



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

FOURTH SECTION

**CASE OF GRIMAILOVS v. LATVIA**

*(Application no. 6087/03)*

JUDGMENT

STRASBOURG

25 June 2013

**FINAL**

**25/09/2013**

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



**In the case of Grimailovs v. Latvia,**

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

David Thór Björgvinsson, *President*,

Ineta Ziemele,

Päivi Hirvelä,

George Nicolaou,

Zdravka Kalaydjieva,

Vincent A. De Gaetano,

Krzysztof Wojtyczek, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 June 2013,

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

## PROCEDURE

1. The case originated in an application (no. 6087/03) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a “permanently resident non-citizen” of the Republic of Latvia, Mr Artemijs Grimailovs (“the applicant”), on 31 January 2003.

2. The applicant was represented by Ms J. Kvjatkovska, a lawyer practising in Rīga. The Latvian Government (“the Government”) were represented by their Agent at the time Mrs I. Reine.

3. The applicant alleged, in particular, that he had been ill-treated by police officers on 10 September 2001, that there had been no effective investigation in that regard, that he had received inadequate medical assistance in custody, and that the conditions of his detention had been unsuitable in view of his disability.

4. On 5 July 2006 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 1957 and lives in Jelgava.

6. It appears that in an unrelated incident on 23 June 2000 the applicant broke his spine. He underwent surgery to have a metal implant inserted into

his back for support. It appears that following the operation he could move unaided. He was certified as being Category 2 disabled.

7. On 17 December 2002 a note was made for the first time in the applicant's medical records that he could not move without a wheelchair.

8. On 23 January 2003 the applicant was certified as being Category 1 disabled (the most severe level of disability). His disability was reassessed on two further occasions, 13 February 2004 and 22 February 2006.

### **A. The applicant's arrest**

9. On 10 September 2001 at approximately 3 p.m., two traffic police officers, E.Š. and O.Ž., attempted to stop the applicant, who had exceeded the speed limit in Rīga and appeared to be driving under the influence of alcohol. He failed to stop on their instructions and continued driving. The police officers set out to follow him out of the city onto the Rīga-Jelgava motorway. They eventually overtook the applicant's car and pulled it over to the side of the road until it came to a halt. Both vehicles were by then next to an apartment building on a residential street in Jaunolaine.

10. According to the Government, both police officers then saw a firearm in the applicant's inner left jacket pocket, and proceeded to push him to the ground using unspecified restraint techniques (*speciālie cīņas paņēmieni*) and handcuffed him. They then called the local police to the scene to collect evidence. The applicant was breathalysed on the spot and then taken to a police station in Olaine.

11. The applicant did not agree with the Government's version of events concerning his possession of a firearm. He submitted that the police officers had kicked him in the back several times, hurting him badly, before finding out that he was disabled. He alleged that when he had invited them to verify his documents, which were in his wallet in his car, the officers had planted a firearm on him in an attempt to evade criminal liability for having assaulted a disabled person. The applicant denied having had the firearm. He maintained that if he had been keeping a firearm, he would have disposed of it during the car chase.

### **B. The applicant's state of health**

#### *1. Public hospital*

12. On 11 September 2001 the applicant was taken to a public hospital in Rīga (*Rīgas 1. slimnīca*), where an X-ray of his spine was carried out. His state of health was described as being "post-spinal fixation". The fixing screws that held the metal implant supporting his spine in place had been

broken. He also suffered from a spinal contusion and lower back pain. Lastly, it was noted that a consultation with a specialist was necessary.

## *2. Specialist hospital*

13. On 11 September 2001 at 5.40 p.m., the applicant was transferred to a specialist traumatology and orthopaedics hospital in Rīga (*Traumatoloģijas un ortopēdijas slimnīca*). He told a specialist that the day before he had been fleeing from the police. Some officers had stopped him, had pulled him out of the car and had pushed him to the ground, which had led to his back making a hyperextensive movement, in other words, it had bent too far backwards. The applicant complained of lower back pain on his right side and said that he was unable to move his right leg because of the pain. Following an examination by a specialist, the applicant was diagnosed with the following: i) a hyperextension injury and contusion to the lower back; ii) a transverse process fracture (resulting from rotation or extreme lateral bending) to the L3 vertebra, iii) a compression fracture (flexion fracture pattern) to the L1 vertebra, previously fused by transperpendicular fixation surgery, the metal implant having become dislodged and screws in the Th12 and L3 vertebrae having been broken, and iv) intoxication. An X-ray revealed that the fracture to the applicant's L1 vertebra had been fused and fixated with rods and eight screws. Four screws in the applicant's Th12 and L3 vertebrae had been broken. The metal implant had become dislodged. While at the hospital, the applicant received various types of medication.

14. On 12 September 2001 the applicant was discharged from the hospital for outpatient treatment with recommendations to continue taking medication and to wear a fixating belt.

## *3. Prison Hospital*

15. On 12 September 2001 at 7.15 p.m., the applicant was transferred to Rīga Central Prison. Upon admission, he was examined by a doctor, who noted the diagnosis of the specialist hospital and placed the applicant in the surgical ward of the Prison Hospital located within the grounds of the prison. The applicant's overall state of health was described as satisfactory.

16. On 14 September 2001 the applicant complained of severe lower back pain and said that he could not lift his right leg or walk. His state of health was described as moderately severe. A procaine blockade (an anaesthetic which affects the peripheral nervous system) was administered to him.

17. On 19 September 2001 a further procaine blockade was administered to the applicant.

18. On 21 September 2001 his pain lessened and he could stand up and walk. On the same day an X-ray was carried out and no injuries other than

those noted by the specialist hospital (see paragraph 13 above) were found. An X-ray of his lungs was also carried out, the results of which were clear.

19. On 25 September 2001 the applicant had cold-like symptoms and complained of lower back pain. He also said that he could not feel his right thigh. Treatment was prescribed to him for an acute respiratory illness.

20. On 26 September 2001 an infiltration in the applicant's right hip was detected. His fever had been caused by the post-injection infiltration. Over the following two days, the applicant was consulted by a neurologist and a psychiatrist.

21. On 28 September 2001 a surgical procedure was carried out to relieve the applicant's pain, which continued to persist after that date and until 9 October 2001. On the latter date the applicant's overall state of health was described as satisfactory and he could walk again.

22. On 10 October 2001 the applicant was discharged from the Prison Hospital, but remained in custody.

### **C. Investigation into the events of 10 September 2001**

23. On 10 September 2001, after the applicant was taken to the police station in Olaine, both traffic officers were questioned by an inspector of the Olaine police within the criminal proceedings concerning the firearm charge (see paragraph 33 below).

24. E.Š. was the first to make a statement, on 10 September 2001 between 10 and 10.30 p.m. His version of events was as follows. In a residential area in Jaunolaine, he had taken the applicant by the hand and had made him step out of the car. Both he and his colleague had seen a firearm in the applicant's inner left jacket pocket. They had both proceeded to push him to the ground and to handcuff him. His colleague, O.Ž., had taken the firearm out of the jacket pocket. They had then called the local Olaine police, who had arrived and had confiscated the firearm. The local police had also found a bullet in the car the applicant had been driving. Lastly, the police officers breathalysed the applicant and found that he had been under the influence of alcohol.

25. In addition, in a report to his superior, which was drafted on the same day, E.Š. noted that restraint techniques had been used on the applicant because a firearm and bullets had been found in his inner left jacket pocket.

26. O.Ž. made his statement on 10 September 2001, between 10.40 and 11.15 p.m. His evidence was very similar to that of his colleague. He also stated that they had both seen the firearm in the applicant's jacket and had pushed the applicant to the ground and had handcuffed him. O.Ž. had then taken the firearm and the local police had confiscated it. He also noted that the applicant had been under the influence of alcohol. He had found out later that the local police had also found a bullet in the car.

27. In addition, in a report to his superior, which was drafted on the same day, O.Ž. noted that when he had seen the firearm, he had taken it out of the applicant's jacket. He added that the applicant had been handcuffed for around forty minutes as he had been behaving aggressively. Lastly, he mentioned that the applicant had agreed to be breathalysed on the spot.

28. The applicant was first questioned by the inspector of the Olaine police on 11 September 2001 at 9.50 a.m. He submitted that he had been ill-treated upon his arrest and said that he was not in a position to make a statement because he felt severe back pain. He mentioned the fact that he had previously undergone spinal surgery. At 10.15 a.m. the interview was terminated and the applicant was then taken to hospital (see paragraphs 12 et seq.).

29. During his subsequent questioning by prosecutor J.D., on 21 September 2001 (see paragraph 37 below), the applicant maintained his allegation that he had been ill-treated upon arrest.

30. On 9 November 2001 an expert commenced the forensic medical examination, which had been ordered on 10 October 2001 by prosecutor J.D. It appears that it was completed on 15 November 2001, when report no. 46-4528 was issued. The examination was based on the applicant's medical records from the public and specialist hospitals, as well as his records from the Prison Hospital (see paragraphs 12 to 22 above). It appears that the applicant was not examined in person. The expert concluded that the applicant had not sustained any injuries. In reaching that conclusion, the expert noted that she had not taken into account the first diagnosis made by the specialist hospital that the applicant had "a hyperextension injury and contusion to the lower back" (see paragraph 13 above) because:

"[I]t [was] not confirmed by objective clinical symptoms or by visible bodily injuries, but rather was based on the applicant's complaints relating to the dislodging of the metal implant following osteosynthesis surgery and [the dislodging] cannot be regarded as bodily injuries on the grounds of instructions concerning the forensic medical examination."

31. She had also not taken into account the second diagnosis made by the specialist hospital that the applicant had "a fracture to the L3 vertebra" (see paragraph 13 above) as it had been an old fracture and had not been connected to the events of 10 September 2001, a fact confirmed by a specialist's opinion of 15 November 2001. It appears that the results of the opinion were not made available to the applicant.

32. On 27 November 2001 prosecutor J.D. decided to refuse the institution of criminal proceedings. Her decision was worded as follows:

"The materials regarding [the applicant's] complaint that officers O.Ž. and E.Š. had assaulted him during his arrest on 10 September 2001 have been separated from the criminal case file.

In their witness statements, O.Ž. and E.Š. categorically denied that they had assaulted the applicant. None of the officers had assaulted him.

Furthermore, according to forensic report no. 4528, dated 9 November 2001, no injuries were found on the applicant's body. The fracture to the applicant's L3 vertebra was not taken into account for the purposes of the forensic report, because it was old and was not connected to the injuries of 10 September 2001.

In the circumstances, the actions of E.Š. and O.Ž. do not contain the elements of a criminal offence and there is no basis on which to institute criminal proceedings.

Considering the above, and in accordance with section 5 and section 212 of the Code of Criminal Procedure, it is decided:

1. to refuse to institute criminal proceedings into the applicant's allegations of assault on 10 September 2001;
2. to notify the applicant of this decision."

#### **D. The criminal proceedings against the applicant**

##### *1. Firearm charge*

33. On 10 September 2001 the Olaine police instituted criminal proceedings against the applicant in connection with the illegal acquisition and storage of a firearm. It appears that while at the police station, the applicant was breathalysed for a second time.

34. On the same date an initial forensic examination of the firearm took place, which had been ordered by the Olaine police. Three further forensic examinations followed in the same month. The examination reports included a note stating that the firearm and a bullet had been confiscated from the car the applicant had been driving. The examinations revealed that there had been no fingerprints on the firearm and that the applicant's jacket had not contained any traces of firearm oil, which had been found on the firearm.

35. On 12 September 2001 the Rīga Regional Court (*Rīgas apgabaltiesa*) remanded the applicant in custody. He appealed against the order to no avail.

36. On 18 September 2001 the case file was sent to the relevant prosecutor's office in Rīga (*Rīgas rajona prokuratūra*).

37. On 21 September 2001 prosecutor J.D. charged the applicant with the illegal acquisition and storage of a firearm. He denied the charge, saying that the police officers had ill-treated him and had then planted the firearm on him.

38. On 8 October 2001 a confrontation took place in which prosecutor J.D. cross-examined the applicant and both traffic police officers; the applicant's counsel was present. O.Ž. maintained statements he had previously made on 10 September 2001 (see paragraph 26 above). The

applicant submitted that during his arrest, O.Ž. had pulled him out of the car by his hand, had pulled his hands behind his back and had pushed him to the ground. When he had tried to turn around, an officer had started kicking him in his shoulders and arms. One of the officers had put his feet on his back. He alleged that he had been kicked some five or six times. He had told the officers about his disability and had invited them to verify his documents, which had been in his car. One of the officers had gone to his car and had found his disability certificate. The other officer, who had remained with his feet on his back, had then kicked him again. Afterwards, he had been ordered to stand up and put on his jacket, which had prior to that been in his car. He had been ordered to empty his pockets and had then felt an object similar to a firearm in his inner left pocket, which he had taken out and immediately dropped on the ground. The officers had then asked him if he had found everything, and he had noticed another object of a rectangular shape in the same pocket, which he had also dropped on the ground, which had turned out to be an ammunition clip (*aptvere*). He had then been handcuffed, breathalysed and handed over to the Olaine police.

39. On 8 October 2001 prosecutor J.D. cross-examined the applicant and E.Š, who maintained statements he had made on 10 September 2001 (see paragraph 24 above); the applicant's counsel was present. The applicant submitted that during his arrest, he had been kicked some five or six times in his back and arms, and that one of the officers had been standing or kneeling on his back while the other officer had handcuffed him. While in this position, he had made them aware of his disability and one of the officers had proceeded to verify his documents. After some time, they had made him stand up and put on his jacket, which had prior to that been in his car. The officers had searched him and he had felt an object similar to a firearm in his inner left pocket, which he had taken out and immediately dropped on the ground. The officers had then asked him if he had found everything and he had noticed another object of a rectangular shape in the same pocket, which he had also dropped on the ground.

40. On 10 October 2001 prosecutor J.D. decided to order a forensic medical examination to determine the injuries sustained by the applicant. In her decision, she noted that the applicant's statements suggested that the police officers had pulled him out of the car, had pushed him to the ground and had kicked him no less than five times in the back, shoulders and arms. In addition, she noted that the applicant had submitted that one of the officers had been standing on the exact spot where he had had his injury. She also noted that the applicant had been Category 2 disabled and at the time of the arrest had been under the influence of alcohol. The decision to order the forensic examination was received by the competent forensic authority on 8 November 2001.

41. On 22 October 2001 the applicant was released pending trial in connection with the firearm charge, but was remanded in custody in relation to other charges (see paragraph 48 below).

42. On 5 November 2001 prosecutor J.D. decided to separate the applicant's allegations of ill-treatment from his criminal case file (see, as concerns the investigation, paragraphs 23 et seq. above). In her decision, she noted that the applicant had been arrested on 10 September 2001 for a traffic offence, and that the police officers had found a firearm in his jacket pocket. She also noted the applicant's submissions about his alleged ill-treatment and the fact that the traffic officers had denied the allegations. Lastly, she noted that although a forensic medical examination had been ordered, it had not yet been carried out. As it was her view that the results of the examination would not affect the qualification of the applicant's offence, she separated the materials concerning the alleged ill-treatment from the case file and sent them to the Olaine police for additional review.

43. There is no information available as to whether any review was carried out by the Olaine police.

44. On 8 November 2001 prosecutor J.D. sought the advice of an expert to answer the question "Would the driver of a BMW 535 driven on wet tarmac at a speed of 200 to 230 km/h lose control, if a window is opened, either manually or electronically, to throw something out?" The expert concluded that it was possible in both situations, but that it would be more difficult if the window was opened manually, which was less likely to be the case for the model of car mentioned.

45. On 20 November 2001 prosecutor J.D. issued the final bill of indictment concerning the firearm charge against the applicant.

46. On 22 November 2001 and 8 January 2002 prosecutor J.D. examined the applicant's request for the criminal proceedings against him to be terminated on the grounds that he was innocent, his guilt not having been proven, and because the firearm did not belong to him. She rejected the request on the basis that the applicant's guilt had been proven by the case materials in their entirety. There were therefore no grounds to terminate the criminal proceedings.

## 2. *Bodily injury and rape charge*

47. Meanwhile, on 17 September 2001, the Jelgava police instituted criminal proceedings against the applicant in connection with the bodily injury and rape of a minor girl that had taken place on 9 September 2001.

48. It appears that on 22 October 2001 the applicant was remanded in custody in connection with those charges.

49. On an unspecified date the case was sent to the relevant prosecutor's office in Jelgava (*Jelgavas pilsētas prokuratūra*).

50. On 28 November 2001 the final bill of indictment was issued concerning the bodily injury and rape charge against the applicant.

### 3. *The applicant's trial concerning both charges*

51. A trial took place from 24 May to 4 June 2002, and on the latter date the Jelgava Court (*Jelgavas tiesa*) found the applicant guilty of both (the firearm and the bodily injury and rape) charges and, taking into account his state of his health, sentenced him to five years and six months' imprisonment, into which a previous suspended prison sentence was also incorporated.

52. As concerns his arrest on 10 September 2001, the applicant told the court that he had been fleeing from the police. He submitted that two police officers had pulled him out of the car in Jaunolaine, had pushed him to the ground and had handcuffed him. While lying down on the ground, he had been kicked hard several times in his back. He then had felt a sharp pain in his back, had told the officers about his disability and had invited them to verify his documents, which they had done. The officers had then made him stand up and put on his jacket, which until then had been lying on the passenger seat. Afterwards, one of the officers had ordered him to empty his pockets. He had felt a gun in his pocket and had immediately dropped it on the ground. The officers had then requested all the contents of his pockets to be emptied. When he had felt another object in his pocket, which had turned out to be an ammunition clip, he had dropped that on the ground as well.

53. As concerns the firearm, the applicant submitted that it had not been his. It had either been planted on him by the police officers in an attempt to evade criminal liability for having assaulted a disabled person, or by someone who had put it in his pocket the day before (during the events surrounding the bodily injury and rape charge).

54. The trial court did not give credence to the applicant's allegations of ill-treatment by the police officers on the grounds that the forensic examination had concluded that the applicant had not sustained any bodily injuries (see paragraph 30 above).

55. O.Ž. was the only traffic police officer to give evidence before the trial court and relied on his cross-examination with the applicant (see paragraph 38 above). O.Ž. testified that on pulling the applicant out of the car in Jaunolaine, his jacket had opened and O.Ž. had seen an object similar to a firearm in the applicant's inner pocket. For that reason he had been pushed to the ground using force and handcuffs had been put on him. O.Ž. had then taken the firearm out of the applicant's inner pocket and had put it on the bonnet of the car. The local police had then been called.

56. In examining the officer's evidence, the trial court found it consistent and unvaried throughout the preliminary investigation and the trial. They further relied on evidence given by an officer of the Olaine police during the pre-trial investigation, who stated that when he had arrived at the scene the firearm had been on the bonnet of the car and a bullet had been found inside.

57. On 21 October 2002, following an appeal by the applicant, the Zemgale Regional Court (*Zemgales apgabaltiesa*) upheld the judgment of the trial court.

58. The applicant subsequently lodged an appeal on points of law, but on 2 December 2002 this was dismissed by the Senate of the Supreme Court (*Augstākās tiesas Senāts*) in a preparatory meeting.

## **E. The applicant's medical care in prison**

### *1. Rīga Central Prison*

59. From 12 September to 10 October 2001 the applicant was held in the Prison Hospital located within the grounds of Rīga Central Prison. His medical care during that period is described above (see paragraphs 15 to 22 above).

60. In addition, he was also held in the Prison Hospital during the following periods:

- from 15 November to 3 December 2001;
- from 19 to 27 December 2001;
- from 17 to 25 January 2002;
- from 22 December 2002 to 13 January 2003;
- from 17 January to 7 February 2004; and
- from 17 to 24 January 2006.

61. It appears that between the periods of hospitalisation prior to his conviction, he was detained in the prison itself.

62. In the meantime, on 10 October 2001 the applicant's lawyer applied to a prosecutor seeking permission for the applicant to be transported from the prison to the Commission for Health and Working Capacity Examination (*Veselības un darbaspēju ekspertīzes komisija*). On 13 November 2001 that prosecutor informed the lawyer that under Regulation of the Cabinet of Ministers no. 358 (1995), transport to the Commission was only permitted for convicted prisoners. Its doctors were not permitted to visit detainees awaiting trial in Rīga Central Prison.

### *2. Liepāja Prison*

63. On 19 August 2002 the applicant was transferred to Liepāja Prison to serve his sentence, where he remained until 13 December 2002. Upon admission, he requested that he be provided with mobility assistance. He immediately received crutches. By the end of August, with the help of a donation by the local Red Cross, he received a wheelchair.

### 3. Pārlielupe Prison

64. On 13 December 2002 the applicant was transferred to Pārlielupe Prison to continue serving his sentence. He was held in that prison until 27 October 2003, save for a period of twenty-two days when he was in the Prison Hospital (see paragraph 60 above).

65. On 9 April 2003 the local social services in Jelgava (*Jelgavas sociālo lietu pārvalde*) informed the applicant that a wheelchair had been ordered for him and would be delivered accordingly.

### 4. Valmiera Prison

66. On 27 October 2003 the applicant was transferred to Valmiera Prison to continue serving his sentence. He was held in that prison until 21 April 2006, save for two periods of twenty-one and seven days respectively when he was in the Prison Hospital (see paragraph 60 above).

67. In the prison the applicant was placed in “the open living area” (*atklātā dzīvojamā zona*) in a unit for convicted prisoners with health problems. The applicant shared his cell with another inmate.

68. The facilities in Valmiera Prison were adapted for the applicant’s needs to the following extent:

- he was allowed to have his meals delivered to his cell instead of having to go to the canteen;
- he was allowed to attend sauna once a week at special times;
- every day from 6 a.m. to 10 p.m. he could stay in the open area in his unit and have access to fresh air;
- a ramp was installed so that he could access the outdoor yard;
- toilets were adapted for his needs;
- he was exempted from social work and from every day check-ups;
- the staff of the medical unit visited him in his cell so that he did not need to go to the unit himself.

69. On 29 January 2004 a computerised tomography (CT) scan of the applicant’s spine was carried out at a specialist clinic in Rīga. On two further occasions the applicant was examined at a public hospital in Valmiera.

70. On 2 August 2005 the applicant complained to the National Human Rights Office (*Valsts cilvēktiesību birojs*) about the conditions of his detention in Valmiera Prison and the adequacy of his medical support. As he had become paraplegic, he could not access the sanitation facilities (including the toilets and shower), library, shop or meeting and telephone rooms. He was also unable to go outside for walks. The applicant complained that he needed two operations, one so that he could walk again and the other to remove the metal implant supporting his spine. On 12 August 2005 his complaint was forwarded to the Prisons Administration (*Ieslodzījuma vietu pārvalde*).

71. On 2 September 2005 the Prisons Administration replied to the applicant and the National Human Rights Office that his complaints concerning the medical unit of Valmiera Prison were unsubstantiated. The Category 1 disability certificate had been granted to the applicant from 13 February 2005 to 28 February 2006. He had correctly noted himself in his complaint that such surgery could not be performed in Latvia. Furthermore, the medication necessary for acute conditions was available in the medical unit of Valmiera Prison.

72. On 7 September 2005 the National Human Rights Office sent the Prisons Administration a repeated request seeking a comprehensive review of the applicant's complaints as it had not been done. In particular, answers were required concerning the applicant's medical and social care and social integration in the prison.

73. On 21 September 2005 the Prisons Administration replied, adding to its previous letter that the applicant had failed to approach the medical staff in Valmiera Prison as concerns the surgery he allegedly needed. It stated that only doctors could ascertain if, where and when the applicant needed surgery and under which circumstances. According to the information in its possession, at that time no real possibility had existed for such surgery to be performed in Latvia. At the same time, it had been aware that the operations requested had not been urgent. The applicant had also been advised to actively engage in therapeutic/remedial gymnastics (*ārstnieciskā fizikultūra*). As concerns his social care, under domestic law there was no such care in prisons for the disabled and, accordingly, the administration of Valmiera Prison could not appoint someone to assist the applicant. The prison staff did not include social workers. Lastly, it was noted that as far as possible the administration of Valmiera Prison had facilitated the applicant's life in prison, for example, by exempting him from participating in daily check-ups.

74. On 12 October and 7 December 2005 the National Human Rights Office requested further information from the Prisons Administration and the Ministry of Justice concerning social care for disabled prisoners.

75. On 27 January 2006 the National Human Rights Office informed the applicant that, according to the information provided by the Ministry of Justice, domestic law did not contain any provisions for social care for prisoners with disabilities. However, new regulations concerning the issue were in the process of being drafted.

76. On 21 April 2006 the Valmiera District Court (*Valmieras rajona tiesa*) conditionally released the applicant prior to completion of his sentence (*atbrīvot nosacīti pirms termiņa*) ten months and seventeen days early, on the grounds that he had served three-quarters of his sentence, had not breached the prison regime (his disciplinary punishments had been removed), had a Category 1 disability and had received a satisfactory reference from the administration of the prison.

77. It appears that the applicant's medical records contain information received from the State Probation Service in Jelgava suggesting that after his release, the applicant had been seen walking around the city of Jelgava on his own legs and drinking.

## II. RELEVANT INTERNATIONAL AND DOMESTIC LAW

### A. International law

*1. Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106)*

78. The Convention entered into force on 3 May 2008, was signed by Latvia on 18 July 2009 and ratified on 1 March 2010. The relevant parts provide:

#### **Article 2 - Definitions**

“For the purposes of the present Convention:

...

‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms; ...”

#### **Article 14 - Liberty and security of the person**

“2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.”

79. In Interim Report of 28 July 2008 (A/63/175), the then UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Manfred Nowak, noted as follows:

“50. ... Persons with disabilities often find themselves in [situations of powerlessness], for instance when they are deprived of their liberty in prisons or other places ... In a given context, the particular disability of an individual may render him or her more likely to be in a dependant situation and make him or her an easier target of abuse ...

...

53. States have the further obligation to ensure that treatment or conditions in detention do not directly or indirectly discriminate against persons with disabilities. If such discriminatory treatment inflicts severe pain or suffering, it may constitute torture or other form of ill-treatment. ...

54. The Special Rapporteur notes that under article 14, paragraph 2, of the CRPD, States have the obligation to ensure that persons deprived of their liberty are entitled to ‘provision of reasonable accommodation’. This implies an obligation to make appropriate modifications in the procedures and physical facilities of detention centres ... to ensure that persons with disabilities enjoy the same rights and fundamental freedoms as others, when such adjustments do not impose disproportionate or undue burden. The denial or lack of reasonable accommodation for persons with disabilities may create detention ... conditions that amount to ill-treatment and torture.”

## *2. Council of Europe material*

80. The relevant extracts from the 3rd General Report (CPT/Inf (93) 12; 4 June 1993) by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) read as follows:

### **e. Humanitarian assistance**

“64. Certain specific categories of particularly vulnerable prisoners can be identified. Prison health care services should pay especial attention to their needs.”

...

### **iv) prisoners unsuited for continued detention**

“70. Typical examples of this kind of prisoner are those who are the subject of a short-term fatal prognosis, who are suffering from a serious disease which cannot be properly treated in prison conditions, who are severely handicapped or of advanced age. The continued detention of such persons in a prison environment can create an intolerable situation. In cases of this type, it lies with the prison doctor to draw up a report for the responsible authority, with a view to suitable alternative arrangements being made.”

### **g. Professional competence**

“76. To ensure the presence of an adequate number of staff, nurses are frequently assisted by medical orderlies, some of whom are recruited from among the prison officers. At the various levels, the necessary experience should be passed on by the qualified staff and periodically updated.

Sometimes prisoners themselves are allowed to act as medical orderlies. No doubt, such an approach can have the advantage of providing a certain number of prisoners with a useful job. Nevertheless, it should be seen as a last resort. Further, prisoners should never be involved in the distribution of medicines.

77. Finally, the CPT would suggest that the specific features of the provision of health care in a prison environment may justify the introduction of a recognised professional speciality, both for doctors and for nurses, on the basis of postgraduate training and regular in-service training.”

81. Recommendation no. R (98) 7 of the Committee of Ministers of 8 April 1998 concerning the ethical and organisational aspects of health care in prison, provides, in so far as relevant:

**III. The organisation of health care in prison with specific reference to the management of certain common problems**

*C. Persons unsuited to continued detention: serious physical handicap, advanced age, short term fatal prognosis*

“50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment. ...”

82. Recommendation CM/Rec (2012) 5 of the Committee of Ministers of 12 April 2012 on the European Code of Ethics for Prison Staff, provides, in particular:

**IV. Guidelines for prison staff conduct**

*D. Care and assistance*

“19. Prison staff shall be sensitive to the special needs of individuals, such as juveniles, women, minorities, foreign nationals, elderly and disabled prisoners, and any prisoner who might be vulnerable for other reasons, and make every effort to provide for their needs.

20. Prison staff shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

21. Prison staff shall provide for the safety, hygiene and appropriate nourishment of persons in the course of their custody. They shall make every effort to ensure that conditions in prison comply with the requirements of relevant international standards, in particular the European Prison Rules.

22. Prison staff shall work towards facilitating the social reintegration of prisoners through a programme of constructive activities, individual interaction and assistance.”

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

*Hygiene*

“19.1 All parts of every prison shall be properly maintained and kept clean at all times.

19.2 When prisoners are admitted to prison the cells or other accommodation to which they are allocated shall be clean.

19.3 Prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy.

19.4 Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

19.5 Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6 The prison authorities shall provide them with the means for doing so, including toiletries and general cleaning implements and materials.”

**B. Relevant domestic law***1. In relation to criminal proceedings*

84. The relevant provisions of the former Code of Criminal Procedure (*Kriminālprocesa kodekss*), in force until 1 October 2005, read as follows:

**Section 3(1) (duty to institute criminal proceedings)**

“A court, prosecutor or investigating authority, in so far as it is within its powers, shall institute criminal proceedings whenever signs of a criminal offence (*noziedzīga nodarījuma pazīmes*) are discovered, using all means laid down in law with a view to discovering any incidence of a criminal offence and the persons responsible for the criminal offence in order to punish them.”

**Section 5 (circumstances precluding criminal proceedings)**

“Criminal proceedings may not be instituted, but instituted proceedings shall be terminated: ...

2) if there are no elements of a criminal offence. ...”

**Section 109(1), (2) and (5) (duty to examine applications and declarations concerning criminal offences)**

“An investigating authority, prosecutor, judge or court shall accept material, applications and declarations concerning a criminal offence that has been committed or planned, including in cases which do not fall under its jurisdiction.

In response to the material, applications or declarations received, one of the following decisions shall be adopted:

- 1) to institute criminal proceedings,
- 2) to refuse to institute criminal proceedings,
- 3) to forward the application or declaration to the competent authority.

...

Applications and declarations concerning crimes shall be examined immediately, but at the latest within ten days of their receipt. If an expert or audit report or specialist's consultation is necessary for such examination, applications and declarations shall be examined at the latest within 30 days. ”

### **Section 112(3) (refusal to institute criminal proceedings)**

“A copy of the decision to refuse to institute criminal proceedings ... shall be sent to the applicant and those concerned with an explanation of their right to complain about the decision: a decision adopted by an investigating authority to a corresponding prosecutor, by a prosecutor to a higher-ranking prosecutor, by a prosecutor of the Office of the Prosecutor General to the Prosecutor General, and by a judge to a higher-instance court.”

### **Section 212(5) and (6) (decision to terminate criminal proceedings)**

“An individual, the criminal proceedings against whom have been terminated, a victim and his or her representative, as well as an applicant or an institution upon which application the criminal proceedings had been instituted, shall immediately be informed of the termination of the criminal proceedings by a prosecutor or an investigating authority (*izziņas izdarītājs*), with an explanation of their rights to be acquainted with the decision and with the case materials. ...

Those concerned may lodge an appeal to a higher-ranking prosecutor or, if a decision has been taken by a prosecutor of the Office of the Prosecutor General, to the Prosecutor General, within five days of being notified.”

### **Section 220 (procedure for lodging complaints against the actions of an investigating authority)**

“A suspected or an accused individual and their counsel or legal representatives, witnesses, experts, translators, guarantors, as well as a victim, a civil party, a civil respondent, their representatives and other individuals may lodge complaints with a prosecutor about the actions of an investigating authority. The complaints shall be submitted to a prosecutor directly or through the intermediary of the authority against whom the complaint was brought. Complaints may be made either in writing or verbally. In the latter case, the prosecutor or the investigating authority shall write the complaints down in the minutes to be signed by the complainant. The complaint submitted to the investigating authority shall be forwarded, together with written explanations by the latter to the prosecutor. ...”

**Section 221 (procedure for a prosecutor's review of a complaint)**

“The prosecutor supervising the investigation shall review a complaint within ten days of receipt. A higher-ranking prosecutor shall review a complaint within ten days of receipt, or if further investigation is necessary or additional information has to be requested, within thirty days. The complainant shall be informed of the outcome. If the complaint is rejected as unsubstantiated, the prosecutor shall provide reasons and explain the procedure for appeal. An appeal against the decision made by the prosecutor in reviewing the complaint, may be made by the complainant or the investigating authority to a higher-ranking prosecutor.”

**Section 222 (complaints about actions of a prosecutor)**

“Complaints about the actions of a prosecutor shall be submitted to a higher-ranking prosecutor and reviewed in accordance with the procedure laid down in sections 220 and 221 of this Code.”

*2. In relation to medical care*

85. Regulation of the Cabinet of Ministers no. 358 (1999), in force at the material time and effective until 28 March 2007, provided as follows:

“2. Convicted persons shall receive the minimum standard of health care free of charge up to the amount established by the Cabinet of Ministers. In addition, the Prisons Administration, within its budgetary means, shall provide the convicted persons with:

- 2.1. primary, secondary and tertiary (in part) medical care;
- 2.2. emergency dental care;
- 2.3. examination of health conditions;
- 2.4. preventive and anti-epidemic measures;
- 2.5. medication and injections prescribed by a doctor of the institution;
- 2.6. medical accessories.

3. Detained persons shall receive medical care in accordance with Article 2 of these regulations, excluding planned inpatient treatment ... Detained persons shall be sent to receive inpatient treatment only in acute circumstances.”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE EVENTS OF 10 SEPTEMBER 2001

86. The applicant alleged that the police officers had ill-treated him on 10 September 2001. He also complained about the investigation into these events. The Court considers that this complaint falls to be examined under 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. Admissibility

##### 1. *Parties' submissions*

87. The Government argued that the applicant had not exhausted the domestic remedies available to him under sections 220 and 222 of the former Code of Criminal Procedure. They pointed out that he had failed to complain about the decision of 27 November 2001 to a higher-ranking prosecutor; he could have done so either orally or in writing. In this connection, the Government noted that the applicant had been able to lodge a complaint with the doctor of the Prison Hospital around the same time, and moreover that he had been represented by counsel in the criminal proceedings, who could have lodged complaints on his behalf. In any event, the Government argued that the applicant had not complied with the six-month time-limit, since he had lodged his application with the Court on 31 January 2003, whereas the final decision had been adopted on 27 November 2001. It was their view that the trial court could not be considered an effective remedy, considering the lapse of time of almost nine months between the moment the alleged violation took place and the moment the issue was raised before the trial court. The Government argued that even if the trial court had instituted criminal proceedings, they could only have sent the case materials to the prosecutor's office for a repeated investigation.

88. The applicant admitted that he had not appealed against the decision to refuse the institution of criminal proceedings. He considered the remedy ineffective. Firstly, the decision had contained a reference to section 212 of the former Code of Criminal Procedure, which was incorrect since the relevant provision at that time had been section 112. The Government's reliance on sections 220 and 222 of the former Code of Criminal Procedure was also misguided, since those sections referred only to challenging the

actions of investigators and not to refusals to institute criminal proceedings at all. In any event, the applicant submitted that he had not been informed of his rights to complain about the decision. Secondly, at the time the decision had been adopted, the applicant had been in the Prison Hospital suffering from severe pain, and it had been extremely difficult for him to challenge the decision on account of the state of his health. Since the applicant did not consider this remedy effective, he had brought his complaints to the attention of the trial court within the criminal proceedings against him. Referring to the judgment of 4 June 2002, the applicant pointed out that the Jelgava Court had in fact examined his allegations of ill-treatment, but had found the police officers' statements and the results of the forensic examination sufficient to reject them. The applicant pointed out that under section 257 of the former Code of Criminal Procedure, the trial court had the competence to institute criminal proceedings against third parties. It was therefore his view that the trial court had been the proper remedy in his case and that he had submitted his application within the requisite six-month time-limit.

## *2. The Court's assessment*

89. The Court considers that the Government's preliminary objections are closely related to the merits of the applicant's complaint. It will therefore examine them together with the merits of this complaint (see *Timofejevi v. Latvia*, no. 45393/04, 11 December 2012, § 84).

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

## **B. Merits**

### *1. Parties' submissions*

#### **(a) The applicant**

91. The applicant maintained that he had been subjected to physical ill-treatment by the police officers. He referred to the medical evidence obtained from the public and specialist hospitals, which confirmed that he had not only had a hyperextension injury, but also a contusion to the lower back and broken fixing screws that had held the metal implant supporting his spine in place. The applicant submitted that the forensic examination which had been carried out two months later, which allegedly "did not establish any bodily injuries", could not be the basis for disregarding the medical evidence available.

92. Furthermore, although discharged from the specialist hospital the day after his admission, he had subsequently been admitted to the Prison Hospital for a total duration of 111 days within a four-and-a-half year period. Meanwhile, he had become paraplegic and he had been certified as being Category 1 disabled. That, together with the above-mentioned injury, was sufficient to establish that the alleged ill-treatment had taken place, and that the police officers' conduct was sufficiently severe to fall within the scope of Article 3 of the Convention.

93. The applicant also argued that his conduct during the arrest had not warranted severe physical force by the police officers and that the force used on him had been disproportionate. The police officers had acted aggressively towards him as he had tried to escape.

94. The applicant submitted that the investigation into his complaint had been ineffective. To his knowledge, it had been limited to a questioning of the police officers, his confrontation with those officers, and the forensic examination. It remained unclear why the diagnoses of the public and specialist hospitals had been disregarded by the investigators and the forensic expert. He reiterated that their records had indicated that he had sustained bodily injuries. The applicant further noted that no witnesses had been questioned for the purposes of the investigation, which he had considered crucial in view of the fact that the medical evidence and the statements of the applicant and the police officers were all conflicting.

**(b) The Government**

95. The Government contested that the applicant had been subjected to ill-treatment contrary to Article 3 of the Convention. They did not dispute the fact that on the day after his arrest, he had been taken to the specialist hospital in view of his complaints concerning lower back pain. The Government admitted that a hyperextension injury had been established, but noted that the applicant had a pre-existing spinal injury which had already been operated on. They pointed out that the doctors had not established any visible bodily injuries on the applicant's body. The Government relied on the police officers' statements, and argued that during his arrest the applicant had been aggressive and drunk. Having seen a gun in his pocket, the officers had pushed him to the ground, had pulled his arms backwards and had handcuffed him. The Government admitted that the applicant's spine had been twisted backwards extensively and that that a certain degree of force must have been used on him. They acknowledged that the applicant's pain might have been caused by the police officers' conduct.

96. However, the Government were of the view that the police officers' conduct had been proportionate, and that the use of force and handcuffs had not been excessive in the circumstances. They distinguished the case at hand from *Rehbock v. Slovenia* (no. 29462/95, ECHR 2000-XII), and noted that in the present case the applicant had been arrested in the course of a random

operation that might have given rise to unexpected developments. They emphasised that the applicant had been carrying a gun and had been drunk, thus his behaviour had been unpredictable. They submitted that handcuffing as such did not raise an issue under Article 3, citing the case of *Raninen v. Finland* (16 December 1997, *Reports of Judgments and Decisions* 1997-VIII). Their conclusion was that the police officers had had recourse to force during the applicant's arrest only to the extent that it had been made necessary by his conduct.

97. In addition, the Government alleged that immediately after the police officers had become aware of the fact that the applicant had had health problems, he had been pulled up from the ground and the handcuffs had been removed.

98. The Government also submitted that the alleged injuries had not caused serious suffering to the applicant as he had been discharged from the specialist hospital for outpatient treatment the following day. The Government concluded that it had not been proved "beyond reasonable doubt" that the applicant had been ill-treated and that the police officers' conduct had attained a sufficient level of severity to fall within the scope of Article 3 of the Convention.

99. The Government argued that there had been an effective investigation into the applicant's allegations of ill-treatment on 10 September 2001. They reiterated that the effectiveness of the investigation did not depend on a positive outcome for the applicant. The Government noted that, on the one hand, during his questioning on 11 September 2001, the applicant had complained that the police officers had used physical force and that he had sustained bodily injuries as a result. On the other hand, the police officers had denied this during their own questioning and also during their confrontation with the applicant. In the Government's submission, a forensic examination had been the only way to verify the applicant's allegations. Lastly, in view of the conclusion of the forensic expert that the applicant had not sustained any bodily injuries, the criminal proceedings had been terminated.

## 2. *The Court's assessment*

100. The Court reiterates that where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004; *Matko v. Slovenia*, no. 43393/98, § 99, 2 November 2006; *Mrozowski v. Poland*, no. 9258/04, § 26, 12 May 2009). Although the use of force during arrest, even if resulting in injury, may fall outside the scope of Article 3 if the use of force had been indispensable and resulted from the conduct of the applicant (see *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269), the Court also points out that where an individual, when

taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

101. The Court further notes that in assessing evidence in a claim of a violation of Article 3 of the Convention, it adopts the standard of proof “beyond reasonable doubt”. Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004; *Bazjaks v. Latvia*, no. 71572/01, § 74, 19 October 2010; and *Krivošejis v. Latvia*, no. 45517/04, § 69, 17 January 2012).

102. Furthermore, where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

103. An obligation to investigate “is not an obligation of result, but of means”: not every investigation should necessarily come to a conclusion which coincides with the applicant’s account of events. However, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

104. The investigation into allegations of ill-treatment must be thorough. That means that the authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness accounts, forensic evidence and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the applicable standard (see *Mikheyev*, cited above, § 108).

105. For an investigation to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events (see *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004). This means not only a lack of hierarchical or institutional connection but also practical

independence (see, for example, *Ergi v. Turkey*, 28 July 1998, §§ 83-84, *Reports* 1998-IV, where the public prosecutor investigating the death of a girl during an alleged clash showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

106. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used by the police was or was not justified in the circumstances (see *Kaya v. Turkey*, 19 February 1998, § 87, *Reports* 1998-I).

107. The Court observes that the applicant was arrested following a car chase which ensued after the applicant had refused to stop on the police officers' instructions. It is common ground between the parties that the officers used some physical force to pull the applicant out of his car, to push him to the ground and to handcuff him. However, the parties disagree as concerns the nature of injuries sustained by the applicant and whether or not they were caused by the officers' actions.

108. The Government submitted that the applicant's spine had been twisted backwards, but emphasised that he had had a prior spinal injury. Force that had been used on the applicant was proportionate in view of his conduct. The applicant, however, argued that the force used on him had been disproportionate. In addition to a hyperextension injury on his back, the applicant also had a contusion to the lower back and broken fixing screws that held the metal implant supporting his spine. He had become paraplegic as a result. The Court notes that the medical examination results referred to by the applicant were strictly limited to establishing his state of health, which at least in part mentioned his previous condition, but not to the circumstances surrounding his arrest. The forensic expert in the present case, in contrast with *Mrozowski* case (cited above, § 13), did not provide an answer to the question whether the injuries sustained by the applicant could have been inflicted by the police officers in the manner as described by the applicant.

109. The Court finds it impossible to establish, on the basis of the evidence before it, whether or not the applicant's injuries were caused as alleged. However, for the reasons set out below, the Court notes that it cannot accept the Government's argument that the investigation by the prosecuting authorities were effective in the present case and observes that the difficulty in determining whether there was a plausible explanation for the applicant's injuries or whether there was any substance to his allegations of ill-treatment rests with the failure of the authorities to investigate his complaints effectively (see *Veznedaroğlu v. Turkey*, no. 32357/96, § 31, 11 April 2000; *Petru Roşca v. Moldova*, no. 2638/05, § 42, 6 October 2009; *Popa v. Moldova*, no. 29772/05, § 39, 21 September 2010; and *Hristovi v. Bulgaria*, no. 42697/05, § 83, 11 October 2011). The Court will now examine this matter further.

110. At the outset, the Court observes that it is not disputed by the parties that the State was under a procedural obligation, arising from Article 3 of the Convention, to carry out an effective investigation into the circumstances in which the applicant was arrested.

111. The Court notes that the authorities carried out an inquiry into the applicant's allegations. It is not convinced, however, that the inquiry was sufficiently thorough and effective to meet the requirements of Article 3 of the Convention.

112. The Court observes at the outset that the Olaine police started the investigation soon after the events had taken place, admittedly at this point in connection with the criminal proceedings against the applicant. The Court notes that the Olaine police, as the competent investigating authority at that point in the criminal proceedings, was in charge of two investigations based on mutually contradictory allegations – in relation to the firearm charge against the applicant and in relation to his allegations of ill-treatment upon arrest implicating the traffic police officers who had discovered the firearm. The Court has found in a number of cases against Latvia that minimum standards of an independent investigation have not been respected where the police was charged with investigating allegations relating to its own officers (see *Jasinskis v. Latvia*, no. 45744/08, § 75, 21 December 2010; *Timofejevi v. Latvia*, no. 45393/04, § 98, 11 December 2012, and *Vovruško v. Latvia*, no. 11065/02, § 50, 11 December 2012). Bearing in mind that the Olaine police sent the case material to the prosecutor for bringing the firearm charge against the applicant on the 8<sup>th</sup> day after the events and that they took no additional investigative steps after the prosecutor sent back the case material in relation to the allegations of ill-treatment for additional review on 5 November 2001, the Court considers it sufficient to note that the investigation by the Olaine police in this regard can hardly be considered showing the necessary diligence for the following reasons.

113. The Court considers that not all reasonable steps to secure the available evidence were taken. It is true that both traffic police officers were questioned on the day of the events, and that the following day an attempt was made to question the applicant, who owing to his state of health could not give evidence alleging that he had been ill-treated. However, there were discrepancies between police officer E.Š.'s statement and his own report about the arrest as to where exactly a bullet was found, either together with a gun in the applicant's pocket or inside the car. The Olaine police did not look into this. It appears that this conflicting statement was not admitted as evidence in the applicant's trial concerning the firearm charge. Further discrepancies were present in the forensic reports as concerns the place where the bullet was found. These discrepancies were not examined further, which undermines the thoroughness and reliability of the pre-trial investigation. It appears that the investigation by the Olaine police had consisted of a questioning of the police officers and the applicant, and some

forensic examinations which did not yield any results. No medical examination of the applicant was ordered at this point.

114. It remains to be examined whether the above-mentioned shortcomings could, to a certain extent, be counterbalanced by an effective supervision of the investigation (see the above-cited *Vovruško* case, § 51). The Court refers in this connection to other cases against Latvia, where it has found various shortcomings in the exercise of the prosecutorial supervision at the material time (see *Timofejevi*, §§ 101 and 103, and *Vovruško*, §§ 52-53, cited above). In the case at hand, the Court notes that the prosecutor was the same person who brought the formal firearm charge against the applicant and issued the final bill of indictment in that regard (see paragraphs 37 and 45 above). The Court further notes that on two occasions, the same prosecutor rejected the applicant's request to terminate the criminal proceedings against him on the basis that his guilt had been duly established (see paragraph 46 above). The Court considers that the prosecutor relied to a considerable extent on the statements of the police officers who had been implicated in the events, and fully accepted their denial of having assaulted the applicant, as evidenced by the scarcely reasoned decision to refuse the institution of proceedings. This is sufficient to cast doubt on the effectiveness of the prosecutor's supervision of the investigation in the applicant's case, particularly as she did not carry out any assessment of the statements given by the police officers and the applicant, and did not provide reasons why she considered the police officers' statements more credible. Nor were her conclusions based on witness statements, proper forensic examination reports or other evidence.

115. The Court considers that the prosecutor did not proceed with securing further evidence with requisite expedition. It appears that the forensic examination concerning the applicant's injuries was ordered one month after the applicant's arrest, and in actual fact was not carried out until a month later. The Court considers the total delay of two months for ordering and carrying out a forensic examination of injuries sustained by the applicant unacceptable. Nor did the prosecutor ensure that the forensic expert examined the applicant in person (see, for an example of similar shortcomings in an investigation the above-cited *Vovruško* case, § 49), thereby making it impossible to discover any physical marks or injuries on the applicant's body, if there had been any and that they could have remained visible two months after the events. The prosecutor also endorsed the forensic expert's disregard of the first diagnosis made by doctors at the specialist hospital concerning the hyperextension injury because "they were not confirmed by visible bodily injuries". The Court does not agree that only visible injuries on an individual's body could serve as a proof of ill-treatment. It further notes that the conclusions made by the specialist hospital (about the broken screws and dislodging of the metal implant) were based on an X-ray of the applicant, which the prosecutor appears to have

omitted to take into consideration when examining the case. Moreover, it appears that the prosecutor failed to take any steps to obtain any eyewitness accounts, which could have shed some light on the disputed circumstances of the arrest, given that it had taken place next to an apartment building in a residential area.

116. Lastly, the Court considers that the prosecutor's supervision of the investigation was deficient in that she did not ensure that any additional investigative activities were taken in response of her remittal of the case material back to the Olaine police on 5 November 2001.

117. In response to the Government's argument that higher-ranking prosecutor's supervision was required, the Court observes that it appears that the applicant was not notified of the procedure or time-limit for lodging a complaint against the decision of 27 November 2001. The prosecutor had an obligation under domestic law to explain these rights to the applicant, which she failed to do, thereby causing confusion as to the applicable procedures for complaint. The Government further argued that the applicant's counsel could have lodged a complaint to a higher-ranking prosecutor on his behalf, if the applicant himself was not capable of doing so on account of his state of health. That counsel, however, appears to have been appointed only in the connection with the criminal proceedings against the applicant, and it remains unclear whether she had the authority to lodge any complaints relating to the criminal proceedings against the police officers. There is no information that she was actually informed about the refusal to institute the criminal proceedings against the police officers.

118. In any event, the Court considers that the applicant brought his allegations of ill-treatment to the attention of the domestic authorities during his trial. The Court reiterates that at the material time pursuant to section 109 of the former Code of Criminal Procedure a court had to accept any material concerning criminal offences and to institute or refuse to institute criminal proceedings, or forward that material to the competent authority (see paragraph 84 above). The Court has already noted that domestic courts had such competence and that that they could forward the complaint of ill-treatment by the police raised during the trial to the prosecutor's office (see *Timofejevi*, cited above, § 104). Likewise, the Court has noted that where representations of ill-treatment were raised during the trial in the presence of a representative of the prosecutor's office, the latter could not remain passive and had to ensure that an investigation was carried out (see *Sorokins and Sorokina v. Latvia*, no. 45476/04, §§ 98-99, 28 May 2013). The applicant in the present case pursued his complaint before the national courts, but they did not give any credence to his allegations. No official investigation was triggered. The Court therefore considers that the final decision in relation to the applicant's complaint of ill-treatment was adopted on 2 December 2002, when the Senate of the Supreme Court dismissed the applicant's appeal on points of law in the criminal

proceedings against him, whereas his complaint to the Court was lodged on 31 January 2003.

119. The above-mentioned considerations are sufficient for the Court to conclude that the domestic authorities did not ensure an effective investigation into the applicant's allegations of police ill-treatment on 10 September 2001 and the Court dismisses the Government's preliminary objections. Accordingly, there has been a violation of Article 3 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF INADEQUATE MEDICAL ASSISTANCE AND THE UNSUITABILITY OF PRISON FACILITIES

120. The applicant complained under Article 3 of the Convention that, because of the lack of adequate medical assistance in the Prison Hospital and in Pārlielupe Prison, his state of health had deteriorated considerably, he had become paraplegic and had been certified as being Category 1 disabled, only being able to move in a wheelchair.

121. He also complained that the facilities in Pārlielupe and Valmiera Prisons had been unsuitable for him as he was wheelchair-bound. He submitted, in support of his allegations, that there had been no social care or assistance in prison to help him with everyday life.

### A. Admissibility

#### *1. Medical assistance*

122. On the one hand, the Government raised a preliminary objection of non-exhaustion of domestic remedies in relation to the lack of medical assistance in Pārlielupe Prison. They argued that the applicant could have complained to the prison's medical unit, to the Prisons Administration, to a prosecutor, or to the Inspectorate for Quality Control of Medical Care and Working Capability ("the MADEKKI"), all of which, according to the Government, were effective and accessible domestic remedies and offered reasonable prospects of success. However, they did not provide more information in this connection save for references to the legal provisions describing their respective competence.

123. On the other hand, they did not raise a similar objection as concerns the applicant's stay in the Prison Hospital. The Government contended that the applicant's complaint in this regard was manifestly ill-founded, as he had failed to provide details of the alleged shortcomings.

124. The applicant disagreed and maintained that he had not received adequate medical treatment either in the Prison Hospital or in Pārlielupe

Prison. As regards the Prison Hospital, he pointed out that his spine had not been operated on and that the broken screws and metal implant had not been removed and replaced when necessary. In relation to Pārlielupe Prison, he alleged that he had contracted new illnesses, in that his blood pressure had increased and he had suffered a stroke. In addition, the applicant pointed out that he had been suffering from severe pain even before becoming paraplegic. The mere fact that during detention his health had deteriorated so severely that he had obtained the most severe classification of disability (Category 1) in itself indicated that the medical care had been inadequate.

125. The Court reiterates that it has spelled out the applicable principles in relation to the adequacy of medical assistance in prisons in connection with complaints under Article 3 of the Convention on numerous occasions in cases against Latvia (see *Farbtuhs*, cited above, §§ 49-51; *Krivošejs*, cited above, §§ 69-71; *Van Deilena v. Latvia* (dec.), no. 50950/06, § 62; 15 May 2012; *Epnors-Gefnors v. Latvia*, no. 37862/02, § 43, 29 May 2012; *Leitendorfs v. Latvia* (dec.), no. 35161/03, § 49, 3 July 2012; and *Buks v. Latvia* (dec.), no. 18605/03, §§ 39-40; 4 September 2012).

126. The Court will first turn to the adequacy of the applicant's medical assistance in the Prison Hospital. It notes in this regard that the applicant's complaint relates to the period of time that preceded his becoming paraplegic. This period ended either on 17 December 2002, when a note was made for the first time in his prison medical records that he could not walk on his own, or on 23 January 2003 when he was certified as being Category 1 disabled.

127. The Court observes that the present applicant has not provided any detailed information about the operations he allegedly needed, let alone any medical recommendation or independent expert opinion about their necessity. No suggestion was made by the specialist hospital, where the applicant was examined and treated after the events of 10 September 2001, that any surgery was necessary. Its only recommendations were for the applicant to continue taking medication and to wear a fixating belt. In the absence of an expert medical report or other evidence, the Court is unable to consider that the applicant's condition necessitated any surgery, contrary to what has been claimed by him. If it is to be understood that he referred to the same operations he requested later in a different prison (see paragraphs 70-73 above), the Court observes that such surgery was unavailable in Latvia at the material time (see, *mutatis mutandis*, the above-cited *Epnors-Gefnors*, § 45), a fact which the applicant did not contest before the Court. Taking into account that the applicant did not highlight any other shortcomings in his medical care in the Prison Hospital, the Court concludes that the applicant has not substantiated his allegations in this regard.

128. Turning to the medical assistance in Pārlielupe Prison, the Court does not consider it necessary to reach any conclusion as to whether or not

the applicant exhausted domestic remedies or whether or not such domestic remedies were effective, since this part of the applicant's complaint is inadmissible in any event for being manifestly ill-founded.

129. The Court notes that there is nothing in the case file to suggest that the applicant had any health-related problems in Pārlielupe Prison, save for his allegation of increased blood pressure, for which he provided no proof. The applicant has not submitted, either in his initial application or in his comments after the communication of the present application to the Government, any medical records or other evidence showing that his high blood pressure necessitated any action or treatment on the part of the medical staff of Pārlielupe Prison. He mentioned that he had suffered severe pain, but did not allege that he had been refused painkillers or that he needed to take any other medication. Furthermore, it does not transpire from the information at the Court's disposal that the applicant suffered from any other illnesses, problems or ailments (apart from his complaint about the adequacy of prison facilities for disabled prisoners, which the Court will examine below), or that he needed constant treatment or care. The Court therefore concludes that the applicant has not laid the basis of an arguable claim that he did not receive adequate medical assistance in Pārlielupe Prison.

130. It follows that the applicant's complaints relating to the adequacy of medical assistance in the Prison Hospital and in Pārlielupe Prison must be dismissed in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## *2. Prison facilities*

131. On the one hand, the Government argued that the applicant had not exhausted the available domestic remedies in relation to his complaint regarding the unsuitability of the facilities in Pārlielupe Prison. They insisted that he could have complained to the administration of Pārlielupe Prison, to the Prisons Administration, or to a prosecutor. As in relation to the previous complaint, the Government did not provide any further explanation but merely referred to the applicable domestic law.

132. On the other hand, the Government did not raise a similar objection as concerns the unsuitability of the facilities in Valmiera Prison. The Government contended that the applicant's complaint in this regard was manifestly ill-founded, as he had been placed in a special unit for inmates with health problems and had been granted certain privileges.

133. The applicant disagreed and maintained his complaint about the facilities in Pārlielupe Prison and Valmiera Prison. As regards Pārlielupe Prison, he alleged he had needed constant care, as he had not even been able to go to the toilet on his own. He alleged that he had not had access to fresh air. As regards Valmiera Prison he submitted that he had been unable to move around in his wheelchair, that there had been no social care and that

he had had to rely on the voluntary assistance of his cellmate (see paragraph 138 below).

134. The Court will first turn to the facilities in Pārlielupe Prison. As in relation to the previous complaint, the Court does not consider it necessary to reach any conclusion as to whether or not the applicant exhausted domestic remedies and whether or not such domestic remedies were effective, since this part of the applicant's complaint is inadmissible in any event for being manifestly ill-founded.

135. The Court observes that the only description it has about the prison facilities in Pārlielupe Prison is the description provided by the applicant, which is surprisingly scarce (when contrasted with his detailed description in relation to Valmiera Prison). The applicant submitted, but provided no proof, that in Pārlielupe Prison he had been unable to access the toilets and had not had access to fresh air. He failed to provide more information as to the location and accessibility of the toilets and exercise yard from his prison cell or from other areas in the prison. The only piece of evidence in support of his allegations was a handwritten request to the administration of Pārlielupe Prison to provide information about his state of health, which did not indicate that he had any problems with mobility or with using or accessing any prison facilities (contrast with the evidence submitted in support of his complaint in relation to Valmiera Prison, see paragraphs 70-75). The applicant himself, in his observations in reply to those of the Government, focused on the facilities in Valmiera Prison and did not specifically refer to those in Pārlielupe Prison. In such circumstances, the Court considers that the applicant's complaint does not contain sufficient detail for the Court to consider that he has raised a *prima facie* arguable complaint under Article 3 of the Convention about the adequacy of prison facilities in Pārlielupe Prison. The Court concludes that his complaint in that regard is manifestly ill-founded and must therefore be dismissed in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

136. Turning to the applicant's complaint regarding the unsuitability of prison facilities in Valmiera Prison, the Court notes that his description is sufficiently detailed, and provides the essence of his grievances in relation to that facility. Furthermore, he submitted various reports by the National Human Rights Office and other authorities (see paragraphs 70-75 above) in support of this complaint, in contrast to his complaint about Pārlielupe Prison. In such circumstances, the Court considers that the applicant has set out the basis of a *prima facie* arguable claim under Article 3 of the Convention about the adequacy of the prison facilities in Valmiera Prison.

137. In the light of the above, the Court considers that the applicant's complaint about the adequacy of the prison facilities in Valmiera Prison is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. Parties' submissions*

#### **(a) The applicant**

138. It transpired from the documents submitted by the applicant that certain facilities in Valmiera Prison were not suitable for disabled people in a wheelchair such as him. Several areas were inaccessible in a wheelchair. For example, he could not leave the living area in his unit independently, nor could he access the toilets, canteen, sauna, library, shop, gym, meeting room or telephone room. In the meeting room, where he had conjugal visits with his wife, he could not access the sanitation facilities (toilets and shower) because the doors were too narrow. As his wife could not carry him into these facilities, he had to use a plastic bottle and plastic bag instead of the toilet. He could not use the shower at all and could only clean himself with a damp towel. This had been extremely humiliating.

139. The applicant admitted that the administration of Valmiera Prison had made some efforts. He admitted to have been exempted from daily check-ups, which had taken place three times a day in the outdoor yard. He mentioned that a wooden ramp had been installed to provide access to that yard; however, these efforts were connected with his physical inability to access certain areas in the prison and was not evidence that the prison authorities had wanted to alleviate the hardship of his detention in that facility.

140. The applicant further argued that there was no social assistance for disabled prisoners. The applicant had to rely on the voluntary assistance of his cellmate, which could not be considered adequate. He further submitted that being placed in a position of dependence upon the goodwill of other detainees, to whom he had to "pay" with cigarettes and tea, had been extremely humiliating for him. The applicant mentioned that, at times, he had been left outside in the walking area for long periods of time without a rain shelter, as he could not get into the building by himself. The applicant relied on the case of *Farbtuhs* (cited above, § 60) to argue that that leaving the assistance of disabled prisoners to other detainees was inadequate, since it in effect shifted the responsibility for such people to those other detainees, who lacked the proper qualifications, even if their help was only for a limited period of time. In his view, it was a serious issue under Article 3 of the Convention that a disabled person such as himself had to endure concerns and worries about the inaccessibility of qualified medical assistance in an emergency. He argued that he had been dependent on the goodwill of other detainees to assist him, which had put him in a situation of uncertainty, and had caused him physical and mental suffering and distress. The applicant disagreed with the Government's distinction between the

facts of the present case and those in *Farbtuhs*. He considered that the Government's analysis of the *Farbtuhs* case in relation to the appropriateness of the detention itself was irrelevant. The applicant submitted that the focus of his dissatisfaction was not that he had been held in continued detention despite his poor health, which had been the main problem in *Farbtuhs*, but rather that the conditions in Valmiera Prison had been unsuitable for him as a disabled person.

141. Lastly, the applicant strongly disagreed with the Government's suggestion that he had aggravated his medical condition or had even faked his disability while in detention. He considered this statement insulting. The applicant reiterated that he had spent a long time in prison under the supervision of the prison authorities and considered it impossible to imagine that an individual could fake paralysis in both legs for over four years. There had been no proof in that regard. The mere fact that his medical condition had improved after release only proved that the medical treatment and prison conditions had been detrimental to his health as his state of health had improved upon receipt of the appropriate medical care.

**(b) The Government**

142. The Government noted that during the applicant's detention in Valmiera Prison he was placed in a special unit for inmates with health problems. In this unit the applicant had shared a separate cell with a convicted prisoner who had undertaken to assist him in case of necessity. The Government further pointed out that the applicant had received certain "privileges" in Valmiera Prison that had not been available to ordinary inmates (see paragraph 68 above).

143. The Government noted that all the necessary medication for treating the applicant in acute circumstances had been available in the prison's medical unit. They reiterated that the applicant had been taken for a specialist consultation to public hospitals in Rīga and Valmiera on three occasions, and had also been transferred to the Prison Hospital on three occasions to receive unspecified treatment.

144. The Government further submitted that between 15 and 17 March 2005 the Prisons Administration had carried out an audit at Valmiera Prison of the special unit for inmates with health problems, concluding that the conditions of detention were satisfactory and that no complaints from inmates had been received. However, the Government did not submit a copy of that report.

145. The Government made a distinction between the present application and the case of *Farbtuhs*. In the latter case the relevant domestic authority had admitted that, considering the extremely poor state of the applicant's health, he could remain deprived of his liberty only if provided with specialist care and treatment. After that conclusion, the Prisons Administration had stated that these conditions could not be provided in a

place of deprivation of liberty. Furthermore, a panel of doctors set up by the Prisons Administration had advised the State authorities to release the applicant from prison. Likewise, the present case should be distinguished from the case of *Mouisel v. France* (no. 67263/01, ECHR 2002-IX), in which the applicant's doctors and various associations had applied for him to be pardoned, as according to an expert, "he had to be looked after in a specialist unit". The judge responsible for the execution of sentences had released that applicant on parole, concluding that "[his] condition has become incompatible with his continued detention, on account of the medical care he requires during regular visits to hospital".

146. The Government noted that during the present applicant's detention, the relevant State authorities had never been requested by the applicant himself or by other State authorities to evaluate whether he should remain in continued detention or be released on account of his medical condition or the allegedly inadequate conditions of imprisonment. Nor had such an evaluation obviously been necessitated by the applicant's medical condition or conditions of detention, since he was provided with the necessary medical treatment and adequate conditions of detention. Nevertheless, on 21 April 2006 the Valmiera District Court had conditionally released the applicant from the prison ten months and seventeen days early. The above decision was based, *inter alia*, on the fact that the applicant had a Category 1 disability.

147. The Government strongly insisted that the applicant had received adequate assistance for his medical condition during his imprisonment in Valmiera Prison, and that there were no symptoms indicating that specific treatment was necessary. Likewise, the Government contended that the state of the applicant's health evidently allowed the continuation of his imprisonment. The Government also reiterated that the applicant had been suffering from very serious spinal problems since 2000, when he had undergone surgery and been granted Category 2 disability status. Furthermore, the very fact that in deciding about the applicant's sentence the national courts took into the account the applicant's medical condition and applied the lowest possible sentence could not be disregarded.

148. As concerns the alleged lack of social assistance, the Government noted that the Convention did not guarantee such a right.

149. Finally, the Government submitted that the applicant's medical records had contained information received from the State Probation Service in Jelgava suggesting that after his release the applicant had been seen walking. According to the Government, the relevant authority had as a result re-examined its previously adopted decision to grant the applicant Category 1 disability status for two years by reducing the term of validity of his certificate to one year. The Government concluded that the applicant had aggravated his medical condition on purpose or had even faked his

disability in order to ensure that he received advantageous conditions of detention and certain privileges.

## 2. *The Court's assessment*

### (a) **General principles**

150. The Court reiterates that Article 3 of the Convention cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to transfer him to a public hospital, even if he is suffering from an illness that is particularly difficult to treat. However, this provision does require the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI; *Melnītis v. Latvia*, no. 30779/05, § 69, 28 February 2012; and *Savičs v. Latvia*, no. 17892/03, § 130, 27 November 2012).

151. Moreover, the Court has considered that where the authorities decide to place and keep a disabled person in continued detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from his disability (see *Farbtuhs*, cited above, § 56; *Jasinskis*, cited above § 59; *Z.H. v. Hungary*, no. 28973/11, § 29, 8 November 2012; and the international law material in paragraphs 78-82 above).

152. In the above-cited case of *Farbtuhs*, the Court noted that the prison authorities had permitted family members to stay with the applicant for twenty-four hours at a time and that this took place on a regular basis. In addition to the applicant, who had a physical disability, being cared for by his family, he was assisted during working hours by the medical staff and outside working hours was helped by other inmates on a voluntary basis. The Court expressed its concerns in the following terms (§ 60):

“The Court doubts the appropriateness of such a solution, leaving as it did the bulk of responsibility for a man with such a severe disability in the hands of unqualified prisoners, even if only for a limited period. It is true that the applicant did not report having suffered any incident or particular difficulty as a result of the impugned situation; he merely stated that the prisoners in question sometimes ‘refused to cooperate’, without mentioning any specific case in which they had refused. However, the anxiety and unease which such a severely disabled person could be expected to feel, knowing that he would receive no professional assistance in the event of an emergency, in themselves raise a serious issue from the standpoint of Article 3 of the Convention.”

153. The Court has also held that detaining a disabled person in a prison where he could not move around and, in particular, could not leave his cell independently, amounted to degrading treatment (see *Vincent v. France*, no. 6253/03, § 103, 24 October 2006). Similarly, the Court has found that leaving a person with a serious physical disability to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed, contributed to its finding that the conditions of detention had amounted to degrading treatment (see *Engel v. Hungary*, no. 46857/06, §§ 27 and 30, 20 May 2010).

**(b) Application of these principles to the present case**

154. The Court observes that the crux of the applicant's complaint relates to the material conditions of his detention in Valmiera Prison in view of his physical disability and the lack of any organised assistance in that regard. The Court notes that the applicant himself specifically pointed out that his complaint did not relate to his continued detention in view of his state of health (compare and contrast with the above-cited *Farbtuhs* case).

155. The Court notes that the applicant's medical condition is not disputed between the parties. While serving his sentence in Valmiera Prison, the applicant was paraplegic and was confined to a wheelchair. The Court considers that the applicant's state of health following his release is irrelevant for the purposes of the present complaint under Article 3 of the Convention and will therefore not examine the parties' submissions in this regard. Nor shall any importance be attached to the Government's suggestion that the applicant might have faked his physical disability while in detention, since the diagnosis of his medical condition lies within the competence of the domestic authorities. The Court considers that there can be no question over the adequacy of medical assistance in the absence of a timely and accurate diagnosis. It is important to note that when the applicant was placed in detention he could walk; his paraplegia was first recorded in prison and his Category 1 disability was subsequently confirmed by the relevant domestic authority. Had there been any imprecision on their part in establishing an accurate diagnosis of the applicant's medical condition, or indeed had the domestic authorities subsequently failed to detect any changes in the applicant's condition, the State would have to bear responsibility for such an omission as it is its obligation to ensure that persons deprived of their liberty receive the requisite medical assistance.

156. The Court notes that neither parties' submissions suggest that the applicant while in Valmiera Prison suffered from any conditions, problems or ailments other than his physical disability, as a result of which he was confined to a wheelchair (compare and contrast with the above-cited cases of *Mouisel* and *Farbtuhs*, and also with *Price v. the United Kingdom*, no. 33394/96, § 25, ECHR 2001-VII; *Kupczak v. Poland*, no. 2627/09, § 60, 25 January 2011; *Turzynski v. Poland* (dec.), no. 61254/09, §§ 2 and 37,

17 April 2012; *D.G. v. Poland*, no. 45705/07, § 143, 12 February 2013; *Todorov v. Bulgaria* (dec.), no. 8321/11, § 64, 12 February 2013).

157. First of all, as concerns the material conditions of the applicant's detention in Valmiera Prison, the Court notes that it is common ground between the parties that he was detained for nearly two-and-a-half years in a regular detention facility, which was not adapted for a wheelchair-bound person such as the applicant. The Government insisted that the applicant had been placed in a special unit for inmates with health problems, yet these facilities do not appear to have had less architectural or technical barriers than the facilities in the ordinary wings of that prison. The Court notes that a ramp had been installed to facilitate the applicant's access to the outdoor yard. Yet other areas, such as the canteen, toilets, sauna, library, shop, gym, meeting room and telephone room, remained inaccessible for the applicant in a wheelchair, a fact which the Government did not deny. Special arrangements had been put in place to alleviate the hardships of the access-related problems, but only in relation to the canteen and not the other facilities. While it appears that the applicant was not locked up in his cell during daytime and could move around in the living area of his unit, his ability to use any facilities therein was restricted owing to his paraplegia.

158. In this regard, the Court considers that the accessibility of the sanitation facilities raises a particular concern under Article 3 of the Convention (see, in a more complex context, *D.G. v. Poland*, cited above, §§ 147 and 150). In the present case, the applicant submitted, and the Government did not deny, that his physical disability had prevented him from being able to access the toilets and sauna. While, according to the Government, the toilets had been adapted to the applicant's special needs, the Court notes that it can hardly be considered as alleviating his hardship, given that these facilities themselves remained inaccessible without the help of other inmates. Moreover, it appears that the only possibility for the applicant to wash himself had been during the weekly sauna visits, facilities which were also inaccessible to the applicant without the help of others. Nor does it transpire from the case materials that the sauna facilities had been adapted for the applicant's special needs. The Court considers such a state of affairs unacceptable. It has already found that restricting prisoners' access to showers once a week did not allow them to wash themselves properly and that this shortcoming had contributed to the cumulative effect of conditions of detention in the Prison Hospital in violation of Article 3 of the Convention (see *Čuprakovs v. Latvia*, no. 8543/04, §§ 44-45, 18 December 2012). The international standard in this respect currently stands at least at twice a week (see paragraph 83 above), to which the CPT

has also invited the Contracting States to adhere<sup>1</sup>. In the present case, the applicant did not have access to a shower at all. The Court considers that weekly sauna visits did not provide him with an adequate opportunity to maintain his personal hygiene, given their inaccessibility and limited availability (contrast with the above-cited *Todorov* case, where the applicant had daily access to common showers and later had an en suite toilet and shower).

159. The Court further notes that the applicant's special needs were further disregarded as no measures were adopted to alleviate the hardship caused by the inaccessibility of the sanitation facilities while meeting his wife for conjugal visits, which under Latvian legislation could last up to forty-eight hours (see *Aleksejeva v. Latvia*, no. 21780/07, § 28, 3 July 2012). Acknowledging that the Convention does not require the Contracting States to make provisions for such visits (see *Epnerns-Gefners*, cited above, § 62), the Court nevertheless notes that they have to ensure that prisoners are detained in conditions which are compatible with respect for human dignity. In exercising their wide margin of appreciation in deciding whether or not to allow conjugal visits, the States have to have due regard to the needs and resources of the community and of individuals (*ibid.*). The Court finds that placing the applicant, who is confined to a wheelchair, in facilities where he cannot properly wash and use the toilet, even if only for a limited period of time, could be hardly considered compatible with respect for his human dignity.

160. Turning to the second point in its analysis, the Court notes that the applicant, who has a physical disability and is wheelchair-bound, was in need of daily assistance with his mobility around the prison. While the Court recognises that the administration of Valmiera Prison had made certain efforts to lessen his inability to move about in the prison, the fact remains that he had to rely on the help of his cellmate to enter and leave the living area of his unit; he also had to rely on the help of other inmates to access various facilities, such as the toilets, sauna, library, shop, gym, meeting room and telephone room, as they were inaccessible to him in a wheelchair. Although the medical staff visited the applicant in his cell for ordinary medical check-ups, they did not provide any assistance with his daily routine (contrast with the above-cited cases of *Turzynski*, § 40, and *Todorov*, § 65).

161. The Court finds that the applicant had to rely on his fellow inmates to assist him with his daily routine and mobility around the prison, even though they had not been trained nor had the necessary qualifications to provide such assistance. The Government argued that the applicant's

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1. See, for an example, the CPT report following its visit to Armenia from 5 to 7 December 2001 CPT/Inf (2012) 23, para. 23; the CPT report following its visit to Georgia from 5 to 15 February 2010 CPT/Inf (2010) 27, para. 57; the CPT report following its visit to Ireland from 25 January to 5 February 2010, para. 41.

cellmate had voluntarily agreed to assist him in case of necessity. The Court is not persuaded by such an argument and does not consider that the applicant's special needs were thereby attended to and that the State has complied with its obligations under Article 3 of the Convention in that respect. The Court has already stressed its disapproval of a situation in which the staff of a prison feel relieved of their duty to provide security and care to more vulnerable detainees by making their cellmates responsible for providing them with daily assistance or, if necessary, with first aid (see, *mutatis mutandis*, *Kaprykowski v. Poland*, no. 23052/05, § 74, 3 February 2009). It is clear that in the present case the help offered by the applicant's cellmate did not form part of any organised assistance by the State to ensure that the applicant was detained in conditions compatible with respect for his human dignity. It cannot therefore be considered suitable or sufficient in view of the applicant's physical disability (see the above-cited cases of *Farbtuhs*, § 60, and *D.G. v. Poland*, § 147). While it is true that the Convention does not guarantee as such a right to social assistance, the Court considers that the State's obligation to ensure adequate conditions of detention includes provision for the special needs of prisoners with a physical disability such as the present applicant (see paragraph 151), and the State cannot merely absolve itself from that obligation by shifting the responsibility to the applicant's cellmate.

162. In the light of the foregoing considerations and their cumulative effects, the Court holds that the conditions of the applicant's detention in view of his physical disability and, in particular, his inability to have access to various prison facilities independently, including the sanitation facilities, and in such a situation the lack of any organised assistance with his mobility around the prison or his daily routine, reached the threshold of severity required to constitute degrading treatment contrary to Article 3 of the Convention. There has, accordingly, been a violation of that provision.

### III. OTHER ALLEGED VIOLATIONS

163. The applicant also complained that the public prosecutors and domestic courts had subjected him to inhuman and degrading treatment. He also he alleged a violation of Article 5 § 5 of the Convention with no further explanation.

164. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

166. Article 41 of the Convention provides:

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

##### **A. Damage**

167. The applicant submitted that the finding of a violation by itself would not be sufficient compensation for the severe deterioration to his health and physical and moral suffering he had been subjected to during his arrest and continued detention. He therefore requested the Court to award him damages for the suffering and distress caused. He was however unable to quantify in financial terms the degree of emotional distress, physical suffering and deterioration of health he had endured. The applicant asked the Court to take into consideration the severity of his grievances when determining the amount of the compensation to award. He left it to the Court to establish the precise amount, suggesting an amount not less than 100,000 Latvian lati (approximately 142,287 euros (EUR)).

168. The Government contested these claims.

169. Having regard to the nature of the violations found in the present case and deciding on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

##### **B. Costs and expenses**

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

##### **C. Default interest**

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

#### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits of the case the Government’s objections relating to the complaint under Article 3 of the Convention as concerns the events of 10 September 2001;

2. *Declares* the above-mentioned complaint and the complaint about the adequacy of prison facilities in Valmiera Prison admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention as concerns the events of 10 September 2001 and *dismisses* the Government's above-mentioned objections;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the inadequacy of the facilities in Valmiera Prison;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı  
Deputy Registrar

David Thór Björgvinsson  
President