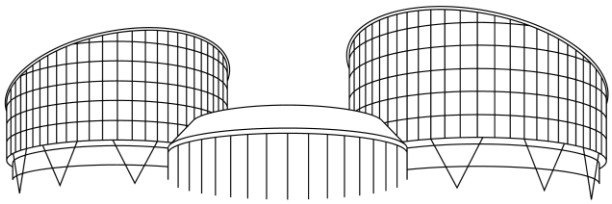

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF LEJA v. LATVIA

(Application no. 71072/01)

JUDGMENT

STRASBOURG

14 June 2011

FINAL

14/09/2011

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

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

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

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 71072/01) against the Republic of Latvia lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Juris Leja ("the applicant"), on 26 September 1998.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. On 26 November 2004 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. On 16 September 2010 the President of the Chamber to which the case had been allocated requested the respondent Government to submit certain additional factual information and documents. On 28 October 2010 the Government submitted additional information and informed the Court that some of the documents pertaining to the information requested could not be produced since they had been destroyed after the expiry of the statutory storage period of archival documents. The applicant provided his comments on 24 November 2010, without providing any substantive additional information concerning the facts of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946 and lives in Rīga.

A. The applicant's pre-trial detention

6. On 5 May 1995 the applicant was arrested by the police and subsequently remanded in custody on suspicion of burglary and drunk driving. While in detention, on 8 May and 11 May 1995 the applicant was allegedly beaten, kicked and assaulted by policemen. The applicant's subsequent requests for criminal proceedings to be instituted in respect of the alleged ill-treatment by the police eventually remained unsuccessful; by a final decision of 29 March 1996 the Saldus District Public Prosecutor's Office refused to open a criminal investigation against the police officers.

B. The first set of criminal proceedings

7. On 26 October 1995 the Saldus District Court convicted the applicant of aggravated burglary and sentenced him to seven years' imprisonment. On 17 April 1996 the Kurzeme Regional Court fully upheld the judgment of the first-instance court. On 30 May 1996 the Senate of the Supreme Court by a final decision dismissed the applicant's appeal on points of law. The applicant's repeated requests to the Prosecutor General for supervisory review of his conviction were dismissed on 30 June 1997 and on 12 November 1997 respectively.

C. The second set of criminal proceedings

8. On 4 September 1997 the Rīga City Kurzeme District Court examined the drink-driving charges against the applicant. The applicant was represented by defence counsel of his choice. The applicant was found guilty of that offence and sentenced to one year in prison. The court added to that sentence the sentence imposed on the applicant by the judgment of 26 October 1995 and imposed a final sentence of eight years' imprisonment. On 15 January 1998 the Rīga Regional Court, acting as a court of appeal, reduced the applicant's final sentence to seven years' imprisonment. The applicant was represented at the appellate court by defence counsel. The applicant submitted an appeal on points of law. On 17 April 1998 the Senate of the Supreme Court refused leave to appeal, finding that the arguments

invoked by the applicant did not constitute any valid ground for appeal in cassation according to the Code of Criminal Procedure.

D. The applicant's detention in Jelgavas prison

9. On an unspecified date the applicant was transferred to Jelgavas prison to serve his sentence.

10. In June 1997, the applicant was subjected to disciplinary punishment in the form of detention in a punishment cell for fifteen days on the basis of a report that he had harassed another detainee. The applicant began a hunger strike to protest against the allegedly unjust penalty. On the tenth day of the hunger strike the disciplinary penalty was lifted.

11. On 8 October 1998 the applicant handed in to the prison administration a letter addressed to the Secretariat of the European Commission of Human Rights. It appears the application was not forwarded to the addressee but instead was transmitted to the Parliament, which, in turn, forwarded it to the Office of the Prosecutor General, which dismissed the complaints contained in the letter as unfounded. No letter of that date has been received by the Commission. On 9 February 1999 the applicant, having become aware that his application of 8 October 1998 had not been sent to the intended addressee, announced that he was going on hunger strike. The hunger strike gave rise to a disciplinary sanction of fifteen days' detention in a disciplinary cell. The applicant further alleged that in response to his complaint a member of the prison administration had threatened him with a transfer to a prison "from which [he] will never come out".

E. The applicant's detention in Grīvas prison

12. On 19 February 1999 the applicant was transferred from Jelgavas prison to Grīvas prison, located in Daugavpils. On 21 February 1999 the applicant was placed in a punishment cell to serve the remainder of the disciplinary penalty that had been imposed in Jelgavas prison.

13. After his release from the punishment cell, the applicant handed to the prison administration a complaint addressed to the Prosecutor's Office for Places of Detention (*Ieslodzījuma vietu prokuratūra*). According to the applicant, the prison administration refused to accept his complaint for despatch. On an unspecified date the applicant started a hunger strike to protest against that refusal. As a result, on 10 March 1999 a new disciplinary punishment of fifteen days' detention in a punishment cell was imposed on him.

14. On 15 March 1999 the applicant's complaint was transferred to the Prosecutor's Office for Places of Detention. On 30 March 1999 a prosecutor from that office dismissed the applicant's complaint as unsubstantiated. The

applicant appealed to a hierarchically superior prosecutor. However, the appeal was examined by the same prosecutor who had examined the original complaint. He dismissed that appeal on 19 April 1999, finding that the substance of the applicant's complaint had already been examined once and that it had been dismissed for the reasons set out in the letter of 30 March 1999. According to the applicant, a further complaint he made to the Ministry of Justice was again dealt with by the same prosecutor, who again informed him that the matters complained of had already been examined.

15. On 26 June 2000 the deputy director of the Prison Administration (*Ieslodzījuma vietu pārvalde*) replied to a complaint, which apparently concerned the conditions of detention in Grīvas prison. The reply noted that a complex inspection had been carried out in that prison from 22 to 24 May 2000 and no violations of the Convention or the internal regulations mentioned in the applicant's complaint had been found.

16. On 2 June 2000 the applicant handed a letter together with copies of documents to the prison administration in order to have it despatched to the Court. No such letter has been received at the Court. However, in a letter of 11 September 2000 a prosecutor of the Specialised Public Prosecutor's Office (*Specializētā vairāku nozaru prokuratūra*) wrote to the applicant, informing him, *inter alia*, that his letter had been sent to Strasbourg on the same day that it had been handed to the prison administration.

17. On 3 September 2000 the applicant allegedly wrote to an unspecified public prosecutor's office, complaining about his ill-treatment in Grīvas prison, the conditions of detention therein and the allegedly unlawful character of the disciplinary penalties imposed on him. The applicant asked for criminal proceedings to be instituted in that regard. It appears that he did not receive any reply.

18. On 5 September 2000 the applicant started a hunger strike in order to demonstrate to the authorities that the disciplinary penalties imposed on him were unlawful, that his rights had been infringed and to protest that his application of 8 October 1998 had not been sent to Strasbourg. As a result, he was again penalised with fifteen days' solitary confinement in a punishment cell. According to the applicant, a prison staff member, C., prepared a special cell for this penalty, in order to intentionally increase the severity of the punishment. The applicant alleges that a fan installed in the wall of the cell was purposefully switched on, causing a flow of cold air from the outside. A window was kept open at all times. As a result, the air temperature inside the cell was approximately 0^{o}C. Before his removal to the punishment cell the applicant was made to change his clothes to thinner ones, which did not provide sufficient warmth. The equipment of the cell consisted of a single metal bed with no mattress, blanket or bedding.

19. During his solitary confinement the applicant was subjected to full body searches on several occasions. In his submission, during these

searches he was taken out of the punishment cell into a corridor and forced to strip naked. According to the applicant, the only real reason for conducting the searches had been to humiliate him.

20. On 19 September 2000, which was the seventh day of his confinement, the applicant was transferred to the medical department of the prison. On 21 September he discontinued the hunger strike for health reasons. On 22 September 2000 the applicant received a penalty of fifteen days' solitary confinement for "failure to obey the rules of a hunger strike".

21. After his release from the punishment cell, the applicant allegedly requested two staff members of the prison to forward his complaints concerning his alleged ill-treatment and torture. However, the applicant assumes that his complaints were never sent to the intended addressees, since he did not receive any replies.

22. On 11 December 2000 the applicant requested a member of the prison administration to despatch a complaint concerning his ill-treatment. On 22 January 2001 a prosecutor of the Specialised Public Prosecutor's Office replied to the applicant's complaint and noted, *inter alia*, that the applicant's complaint "that [he was] being tortured by representatives of prison administration could not be verified", and the prosecutor thus considered that the applicant's grievances consisted merely of "unsubstantiated statements". The prosecutor further wrote to the applicant that "if you choose to damage your own health by starvation, you are the only one to blame". Finally, it was noted that an appeal could be lodged against the response to a hierarchically superior prosecutor of the same prosecutor's office. It appears that the applicant did not formulate such an appeal.

23. On 5 January 2001 the applicant was transferred from Grīvas prison to Daugavpils prison.

24. On 31 January 2001 he submitted a complaint to the Prison Administration. On 5 March 2001 the Deputy Director of the Prison Administration replied to the applicant's complaint. The reply summarised the applicant's complaints as being about

> "serious conflicts [he was having] with the administrations of Grīvas and Jelgavas prisons[,] ... Grīvas prison director's and staff's unfair and prejudiced attitude towards [the applicant], [i]ncessant pressure put on [him, and] about corruption in the Grīvas prison administration, and about existing financial violations"

and other issues. The Prison Administration's reply stated, *inter alia*, that on 24 January 2001 an inspection had been carried out in Grīvas prison and no breaches of prison rules on the part of the prison administration had been found.

25. The applicant alleges that in January and February 2001 he applied to the Office of the Prosecutor General and to the President of the Supreme Court, complaining, *inter alia*, about ill-treatment by the Grīvas prison authorities. The complaints were subsequently transferred to the Specialised

Public Prosecutor's Office. On 14 March 2001 a prosecutor of the Specialised Public Prosecutor's Office dismissed the applicant's complaints addressed to the Prosecutor General's Office and to the President of the Supreme Court as unsubstantiated.

26. On 18 and 19 April 2001 the Prison Administration carried out a regularly scheduled inspection in Grīvas prison, in the course of which certain deficiencies were discovered. Specifically it was found that problems existed with regard to the placement in cells of active tuberculosis carriers, the execution of sentences of juvenile criminals, and the adequacy of procedures for changing imprisonment regimes. No other problems were noted.

F. The applicant's detention in Daugavpils prison

27. In January 2001, upon arrival at Daugavpils prison, the applicant's personal belongings such as washing powder, shampoo, newspapers, shoe polish, a hairbrush and certain items of stationery were seized by the prison administration.

28. In April 2001 the applicant handed to the prison administration a letter addressed to the European Court of Human Rights. The letter and the attached documents had been placed in a hand-made envelope, since the applicant lacked sufficient means to buy standard size envelopes. However, on 27 April 2001 the letter was returned to the applicant and he was informed that the postal service had refused to despatch the letter because of the non-standard envelope size.

29. On 3 March 2002 the applicant was transferred to Valmieras prison and on 3 May 2002 he was released from prison after serving his sentence.

G. Proceedings concerning the change of prison regime

30. On 19 September 2000 the administrative commission of Grīvas prison decided to transfer the applicant from the "higher" or most lenient type of prison regime to the stricter "medium" regime, due to his persistent breaches of the internal rules of the prison. Neither the applicant nor his defence counsel were present at the meeting of the administrative commission. The Government indicated that immediately after the meeting the members of the administrative commission, with a public prosecutor, visited the applicant in the punishment cell where he was being held at that time. The applicant refused to talk to them and refused to sign the decision of the commission. According to the applicant, he was unable to talk to the members of the commission because he "was lying on the floor with a bleeding face". The Government submitted that the applicant' right to appeal against that decision had been explained to him. The applicant alleged that he was unable to lodge an appeal, since in the punishment cell

the use of writing materials was forbidden by order of the director of Grīvas prison. In a report of 11 January 2001 a prosecutor of the Specialised Public Prosecutor's Office noted that the applicant had appealed against the administrative commission's decision. No documents in that regard were produced before the Court by either of the parties.

31. On 12 December 2000 the administrative commission decided to transfer the applicant from the "medium" regime to the "lower" or the strictest type of regime on the basis of persistent breaches of the internal rules of the prison. The applicant alleged that the director of the prison had rejected his request to ensure legal representation. The applicant himself participated in the meeting of the commission.

32. On 8 February 2001 the Daugavpils Court examined the applicant's appeal against the decision of 12 December 2000 and dismissed it by a final decision. The applicant participated in the hearing. According to the applicant, in his appeal he brought his complaints of ill-treatment to the attention of the court but received no reply. The decision of the court noted that the applicant had argued that the disciplinary infractions that he was alleged to have committed had been insignificant. In response, the court briefly indicated that the applicant had systematically violated the internal rules of the prison and therefore the decision of the administrative commission was appropriate.

II. RELEVANT LAW

A. Domestic law

33. Article 95 of the Constitution (*Satversme*) prohibits torture, as well as any cruel, inhuman or degrading treatment or punishment.

34. The relevant parts of the Law on the Prosecutor's Office (*Prokuratūras likums*) as applicable at the material time read as follows:

Section 6 – Independence of the prosecutor

"(1) In his or her activities a prosecutor shall be independent of the influence of any other institution or official exercising State authority or administrative power, and shall be bound only by the law.

(2) The Parliament, the Cabinet of Ministers, State and local government institutions, State and local government civil servants, all types of enterprises and organisations, as well as all persons are prohibited from interfering in the work of prosecutors during the investigation of cases or during the performance of other functions of prosecutors.

(3) Prosecutors' actions may be appealed against in the cases and in accordance with the procedures specified by this law and procedural laws. Complaints regarding

questions which fall within the exclusive competence of prosecutors shall be submitted to a chief prosecutor of a hierarchically superior prosecutor's office, but regarding the actions of a prosecutor of the Office of the Prosecutor General to the Prosecutor General. The decisions taken by the aforementioned officials shall be final.

(4) A prosecutor of a superior rank may take over any case file, but may not compel a prosecutor to carry out actions against his or her belief.

...

(7) Attempts to unlawfully exert influence on a prosecutor or to interfere with the work of a prosecutor's office shall be prosecuted in accordance with law."

Section 9 – Mandatory nature of a prosecutor's orders

"(1) Lawful orders of a prosecutor shall bind all persons in the territory of the Republic of Latvia.

(2) Persons shall be prosecuted in accordance with law for any failure to comply with the lawful orders of a prosecutor."

Section 15 – Supervision of the execution of sentences of deprivation of liberty

"(1) In accordance with the procedures prescribed by law, prosecutors shall supervise the execution of court-imposed sentences of deprivation of liberty and supervise the places where persons arrested, detained or under guard are held, and shall take part in court hearings relating to changes in the specified length of sentences or the conditions of sentences.

...

(3) A prosecutor's protest with regard to an unlawful penalty imposed on a person held in a place of deprivation of liberty shall suspend the execution of the penalty until the protest has been dealt with."

Section 16 – Protection of rights and lawful interests of persons and the state

"(1) Having received information concerning a breach of law, a prosecutor shall carry out an examination in accordance with the procedures prescribed by law if:

1) the information concerns a crime;

2) the rights and lawful interests of ...detainees ... have been violated.

(2) A prosecutor has the duty to take measures required for the protection of rights and lawful interests of persons and the State, if:

1) the Prosecutor General or a chief prosecutor recognises the necessity for such examination; ...

2) such a duty is provided for by other laws. ...

(3) A prosecutor shall also carry out an examination if a submission from a person regarding a violation of his or her rights or lawful interests is received and if this submission has already been reviewed by a competent state institution and it has refused to rectify the violation of law referred to in the submission or it has given no reply within the term specified by law. ..."

Section 17 – Powers of a prosecutor when examining an application

"(1) When examining an application in accordance with the law, a prosecutor has the right:

1) to request and to receive regulatory enactments, documents and other information from administrative authorities ..., as well as to enter the premises of such authorities without hindrance;

2) to order heads and other officials of ... institutions and organisations to carry out examinations, audits and expert-examinations and to submit opinions, as well as to provide the assistance of specialists in the examinations carried out by the prosecutor;

3) to summon a person and to receive from him/her an explanation on the breach of law...

(2) When taking a decision on a breach of law, the prosecutor, depending on the nature of the breach, has the duty:

...

3) to bring an action to the court;

4) to initiate a criminal investigation; or

5) to initiate [proceedings on] administrative or disciplinary liability."

Section 20 – Application of a prosecutor

"... (3) If the requirements stated in an application [of a prosecutor to an authority] are not complied with or no reply to it is provided, the prosecutor is entitled to submit to a court or to any other competent institution a request to subject [the responsible] person to liability prescribed by law."

35. Section 130 of the Criminal Law (*Krimināllikums*) reads as follows:

Section 130 – Intentional minor bodily injuries

"(1) For a person who intentionally inflicts [upon another person] bodily injuries which have not caused damage to health or the general ongoing loss of ability to work (minor bodily injuries), as well as who intentionally [subjects another person] to beating which has not caused the consequences mentioned, the applicable sentence shall be custodial arrest, or community service, or a fine not exceeding ten times the minimum monthly wage.

> (2) For a person who intentionally inflicts [upon another person] minor bodily injuries which cause temporary damage to health or insignificant general ongoing loss of ability to work, the applicable sentence shall be deprivation of liberty for a term not exceeding one year, or custodial arrest, or community service, or a fine not exceeding twenty times the minimum monthly wage.
>
> (3) For a person who [subjects another person to] systematic beating having the nature of torture, or any other kind of torture, provided these acts have not [caused injuries of medium severity or very severe injuries], the applicable sentence shall be deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage."

36. According to section 111(2) of the Code of Criminal Procedure in force at the material time, the aforementioned offence belonged to the category of private prosecution cases which had to be brought by the plaintiff directly before the court with jurisdiction. The statutory limitation period for this offence expired after six months (section 56(1) of the Criminal Law). Section 111(4) provided that normally pre-trial investigation was not conducted in private prosecution cases, except if a court, a judge or a prosecutor decided to conduct one "in order to protect the interests of the state or of society or rights of certain persons".

37. Section 71 of the Sentence Enforcement Code (*Sodu izpildes kodekss*) at the relevant time provided that prison inmates may appeal against disciplinary penalties to hierarchically superior staff members.

38. The Rules of the Prison Administration (*Ieslodzījuma vietu pārvaldes nolikums*) that were in force at the relevant time provided that the head of the Prison Administration had the obligation to accept and reply to complaints, enquiries and suggestions and had the right to quash unlawful orders or decisions of any staff member of the Prison Administration or prisons.

39. At the material time, the Code of Civil Procedure provided that civil courts were competent to deal with, among others, cases arising from actions or decisions of state or municipal agents where those had impinged on private individuals' rights (section 228). Chapter 24.A of that Code set out the rules and procedures to be followed in such cases, from which it followed that civil courts could deal with disputes for which the law did not provide for another settlement mechanism.

B. The relevant documents of the Council of Europe

40. The relevant findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "the CPT") read as follows:

Visit to Latvia of 24 September to 4 October 2002

"140. One of the most effective means of preventing ill-treatment by prison officers lies in the diligent examination of complaints of ill-treatment and the imposition of suitable penalties. Prisoners should have avenues of complaint open to them both within and outside the prison system, including the possibility of confidential access to an appropriate authority.

In all prisons visited, prisoners could, in principle, submit a complaint to the establishment's Director. In addition, complaints could be addressed to the Regional Prosecutor and the National Human Rights Office.

However, the CPT is concerned by the manner in which prisoners' complaints were processed in practice. Many prisoners interviewed in the establishments visited indicated that they did not have any trust in the current complaints system, since they were obliged to hand their complaint - even those addressed to judicial authorities – in an unsealed envelope to a prison officer. Not surprisingly, only a few complaints were recorded in the establishments visited. Means must be found of enabling complaints to be submitted to the Regional Prosecutor and the National Human Rights Office in a truly confidential manner."

Visit to Latvia of 5 to 12 May 2004

"77. As in 2002, the confidentiality of external complaints was not always guaranteed (i.e. prisoners were obliged to hand complaints in an unsealed envelope to the prison administration or to give an oral explanation to members of the Security Department on the reasons for lodging a complaint). **The CPT reiterates its recommendation that steps be taken to enable prisoners to submit complaints to the Regional Prosecutor and the National Human Rights Office in a truly confidential manner.**"

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

41. The Government submitted that the applicant could not claim to be a victim of a violation of the Convention within the meaning of Article 34 of the Convention. In this regard, they referred to a document issued by the director of the medical department of Grīvas prison, which indicated that the applicant had been diagnosed with a "paranoid personality disorder with a querulous tendency". Taking this information into account, the Government submitted that the present application to the Court was "one of the numerous complaints submitted by the applicant, containing imaginary information and facts since the applicant has a tendency to see himself as a victim". In conclusion, the Government requested the Court to declare the

application incompatible *ratione personae* with the provisions of the Convention, within the meaning of Article 35 § 3.

42. The applicant submitted that the document concerning his diagnosis was forged and that he was not suffering from any mental illness.

43. The Court does not find it necessary to analyse the accuracy of the information about the applicant's mental health which was submitted by the Government. It suffices to note that the reliability and truthfulness of the applicant's complaints are questions that are related to the merits of the case. The mere fact that a potential applicant to the Court might be suffering from a mental illness does not preclude him from petitioning the Court. Accordingly the Court dismisses the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

44. The applicant complained that, taking into account the conditions created in the punishment cell in Grīva Prison while he was under the disciplinary penalty imposed on him on 5 September 2000, he had been subjected to inhuman treatment and torture. He furthermore alleged that there had been no effective investigation in that respect. He relied on Article 3 of the Convention, which reads as follows:

Article 3

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

45. With regard to the applicant's alleged ill-treatment in the disciplinary cell in Grīvas prison, the Government submitted that the applicant's complaint ought to be declared inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention. In that regard they referred to three alternative remedies that ought to have been exhausted – private prosecution criminal proceedings, a complaint about an administrative act, and an appeal to a hierarchically superior prosecutor.

46. The Court reiterates that, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V, and *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005). However, for the reasons of clarity, the Court will evaluate all inadmissibility grounds raised by the Government, taking into account the following criteria that have been established in its case-law.

47. At the outset, the Court notes that the purpose of the exhaustion rule contained in Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Considering the subsidiary role of the Convention machinery, Article 35 § 1 of the Convention obliges applicants to use remedies which relate to the breaches alleged and at the same time are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, Reports 1996-VI, and *Selmouni*, cited above, § 75).

48. The Court furthermore reiterates that in the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success (see *Soldatenko v. Ukraine*, no. 2440/07, § 48, 23 October 2008). However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been made use of or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement. In this regard the Court notes that it has previously held on multiple occasions that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see, for example, *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II; *Milošević v. the Netherlands* (dec.), no. 77631/01, 19 March 2002; and *Pellegriti v. Italy* (dec.), no. 77363/01, 26 May 2005).

49. On the other hand, the Court also notes that one reason that could absolve an application from the obligation to exhaust domestic remedies could consist of the national authorities' remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or to offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what they have done in response to the scale and seriousness of the matters complained of (see *Selmouni*, cited above, § 76).

50. Lastly, the Court emphasises that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. The rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV, and *Aksoy*, cited above, §§ 53 and 54).

A. Private prosecution under the Code of Criminal Procedure

51. The Government submitted that the applicant should have used a remedy provided by section 111(2) of the Code of Criminal Procedure, namely, a private prosecution with regard to his alleged ill-treatment in the punishment cell in Grīvas prison.

52. The applicant noted that such a remedy was merely illusory and in practice unavailable to a person without specialised legal education and without the financial means to secure representation by a competent lawyer. In support of his arguments he referred to the Court's judgments *Remli v. France* (23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II), and *Włoch v. Poland* (no. 27785/95, § 89, ECHR 2000-XI).

53. The Court observes that according to section 111(2) of the Code of Criminal Procedure a private prosecution could only be initiated in cases concerning – in so far as could be relevant to the present case – intentional infliction of minor bodily injuries (with or without damage to health) or torture. The Government failed to specify what actions – and by whom – ought to have been the subject of a private prosecution. The Court notes that in his application to the Court the applicant has not specifically complained about infliction of any bodily injuries. While referring to the relevant time spent in the punishment cell in Grīvas prison the applicant mentioned that he "was lying on the floor with a bleeding face" (see paragraph 30 above), however, he has failed to establish any causal link between his allegations concerning his treatment and the conditions in that cell and the "bleeding". The Court fails to see such a link and accordingly concludes that no bodily injuries were inflicted on the applicant as a result of his detention in the disciplinary cell after 5 September 2000. It follows that the only basis for a private prosecution could have been section 130(3) of the Criminal Law, which provides for a punishment in cases of systematic beating or "any other kind of torture".

54. In this regard, the Court cannot but express surprise at the fact that such a serious offence as torture at the relevant time was only prosecutable at the initiative of a victim. Be that as it may, the Court's task is to evaluate whether a private prosecution in situations such as the present one is a sufficiently accessible and effective remedy.

55. In this regard, the Government noted that a victim of a crime listed in section 130 of the Criminal Law could make representation to a court within six months of the alleged offence. The courts normally had an obligation to examine such representations within ten days of the date of its submission and to decide on whether or not to institute criminal proceedings or to forward the representation to the competent authority. In order to make a decision, a judge was entitled to request the necessary documents and experts' opinions (section 109 of the Code of Criminal Procedure). If the judge decided not to institute criminal proceedings, such a decision was amenable to appeal.

56. The Government submitted that the extensive investigative powers given to an independent judge, who had an obligation to adopt a reasoned opinion in response to requests to initiate private prosecution cases, meant that the private prosecution procedure was adequate for dealing with complaints such as the applicant's and affording redress. According to the Government, the fact that the private prosecution procedure was described in the Code of Criminal Procedure, which was published and readily available to the applicant, meant that this procedure was also accessible.

57. The Court notes that the applicant disputes that the procedure of private prosecution was accessible to someone like himself who had no legal training. In this regard it should be noted that private prosecution is conducted in the field of criminal law, in which the domestic authorities are obliged to guarantee the observance of the procedural rights of the person who is accused of committing an offence. Among other things it means that the accused person should be clearly informed of the charges against him. The Court observes that the peculiarity of private prosecution proceedings is that the charges are brought by the victim of a crime. While it is true that a judge of the first-instance court is authorised to demand documents and experts' opinions to establish the veracity of those charges, the charges themselves are to be formulated by the victim, and nothing in the Code of Criminal Procedure authorises the competent judge, a prosecutor or anyone else to amend those charges, other than in a situation when a prosecutor makes an exceptional decision to intervene in the proceedings in accordance with section 111(4) of that Code.

58. It follows that if the applicant had wished to initiate a private prosecution against C., he would have had to know certain personal data of C.'s that would allow a court to identify the accused person (personal identity code, home address or similar). Secondly, he would have to precisely identify his treatment as "any other kind of torture" mentioned in

section 130(3) of the Criminal Law and to submit a relatively complete legal analysis of the circumstances of the case to a court, which could be considered adequate and sufficiently comprehensible "charges" against C. The Court is thus inclined to add credence to the applicant's argument that he would have encountered significant difficulties in attempting to initiate criminal proceedings by way of a private prosecution while in prison without any access to legal assistance.

59. Lastly, the Court notes that the Government have not provided any examples of domestic practice showing the effectiveness of the given remedy (see a similar requirement in *Estrikh v. Latvia*, no. 73819/01, § 98, 18 January 2007). The Government's submissions remain very general stating the relevant provision in the law. No specific examples of successfully initiated private prosecution have been provided. In particular, the Government have failed to prove that a prison inmate could realistically be expected to successfully initiate a private prosecution against a member of a prison administration. It follows that the applicant could not reasonably have been expected to initiate a private prosecution against C. (see also *Sakık and Others v. Turkey*, 26 November 1997, § 53, *Reports of Judgments and Decisions* 1997-VII, and *Micallef v. Malta* [GC], no. 17056/06, § 56, ECHR 2009-...). In the light of the above, the Court considers that the Government's claim of non-exhaustion of domestic remedies for reasons of failure to initiate private prosecution should be dismissed.

B. Complaint about an administrative act

60. The Government next reminded that remedies to be exhausted did not necessarily need to be judicial for them to be considered effective. In this regard they referred to the *Akdivar and Others* judgment (cited above, § 66). Keeping that in mind, the Government noted that both the Prison Administration and the Prison Administration's Inspector General's Office of the Ministry of Justice (*Tieslietu ministrijas Ieslodzījuma vietu pārvaldes Ģenerālinspektora birojs*) were administrative authorities whose decisions with regard to prisoners were considered administrative acts. Accordingly the applicant could appeal against "the decision of the Prison [Administration]" to the above-mentioned Office, whose decision could then have been appealed against to courts of general jurisdiction.

61. The applicant did not provide any comments concerning this ground of inadmissibility.

62. At the outset the Court notes that the Government has not identified any specific decision of the Prison Administration that should have been appealed against in accordance with administrative law. It is true that at the relevant time the Rules of the Prison Administration provided that the head of the Prison Administration was authorised to quash any unlawful order or decision adopted by, among others, staff of prisons (see paragraph 38

above). Thus, had the applicant been subjected to disciplinary punishment unlawfully, it appears that the avenue suggested by the Government could have been open to him. However, the gist of the applicant's complaint before the Court does not concern the legality of the disciplinary penalty but rather the allegedly intentional aggravation of the conditions prevailing in the disciplinary cell. The Court is not persuaded, and the Government have not submitted any examples to the contrary, that at the material time such aggravation of conditions was to be considered an administrative act which would be amenable to appeal to the Prison Administration, the Inspector General and subsequently to the civil courts according to Chapter 24.A of the Code of Civil Procedure (see paragraph 39 above). The *lex specialis* in that regard appears to have been the Law on the Prosecutor's Office, which will be discussed below. Therefore the Court considers that the Government's non-exhaustion claim about the applicant's failure to use the remedies allegedly offered by administrative law should be dismissed.

C. Appeal to a hierarchically superior prosecutor

63. The Government noted that under section 6 of the Law on the Prosecutor's Office the applicant had the opportunity to appeal against the reply of a prosecutor of the Specialised Public Prosecutor's Office of 22 January 2001 (see paragraph 22 above). The Government pointed out that no such appeal was ever lodged.

64. In reply, the applicant insisted that he had "pointed out the violations of rights guaranteed by laws and by the Convention to prosecutors at all levels". He did not provide any more specific information on that alleged communication with prosecutors. The applicant further argued that an appeal against the reply of 22 January 2001 to a hierarchically superior public prosecutor would have been futile, since prosecutors had no legal authority to award monetary or equivalent compensation even if a violation of the applicant's rights were to be established. He furthermore referred to a "well-established practice" of not investigating complaints about violence in prisons and remarked that prosecutors themselves, along with other state officials, were responsible for his ill-treatment. Lastly, the applicant noted that a remedy such as a hierarchical appeal to another prosecutor was merely illusory and in practice was unavailable to a person without specialised legal training and without the financial means to secure representation by a competent lawyer.

65. Despite the applicant's assertion that he had complained to prosecutors at all levels, the Court is not in possession of any copies or summaries of such alleged complaints. Furthermore, the applicant has neither provided the dates of the alleged complaints nor has he stated to which prosecutors' offices the complaints were allegedly addressed. Lastly, none of the multiple letters from various prosecutors to the applicant

contains any indication that the applicant has appealed against the reply of 22 January 2001 or has raised complaints about the alleged events of September 2000.

66. Turning to the question of whether a hierarchical appeal to a higher-level prosecutor was a remedy that was available in theory and practice, the Court notes that the possibility of an appeal was explicitly mentioned in the reply of 22 January 2001 and also provided for in section 6(3) of the Law on the Prosecutor's Office. It was thus accessible in theory.

67. As to its availability in practice, the Court notes that the Government in their observations have merely referred to the procedures described in the domestic laws. They have not provided any examples of their functioning in practice. However it is difficult or virtually impossible to make any further analysis concerning the practical availability of a hierarchical appeal in the circumstances of the present case, where the applicant has failed to inform the Court of the contents or any other details of his alleged complaints to various prosecutors, including the complaint which was replied to on 22 January 2001.

68. It remains to be established whether the applicant's failure to appeal against the prosecutor's reply of 22 January 2001 was motivated by the existence of mere doubts on his part as to the prospects of success of a particular remedy which is not obviously futile, which, as has been indicated before (see paragraph 48 above) is not a valid reason for failing to exhaust domestic remedies. The Court considers that the applicant's reference to a "well-established practice" of not investigating complaints about violence against prisoners is not sufficiently supported by any real-life examples, from his own experience or elsewhere. With regard to the applicant's argument that his lack of legal qualifications and lack of resources to obtain legal representation constituted an impediment to appealing against the reply from 22 January 2001, the Court observes that the Law on the Prosecutor's Office does not require an appeal to be lodged in any particular form. Neither is it required to contain any legally substantiated arguments. It would have been sufficient for the applicant to merely submit to a hierarchically superior prosecutor his account of the events of September 2000 and to explain his disagreement with the reply of 22 January 2001. Furthermore, no fee is payable for lodging a hierarchical appeal. Thus, while the Court recognises that adequate legal substantiation would have given additional weight to the applicant's appeal, his purported inability to secure legal representation does not constitute an insurmountable obstacle to at least attempting to lodge a hierarchical appeal. Lastly, taking into account the fact that no hierarchical appeal was ever lodged, the applicant's argument concerning the prosecutor's purported inability to award compensation is to be considered "mere doubts". The Court is thus unable to examine properly the effectiveness of a hierarchical

appeal in the absence of any attempt on the part of the applicant to avail himself of this remedy.

69. It follows that the applicant has not pursued the remedy of hierarchical appeal merely because of having doubts as to the prospects of its success. Accordingly the Court concludes that the applicant has not exhausted domestic remedies as required by Article 35 § 1 of the Convention and declares the complaint under Article 3 pertaining to the conditions in the disciplinary cell in Grīvas prison inadmissible in accordance with Article 35 § 4 of the Convention.

70. Taking into account that conclusion, the Court does not consider it necessary to decide whether the investigation into the applicant's allegations was effective, since from the documents submitted by the parties it is impossible to determine whether the applicant raised an arguable claim that he had been ill-treated in his complaint that gave rise to the prosecutor's reply of 22 January 2001. Therefore it is not possible to conclude that the Government had a procedural obligation under Article 3 of the Convention to investigate the applicant's allegations (see *Kuralić v. Croatia*, no. 50700/07, § 36, 15 October 2009).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. The applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated by the police during his detention in 1995, and that the domestic authorities had refused to investigate his grievances in that regard. He also complained, without invoking any particular provision of the Convention, about the fairness and outcome of the first set of criminal proceedings against him, which were terminated by a decision of the Senate of the Supreme Court, adopted on 30 May 1996. The Court observes that the events underlying those complaints occurred during the period prior to 27 June 1997, which is the date of entry into force of the Convention with respect to Latvia. Accordingly the Court finds that this part of the application is incompatible *ratione temporis* with the Court's jurisdiction (see *Blečić v. Croatia* [GC], no. 59532/00, § 81, ECHR 2006-III). The same conclusion applies to the applicant's complaint, formulated under Article 5 § 1 of the Convention, about the allegedly unlawful character of his detention subsequent to the adoption of the Saldus District Court's judgment of 26 October 1995.

72. The applicant complained under Article 3 of the Convention about the degrading effect of the allegedly arbitrarily imposed disciplinary penalties in Jelgavas, Grīvas and Daugavpils prisons. The Court observes that even though it seems that the applicant has on occasion challenged the legal and factual basis of the individual penalties (see, for example, paragraphs 13 and 17 above) and his complaint in that regard has been dealt with, albeit summarily, by the Daugavpils Court on 8 February 2001 (see

above, paragraph 32), it appears that the first time he raised a complaint about their degrading effect was in his application to the Court. The applicant having failed to show that he has tried to approach national authorities with any comparable complaint, the Court cannot speculate as to the existence or lack of national remedies. Accordingly it declares the applicant's complaint about the allegedly degrading effect of the disciplinary penalties inadmissible for non-exhaustion of domestic remedies.

73. The applicant complained under Article 13 of the Convention that the Prosecutor General had refused his requests for a supervisory review of his conviction in the first set of criminal proceedings. The Court reiterates that no provision of the Convention guarantees the right to the reopening of proceedings which have been closed by a final judgement (see *Mumladze v. Georgia*, no. 30097/03, § 35, 8 January 2008, and the jurisprudence cited therein). It follows that the applicant's complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

74. In respect of the second set of criminal proceedings against him, the applicant complained under Article 6 § 1 that his right to have a "hearing within a reasonable time" had not been respected. The period to be taken into consideration did not begin in May of 1995, when the charges were brought, but only on 27 June 1997, when the Convention came into force in respect of Latvia. However, the stage of proceedings reached on that date is to be taken into account (see, for example, *Kikots and Kikota v. Latvia* (dec.), no. 54715/00, 6 June 2002). The second criminal proceedings against the applicant lasted for approximately three years and three months, of which nine months and twenty days occurred after 27 June 1997. Taking that into account, the Court does not consider that such a length of proceedings is unacceptable within the meaning of Article 6 § 1. Accordingly the applicant's complaint is manifestly ill-founded within the meaning of Article 35 § 3 and it is thus declared inadmissible pursuant to Article 35 § 4 of the Convention.

75. The applicant invoked Article 6 § 3 (c) and complained about the quality of the services rendered to him by his defence counsel in the context of the second criminal proceedings. The Court observes that the applicant has failed to explain in any detail his dissatisfaction with the work of his counsel. In any case, the Court notes that the applicant did not invoke this alleged violation of his defence rights in his submissions to the domestic courts. Accordingly the Court declares this complaint inadmissible in accordance with Article 35 § 4 of the Convention because of non-exhaustion of domestic remedies within the meaning of Article 35 § 1.

76. In the context of the second criminal proceedings the applicant also referred to Article 2 of Protocol No. 7 and complained in substance that the Senate of the Supreme Court's refusal of leave to appeal on points of law

had infringed his right to appeal against his conviction. The Court observes that the criminal case against the applicant was reviewed by courts at two levels of jurisdiction, and his appeal to a third level was rejected because it sought to dispute facts and evaluation of evidence rather than points of law. Taking into account the principles set forth in *Krombach v. France* (no. 29731/96, § 96, ECHR 2001-II), the Court considers this complaint manifestly ill-founded within the meaning of Article 35 § 3 and accordingly declares it inadmissible pursuant to Article 35 § 4 of the Convention.

77. By a reference to Article 6 the applicant complained about the allegedly arbitrary nature of the decisions of the administrative commission of Grīvas prison and Daugavpils Court, under which on two occasions he was transferred to a more severe prison regime. It does not appear from the materials in the case file that the decision-making procedure had been in any way arbitrary. Instead the Court considers that the applicant is dissatisfied with the outcome of the proceedings. In that regard, the Court notes that it is not its task to review alleged errors of fact and law committed by the domestic judicial authorities and that, as a general rule, it is for the national courts to assess the evidence before them and to apply domestic law. The Court's task is to ascertain whether the proceedings as a whole were fair (see, *inter alia*, *Bernard v. France*, judgment of 23 April 1998, no. 22885/93, § 37, ECHR 1998-II). In the present case, the Court does not see any reason to believe that the proceedings as a whole were conducted unfairly. Accordingly the applicant's complaint is manifestly ill-founded and inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

78. Lastly, the applicant invoked Article 14 of the Convention and alleged that he had been discriminated against on the basis of his social origin and financial situation. In this regard, the Court reiterates that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols (see *Kafkaris v. Cyprus* [GC], no. 21906/04, § 159, ECHR 2008-...). In the present case the applicant has not invoked that article in combination with any other substantive provision. It follows that his complaint is manifestly ill-founded and inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

79. The applicant further complained that he was hindered in the effective exercise of his right to make an application to the Convention organs. In this respect he noted that his letters of 8 October 1998 and 2 June 2000 had not been sent to Strasbourg. He relied on Article 34 of the Convention. Referring to the same article, he alleged that he lacked the means to buy envelopes and stamps to send correspondence to the Court. Finally, he alleged that he could not obtain copies of certain documents

necessary to support his application. Article 34 of the Convention reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

80. The Government contested that argument. They firstly submitted that the applicant had failed to exhaust domestic remedies. The Government noted that the applicant ought to have lodged complaints with a prosecutor's office or with the Prison Administration. In this regard, the Court observes that a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Ponushkov v. Russia*, no. 30209/04, § 78, 6 November 2008). The Government's objection as to non-exhaustion of domestic remedies is therefore misconceived.

81. As to the merits of the applicant's complaint, the Government argued that the applicant's letter of 2 June 2000 had in fact been sent to the addressee. In this regard the Government referred to the 11 September 2000 letter of a prosecutor of the Specialised Public Prosecutor's Office (see paragraph 16 above). They further argued that in general there were no reasons to suspect the administrations of Grīvas and Daugavpils prisons of interfering with the applicant's communications with the Court, since nine other letters sent by the applicant from those prisons had been received by the Court without any problems or improper delays.

82. The applicant indicated that it had not been disputed that his letter of 8 October 1998 had not been sent to the Commission but instead had been forwarded to the Office of the Prosecutor General. He further affirmed his belief that his letter of 2 June 2000 had intentionally not been despatched to the Court.

83. The Court reiterates that it has previously held that the failure to provide a prisoner with resources required for carrying out correspondence with the Court may contribute to a finding of the respondent State's failure to comply with its obligations under Article 34 of the Convention (see, for example, *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003). However, in the present case the Court considers that the applicant has failed to sufficiently make out his complaints about the alleged lack of resources for communication with the Court as well as about the alleged refusal of the national authorities to provide copies of documents necessary to support his application. However, the Court considers that it is not necessary to make any definitive ruling concerning this particular aspect of the applicant's complaint, given that the respondent Government has in any case violated the guarantees of Article 34 for the reasons given below.

84. Turning to the applicant's allegations that his letters were not despatched to the Court, the Court considers that the Government have failed to provide any plausible explanation as to why the applicant's letter of 8 October 1998 was forwarded to the Office of the Prosecutor General instead of being dispatched to the Court. Furthermore, the Court notes that the CPT has identified significant shortcomings in the way Latvian prisons, at the relevant time and also subsequently, treated prisoners' complaints to national authorities (see paragraph 40 above). The Government have not identified any guarantees in domestic law or practice which would mandate any different treatment of prisoners' correspondence with the Court. In such circumstances the Court accepts the applicant's version of the events as true.

85. Failure to despatch a letter addressed to the Court by itself constitutes an example of hindrance with effective exercise of the right to petition the Court (see, for example, *Kornakovs v. Latvia*, no. 61005/00, § 166, 15 June 2006, or *Poleshchuk v. Russia*, no. 60776/00, § 28, 7 October 2004). Taking that into account, the Court considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention. In view of the foregoing, the Court does not consider it necessary to determine the destiny of the applicant's letter of 2 June 2000, which never reached its addressee in Strasbourg.

86. As regards the fact that the Government was unable to furnish to the Court the documents that were requested from it (see above, paragraph 4), the Court reiterates that it has interpreted Article 34 of the Convention in conjunction with Article 38 § 1 (a) in the version in force prior to the entry into force of Protocol 14 to the Convention (essentially the same language is now contained in Article 38 of the Convention) in such a way that the Contracting States are required to furnish all necessary facilities to the Court to enable it to examine applications before it (see generally *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 253-254, ECHR 2004-III). The Court emphasises that in certain situations the destruction of documents pertinent to a case pending in Strasbourg could not only give rise to the drawing of inferences as to the well-foundedness of applicants' allegations but also could be seen as the respondent State's failure to comply with its obligations under Article 38 of the Convention. The fact that the documents were destroyed very soon after the application was communicated to the Government raises serious concerns. However, in view of the finding of a violation of Article 34, the Court does not consider it necessary to rule further on this question in the present case.

87. In conclusion, the Court holds that the Latvian authorities have violated the guarantees of Article 34 by failing to despatch the applicant's letter of 8 October 1998 to its intended recipient, the Commission.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

88. 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. Pecuniary damage

89. The applicant claimed 11,000 Latvian lati (approximately 15,652 euros (EUR)) in respect of pecuniary damage caused by loss of earnings during his imprisonment and afterwards.

90. The Government argued that the applicant's imprisonment had been lawful and that he had furthermore failed to substantiate his claim that the alleged breaches of the Convention were somehow related to his inability to gain income after his release from prison.

91. The Court does not discern any causal link between the violation of Article 34 found and the pecuniary damage alleged; it therefore rejects the claim under this head.

B. Non-pecuniary damage

92. The applicant claimed that he had suffered non-pecuniary damage. He indicated that his rights had been violated as a result of intentional and deliberate actions on the part of the Latvian authorities, as a result of which he felt constant fear, depression and hopelessness. The applicant indicated that it was impossible to place a monetary value on his suffering and therefore left the precise sum to be awarded to the Court's discretion.

93. The Government argued that a finding of a violation of the applicant's Convention rights would constitute adequate compensation. For support of this statement, they referred to the Court's conclusion in the case of *Lavents v. Latvia* (no. 58442/00, 28 November 2002). As an alternative, the Government submitted that in any case the compensation for non-pecuniary damage should not exceed EUR 5,000.

94. The Court considers that the circumstances that have led it to find a violation of Article 34 must have caused certain distress to the applicant. Therefore, ruling on an equitable basis, it awards the applicant EUR 1,000 in respect of non-pecuniary damage.

C. Costs and expenses

95. The applicant also claimed LVL 20,000 (approximately EUR 28,490) for the legal costs and "at least" LVL 100 (approximately EUR 142) for postal expenses incurred before the domestic authorities and the Court. He further claimed LVL 39 (approximately 56 EUR) for translation expenses incurred when obtaining a translation of a letter of the Court containing the statement of facts of the case and questions to the parties prepared by the Court's Registry. In support of his claims, the applicant submitted copies of receipts for postal expenses, from which it appears that he spent LVL 5.25 on letters sent to the Court and LVL 1.60 – to a "petition committee of the European Parliament". He furthermore submitted receipts attesting to the payment of LVL 39 for translation expenses.

96. The Government first noted that according to Rule 60 § 2 of the Rules of Court the applicant had to submit itemised particulars of all his claims under Article 41 of the Convention. They further noted that costs and expenses had to be actually and necessarily incurred and reasonable as to quantum. The Government thus noted that the applicant's legal costs had not been actually incurred, since he had been representing himself. With regard to the postal expenses, the Government submitted that the applicant had only provided receipts justifying expenses for correspondence with the Court in the amount of LVL 4.45. Lastly, the Government disputed the applicant's allegation that the translation expenses had been necessarily incurred, since what had been translated was the Court's letter that had been primarily addressed to the Government and had contained questions that the Government had been requested to answer.

97. 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 considers it reasonable to award the sum of EUR 64 plus any tax that may be chargeable to the applicant for postal and translation expenses.

D. Default interest

98. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 34 of the Convention with regard to the failure to despatch the applicant's letter of 8 October 1998 to the Commission;

2. *Declares* the remainder of the application inadmissible;

3. *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,
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Latvian lati at the rate applicable on the date of settlement;
      (ii) EUR 64 (sixty-four euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into Latvian lati at the rate applicable on 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President