Section 2 he had had to serve his sentence with R.J., contending that the criminal experience of the two men had been of a different degree. Namely, R.J. had three convictions, whereas for the

applicant this was the first. In the applicant's view, the procedure in Lithuania as regards the serving of sentences was not properly regulated. Those sentenced for the first time and those with three convictions could be placed together, because in theory they were serving a prison sentence for the first time. This erroneous categorisation of convicts by the State and their allocation to the wrong groups were directly linked to the cause of the incident.

38. The applicant also claimed that the prison administration had been well aware of the unofficial hierarchy among the prisoners. The administration had known that the applicant had not belonged to the group of prisoners who lived in Wing 2, Section 2, given that, according to the testimony of R.J., only prisoners of "higher" rank, including himself, resided there. It had been only a matter of time until the applicant would be beaten up.

39. Lastly, the applicant referred to domestic legislation prohibiting inmates from obtaining and consuming alcohol. In this connection, he submitted that immediately after the fight of 2 October 2002, R.J. had smelled of alcohol. However, the administration of Pravieniškės Prison had not tested R.J. for alcohol until twelve hours later, even though all the guards who were at the scene of the accident thought that R.J. smelled and appeared drunk. On this point the applicant implied that the consumption of alcohol caused inmates to be aggressive and unpredictable. In sum, the State should bear responsibility for failure to prevent disorder, which had resulted in an incident that had caused him life-long incapacity.

2. The Government

40. The Government submitted, firstly, that the complaint was inadmissible because the applicant had failed to exhaust the domestic remedies. They argued that he had missed the statutory deadline for bringing a civil claim for damages, as noted by the Vilnius Regional Administrative Court in the decision of 21 February 2008. The fact that the statutory time-limit had expired in relation to the applicant's claim could not be reversed by the court further examining the substantiation of the claim.

41. Alternatively, should the Court find the complaint admissible as regards the exhaustion of domestic remedies, the Government contended that it was nonetheless not founded. Their argument was as follows.

42. The Government observed, at the outset, that unlike prisons where inmates live in shared or solitary cells, in Pravieniškės Prison the inmates were accommodated in dormitories (living quarters), which were shared by a number of inmates. The prisoners were allowed to move freely within the prison premises during the day; it was only at night that they had to stay within their living quarters. As concerned the alleged failure to guarantee that prisoners were "properly supervised", as had been suggested by the applicant, the requirement could not be understood as an obligation on the

guards to ensure ceaseless supervision of every inmate. On the contrary, the term required that proper and adequate supervision should be put in place in general, which, in fact, had been done in the Pravieniškės facility. Thus, supervision consisted of a number of measures, all aimed at ensuring the continuous supervision of inmates' behaviour, their isolation where necessary and the implementation of the prison regime requirements as well as preventing possible breaches of discipline and crimes, as provided for under the domestic legislation (paragraphs 29-31 above). The effectiveness and vigour of supervision in Pravieniškės Prison was further illustrated by the fact that the applicant had been punished a number of times for different breaches of discipline. The guards' immediate reaction to the fight between the applicant and R.J. also confirmed that supervision had been organised properly and had enabled them to react to disorder.

43. Whilst acknowledging that Article 3 of the Convention encompasses a positive obligation on the State authorities to take preventive measures to protect persons whose physical well-being is at risk from private individuals, the Government considered that in the instant case the prison authorities had not been and could not have been aware of any real and immediate risk to the applicant. On this point they noted that the applicant had never informed the prison administration that he was in danger, even though in accordance with the provisions of the Code of Correctional Works, he had been entitled to lodge a complaint about the conditions of his detention, ask to be placed in isolation or even request a transfer to another correctional institution. Furthermore, contrary to the facts in *Premininy v. Russia* (no. 44973/04, § 89, 10 February 2011), the circumstances of the instant case did not show that the applicant had been the subject of systematic attacks; the applicant's medical file contained no record of suspicious injuries at the relevant time.

44. The Government also found it paramount that the conflict between the applicant and R.J. had occurred more than ten months after the applicant's transfer to Wing 2, Section 2. It was also noteworthy that during the criminal proceedings, R.J. had testified that before the incident he had had no prior conflicts with the applicant. Moreover, it was the first time that the applicant and R.J. had served a prison sentence. The crimes of both prisoners were of a similar seriousness: the applicant had been convicted for murder committed in a particularly cruel way and for soliciting for prostitution, and R.J. had been convicted for attempted murder. Both prisoners had had a certain authority among the other inmates. Accordingly, in contrast to the facts in *Rodić and Others v. Bosnia and Herzegovina* (no. 22893/05, §§ 69-71, 27 May 2008) there had been no obvious reasons why the applicant might suffer from R.J.'s actions. On this last point, the Government also disagreed with the applicant's suggestion that the prosecutor's letter of 19 December 1994 was a testament to the complicated character of R.J. Whilst affirming that the content of that letter had been

unknown to them, the Government nevertheless submitted that the letter must have concerned the need to isolate R.J. at the pre-trial stage of a different set of criminal proceedings in order to conduct an effective investigation.

45. The Government likewise found it appropriate to draw the Court's attention to the inconsistency between R.J.'s testimony in the criminal proceedings and in the subsequent administrative proceedings for damages. In particular, in the course of the criminal proceedings, R.J. had stated that when the incident had taken place, he had been sober and that he had had no prior conflicts with the applicant. Conversely, in the proceedings against the State for damages, R.J. had stated that there had been tension between him and the applicant, and had not answered a question concerning alleged consumption of alcohol. On that basis the Government appeared to imply that in the second set of court proceedings R.J. had attempted to alleviate his situation and put the blame on the State, so that he would not be liable for damages.

46. Lastly, as concerns the alleged failure to ensure the effective prohibition of alcohol consumption by the prisoners, the Government submitted that it would be unreasonable to claim that the prison administration had been inactive in that regard. Regular searches had been conducted by the guards, as proved by the applicant's disciplinary punishments. Whilst acknowledging that there had been some lapse of time before R.J. had been tested for intoxication, the Government submitted that this had been because of the time of day; the action taken by the doctors had been primarily predetermined by the seriousness of the applicant's injuries and the need to provide medical assistance outside the prison. Furthermore, R.J. had also sustained injuries as a result of the fight and the inmates had refused to explain the circumstances of the incident. Faced with this general calamity, the doctors' priority had been to provide R.J. with medical assistance.

47. In conclusion, the applicant's injury was not the result of a failure on the part of the Pravieniškės Prison authorities to act diligently, but the consequence of actions by R.J. in a one-off fight which, above all, had been spontaneous. In the Government's view, the prison administration had reacted immediately, necessary medical assistance had been provided to the applicant, and the perpetrator of the crime had eventually been punished. Accordingly, the positive obligations of the State had been fulfilled.

B. The Court's assessment

1. Admissibility

48. The Court first turns to the Government's argument that the applicant failed to properly exhaust the available domestic remedies, as he

had lodged a claim for damages after the statutory time-limit had expired. The Court notes, however, that the Vilnius Regional Administrative Court and, subsequently, Supreme Administrative Court did examine the merits of the applicant's complaints and dismissed them as not founded (see paragraphs 25, 26 and 28 above). Accordingly, the Government's objection must be dismissed.

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

2. Merits

50. The applicant complained that the ill-treatment to which he had been subjected was so grave as to fall under the protection of Article 3 of the Convention. The Court reiterates that for the treatment to fall within the scope of Article 3 of the Convention it must attain a minimum level of severity. The assessment of this minimum is, by nature, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see, amongst many other authorities, *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161).

51. In the circumstances of the instant case the Court notes that as a consequence of the incident of 2 October 2002, the applicant sustained serious head injuries and went into a coma. Subsequently, a doctors' commission declared the applicant totally disabled (see paragraphs 18 and 19 above). The Court also notes that at the time of the incident the applicant was only thirty years old. Having regard to the consequences of the ill-treatment and its permanent effect on the applicant's health, the Court finds that there are elements that are sufficiently serious to render such treatment inhuman and degrading, contrary to the guarantees of Article 3 of the Convention. It therefore remains to be determined whether the State authorities can be held accountable for the ill-treatment of which the applicant was a victim.

52. The Court observes that according to its constant case-law the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment administered not only by State agents but also by private individuals (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V). In the case of prisoners, the Court has stressed that States 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 *Kovaļkovs v. Latvia* (dec.), no. 35021/05, § 47, 31 January 2012). That being so, the Court has consistently interpreted that obligation in such a manner as not to impose an impossible or disproportionate burden on the authorities (see *Pantea v. Romania*, no. 33343/96, § 189, ECHR 2003-VI (extracts); *Stasi v. France*, no. 25001/07, § 78, 20 October 2011).

53. Having regard to the absolute character of the protection guaranteed by Article 3 of the Convention and given its fundamental importance in the Convention system, the Court has developed a test for cases concerning a State's positive obligation under that Convention provision. In particular, it has held that to successfully argue a violation of his Article 3 right, it would be sufficient for an applicant to demonstrate that the authorities had not taken all steps which could have been reasonably expected of them to prevent real and immediate risks to the applicant's physical integrity, of which the authorities had or ought to have had knowledge. The answer to the question whether the authorities fulfilled their positive obligation under Article 3 will depend on all the circumstances of the case under examination (see *Premininy*, cited above, § 84). The Court therefore has to establish whether, in the circumstances of the present case, the authorities knew or ought to have known that the applicant was at risk of being subjected to ill-treatment at the hands of his cellmate R.J., and if so, whether the administration of the Pravieniškės Prison, within the limits of their official powers, took reasonably available measures to eliminate that risk and to protect the applicant from abuse. In this context the Court also refers to the Recommendation Rec(2003)23 by the Committee of Ministers of the Council of Europe to the effect that the prison administration has an obligation to make careful appraisal to determine whether individual prisoners pose risk to themselves or others (see paragraph 34 above).

54. The Court notes the Government's argument that the Pravieniškės Prison authorities could not have foreseen a spontaneous fight breaking out between the applicant and J.R. In this connection, the Court recalls that by the time the Pravieniškės Prison authorities transferred the applicant to Wing 2, Section 2 of that institution on 22 November 2001, he had already been serving a custodial sentence in that prison for some five and half years. Accordingly, it could be reasonably assumed that by that time the applicant was well aware of the way of life in that prison. Even more critical for the Court is the fact that the applicant had been staying in Wing 2, Section 2 for more than ten months before the fight between him and R.J. broke out (see paragraphs 7–9 above). Neither the applicant nor his lawyer have provided the Court with any material showing that, during those ten months in that section of the prison, the applicant had sustained any physical injuries. Nor

have they submitted any evidence that, during that period, the applicant had received any threats from other inmates and reported them to the prison administration.

55. The applicant has argued that the Pravieniškės Prison authorities should have been aware that he was not suited to Wing 2, Section 2 of the prison, because only particularly "hardened" criminals were held there and the applicant was not of that calibre. The Court cannot subscribe to this thesis. It observes, firstly, that except for the testimony of R.J. during the civil proceedings, the documents submitted by the parties do not corroborate such a conclusion. Whilst it is not prepared to dispute the veracity of R.J.'s statement, the Court likewise is reluctant to take it for the truth either. Accordingly, the Court is not ready to find that there were any solid reasons why the applicant's placement in that particular part of the prison inherently entailed a serious risk to his physical well-being (see, by contrast, *Rodić and Others*, cited above, § 70).

56. Secondly, turning to the personalities of the applicant and R.J., the Court acknowledges that the latter had indeed been convicted for serious crimes, including attempted murder, which could be a testament to his dangerous character. Be that as it may, the Court cannot fail to observe that the applicant was spending time in Pravieniškės Prison for serious crime, too. Namely, the applicant had been convicted for a murder of a prostitute committed in a particularly cruel way, as well as for soliciting for prostitution. Consequently, it can very well be said that both the applicant and R.J. were of similar danger to others and to society. On this point the Court also notes that in the domestic proceedings the applicant's lawyer relied on the prosecutor's letter of 19 December 1994, which recommended that R.J. be held in isolation. For the lawyer, that was proof of R.J.'s dangerous character. The applicant has not provided a copy of that letter to the Court, despite being specifically requested to do so, but has simply requested that the Government's arguments as to the content of the letter (see paragraph 44 above) be considered as unfounded. Although the content of the prosecutor's letter was not disclosed in the domestic court proceedings for damages, the Court considers that this was an opportunity for the applicant to prove his claim before the Court. However, the applicant has not availed himself of that opportunity, nor has he claimed that he could not obtain a copy of that document. Lastly, the Vilnius Regional Administrative Court acknowledged that by placing the applicant in the same section of the prison as R.J., the authorities were following the relevant domestic rules for the allocation and accommodation of prisoners (see paragraphs 26, 29 and 30 above).

57. The applicant has also argued that alcohol was accessible to inmates in the Pravieniškės Prison, suggesting that intoxicated prisoners were more prone to violence. Taking into account the submissions by the Government and the testimony of the guards who appeared at the scene of the fight (see

paragraphs 13 and 46 above), the Court lends a certain weight to the first part of the applicant's argument and cannot but condemn the situation. However, the Court considers that the question of alcohol abuse in prison is relevant, but not decisive, in that it is not for the Court to speculate whether alcohol consumption made one or another prisoner – R.J. in this particular case – more aggressive and prone to violence. More importantly, the Court observes that when convicting R.J., the trial court made no conclusive finding that he had been intoxicated when the fight broke out (see paragraph 15 above). On this point the Court also reiterates that, in principle, and without prejudice to its power to examine the compatibility of national decisions with the Convention, it is not the Court's role to assess the facts which have led a national court to adopt one decision rather than another; otherwise, it would be acting as a court of fourth instance and would disregard the limits imposed on its action (see, *mutatis mutandis*, *Kemmache v. France (no. 3)*, 24 November 1994, § 44, Series A no. 296-C); *G.N. and Others v. Italy*, no. 43134/05, § 89, 1 December 2009; and *Papapetrou and Others v. Greece*, no. 17380/09, § 63, 12 July 2011). It follows that the applicant's argument that the prison administration must be held liable for inadequate supervision of inmates whose access to alcohol put at risk the physical well-being of other prisoners, cannot be upheld.

58. The Court considers that the key factor in determining whether the State may be blamed for not having guaranteed that the applicant would not suffer at the hands of another inmate is the circumstances surrounding the incident of 2 October 2002. It notes, firstly, that the dispute took place in the evening, after the evening check-up. The Court lends particular weight to the fact that, as R.J. testified during criminal proceedings, "the quarrel between [him] and the applicant had been spontaneous", "the fight had been short", and "afterwards the guards had run in and it had all been over". The brief duration of the fight was also confirmed by another inmate, Ž.K., who stated that "the conflict had happened very fast" (see paragraph 14 above). That being the case, and taking into account the absence of any prior reported incidents that the applicant had encountered in Wing 2, Section 2, of the prison, the Court cannot hold the facility's administration responsible for not having prevented the outcome of the fight, which was clearly spontaneous (see, by converse implication, *Premininy*, cited above, § 89). While reiterating that it is the State's utmost responsibility to prevent and address violence among inmates in prisons (ibid., § 85), in the circumstances of the instant case the Court finds that the Pravieniškės Prison authorities had carried out regular risk assessment of the applicant and R.J. (see paragraph 10 above). It further notes that the fight took place immediately after the evening check-up and before the night-time check-up (see paragraphs 13 and 23 *in fine* above), the time-difference between the two being between one and two hours. Accordingly, the Pravieniškės Prison administration may not be reproached for making too few check-ups on

inmates. Moreover, the applicant has not complained that after the fight broke out the guards' had failed to intervene promptly. On this issue the Court also reiterates its prior finding that the applicant had been residing in that unit of the prison for more than ten months before the incident took place without having raised any issues with the administration regarding his security.

59. Lastly, the Court observes that, as has been argued by the Government, immediately after the incident took place, the State provided the applicant with medical assistance and he was operated on in a public hospital. Moreover, as concerns the authorities' duty under Article 3 to conduct an effective official investigation into any alleged ill-treatment, even if such treatment has been inflicted by private individuals (see *Ay v. Turkey*, no. 30951/96, § 60, 22 March 2005, and *M.C. v. Bulgaria*, no. 39272/98, § 151, ECHR 2003-XII), the Court finds that in the instant case this obligation has also been fulfilled, as R.J. was found guilty of having caused the applicant severe bodily injury and sentenced to two years and six months' imprisonment, which was added to his prior conviction.

60. In the light of the foregoing considerations, the Court holds that the material in the case file does not provide an evidential basis sufficient to enable it to find that the Lithuanian authorities did not fulfil their positive obligation to adequately secure the physical integrity of the applicant during his stay in Pravieniškės Prison.

Accordingly, the Court concludes that there has been no violation of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. Lastly, invoking Article 6 of the Convention, the applicant also alleged that the Lithuanian courts were not impartial, improperly interpreted and applied legal norms regulating the State's civil liability, and thus failed to protect his rights.

62. The Court notes, however, that the issues raised by the applicant are in reality a re-statement of his complaint under Article 3, which has already been examined above. The Court therefore considers that it is not necessary to examine separately the admissibility or the merits of the applicant's complaints made under Article 6.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the applicant's ill-treatment by his inmate admissible;

2. *Holds* by six votes to one that there has been no violation of Article 3 of the Convention;

3. *Holds* unanimously that there is no need to separately examine the admissibility or merits of the applicant's complaint under Article 6 of the Convention.

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

Stanley Naismith Registrar	Ineta Ziemele President

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

(a) concurring opinion of Judges Jočienė and Berro-Lefèvre;
(b) dissenting opinion of Judge Pinto de Albuquerque.

I.Z.
S.H.N.

CONCURRING OPINION OF JUDGES JOČIENĖ AND BERRO-LEFÈVRE

We agree with the majority that there has been no violation of Article 3 of the Convention in this case.

However, we have some difficulties as regards the arguments used by the Chamber with regard to the risk and needs assessment (see paragraphs 53 and 58 of the judgment). We understand the importance and usefulness of the Committee of Ministers Recommendation Rec(2003)23 to member states on the management by prison administration of life sentence and other long-term prisoners (paragraph 34), and welcome all the principles enshrined in this Recommendation concerning risk and needs assessment and security in prisons. The European Court of Human Rights, however, based as it is on the *subsidiary character* of the Convention machinery to the national systems safeguarding human rights (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, §§ 89-90, § 92, et seq., ECHR 2007-I), cannot rely on arguments which were never raised before the domestic courts.

It is clear from the Court's well-established case-law that, under Article 1 of the Convention, the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention **is laid on the national authorities**.

This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 140, ECHR 2006-V). The Court can and should intervene only where the domestic authorities have failed in that task or where the domestic institutions are incapable of providing effective protection of the rights guaranteed by the Convention. We stress that it would be inappropriate and contrary to the Court's subsidiary role under the Convention for it to attempt to establish the facts of this case on its own, duplicating the efforts of the domestic authorities, which are better placed and equipped for that purpose (see, for example, *McShane v. the United Kingdom*, no. 43290/98, § 103, 28 May 2002). In line with its well-established practice, the Strasbourg Court should confine its examination of the application to an evaluation of the domestic investigation into the matter (see *Prynda v. Ukraine*, no. 10904/05, § 54, 31 July 2012).

We note in this respect that the Lithuanian courts have had no opportunity to analyse this issue, as this aspect (risk assessment) was never raised before the domestic courts by the applicant. Within the proceedings at issue the applicant complained in a very general way before the domestic courts about the fact that the prison authorities had failed to protect his physical well-being and that, as a result, he had been severely injured, and alleged that the State had been responsible for that passive attitude.

As stated in the judgment (paragraph 10), five character reports on the applicant were drawn up by the Pravieniškės Prison authorities over the period 1997-2002, and in 2002 R.J. was assessed twice. Again, we note that the applicant never submitted any complaint in respect of his own or J.R.'s assessment, either to the penitentiary authorities or to the administrative courts of Lithuania, which were and are an effective remedy for all prisoners' complaints concerning their conditions of detention (see the decision in *Jankauskas v. Lithuania*, no. 59304/00, "Law" Part, § 1, 16 December 2003; see also, *a contrario*, *Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII.

Furthermore, the applicant never complained before the domestic courts within the proceedings at issue that his or J.R.'s risk assessments had been incorrectly made, or that he had not been reassessed or been reassessed too infrequently, despite having available all the effective measures under Article 13 of the Convention to do so at domestic level. In consequence, the Court cannot rely on arguments which were not raised by the applicant before the domestic courts. In our opinion, in such cases the Court may be regarded as acting as a fourth-instance court, which is not this Court's duty (see, *mutatis mutandis*, *Gurepka v. Ukraine*, no. 61406/00, § 45, 6 September 2005). Furthermore, in accordance with the Court's consistent case-law, the domestic courts are best placed to assess the relevance of evidence to the issues in the case (see, amongst many authorities and, *mutatis mutandis*, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B), had such evidence or issues been presented to the national courts, which was not the case.

In addition, we consider that the Court, if willing to rely on the risk assessment arguments, should have communicated this aspect to the Government, thus providing an opportunity to the Government and to the applicant himself to comment on this aspect and to submit more information on it, if necessary.

DISSENTING OPINION OF JUDGE PINTO DE ALBUQUERQUE

The *Tautkus* case raises the issue of State liability for inter-prisoner violence caused by a wrongful decision on the allocation of inmates. The utmost importance of this case for the future of prison management in Europe is further heightened if one considers the broader question of the State's obligation to provide an individual sentence plan based on a risk and needs assessment of inmates.

To my regret, I cannot agree with the majority. In my view, the respondent State failed to comply, both by action and by omission, with its obligation to protect the physical integrity of the applicant, having failed to take the appropriate measures to prevent and react to the attack that almost cost the applicant's life and left him totally incapacitated for the rest of his life. To justify my opinion, I will start by a brief description of all the relevant facts, including the prison reports on the applicant's situation and the reports of the Committee for the Prevention of Torture (CPT) and the Committee against Torture (CAT) on the problem of inter-prisoner violence in Lithuania before and after the incident in Pravieniškės Prison. I will then proceed to determine the breadth of the international obligation of the respondent State to protect inmates from inter-prisoner violence under Article 3 of the European Convention on Human Rights (the Convention). Finally, I will assess the facts of the case under the aforementioned European standard.

The facts

On 7 May 1996 the applicant, a convicted murderer, was placed in Pravieniškės High-Security Correctional Colony No. 2 to serve his fourteen-year prison sentence[1].

After arriving at Pravieniškės Prison, the applicant was moved six times in six years from one wing of the prison to another. This course of action was never justified by any prior individual risk and needs assessment of the applicant, nor was it performed in accordance with any sentence plan. The Government themselves acknowledged that there remained no documents or explanations as to why the applicant or any other inmate had been placed in or relocated to a particular wing of the Pravieniškės colony[2].

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[1] In June 2003 this prison was renamed as Pravieniškės Correction House No. 2 – Open Colony. In February 2011, Pravieniškės Correction House No. 1, Pravieniskes Correction House No. 2 and Pravieniškės Correction House No. 3 were merged into a single institution, Pravieniškės Correction House – Open Colony ("Pravieniškės Prison").

[2] See page 3 of the Government's observations: "the prisoner's personal file usually did not contain specifications about the placements in different sections."

On 22 November 2001 the prison authorities ordered the transfer or relocation of the applicant and other inmates to different wings and sections of Pravieniškės Prison. The order, which contained only a list of inmates and the wings and sections they were allocated to, was based on "what has been decided by the Commission on the relocation of inmates, which held a hearing on 22/11/2001".

On 2 October 2002 the applicant was severely injured by another inmate, R.J., in Wing 2, Section 2. His skull was fractured and he fell into a coma. He became totally disabled after that incident. The incident lasted between twenty and thirty minutes, according to the Government themselves[3]. Only after that length of time did the prison guards intervene and stop the incident, which by that time already involved a third inmate[4]. The incident took place at around 11 p.m., in spite of the fact that inmates were supposed to be in bed by 10 p.m. according to prison rules. Although guards as well as prisoners stated that R.J. smelled of alcohol, no alcohol test was performed on him immediately after the incident, the first test being carried out more than twelve hours afterwards.

Between the date of his arrival at the prison and the date of the incident, the applicant's situation was reassessed five times. The first report dates from 10 November 1997. It states that "the applicant came to Pravieniškės from Vilnius Remand Prison. In the colony he was not employed. In the outside world, he was a trained ceramicist and did not work. In the colony the applicant does not attempt to observe the rules as regards the prison regime and other internal rules. He has had seven disciplinary punishments for various violations. The last one, in 1996, was for keeping his hands in his pockets. After he received disciplinary punishments, his behaviour improved a little. He is friendly with the other convicts. Does not take part in communal activities. His character traits: he does not like insults, is vengeful, does not have a purpose in life. In his free time he watches TV and does sports. Keeps contact with his family. He does not understand his criminal liability, is not willing to rectify his behaviour, does not draw conclusions (about his past actions)."

The second report, dated 3 March 1999, states that "the applicant was brought to Pravieniškės from Vilnius remand facility. In 1998 he was placed in Wing 7, Section 2. The applicant has adapted well in Wing 7, his relationship with other inmates is normal. He knows how to communicate,

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[3] See page 5 of the Government's observations: "As concerns testimonies of R.J. that guards did not react to the fight for 30 minutes that are mentioned in the Statement of Facts, it must be specified that, taking into account testimonies of R.J. himself and the testimonies of the witnesses in R.J.'s criminal case, it could be observed that the conflict situation might have lasted about 20-30 minutes, but the fight was spontaneous and everything happened very fast."

[4] See page 15 of the Government's observations: "…upon arrival at the place of incident there were three prisoners found with traces of injuries…"

knows how to adapt to the 'communal rules' in prison. He is respectful towards the colony's employees. He has eight times breached internal rules in the colony; the last time he was punished was in 1996. He has been commended for good behaviour five times, the last time in 1999. In his free time he listens to music, watches TV, learns English. Observes the hygiene requirements. Keeps contact with his family. Thinks clearly, logically. His values are not very firm, he is sensitive. Willing to rectify his behaviour."

The third report, dated 3 May 2000, states that "he transferred to Pravieniškės from Vilnius; he adapted in Vilnius normally, had committed one disciplinary violation there. Adaptation in the Pravieniškės colony was hard, the applicant committed breaches of the internal rules. He has secondary school education ... At the colony he works well, complies with the instructions from his superiors (at work). While in the colony he has committed nine disciplinary violations and has been subjected to disciplinary action seven times. Currently his behaviour is not bad, he does not commit disciplinary violations. For good behaviour and work he has been commended seven times. He likes hygiene and a clean environment. In his free time the applicant watches TV and does sports, writes to his family, has an adequate understanding of his criminal liability and is currently more inclined to behave appropriately and not to breach the internal rules."

The fourth report, dated 24 July 2001, states that "he takes part in communal activities, but shows no initiative; self-centred, loves himself, observes the 'prison rules (unofficial ones)', influences other inmates, progress towards resettlement is positive."

The last report on the applicant's situation before the incident dates from 5 September 2002. In this report, it is stated that "[the applicant] arrived in Pravieniškės in 1996 from Vilnius detention facility. There he had been described as a person who knew how to communicate and who had no conflicts with officers or inmates [while in Vilnius]. After he had been assigned to a wing and section [no reference to a specific wing/section] in Pravieniškės, [the applicant] adapted well. He knows how to communicate, knows how to adapt, has authority, is diplomatic with other inmates and respectful to the guards. For a year he worked as a welder and worked well. He also studied to become a carpenter and was commended for studying well. While serving the sentence he has violated prison rules fourteen times, and for that reason has received eleven disciplinary penalties. He reacts positively to disciplinary penalties and remarks (by the guards), [the applicant] attempts to perform his duties well and has therefore been commended thirteen times. He willingly takes part in the activities of the Wing and follows the directions of the Wing supervisor; [the applicant] is active in communal activities in the colony. Maintains hygiene, likes a clean environment and reading literature. [The applicant] acknowledges the negative traits in his character and is working to improve them. [The

applicant] has already served half his sentence and the colony's administration suggests that he could be pardoned."

In the case file, there are also two reports on R.J.'s situation. In a report of 13 February 2002, it is stated that "R.J. came to Pravieniškės from Siauliai detention facility. When assigned to a wing in the colony he adapted well and quickly, he has authority, is diplomatic with other convicts, tends to be a leader. Five grades of school education, does not work in the colony. Twice punished for disciplinary violations, has no commendations. Takes part in the activities of the wing, obeys the orders of the wing supervisor without objecting. Likes a clean environment, wears clean clothes, watches TV and does sports. Keeps contact with his family. R.J. knows his negative character traits and is willing to rectify his behaviour, but since he has served only a small part of his sentence, the colony's administration is not ready to propose [to the court] that R.J. be released from serving his sentence." Another report dated 26 July 2002 stated that "R.J. is confident, keeps contact with his family, two violations of the internal rules, does sports, reads and watches TV. Progress towards resettlement is satisfactory."

In a letter of 19 December 1994, a public prosecutor issued an order to the prison authorities for R.J. to be kept in isolation while in prison[5].

The applicant complained, both before the national authorities and before the Court, of the failure of the respondent State to provide safe conditions of imprisonment, that is, he argued specifically that the decision to place him together with R.J. had been unlawful[6].

Inter-prisoner violence in Lithuania according to the CPT and the CAT

Inter-prisoner violence in Lithuanian prisons, and especially in Pravieniškės Prison, is a very serious problem, one to which the CPT and the CAT have repeatedly drawn the attention of the national authorities. After its first visit to the country in February 2000, the CPT severely criticised the situation in the following terms:

> "64. The CPT received recurrent accounts of inter-prisoner violence relating to both Pravieniškės Strengthened Regime Colony No. 2 and Vilnius Prison. It appears that a significant number of prisoners lived in fear of physical violence (beatings) and were

[5] The existence of this order is not disputed by the Government, who only discuss the way it should be interpreted. According to the Government, this order was not relevant for the allocation of the prisoner within Pravieniskes Prison (see page 13 of the Government's observations: "It should be stressed that the order of the prosecutor to isolate R.J., that was indicated in the letter of 19 December 1994, was not relevant for the placement of R.J. together with the applicant as the mentioned order was related to pre-trial investigation stage in the first R.J.'s criminal case whereby the imposed imprisonment sentence was suspended").

[6] See page 12 of the Government's observations.

subjected to a host of indignities (being forced to clean for others, verbal abuse) by stronger prisoners.

An examination of the injury registers at each establishment lent credence to these allegations. At Vilnius Prison, 713 injuries had been recorded in 1999. At Pravieniškės Strengthened Regime Colony No. 2, 109 reports of various types of injury had been recorded during the same period. However, the registers examined by the delegation contained few details and, in particular, made no reference to prisoners' statements as to the manner in which the injuries had been sustained. Moreover, at Pravieniškės, the head doctor indicated that, in his view, the registers misrepresented the extent of the phenomenon, due to the under-reporting of violent inter-prisoner disputes.

65. It might be added that, at the Pravieniškės Colony, the CPT's delegation met several prisoners who were being held in the segregation unit who claimed that they risked being assaulted by fellow inmates if they were to be moved back to ordinary accommodation. It transpired that, seeking to protect themselves, some prisoners had committed disciplinary violations in order to be removed from ordinary accommodation. Certain of them indicated that they would remain in this situation until the end of their incarceration. The prison's management confirmed that some prisoners who could not 'live with others' were accommodated in disciplinary cells.

The delegation also received allegations to the effect that prison staff were well aware of the de facto hierarchy and its accompanying abuses, but failed to intervene. Given the current level of staffing (e.g. 100 custodial staff for 2000 inmates at Pravieniškės), this is hardly surprising. Some prisoners summed up the situation by stating that 'anything can happen in the cells'.

66. The CPT wishes to emphasize that the duty of care which is owed by the prison authorities to prisoners in their charge includes the responsibility to protect them from other prisoners who might wish to cause them harm. The information gathered in the prisons visited suggests that much remains to be done in this respect.

Addressing the phenomenon of inter-prisoner violence requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills (cf. paragraph 61). It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient to enable prison officers adequately to supervise the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

The CPT recommends that the Lithuanian authorities develop and implement a concrete strategy to address the problem of inter-prisoner violence, in the light of the above remarks.

(...)

72. (...)

> Prisoners serving lengthy sentences should be able to exercise a degree of choice over the manner in which their time is spent, thus fostering a sense of autonomy and personal responsibility. Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psychological support are important elements in assisting such prisoners to come to terms with their period of incarceration and, in due course, to prepare for release.
>
> (...)
>
> 104. Particular reference should be made to Unit 21 of Pravieniškės Strengthened Regime Colony No. 2. (...)
>
> 105. On the whole, material conditions were of a higher standard than in the rest of the prison, particularly as regards the living space available to prisoners. However, the Committee has concerns about certain other aspects of the situation of inmates accommodated in Unit 21: staff presence was lower, the regime was even less developed than in the rest of the prison, and complaints were heard about access to health care."[7] (my underlining)

The Government admitted that the criticism was "well-founded". In response to the CPT's recommendation on the development and implementation of a concrete strategy to address the problem of inter-prisoner violence (paragraph 66 of the report), the Government stated that "[i]t has to be admitted that the delegation's affirmation that the insufficient level of staffing prevents prison officers from managing inter-prisoner violence is well-founded. However, in near future there are hardly any possibilities to increase the number of staff of imprisonment institutions due to financial restraints."[8]

Four years later, after another visit in February 2004, the CPT again raised the issue of inter-prisoner violence, in the following terms:

> "56. The CPT is seriously concerned by the level of inter-prisoner violence at Marijampolė Correction Home. The prospect of becoming victims of beatings, sexual assaults, extortion, and a host of indignities (e.g. being urinated upon by fellow inmates) was a daily reality for many vulnerable prisoners. Such a situation could fairly be described as inhuman and degrading. According to internal investigations, in 2003 alone, the aforementioned circumstances had driven at least two inmates to take their own lives. The delegation met several inmates who had inflicted upon themselves serious or even life-threatening injuries, in order to be removed from their cell/dormitory. It is particularly worrying that a number of allegations were heard that the violent prison sub-culture was being exploited by prison staff as a means of maintaining control or to gather information on inmates.
>
> Further, at Vilnius-Lukiškės Remand Prison, several inmates claimed that they had been threatened by officers of the internal security department with placement in a

[7] CPT/Inf (2001) 22, 18 October 2001, Report to the Lithuanian Government on the visit to Lithuania carried out by the CPT from 14 to 23 February 2000.
[8] CPT/Inf (2001) 23, Responses of the Government of Lithuania to the report of the CPT on its visit to Lithuania from 14 to 23 February 2000.

cell/dormitory together with inmates prone to be violent, if they refused to confess to the criminal offence(s) of which they were suspected.

The potential for inter-prisoner violence also existed at Kaunas Juvenile Remand Prison and Correction Home. Nevertheless, it would appear that the recent reduction in occupancy levels had alleviated the problem at that establishment.

(...)

60. The CPT calls upon the Lithuanian authorities to develop strategies with a view to addressing the problem of inter-prisoner violence in the establishments visited (and, as appropriate, in other prisons in Lithuania), in the light of the remarks made in paragraphs 56 to 59.

Further, the Committee recommends that the existing procedures be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of inter-prisoner violence, the record is immediately brought to the attention of the relevant prosecutor and a preliminary investigation is initiated by him.

(...)

74. (...) Therefore, the approach to the management of life-sentenced prisoners (as indeed to all prisoners) should proceed from an individual risk/needs assessment to allow decisions concerning security, including degree of contact with others, to be made on a case-by-case basis.

The CPT calls upon the Lithuanian authorities to fundamentally revise the regime applicable to life-sentenced prisoners and the relevant legal provisions, in the light of the remarks made in paragraphs 72 to 74."[9] (my underlining)

In their response, the Government countered the CPT's criticism by quoting domestic legal provisions such as Articles 70 and 72 of the Penal Enforcement Code, and adding that:

"In addition, in order to eliminate the problem of inter-prisoner violence in penal institutions, special violence prevention programs are implemented. The newly arrived prisoners are put in the living premises separately from other prisoners up to two weeks' period. They are being interviewed by the prison staff in order to define their physical abilities, psychological characteristics, the nature of the crime committed by them and other indications. This is taken into consideration before they are allocated to the dormitories.

It is expected to address this situation more effectively after the large-capacity dormitories are transformed into smaller cells-type accommodations housing 3-6 prisoners."[10]

[9] CPT/Inf (2006) 9, Report to the Lithuanian Government on the visit to Lithuania carried out by the CPT from 17 to 24 February 2004.
[10] CPT/Inf (2006) 10, Response of the Lithuanian Government to the report of the CPT on its visit to Lithuania from 17 to 24 February 2004.

After a third visit in April 2008, the CPT welcomed the adoption of some measures to tackle the problem of inter-prisoner violence, but noted that "some problems remained":

> "40. As during the previous two visits to Lithuania, the delegation paid particular attention to the phenomenon of inter-prisoner intimidation and violence. At Pravieniškės-2 Correction Home No. 3, many prisoners whom the delegation met said that the situation had improved in recent years and that the beating of vulnerable prisoners was no longer 'routine'. However, it appears that some problems remain. Several prisoners claimed to have been threatened, harassed or struck by other prisoners. Furthermore, a number of them alleged that certain officers would seek to take advantage of the situation to obtain information about prisoners − by threatening vulnerable prisoners that they would be placed in the strict regime if they did not act as informants.
>
> (...)
>
> 41. (...) However, the findings of the delegation during the 2008 visit clearly demonstrated that staffing levels in the three establishments were insufficient to ensure proper supervision of inmates (see paragraph 70). Moreover, many staff (at all levels) did not seem to have received suitable training to enable them to detect (potential or actual) trouble or conflict between prisoners, and take the necessary action.
>
> The CPT recalls that, for a strategy to reduce inter-prisoner intimidation or violence to be effective, staffing levels must be sufficient (including at night-time) to enable prison officers properly to supervise the activities of prisoners and support one another effectively in the performance of their tasks. Moreover, staff members (of all grades) must receive training in managing inter-prisoner violence so that they are able to intervene appropriately when necessary.
>
> The CPT recommends that the Lithuanian authorities pursue their efforts to address the problem of inter-prisoner violence in the establishments visited (and, as appropriate, in other prisons in Lithuania). In this context, it is particularly important to ensure that all prisons have adequate levels of properly trained staff."[11] (my underlining)

In their response, the Government mentioned several programmes that were being implemented in order to diminish inter-prisoner violence and, more generally, "criminal subculture traditions"[12].

Finally, after its last visit in June 2010, the CPT stated as follows:

> "10. (...) In contrast, little progress had been made concerning, firstly, safeguards against ill-treatment and, secondly, conditions of detention in police establishments. It is regrettable that certain recommendations made by the Committee after its first visit to Lithuania a decade ago have still not been implemented.

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[11] CPT/Inf (2009) 22, Report to the Lithuanian Government on the visit to Lithuania carried out by the CPT from 21 to 30 April 2008.

[12] CPT/Inf (2009) 24, Responses of the Lithuanian Government to the report of the CPT on its visit to Lithuania from 21 to 30 April 2008.

(...)

> 16. The duty of care which is owed by the police authorities to detained persons includes the responsibility to protect them from inter-prisoner violence. In this connection, the CPT has already underlined that staff must be alert to signs of trouble and be resolved to intervene in an appropriate manner when necessary. In addition, staffing levels must be sufficient (including at night) for staff to be able to exercise adequate supervision of detained persons. It also goes without saying that any allegations of violence must be followed by a prompt and appropriate response."[13]

The Committee against Torture has portrayed the same picture of inter-prisoner violence in Lithuania. In its 2004 "conclusions and recommendations", the CAT stated as follows: "The Committee expresses concern about the following: ... That conditions in places of detention are poor, as acknowledged by the State party, and that some prisoners 'live in fear' of inter-prisoner violence, as noted by the European Committee to Prevent Torture."[14] Five years later, the situation had not changed significantly. In its 2009 "concluding observations, the CAT stated: "Furthermore, while noting the implementation of violence prevention programmes in places of imprisonment, the Committee is concerned at the occurrence of inter-prisoner violence and lack of statistical data that may provide breakdown by relevant indicators to facilitate determination of root causes and design of strategies to prevent and reduce such occurrences (arts. 11 and 16)."[15]

The international obligation to provide individual sentence plans

The Committee of Ministers, the CPT, the CAT and other United Nations bodies and representatives have for many years and on many occasions defended the imperative necessity of an individual sentence plan based on a permanently updated risk and needs assessment of the inmate concerned, especially in the case of inmates serving life or long-term sentences, that is, a prison sentence or sentences totalling five years or more[16].

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[13] CPT/Inf (2011) 17, Report to the Lithuanian Government on the visit to Lithuania carried out by the CPT from 14 to 18 June 2010.

[14] CAT Conclusions and Recommendations, CAT/C/CR/31/5, 5 February 2004.

[15] CAT, Concluding Observations, CAT/C/LTU/CO/2, 19 January 2009.

[16] The Convention must be interpreted taking into account not only other human rights treaties, but also hard and soft law instruments related to it and especially the system of human rights protection of the Council of Europe within which it fits, as Article 31 para. 3 c) of the Vienna Convention on the Law of Treaties provides (for a clear example, see *Loizidou v. Turkey*, 18 December 1996, § 43, *Reports of Judgments and Decisions* 1996-VI). The same interpretation method has been used by the Inter-American Court of Human Rights in numerous judgments and opinions (for example, see *Yakye Axa Indigenous Community v. Paraguay*, 17 June 2005, Series C No. 125, paragraph 126; *Tibi v. Ecuador*, 7 September 2004, Series C No. 114, paragraph 144; *Gómez-Paquiyauri Brothers v. Peru*, 8 July 2004, Series C No. 110, paragraph 164; *'Street Children'*

In its **Resolution (73) 5 on Standard Minimum Rules for the Treatment of Prisoners**, the Committee of Ministers stated as follows:

> "7. When prisoners are being allocated to different institutions, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of their physical condition (young, adult, sick), their mental condition (normal or abnormal), their sex, age and, in the case of convicted prisoners, the special requirements of their treatment.
>
> (...)
>
> 67. (...)
>
> 2. For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on the various matters referred to in the foregoing paragraph. Such reports shall always include reports by a medical officer, and wherever possible by a psychiatrist.
>
> 3. Reports and other relevant information shall be collected in individual files. Files shall be kept up to date and be accessible to responsible persons.
>
> 4. Individual treatment programmes shall be drawn up after consultation between the various categories of personnel. Prisoners shall be involved in the drawing up of their individual treatment programmes. The programmes should be periodically reviewed." (my underlining)

Resolution (76) 2 on the Treatment of Long-Term Prisoners provided that national authorities should "grant periods of leave from prison not as a relief from detention but as an integral part of the programme of treatment" (my underlining).

Recommendation no. R (87) 3 of the Committee of Ministers to Member States on the European Prison Rules provided as follows:

> "11. 1. In allocating prisoners to different institutions or regimes, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of the special requirements of their treatment, of their medical needs, their sex and age.
>
> (...)
>
> 67. 1. Since the fulfilment of these objectives requires individualisation of treatment and, for this purpose, a flexible system of allocation, prisoners should be placed in separate institutions or units where each can receive the appropriate treatment and training.

(Villagrán-Morales et al.) v. Guatemala, 19 November 1999, Series C No. 63, paragraphs 192–193; and *The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law*, Advisory Opinion OC-16/99 of 1 Oct. 1999, Series A No. 16, paragraph 113). This approach is particularly required in the field of criminal, criminal procedural and prison law, as I demonstrated in my separate opinion in *Portmann v. Switzerland* (no. 38455/06, 23 November 2011).

2. The type, size, organisation and capacity of these institutions or units should be determined essentially by the nature of the treatment to be provided.

3. It is necessary to ensure that prisoners are located with due regard to security and control but such measures should be the minimum compatible with safety and comprehend the special needs of the prisoner. Every effort should be made to place prisoners in institutions that are open in character or provide ample opportunities for contacts with the outside community. In the case of foreign nationals, links with people of their own nationality in the outside community are to be regarded as especially important.

68. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of a suitable length, a programme of treatment in a suitable institution shall be prepared in the light of the knowledge obtained about individual needs, capacities and dispositions, especially proximity to relatives.

69. 1. Within the regimes, prisoners shall be given the opportunity to participate in activities of the institution likely to develop their sense of responsibility, self-reliance and to stimulate interest in their own treatment.

2. Efforts should be made to develop methods of encouraging co-operation with and the participation of the prisoners in their treatment. To this end prisoners shall be encouraged to assume, within the limits specified in Rule 34, responsibilities in certain sectors of the institution's activity." (my underlining)

Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners stated, *inter alia*, as follows:

"1. For the purposes of this recommendation, a life sentence prisoner is one serving a sentence of life imprisonment. A long-term prisoner is one serving a prison sentence or sentences totalling five years or more.

(...)

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).

(...)

8. Individual planning for the management of the prisoner's life or long-term sentence should aim at securing progressive movement through the prison system (progression principle).

9. In order to achieve the general objectives and comply with the principles mentioned above, comprehensive sentence plans should be developed for each individual prisoner. These plans should be prepared and developed as far as possible with the active participation of the prisoner and, particularly towards the end of a detention period, in close co-operation with post-release supervision and other relevant authorities.

10. Sentence plans should include a risk and needs assessment of each prisoner and be used to provide a systematic approach to: – the initial allocation of the prisoner; – progressive movement through the prison system from more to less restrictive conditions with, ideally, a final phase spent under open conditions, preferably in the community; (...)

11. Sentence planning should start as early as possible following entry into prison, be reviewed at regular intervals and modified as necessary.

(...)

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.

(...)

18. 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.

(...)

19. 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." (my underlining)

Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules affirms as follows:

"17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.

17.2 Allocation shall also take into account the requirements of continuing criminal investigations, safety and security and the need to provide appropriate regimes for all prisoners.

(...)

103.2 As soon as possible after such admission, reports shall be drawn up for sentenced prisoners about their personal situations, the proposed sentence plans for each of them and the strategy for preparation for their release.

103.3 Sentenced prisoners shall be encouraged to participate in drawing up their individual sentence plans.

(...)

104.1 As far as possible, and subject to the requirements of Rule 17, separate prisons or separate sections of a prison shall be used to facilitate the management of different regimes for specific categories of prisoners.

104.2 There shall be procedures for establishing and regularly reviewing individual sentence plans for prisoners after the consideration of appropriate reports, full consultations among the relevant staff and with the prisoners concerned who shall be involved as far as is practicable." (my underlining)

According to the **CPT Standards** (CPT/Inf/E (2002) 1 - Rev. 2011):

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

Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority. Specific security measures adapted to the particular characteristics of the situation encountered (including effective search procedures) may well be required; however, such measures can never be more than an adjunct to the above-mentioned basic imperatives. In addition, the prison system needs to address the issue of the appropriate classification and distribution of prisoners. (...)[17]

33. (...) Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached

[17] The usual formulation of this principle is the following: "…the prison system as a whole may need to develop the capacity to ensure that potentially incompatible categories of prisoners are not accommodated together… Tackling effectively the problems posed by inter-prisoner violence requires the implementation of an individualised risk and needs assessment" (see the report on the visit to Greece in 2005, paragraph 83; the report on the visit to Bulgaria in 2006, paragraph 68; the report on the visit to the former Yugoslav Republic of Macedonia in 2006, paragraph 53; the report on the visit to the Czech Republic in 2006, paragraph 37; the report on the visit to Ireland in 2006, paragraph 42; the report on the visit to the same country in 2010, paragraph 33; and the report on the visit to Hungary in 2009, paragraph 60). In fact, this has been the position of the CPT since its early reports on inter-prisoner violence in Portugal and Denmark (see reports on visits to Portugal in 1996, paragraph 14, and to Denmark in 1996, paragraph 53).

from society; to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way. (...)

Additional steps should be taken to lend meaning to their period of imprisonment; in particular, the provision of individualised custody plans and appropriate psycho-social support are important elements in assisting such prisoners to come to terms with their period of incarceration and, when the time comes, to prepare for release.

(...)

37. Psychiatric treatment should be based on an individualised approach, which implies the drawing up of a treatment plan for each patient." (my underlining)

The **International Covenant on Civil and Political Rights** affirms:

"10. (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

The **United Nations Standard Minimum Rules for the Treatment of Prisoners**[18], which reflect customary international law in many respects, provide, *inter alia*, as follows:

"8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. (...)

(...)

9. (...)

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

(...)

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(...)

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

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[18] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, A/61/311.

(...)

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions." (my underlining)

The **United Nations Rules for the Protection of Juveniles Deprived of their Liberty** establish as follows:

"27. As soon as possible after the moment of admission, each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared. This report, together with the report prepared by a medical officer who has examined the juvenile upon admission, should be forwarded to the director for purposes of determining the most appropriate placement for the juvenile within the facility and the specific type and level of care and programme required and to be pursued. When special rehabilitative treatment is required, and the length of stay in the facility permits, trained personnel of the facility should prepare a written, individualized treatment plan specifying treatment objectives and time frame and the means, stages and delays with which the objectives should be approached." (my underlining)[19]

The **United Nations Office on Drugs and Crime**, in its "Handbook on Prisoners with special needs", recommends:

"Not to detain death row prisoners in prolonged solitary confinement. To assess prisoners under sentence of death as all other prisoners and accommodate them according to the risk they pose to others, with access to activities in prisons, to visits, correspondence, recreation, in line with their classification and sentence plan." (my underlining)[20]

The **United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**, Sir Nigel Rodley, concluded as follows:

"Countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than necessitated by the needs of protection and without rendering them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials as to the importance of taking effective steps to prevent and remedy prisoner on prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated along the lines of gender, age and seriousness of the crime, as well as first-time/repeat offenders and pretrial/convicted detainees;"[21]

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[19] Approved by General Assembly resolution 45/113, 14 December 1990, A/RES/45/113.
[20] Handbook on Prisoners with special needs, United Nations, 2009, p. 175.
[21] Report of the Special Rapporteur submitted pursuant to Commission on Human Rights resolution 2001/62, E/CN.4/2003/68, 17 December 2002, Annex 1, A/56/156, paragraph 39 (i).

The **United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions**, Philip Alston, expressed the following opinion:

"76. The Government's legal power to determine which prisoners are confined to which cells, wings and prisons at which times provides one powerful example of the tools Governments have to retake control from prisoner authorities and prevent prisoner-on-prisoner violence. The power to control inmates' movements can be used to disrupt particular circumstances in which inmates attempt to become prisoner authorities, dominating and coercing fellow prisoners. Particularly vulnerable individuals, including ones who have been threatened by other prisoners, may be given protective custody. Prisoner authorities may themselves be moved and isolated from the rest of the prison population.

77. In addition to these separation measures, staff can systematically classify and segregate new inmates in such a way as to reduce the opportunities and incentives for inmates to form violent organizations. International human rights treaties require that some groups of inmates be separated, providing that accused persons shall be segregated from convicted persons, juvenile offenders shall be segregated from adults and migrant workers held for migration-related violations shall be segregated from convicted persons or persons awaiting trial. Other criteria for segregation are enumerated in standards instruments adopted by international bodies. These include the separation of men from women and of persons detained for civil offences from those detained for criminal offences. International standards also suggest the importance of classification to encourage rehabilitation and discourage recidivism.

78. These broad categories, however, provide only a starting point for national authorities. While Governments must avoid classifications that would be inconsistent with human rights law prohibitions on discrimination, there are numerous other country-specific criteria that may be relevant, including gang affiliation (whether as a criterion for grouping or separating), past behaviour in prison and the severity and character of the offence committed. To make any such effort effective, it must be approached systematically. First, the Government should develop a precise policy on how the various criteria interact to determine who should be detained together or apart. Thus, as a purely hypothetical example, one might separate inmates into age, sex and other groups required by law; further segregate each such group by the severity of the offence committed; then, among those responsible for violent crimes, separate persons from rival gangs; and finally separate out leaders of gangs. The system of classification and segregation that is required will vary according to the particular challenges facing each prison system, but too often Governments allow these decisions to be made on an ad hoc basis by individual officials; instead, they should be clearly spelled out and made known to all concerned. Second, the institutional means to implement this classification and segregation policy must be put in place. To effectively screen and sort new inmates, there will be a need for staff trained in interviewing new inmates and in reaching out to other law enforcement authorities to obtain and analyse information on the criminal histories and gang affiliations of individuals and on the relationships between gangs. Third, the policy must be continuously evaluated for its effectiveness in, *inter alia*, preventing

> prisoner-on-prisoner violence, the establishment of gang control and recidivism." (my underlining)[22]

Recently, in *Premininy v.* Russia, the **Court** explicitly acknowledged this standard of international law by stating as follows:

> " ...it appears that the management of the detention facility lacked a clear policy on the classification and housing of detainees, key to promoting internal prison security and preventing prison violence. The Court reiterates that a proper classification system which includes screening for the risk of victimisation and abusiveness, consideration of the traits known to place someone at risk and of an individual's own perception of vulnerability is critical to ensuring that potential predators and potential victims are not housed together... " [23]

In sum, an individual sentence plan, with a comprehensive and updated risk and needs assessment, for inmates sentenced to life or long-term imprisonment (that is, a prison sentence or sentences totalling five years or more) is an international positive obligation of States Parties, based on Article 3 of the Convention interpreted in the light of the consistent and well-established position of the Court, the Committee of Ministers of the Council of Europe and the Committee for the Prevention of Torture. That position is shared by the Committee against Torture, the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the United Nations Economic and Social Council, the United Nations Office on Drugs and Crime, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. As one of the most important practical aspects of the positive obligation of States Parties to protect the physical and psychological well-being of inmates under the Convention, the obligation to provide an individual sentence plan is an obligation of result which is imposed on States Parties, independent of the inmate's wishes. The inmate's adherence to and cooperation with the sentence plan should be promoted, but his or her

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[22] *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development*, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/8/3, 2 May 2008.

[23] In *Premininy v. Russia*, no. 44973/04, 10 February 2011, the Court criticised the fact that the administration of the detention facility had never considered the specific details of the first applicant's personal situation in their choice of co-detainees to place in his cell. This was not the first finding of a violation of Article 3 due to wrongful or groundless accommodation/classification decisions in the Court's case-law. In *Rodić and 3 Others v. Bosnia and Herzegovina*, no. 22893/05, 27 May 2008, the Court had already acknowledged that the policy of integration of those convicted of war crimes into the mainstream prison system could raise issues under Article 3 and that the applicants' physical well-being was not adequately secured in the period from their arrival in Zenica Prison until they were provided with separate accommodation in the Zenica Prison hospital unit.

rejection of or indifference to it does not release the State from the duty to prepare, implement and review the individual sentence plan. Failure to comply with this obligation entails State responsibility, namely for incidents like suicide or inter-prisoner violence resulting from wrongful allocation and classification decisions.

The assessment of the facts of the case under the European standard

The respondent State did not provide an updated risk and needs assessment of the applicant, since the succinct yearly reports on his situation were manifestly insufficient to reflect the applicant's physical, psychological and social situation and to guide his future development within the prison system. The same applies to R.J.'s reports. The risks and needs in relation to both the applicant and R.J. should have been assessed individually through appropriate sentence plans, which was not the case[24]. One of the main purposes of these sentence plans is precisely to prevent wrongful allocation and classification decisions and thus prevent the kind of incidents that occurred in the *Tautkus* case[25]. Hence, the respondent State

[24] Paragraph 53 of the judgment is right in imposing on prison administrations an "obligation to make careful appraisal to determine whether individual prisoners pose risk to themselves or others", based on Recommendation No. (2003)23 by the Committee of Ministers. By so doing, the majority correctly concludes that Article 3 of the Convention does require that the allocation of inmates be carried out in accordance with an individual risk and needs assessment. But measures to eliminate the risk of inter-prisoner violence and protect applicants from abuse should not be limited to those "reasonably available". In fact, the State's liability in the instant case results precisely from the prolonged unavailability of measures to deal with the systemic problem of inter-prisoner violence in Lithuanian prisons, as the CPT and the CAT have pointed out for over a decade. Furthermore, I cannot agree with the majority's assertion in paragraph 58, according to which "the Pravieniškės Prison authorities had carried out regular risk assessment of the applicant and R.J." In its report on the visit to the Czech Republic in 2006, paragraphs 37 and 38, and others mentioned in the next footnote, the CPT has stressed the imperative need that the risk and needs assessment be "rigorous and comprehensive". In my view, the reports on the applicant were neither "rigorous" nor "comprehensive". On the contrary, the brief, perfunctory and superficial nature of the remarks made in the reports reveals the complete absence of any meaningful technical assessment of the applicant's physical, psychological and social situation, the risks presented by him to others and by others to him, his rehabilitation needs, plans for education, work, training and occupation of free time, contacts with the outside world, prison leave and preparation for release. This conclusion applies with even greater force to R.J.'s two reports.

[25] This has been a major concern of the CPT's recommendations on placement/allocation decisions (see the reports in which an individual risk assessment is requested prior to any placement/allocation decisions, such as the report on the visit to the Czech Republic in 2006, paragraph 54; the report on the visit to Ireland in 2006, paragraphs 40 and 41 and the report on the visit to the same country in 2010, paragraph 90; the report on the visit to Croatia in 2007, paragraph 60; the report on the visit to the Netherlands in 2007, paragraph 42; the report on the visit to the United Kingdom in 2008, paragraphs 47 and 63; the report on the visit to Greece in 2009, paragraph 141; the report on the visit to Ukraine in 2009,

did not do everything that it could have done to prevent the incident in question, because it did not even comply with the Committee of Ministers and CPT standards with regard to the risk and needs assessment of inmates sentenced to long-term imprisonment. The mere fact that the applicant did not complain specifically about the lack of a sentence plan, although he argued that his placement was unsafe and unlawful, evidently does not absolve the State of its responsibility, since it is bound by a compulsory international obligation not dependent on the wishes of the applicant.

The respondent State's responsibility for the incident is compounded by five specific facts and omissions imputable to the national authorities. First, the prison authorities had been ordered by a public prosecutor to keep R.J. in isolation while in prison, but did not comply with that order. Although the order was given some years prior to the events in this case, the fact is that it was not revoked. Thus, the prison authorities should have complied with it until its explicit revocation by the authority which issued it or another superior authority. In the event that the order had become groundless, the prison authorities should have raised the issue of its maintenance with the authority which issued it. The only thing the prison authorities could not do was to ignore the order and act as if it had never been given. That was precisely what they did.

Second, R.J. admitted that his relations with the applicant had always been tense and that the incident was foreseeable to the prison authorities, since the applicant "did not fit in" in Wing 2, Section 2. A violent "criminal subculture" had clearly developed in Wing 2, Section 2 in which the applicant was a foreign element, a convict of a "lower caste" as R.J. put it in the domestic court proceedings[26]. As R.J. was the "leader" of this group of

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paragraph 95; and the report on the visit to the former Yugoslav Republic of Macedonia in 2010, paragraph 81), on decisions on security measures or special security regimes (see the reports in which an individual risk assessment is required before adjusting the security measures applied to inmates or subjecting them to a special security regime, such as the report on the visit to Latvia in 2004, paragraphs 8 and 56; the report on the visit to the same country in 2007, paragraph 65; the report on the visit to the same country in 2009, paragraph 33; the report on the visit to the Slovak Republic in 2006, paragraphs 9 and 47; and the report on the visit to Bulgaria in 2008, paragraph 78), on decisions to impose an isolation-type regime (see the reports in which an individual risk assessment is found to be a requirement for imposition of an isolation-type regime, such as the report on the visit to Turkey in 2005, paragraph 51; the report on the visit to the same country in 2009, paragraph 112; and the report on the visit to Azerbaijan in 2008, paragraph 54), and on decisions on programmes of activities (see the reports in which an individual risk assessment is recommended as the basis for a programme of purposeful activities of a varied nature, including work, education and targeted rehabilitation programmes, such as the report on the visit to Finland in 2008, paragraphs 72 and 73; the report on the visit to Hungary in 2009, paragraphs 75 and 77; and the report on the visit to Ukraine in 2009, paragraph 98). The CAT's practice follows the same pattern (see for example, the CAT's concluding observations on the initial report of Ireland, paragraph 15, and its conclusions and recommendations on the second periodic report of Iceland, paragraphs 8 and 10, b).

inmates, as the prison authorities themselves well knew[27], it was most probable that he would react violently to the intrusion of the applicant.

Third, the inmates were allowed to stay up until 11 p.m., in breach of prison rules. The fact that inmates could prolong the "night shift" against the prison rules increased the risk of disturbances and incidents among inmates. The overcrowding of the prison premises and an insufficient prisoner-staff ratio, both noted by the CPT, obviously exacerbated that risk.

Fourth, the prison guards did not react to the incident in good time, bearing in mind the length of time for which the incident lasted. Twenty to thirty minutes is a manifestly excessive period to have elapsed before the prison guards reacted. In fact, the delayed reaction of the guards even created a risk of the fight spreading to other inmates. When the guards intervened, a third inmate was already involved in the fight.

Last but not least, although there was a very strong suspicion that R.J. was under the influence of alcohol when the incident occurred, based on the testimonies of the prison guards themselves, the prison authorities did not subject R.J. to an alcohol test in due time after the incident, performing the first alcohol test on him more than twelve hours later, when signs of alcohol were of course no longer visible. The least that one can say is that the almost unrestricted circulation of alcohol within the prison, acknowledged in R.J.'s testimony in the domestic court proceedings according to which inmates could get as much alcohol in the prison "as they wanted", aggravated the unsafe environment of the prison[28].

When the State detains a person, a heightened level of diligence in protecting that person's right to life and physical integrity is called for.

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[26] See page 4 of the applicant's observations. It is true that the Government rejected the assertion that there was a policy of tolerance of castes in Pravieniškės Prison (see pages 2 and 3 of the Government's reply to the applicant's observations). However, the Government's reply in the present case is not consistent with the Lithuanian Government's responses to the report of the CPT on its visit to Lithuania from 21 to 30 April 2008 (CPT/Inf (2009) 24), where the existence of a "criminal subculture" within Pravieniškės Prison is clearly admitted. In fact, the Government even informed the CPT that "a typical program of individual work with convicts maintaining criminal subculture traditions, which is aimed at motivating convicts to break with criminal subculture traditions, was approved by Order No 1-115 of the Director of Pravieniškės House of Correction No 3 of 1 July 2008 (with other prison establishments taking over the experience). We believe that the introduction of the abovementioned programs and other measures in prison establishments will help to ascertain the main reasons for inter-prisoner violence and reduce the number of cases of violence." It is obvious that in 2008 a phenomenon of "criminal subculture" still existed in Pravieniškės Prison, which caused inter-prisoner violence and required a specific order on the part of the prison director. Thus, the Government's denial of that same phenomenon in the same prison in the instant case is very hard to comprehend.

[27] See the prison report on R.J. of 13 February 2002.

[28] It is thus difficult to accept the "doubts" expressed by the Government as to "whether alleged alcohol consumption could have had determinant influence for the consequences of the incident" (page 4 of the Government's comments on the applicant's observations).

When a person dies or is injured in State custody, there is a rebuttable presumption of State responsibility. The respondent State must, of its own motion, provide unequivocal evidence that it lacks responsibility in order to rebut that presumption, which it did not do in the instant case. On the contrary, the facts and omissions mentioned above, compounded by the respondent State's contradictions, confirm the said presumption. The highly explosive cocktail of circumstances present in Pravieniškės Prison in 2002 – such as the lack of any meaningful sentence plan, the wrongful allocation decision in respect of the applicant, the unsafe custodial environment and the delayed reaction to a serious internal incident – lays the basis for imputing responsibility to the respondent State. Against this background, the national authorities knew, or ought to have known, that their conduct could have tragic consequences[29]. Therefore, the causal relationship between the prison authorities' conduct and the extremely serious consequences of the incident of inter-prisoner violence is undeniable and, accordingly, I conclude that the respondent State breached the applicant's right to physical integrity guaranteed by Article 3 of the Convention.

[29] See *Osman v. the United Kingdom*, 28 October 1998, §§ 115-116, *Reports* 1998-VIII, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-II.