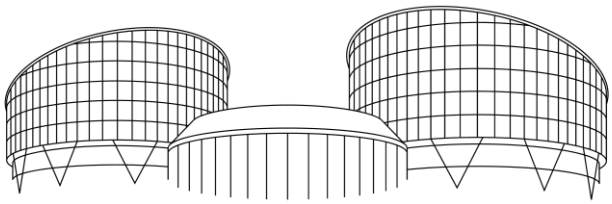

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF J.L. v. LATVIA

(Application no. 23893/06)

JUDGMENT

STRASBOURG

17 April 2012

FINAL

17/07/2012

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

In the case of J.L. v. Latvia**,**

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 23893/06) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr J.L. ("the applicant"), on 2 June 2006. The President of the Chamber decided of its own motion to grant the applicant anonymity pursuant Rule 47 § 3 of the Rules of Court.

2. The applicant, who had been granted legal aid, was represented by Mr Berndt Bergshem, a lawyer practising in Stockholm. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant complained in particular under Articles 3 and 13 of the Convention that the prison authorities had refused to investigate his physical ill-treatment by fellow prisoners, and that he has had no effective remedies for it.

4. On 21 May 2007 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 1980.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The applicant's cooperation with police officers

7. On 21 November 2005 the applicant's wife's car was stolen. G. contacted the applicant and asked for money for return of the car. The applicant reported this to the police and on 25 November 2005, under instructions from police officers, he gave the money to G. and recorded the conversation on audio tape. On the same day G. was arrested. On 5 June 2006 G. was charged with theft and extortion, mainly on the basis of the aforementioned evidence. On 14 July 2006 the criminal case was referred to the court.

B. Criminal proceedings against the applicant

8. Meanwhile, on 7 November 2005 the Aizkraukle District Prosecutor's Office brought charges against the applicant concerning repeated misappropriation.

9. On 16 November 2005 the applicant entered a plea of guilty and confirmed that the examination of evidence was not necessary. He explicitly refused the assistance of defence counsel. On the same day the criminal case was referred to the court.

10 On 4 January 2006, during the hearing, the applicant confirmed that defence counsel and examination of witnesses were not necessary. The Aizkraukle District Court found the applicant guilty and sentenced him to three years' and nine months' imprisonment. The applicant was taken to Central Prison from the courtroom.

11. On 26 January 2006 the Zemgale Regional Court examined the applicant's appeal and upheld the judgment of the lower court. According to the records of the hearing the applicant said in his statement to the court that he had been beaten up on his way to the prison and that it had happened because of his previous cooperation with the police.

12. In his appeal on points of law of 16 February 2006 the applicant complained about the severity of the sentence. He also mentioned his cooperation with police, and that as a result he had suffered bodily injuries in prison.

13. On 23 February 2006 the applicant asked the Prosecutor General to reduce his final sentence. He mentioned, *inter alia*, that because of his cooperation with the police he had encountered problems in prison, specifically that his nose had been broken and he had also sustained other body injuries. In March 2006 he sent a similar request to the Aizkraukle District Court.

14. On 7 March 2006 the Supreme Court dismissed the applicant's appeal on points of law.

15. On 1 September 2006, at the request of the Prosecutor General's Office, the Aizkraukle District Court reduced the applicant's sentence by one year, owing to the fact that he had helped to disclose a serious criminal offence.

16. On 22 June 2007 the applicant was released from prison after serving his sentence.

C. Alleged ill-treatment in Central Prison and further measures taken by the authorities

17. The applicant arrived at Central Prison on 5 January 2006 and was placed in a filtering cell with eleven other inmates.

18. According to the applicant, during the night of 5-6 January 2006 he was physically and sexually assaulted by his fellow inmates: his nose was broken and he was raped. He complained about this to the Central Prison doctor, who rendered medical assistance but refused to draw up a medical report in this connection; similarly, a prison guard refused to initiate an investigation into the assault.

19. On 6 January 2006 he was transferred to cell 72, which provided services to the prison canteen.

20. According to a report drawn up by the head of the medical unit of the Prison Administration, on 6 January 2006 the applicant was examined by the Central Prison doctor, who recorded the applicant's complaints about inflammation of the duodenum. On 16 January 2006 the applicant had a prophylactic examination by the same doctor, who assessed him as in good health and fit for work in the prison canteen.

21. On 14 March 2006 the applicant asked the Prison Administration to transfer him to specialised detention facilities in Matīsa Prison, arguing that he had been receiving threats from those he had testified against.

22. On 21 March 2006 an officer of the Security Department of the Prison Administration met the applicant. According to the report drawn up by the officer during the meeting the applicant complained about possible threats, in that the people he had testified against were known to some of his fellow inmates. The applicant denied having any problems in Central Prison where he was employed in the canteen.

23. Further, according to the same report, in a telephone conversation on 22 March 2006 a police officer in charge of G.'s criminal case confirmed that the applicant was cooperating, and acknowledged that the applicant might therefore encounter problems in prison, but he refused to confirm this in writing. With the agreement of the deputy head of the Prison Administration it was decided to transfer the applicant to Jēkabpils Prison. The report also stated that on 22 March 2006 a representative of the Prison

Administration had advised the head of Jēkabpils Prison by telephone to take the applicant "under control".

24. On 30 March 2006 the applicant was transferred to Jēkabpils Prison.

25. On 13 August 2006 the applicant complained to the Ombudsman (the Bureau for the Protection of Human Rights at that time) that he had been ill-treated on 6 January 2006 in Central Prison. At the Ombudsman's request in September 2006 the Prison Administration requested information from Central and Jēkabpils Prisons about the applicant's situation there.

26. On 25 September 2006 the head of Jēkabpils Prison reported that when the applicant arrived his personal file did not contain any indication that he required isolation from other inmates, and that he had not raised any complaints about physical ill-treatment while detained in Jēkabpils Prison. It was also noted that according to the prisoners' internal classification the applicant was "*kreisais*" (someone who had allegedly, *inter alia*, cooperated with the law enforcement authorities).

27. On 27 September 2006 the head of Central Prison informed the Prison Administration that the applicant had never complained about the incident of 6 January 2006. The letter contained statements from three of the eleven fellow inmates with whom the applicant had been placed on 6 January 2006; they all denied any ill-treatment of the applicant.

28. Relying on the above reports, on 3 October 2006 the Prison Administration informed the Ombudsman's Office that there was no information about the applicant's ill-treatment.

29. In response to the request of the Government Agent, on 2 November 2007 the Office of the Prosecutor General stated that they had not received any complaints from the applicant concerning ill-treatment in Central Prison on 6 January 2006 or in any other prison. The letter confirmed that by virtue of section 6 of the Law of Criminal Procedure the Office of the Prosecutor would have decided on the opening of criminal proceedings if it had received a complaint from the applicant of physical or sexual ill-treatment or a refusal by the prison administration to review the complaint.

D. Other security measures taken by the authorities

30. Aiming to ensure that the applicant attended G.'s trial, on 4 September 2006 the prosecutor in charge asked the Prison Administration to transfer the applicant from Jēkabpils Prison to Rīga. In her letter the prosecutor noted that G. had been detained in Central Prison and that his criminal case contained compelling information that G. had previously intimidated the applicant. Therefore the Prison Administration was asked to transfer the applicant to the specialised detention facilities in Matīsa Prison. The prosecutor referred to a report addressed to the Office of the Prosecutor General which confirmed the attempt to intimidate the applicant.

31. It appears that on two occasions the applicant had been transferred to Matīsa Prison in Rīga in order to attend G.'s trial.

32. In September and October 2006 the Prison Administration dismissed the applicant's requests to allow him to continue serving the rest of his sentence in Matīsa Prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Law and the Law of Criminal Procedure as in force at the material time

33. Sections 159 and 125 of the Criminal Law provides criminal sanctions for rape and other forms of sexual assault, the severity of sanctions varying according to the qualification of the offence.

34. Section 6 of the Law of Criminal Procedure provides that the official authorised to perform criminal proceedings has a duty in each case where the reason and grounds for initiating criminal proceedings have become known, to initiate proceedings and to direct them towards fair regulation of the criminal law as set out in the Criminal Law.

35. By virtue of section 369 parts one and two, one reason for initiating criminal proceedings is information which indicates that a criminal offence has been committed, if such information has been submitted to, or acquired by, an investigating institution (*izmeklēšanas iestāde*), the Office of the Prosecutor, or the court. The information referred to above may be submitted, *inter alia,* by a person who has suffered as a result of a criminal offence; by controlling and supervising institutions; by medical practitioners or institutions; or by any natural or legal person regarding possible criminal offences from which that person has not directly suffered.

36. Section 370 provides that criminal proceedings may be initiated if there is an actual possibility (*reāla iespēja*) that a criminal offence has been committed. Criminal proceedings may also be initiated if the information received described circumstances relating to a criminal offence which may have taken place and the examination of such information is possible only by methods applicable to criminal proceedings.

37. Section 371 sets out the responsibility for instituting investigations and those of the Office of the Prosecutor and the courts in the initiation of criminal proceedings. In particular, an investigator has a duty to initiate criminal proceedings, within his or her competence, if any of the factors referred to in Section 369 of this Law are present. A public prosecutor may send materials for examination to an investigating institution or commence criminal proceedings within the scope of his or her competence, in connection with any reason referred to in section 369 of this Law. Besides, a decision of a public prosecutor regarding the initiation of criminal

proceedings, and the materials related to such decision, shall immediately be sent to an investigating institution, except for particular cases referred to in section 38, paragraph 3 of this Law.

38. By virtue of sections 386 and 387 the Prison Administration shall carry out pre-trial criminal proceedings and investigate criminal offences committed by detained or convicted persons, or by employees of the Latvian Prison Administration in places of imprisonment.

39. According to part 9 of the transitional provisions the terms *izziņas iestāde* (institution of an inquiry) and *izziņas izdarītājs* (person presiding over an inquiry) used in other legal enactments shall hereinafter be understood as the terms *izmeklēšanas iestāde* (investigating institution) and *izmeklētājs* (investigator).

B. Administrative proceedings

40. According to section 1, an administrative act is a legal instrument issued by an institution in an area of public law. It further specifies that decisions regarding, *inter alia*, criminal proceedings and court adjudications, are not administrative acts.

41. The other relevant parts of the Law of Administrative Procedure as applicable at the material time concerning the right to challenge administrative acts and actions of public authorities are summarised in *Melnītis v Latvia*; no. 30779/05, §§ 24-26, 7 February 2012, not yet final.

C. The Law on the Prosecutor's Office

42. The relevant provisions of the Law on the Prosecutor's Office applicable at the material time are summarised in *Leja v. Latvia*, no. 71072/01, § 34, 14 June 2011. In particular, according to section 15 a prosecutor shall supervise the execution of sentences of deprivation of liberty and the places of that detention.

43. Section 16 provides that a prosecutor shall, in accordance with the procedures prescribed by law, carry out an examination if the information received contains assertions regarding either a crime or violation of the rights and lawful interests of, *inter alia,* detainees.

D. The Law on Prison Administration ("Ieslodzījuma vietu pārvaldes likums", as in force until 1 October 2006)

44. According to section 2 paragraph 5 the Prison Administration is an institution of an inquiry (*izziņas iestāde*) in criminal proceedings instituted to investigate offences committed by detained or convicted persons. By virtue of section 6 paragraph 4 the head of the Prison Administration shall have the power to launch an investigation in such criminal proceedings.

E. The Law on Special Protection Measures ("Personu speciālās aizsardzības likums", as in force at the material time)

45. According to section 5 the special protection measures specified in this law are ensured by the following institutions: a specially authorised division of the State Police; a specially authorised department of the Latvian Prisons Administration and at the place of imprisonment – a specially authorised division of the place of imprisonment, as well as other persons performing investigative operations, if, in accordance with the instructions of the Prosecutor General, it is necessary to ensure special protection.

46. According to section 6 the reasons of applying special protection shall be an actual threat to the life, health or other legal interests of a person, expressed imminent threats or other sufficient grounds indicating that the danger may be imminent owing to a person's participation in criminal proceedings. The special protection shall be appplied based on either a written request of a person testifying in criminal proceedings and a proposal of the investigating authority; or the initiative of a court, if a reason for applying special protection has arisen during the course of adjudication; or a written submission of another person to whom the special protection has been assigned.

III. RELEVANT PARTS OF THE CPT REPORTS

47. The report of 13 March 2008 to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("the CPT") from 5 to 12 May 2004 notes the following:

> "46. During the 2004 visit, the delegation examined several internal investigation files on inquiries conducted by the Security Departments into serious incidents of inter-prisoner violence at Daugavpils Prison and Rīga Central Prison. The delegation also had consultations with the competent prosecutor in Rīga.
>
> It came to light that, in several cases, no criminal investigations had been initiated, despite the fact that medical evidence consistent with allegations of inter-prisoner violence was available. In this connection, the delegation was informed that, as a rule, instances of inter-prisoner violence were only reported to the prosecutor if the victim made explicit allegations to this effect in his written statement to the Security Department. In this connection it appeared to be immaterial whether or not the prisoner concerned had previously made such allegations to the doctor and the allegations had been recorded in his medical file.
>
> It is also of concern that, even when the prosecutor had become aware of serious cases of inter-prisoner violence, he had not always initiated investigation not taken a formal reasoned decision on the matter. In fact, the Security Department's investigation file was simply returned to the prison, without any record being kept that the prosecutor had examined the case.

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

More generally, the CPT calls upon the Latvian authorities to develop strategies with a view to addressing the problem of inter-prisoner violence in the establishments visited (and, as appropriate, in other prisons in Latvia).

50. In the light of the above, the CPT calls upon the Latvian authorities to take immediate steps to review throughout the prison system the role played by the Security Departments, in the light of the remarks made above ... .

In particular, steps should be taken to ensure that:

- criminal investigations into instances of ill-treatment by staff as well as inter-prisoner violence are no longer carried out by the Security Departments. Such investigations should be conducted by a body which is independent of the establishment concerned, and preferably of the prison system as a whole.

- prisoners are allocated/transferred to cells under the responsibility of the Director of the establishment concerned".

...

66. At Rīga Central Prison, neither the complement of qualified nursing staff nor the psychiatric/psychological services had been strengthened, despite the specific recommendations made after the 1999 visit and reiterated after the 2002 visit. ....

67. In the light of the above, the CPT reiterates its recommendation that steps be taken, as a matter of priority, to ensure that:

- the complement of qualified nursing staff at Daugavpils Prison and Rīga Central Prison is increased;

...

- every newly-arrived prisoner is properly interviewed and physically examined by a medical doctor (or a fully qualified nurse reporting to a doctor) as soon as possible after his admission to Daugavpils Prison; save for exceptional circumstances, the interview/examination should be carried out on the day of admission;

...

68. In both establishments (including the Prison Hospital), the examination of medical files revealed that the injuries observed (upon admission or after violent incidents within the prison) were frequently not recorded in detail, and that no additional information was given as to the causes of the injuries sustained.

...

> The CPT must therefore reiterate its recommendation that steps be taken at Daugavpils Prison and Rīga Central Prison (as well as in other prison establishments in Latvia) to ensure that the record drawn up after a medical examination of a prisoner, on arrival or after a violent incident within the prison, contains:
>
> (i) a full account of statements made by the prisoner concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him;
>
> (ii) a full account of the objective medical findings based on a thorough examination;
>
> (iii) the doctor's conclusions in the light of (i) and (ii). In his conclusions, the doctor should indicate the degree of consistency between allegations made and the objective medical findings; these conclusions should be made available on request to the prisoner concerned and his lawyer.
>
> Further, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner, the record should be immediately brought to the attention of the relevant prosecutor (see also paragraph 47)".

48. In response to the above report the Latvian Government referred to an instruction of 29 March 2004 adopted by the Prison Administration. According to the instruction, in case there has been an incident of ill-treatment in a prison establishment, the prison doctor has to examine the detainee and to inform the administration of the prison. The latter has to inform the Prosecutor's office and carry out an investigation according to the procedure established by law.

49. The report of 15 December 2009 to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("the CPT") from 27 November to 7 December 2007 notes:

> "78. ... As was the case during all previous visits, the delegation observed a number of shortcomings in the manner in which injuries were recorded at Rīga Central Prison. First of all, several newly-arrived prisoners met by the delegation displayed visible injuries on various parts of the body (including on the face), but no injuries at all were recorded in the medical file, despite the fact that these injuries had apparently been sustained prior to admission. Further, although objective medical findings relating to injuries were recorded in other cases, they were frequently not accompanied by an account of the statements made by the persons concerned which are relevant to the medical examination. In particular, medical records frequently failed to note the prisoner's account of the origin of these injuries (or to note if the person concerned had refused to reply to the relevant questions asked by the doctor) as well as the doctor's conclusions in the light of the objective findings and the prisoner's account. Further, at Jēkabpils Prison, the delegation found instances where visible injuries had not been recorded at all in the prisoners' medical files (including after violent incidents in the prison).
>
> The CPT must recommend once again that steps be taken at Rīga Central Prison and Jēkabpils Prison, as well as in all other prisons in Latvia, to ensure that the record

drawn up after a medical examination of a prisoner, on arrival or after a violent incident within the prison, contains:

(i) a full account of statements made by the prisoner concerned which are relevant to the medical examination, including any allegations of ill-treatment made by him;

(ii) a full account of objective medical findings based on a thorough examination;

(iii) the doctor's conclusions in the light of (i) and (ii). In his conclusions, the doctor should indicate the degree of consistency between any allegations made and the objective medical findings; these conclusions should be made available to the prisoner and his lawyer.

IV. OTHER RELEVANT TEXTS

50. Recommendation Rec (2005)9 of the Committee of Ministers of the Council of Europe to member states on the protection of witnesses and collaborators with justice.

...

"II. General Principles

1. Appropriate legislative and practical measures should be taken to ensure that witnesses and collaborators of justice may testify freely and without being subjected to any act of intimidation.

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

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

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

51. The applicant complained that the staff of Central Prison had refused to investigate the physical ill-treatment to which he had been subjected by fellow inmates, and that he therefore had no effective remedy. In particular, he complained that on the night of 5-6 January 2006 he was beaten up and raped by two of his eleven cellmates because he had cooperated in the past with law-enforcement authorities.

He further complained of threats to his physical safety in Jēkabpils Prison and that the authorities had refused to transfer him to specialised detention facilities in Matīsa Prison.

The complaints are covered by Article 3 and 13 of the Convention, which read as follows:

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

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

A. Admissibility

1. Incident in Central Prison

52. The Government submitted that the applicant has failed to exhaust domestic remedies in respect of his complaints of the alleged ill-treatment by fellow inmates in Central Prison and the lack of investigation thereof. According to the Government the applicant had two sets of remedies available to him. He could pursue the administrative procedure by complaining to the head of Central Prison, whose decision would be subject to an appeal before the Prison Administration and further on before the administrative court. The latter had extensive investigative powers concerning complaints of allegedly unlawful decisions and *de facto* actions on the part of public officials. Alternatively, the applicant could lodge a complaint with the Office of the Prosecutor. The Government emphasised that the applicant had not raised the issue of the alleged ill-treatment and the misconduct of officials during his interview with the representative of the Prison Administration (see paragraph 22, above).

53. The applicant's representative disagreed, contending that the applicant had complained to the Central Prison authorities and had been offered the option of solitary confinement, which he had refused. In his letters to the authorities he had referred to the situation which had resulted from his having cooperated with the police.

54. The Court observes that the parties also raise the same arguments concerning the merits of the complaints under Articles 3 and 13 of the Convention. It considers that the non-exhaustion arguments are closely related to the substance of the complaints, and should be examined in the light of the State's positive obligation to take effective measures against ill-treatment (see, more recently, *Stasi v. France*, no. 25001/07, § 62, 20 October 2011).

55. The Court concludes that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

2. Alleged threats to safety in Jēkabpils Prison

56. The Government contended that the applicant's allegations that he was unsafe in Jēkabpils Prison were purely hypothetical, as he had never provided the Court with any evidence that threats, discrimination or ill-treatment had been directed against him in Jēkabpils Prison. He had also never complained of this issue before domestic authorities.

57. The applicant had not commented on the Government's allegations.

58. As to the applicant's safety in Jēkabpils Prison, the Court notes that the applicant has failed to make his allegation specific, either before the domestic authorities or before the Court.

59. The Court further notes that at the prosecutor's request the applicant was held in the specialised detention facilities in Matīsa Prison during the periods when he was transferred to Rīga to attend court hearings (see paragraphs 30-32, above).

60. In those circumstances it follows that the above complaint is inadmissible under Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. Arguments of the parties

61. The Government contended that as regards the incident in Central Prison the applicant has neither provided the Court with any plausible evidence, including medical records supporting his allegations, nor has he addressed the relevant State authorities.

62. The applicant's representative argued in response that after the incident of 6 January 2006 the applicant had received medical assistance from the Central Prison doctor, but that the latter had refused to record the violation, considering that any inquiries would worsen the applicant's situation in prison. Immediately after the incident, on the doctor's recommendation, he had been transferred to the kitchens, where he could not be subjected to threats. He had not brought further complaints to the Central Prison administration, because of his fears of being moved away from the relatively safe cell he was in. Finally, the applicant submitted two receipts for medication which had been prescribed by the Jēkabpils prison doctor; this however was not reflected in his medical records.

63. The Government in their additional observations commented that the transfer of inmates was not within the competence of the prison doctor and that any complaints with respect to the effectiveness or otherwise of

investigations should be brought to the attention of the Prison Administration. The Government dismissed as irrelevant the applicant's comments about his alleged health problems in Jēkabpils Prison.

2. The Court's assessment

64. The Court reiterates that Article 1 of the Convention, taken in conjunction with Article 3, imposes on the States positive obligations to ensure that individuals within their jurisdiction are protected against all forms of ill-treatment prohibited under Article 3, including where such treatment is administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI). This obligation should include effective protection of, *inter alia*, an identified individual or individuals from the criminal acts of a third party, as well as reasonable steps to prevent ill-treatment of which the authorities knew or ought to have known (see, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII; more recently, *E. and Others v. the United Kingdom*, no. 33218/96, § 88, 26 November 2002).

65. Secondly, the Court notes that the applicant's complaint under Article 3 raises an issue with respect to the State's positive obligation to carry out an effective investigation in response to an arguable claim of ill-treatment (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). Such a positive obligation cannot be considered to be limited solely to cases of ill-treatment by State agents (*M.C. v. Bulgaria*, no. 39272/98, § 151, 4 December 2003, ECHR 2003-XII).

66. Even though the investigation may differ in scope as regards the alleged ill-treatment inflicted by persons other than state officials, it nevertheless should contain the core requirements of an effective investigation (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009). In particular, according to the Court's case-law, the investigation should be independent, impartial, prompt and subject to public scrutiny (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, §§ 135-136, ECHR 2004-IV (extracts)) and the investigation is to be considered effective if the authorities had taken reasonable steps to secure the evidence concerning the incident, including, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports (ibid, § 134).

67. The aforementioned obligations shall not, however, be interpreted as meaning that the State shall guarantee that ill-treatment is never inflicted or that criminal proceedings should necessarily lead to a sanction (see *Beganović v. Croatia*, no. 46423/06, § 71, 25 June 2009). Nevertheless the State shall be held liable in a situation if the domestic legal system fails

to provide effective protection against violation of the rights enshrined by Article 3 (ibid.)

(a) Existence of an arguable claim

68. At the outset the Court notes that it is not disputed by the parties that the applicant had collaborated with the police in investigating a serious crime (see paragraph 7, above), and that at the same time the applicant himself was standing trial. In these circumstances the cooperation as such would oblige the authorities to take measures to ensure the safety of witnesses and collaborators of justice. The importance of this obligation has also been enshrined in a recommendation of the Council of Europe (see paragraph 50, above).

69. In the present case there is no information that as soon as the applicant was cooperating and before he was transferred to prison any reasonably expected measures by the investigating authorities had been taken, such as, for example, communicating to the prosecutor and the prison authorities the fact that he was cooperating with investigators. Such measures would have been intended to prevent the applicant from being subjected to possible threats from either those he had testified against or other inmates who might have found out that he had cooperated. The Court notes that the Government did not comment on the fact of the applicant's cooperation with the investigating authorities and the possible consequences thereof.

70. The Court refers in this respect to events subsequent to the alleged incident. Even though the Prison Administration ordered the administration of Jēkabpils Prison to take the applicant "under control", and following the prosecutor's conclusions (see paragraphs 23 and 30, above), in the official report the Jēkabpils Prison administration did not reveal that the applicant had been entitled to any particular precautionary measures in prison (see paragraph 26, above), thereby demonstrating that protection against possible abuse was left to the discretion of prison officials.

71. In the light of the above-mentioned, the Court will address the parties' disagreement concerning the sufficiency of proof in support of the applicant's allegations of physical ill-treatment by fellow inmates. As established in the case-law, the Court shall in this respect apply the standard of "beyond reasonable doubt", however, such proof may also follow from the coexistence of strong, clear and concordant inferences or similar presumptions of fact (*Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Besides, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumption of fact will arise in respect of injuries occurring during such detention *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

72. As to the allegations concerning the act of violence in Central Prison, the Government stated that there were no medical records or representations by the applicant to show that the incident had happened at all. The Court notes that the applicant's main complaint is precisely the alleged failure of the doctor and other staff of Central Prison to register the applicant's injuries and to investigate the incident. The Court shall therefore examine the inferences deriving from the factual circumstances which were not disputed by the Government (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 51, 4 May 2006).

73. Even if it was only in August 2006 that the applicant for the first time produced a detailed complaint in respect of the events of 6 January 2006 (see paragraph 25, above) the Court notes the consistency with which the applicant had on various occasions asserted to the authorities that he had been subjected to ill-treatment in Central Prison (see paragraphs 11 - 13, above; contrary to *Bazjaks v. Latvia*, no. 71572/01, § 76, 19 October 2010). As concerns the medical records, the Court regrets that it has not been furnished with a copy of the applicant's medical report of 6 January 2006 and the reasons for his transfer to the kitchen unit at the Central Prison (see paragraph 20, above). It notes that the Government has not commented on the fact that even if the initial medical examination did not refer to any health problems suffered by the applicant, ten days later the applicant was repeatedly seen by a doctor (ibid.). There is no explanation as to why there should have been a need for the applicant to undergo a "prophylactic" medical examination, especially considering the already limited medical facilities in Central Prison (see the CPT report in this respect, paragraph 47, above) The Court notes in this connection that the CPT, during their visits to Central Prison, had observed the failure of medical personnel to properly record in the medical files injuries sustained by inmates of the prison (ibid.).

74. The credibility of the applicant's allegation as to the act of violence is corroborated by the undisputed fact attested by the national authorities that the applicant, who was a victim and the main witness in criminal proceedings concerning a serious criminal offence, had been subjected to intimidation from the defendant (see paragraph 30, above). The latter was being held in the same prison and was known to the fellow prisoners, this fact adding probative weight to the applicant's allegations (contrary to *Bazjaks*, cited above, § 76).

75. In the light of the aforementioned the Court considers that with respect to the applicant's allegations of violence in Central Prison, the consistency of his submissions corroborated the confirmation of the intimidation of the applicant, and, keeping in mind his cooperation with the police, lead to a conclusion that the applicant has an arguable claim in the light of Article 3, which therefore required the State to exercise its obligations, examined below.

(b) Compliance with the obligation to investigate

76. The Court shall next assess whether the domestic legislation in force and its application by the authorities in response to the applicant's claim were in compliance with the principles deriving from Article 3 of the Convention.

77. The Court observes that the Criminal Law set out the criminal liability for the criminal offences cited by the applicant (see Relevant domestic law, paragraph 33, above). The Law of Criminal Procedure imposes an obligation on investigating bodies and the Office of the Prosecutor to institute public prosecution proceedings if information is received about an alleged criminal offence (see paragraph 35, above). Concerning persons held in custody, by virtue of the Law on the Prosecutor's Office the latter supervises the execution of sentences and detention facilities (section 15 § 1) and shall, *inter alia*, carry out an inquiry if the rights of detainees have been infringed (section 16 § 1), while it is the Prison Administration which secures the implementation of security measures related to deprivation of liberty and execution of sentences. By virtue of the Law on the Prison Administration (as in force at the material time), in carrying out this task the Prison Administration has investigative powers concerning criminal offences committed by detainees or convicted persons (see paragraph 44, above).

78. The Court shall next examine separately the application of the aforementioned regulation by addressing both types of domestic remedies invoked by the Government.

(i) Administrative measures

79. The Court is critical of the Government's argument that the administration of Central Prison and the Prison Administration were not aware of the applicant's complaints about the incident. It observes that even if the applicant had not cited his complaint about the ill-treatment during the interview with the representative of the Prison Administration (see paragraph 22, above), in September 2006, at the request of the Bureau for the Protection of Human Rights, the Prison Administration requested the administration of Central Prison to carry out an investigation into the same allegations (see paragraph 28, above). The Court observes that despite the theoretical division of responsibilities between the Security Department of the Prison Administration and the prison establishment, in practice the latter continued carrying out investigations of complaints against actions and omissions of the officials of the same establishment, thereby undermining the independence of the investigation.

80. The Court also observes that there were shortcomings in the investigation carried out in Central Prison. Even though the applicant's allegation that his nose had been broken could still have been substantiated by medical examination and an X-ray, no examination of this kind was

carried out. Besides, there is no evidence that any statements were taken from the applicant or the practising medical doctor at the time concerned. The statements taken from three of the eleven cellmates could not be considered sufficient.

81. The Court also observes that it is not clear whether the applicant was informed of the results of the investigation. Even though the investigation was carried out on the basis of information received from other sources than the applicant, the Court considers that the duty of investigation would entail communicating the results to the applicant, indicating the possibility of an appeal against it. The Court notes that this formal approach during the investigation of the ill-treatment was also noted by the CPT (see paragraph 47, above).

82. In these circumstances the Court considers that the investigative measures taken by the Prison Administration and Central Prison administration in response to the complaint of ill-treatment cannot be regarded as independent and as intending to establish what actually took place.

83. The Court shall further address the Government's argument that by virtue of the Law of Administrative Procedure the decisions and actions of Prison Administration officials could be appealed against in the administrative court (see paragraph 52, above). In this respect the Court notes the broad powers vested in the Prison Administration under the Law of Criminal Procedure (see paragraphs 35-39 and 44, above) the control of which falls outside the jurisdiction of the administrative courts (see paragraphs 40-41, above). Even though the Prison Administration in principle could also take action and adopt decisions falling within the sphere of public law, the Government has not submitted relevant domestic case-law examples in which in comparable factual circumstances decisions or actions of the Prison Administration have been scrutinised by administrative courts. The Court is thus unable to conclude that the actions and decisions closely related to the special powers vested with the Prison Administration in investigation of violence in prison would fall within the scope of the administrative rather than the criminal law. In the latter case the examination of complaints concerning such decisions would fall outside the jurisdiction of the administrative courts.

(ii) The Office of the Prosecutor

84. The Court reiterates that observing the broad powers vested with the Office of the Prosecutor in supervising places of detention (see Relevant domestic law, above) and reviewing complaints submitted by individuals with restricted capacity to protect their rights, detainees should normally address to the Office of the Prosecutor any complaints they have concerning physical ill-treatment while in detention (see *Leja*, cited above, § 68).

85. Turning to the facts of the particular case, the Court notes that on at least two occasions the applicant made representations about ill-treatment to the Office of the Prosecutor, in particular in January 2006 during the hearing before the appellate court in the presence of a representative of the Office of the Prosecutor (see paragraph 11, above) and in February 2006 in a letter to the Prosecutor General (see paragraph 13, above). On the basis of the latter the Office of the Prosecutor launched proceedings aimed at reducing the applicant's sentence, but the allegations of ill-treatment were left unexamined.

86. As the Court has previously noted, the prosecuting authorities recognised that the applicant was intimidated by individuals against whom he had testified (see paragraph 30, above). Because of the absence of the report referred to by the prosecutor the Court cannot conclude whether the episodes covered by the report include the incident cited before the Court. Be this as it may, the Court considers that, even though the applicant's letter of 23 February 2006 was devoid of detailed description of the incident, the applicant's allegations were corroborated by the information on his collaboration with the police and his status in other criminal proceedings. The Court therefore considers that this information was sufficient for the Office of the Prosecutor to apply section 16 § 1 of the Law of the Public Prosecutor's Office (see paragraph 43, above) and to launch an enquiry concerning the matters brought to its attention.

(c) Conclusion

87. Even if the applicant primarily complains of the lack of effective investigation into the alleged ill-treatment rather than the absence of a reasonable preventive mechanisms in the circumstances concerned, the Court notes the lack of sufficient coordination among the investigators, the prosecution and the detention institutions to prevent possible ill-treatment of detainees who, owing to cooperation in disclosure of criminal offences, have become particularly vulnerable and prone to violence in prison.

88. In the light of all the aforementioned, the Court considers that the conduct of the national authorities and the manner in which they applied the domestic law in response to the applicant's claim of ill-treatment fail to comply with the State's procedural obligations deriving from Article 3 of the Convention. It follows that there has been a violation of Article 3 of the Convention.

89. Having regard to the above, the Court finds that there is no need to examine separately the complaint under Article 13 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

90. The applicant alleged violations under various other Articles of the Convention.

91. 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 considers that the remainder of the application does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 17,000 Latvian lati (LVL, approximately 24,000 euros (EUR)) in compensation for pecuniary damage, and LVL 15,000 (approximately EUR 21,200) in compensation for non-pecuniary damage.

94. The Government disagreed with the claims. They contended that the applicant had not demonstrated that he had incurred any pecuniary or non-pecuniary damage, nor had he demonstrated a causal link between the alleged violations and the damages sought. Alternatively, in respect of non-pecuniary damage the Government submitted that the finding of a violation would itself constitute sufficient just satisfaction.

95. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 10,000 in compensation for non-pecuniary damage.

B. Costs and expenses

96. The applicant's representative claimed 46,106 Swedish kroner (SEK, approximately EUR 5,250) for costs and expenses incurred before the Court.

97. The Government raised doubts as to the credibility of the claim, especially owing to the fact that the applicant had received legal aid.

98. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court rejects the claim for costs and expenses for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints under Article 3 and 13 of the Convention concerning the incident in Central Prison and the remainder of the application inadmissible;

2. *Holds* that there has been a violation under the procedural limb of Article 3 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention EUR 10,000 (ten thousand) plus any tax that may be chargeable, in respect of non-pecuniary damage 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;

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

Done in English, and notified in writing on 17 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President