FOURTH SECTION

DECISION

Application no. 38494/05
Haralds IGNATS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 24 September 2013 as a Chamber composed of:

David Thór Björgvinsson, President,

 Ineta Ziemele,

 Päivi Hirvelä,

 George Nicolaou,

 Zdravka Kalaydjieva,

 Vincent A. De Gaetano,

 Krzysztof Wojtyczek, *judges*,
and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 12 October 2005,

Having regard to the decision of 15 February 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1.   The applicant, Mr Haralds Ignats, is a Latvian national who was born in 1982 and is currently being detained in a prison in Olaine. He had been granted legal aid and was represented before the Court by Ms D. Rone, a lawyer practising in Riga.

2.  The Latvian Government (“the Government”) were represented by their Agent at the time, Mrs I. Reine.

A.  The circumstances of the case

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

1.  Criminal proceedings against the applicant

4.  On 13 January 2004 the applicant was arrested.

5.  On 25 May 2004 the Riga City Latgale District Court (*Rīgas pilsētas Latgales priekšpilsētas tiesa*) convicted the applicant of twelve episodes of credit card fraud under section 193(4) (repeated unlawful utilisation) and section 177(2) (repeated fraud in a group of persons) of the Criminal Law and sentenced him to five years’ imprisonment.

6.  On 31 May 2005 the Riga Regional Court (*Rīgas apgabaltiesa*) quashed the sentence imposed by the city court and sentenced the applicant to three years’ imprisonment.

7.  In a preparatory meeting on 18 July 2005 the Criminal Cases Division of the Senate of the Supreme Court (*Augstākās tiesas Senāta Krimināllietu departments*) rejected the applicant’s appeal on points of law.

8.  The applicant was released on 12 January 2007, having served his sentence.

9.  On 9 September 2008 the applicant was arrested in the context of another set of criminal proceedings.

2.  Conditions of detention

10.  It appears that from 21 January 2004 to 4 August 2005 the applicant was held in various cells at Central Prison.

(a)  The applicant’s detention

11.  From 21 to 22 January 2004 the applicant was detained in cell no. 30.

12.  From 22 to 28 January 2004 – cell no. 36.

13.  From 28 to 29 January 2004 – cell no. 30.

14.  From 29 January to 5 February 2004 – cell no. 430.

15.  From 5 February to 8 June 2004 – cell no. 269.

16.  From 8 June to 30 September 2004 – cell no. 420.

17. From 30 September to 4 October 2004 – cell no. 32.

18.  From 4 October to 21 October 2004 – cell no. 38.

19.  From 21 to 22 October 2004 – cell no. 32.

20.  From 22 October to 27 November 2004 – no information.

21.  From 27 to 30 November 2004 – cell no. 31.

22.  From 30 November to 20 December – no information.

23.  From 20 to 22 December 2004 – cell no. 30.

24.  From 22 to 23 December 2004 – cell no. 451.

25.  From 23 to 27 December 2004 – cell no. 32.

26.  From 27 December 2004 to 5 January 2005 – cell no. 211.

27.  From 5 to 6 January 2005 – no information.

28.  From 6 to 10 January 2005 – cell no. 32.

29.  From 10 to 12 January 2005 – cell no. 89.

30.  From 12 to 19 January 2005 – no information.

31.  From 19 to 21 January 2005 – cell no. 30.

32.  From 21 January to 13 February 2005 – cell no. 525.

33.  From 13 to 16 February 2005 – no information.

34.  From 16 February to 23 May 2005 – cell no. 209.

35.  From 23 May to 4 August 2005 – no information.

(b)  Conditions in various cells

(i)  Cells nos. 30, 31 and 32

36.  These cells were located in block no. 1 of the prison. They served as “quarantine cells” where detainees were placed for short periods of time.

37.  The applicant submitted that cell no. 30 had measured some 24 sq. m. The cell window had been covered with a metal plate. The cell had been very cold; the only shield against the wind had been the metal plate over the window. The applicant had not been provided with a mattress, blanket, pillow or towel; he had covered himself with a newspaper. The cell had been equipped with one daylight lamp. The cell had a malfunctioning toilet, which had been clogged and stank unbearably. There had been a sink with ice-cold running water. There had been no crockery and the applicant had had to take the ice-cold water with his hands. The cell had been dirty, with dust and litter. In the period from 20 to 22 December 2004 the cell had been even colder than before and the windows had then been covered with bricks.

38.  The Government submitted inventory plans showing that cell no. 30 had measured 35.1 sq. m.

39.  As concerns cell no. 31, the applicant submitted that conditions had been similar to those in cells nos. 30 and 32. There had been no windows. The cell had been cleaner than other quarantine cells but less well-lit.

40.  The Government submitted inventory plans showing that cell no. 31 had measured 33.3 sq. m.

41.  As concerns cell no. 32, the applicant alleged that the cell had been dirty, the toilet clogged and the windows covered with bricks, leaving only a small gap for air. The applicant had had to share the cell with sixteen other detainees. The cell had not been properly lit. It had been designed to accommodate fourteen detainees.

42.  The Government submitted inventory plans showing that cell no. 32 had measured 35.3 sq. m.

(ii)  Cell no. 36

43.  This cell was located in block no. 1 of the prison.

44.  According to the applicant, the cell had measured some 24 sq. m, including an area of around 2 sq. m for a toilet and a sink, and another area for a table and beds. At the time of his transfer, there were already seven other detainees in the cell. A few days later, one more detainee had been placed in it, making a total of nine detainees. The personal space afforded to each detainee had been about 1 sq. m. The cell had been very cold, so the applicant had had to sleep wearing two sweaters. Tea and food had instantly become cold.

45.  The Government submitted inventory plans showing that this cell had measured 30 sq. m.

(iii)  Cell no. 38

46.  This cell was located in block no. 1 of the prison.

47.  According to the applicant, the cell had measured some 24 sq. m and held ten detainees. It had been very cold and damp.

48.  The Government submitted inventory plans showing that the cell had measured 31.4 sq. m.

(iv)  Cell no. 89

49.  This cell was located in block no. 1 of the prison.

50.  According to the applicant, the cell had held six detainees, who had no more than 1 sq. m of personal space each. The cell had been equipped with a table, beds, two chairs, a toilet, a sink and a shower. It had been damp as a result of poor ventilation, and there had been no natural light. The applicant had fallen ill while staying in this cell.

51.  The Government submitted inventory plans showing that the cell had measured 16.8 sq. m.

(v)  Cell no. 209

52.  This cell was located in block no. 2 of the prison.

53.  According to the applicant, the conditions had been similar to those in cell no. 211 (see below). There had been a window, but not enough natural light because of the shadow of another building. The ventilation system had not functioned properly and there had not been enough fresh air. The applicant had not had more than 0.65 sq. m of personal space.

54.  The Government submitted inventory plans showing that the cell had measured 7.3 sq. m.

(vi)  Cell no. 211

55.  This cell was located in block no. 2 of the prison.

56.  According to the applicant, the cell had held two people, who had had 0.65 sq. m of personal space each.

57.  The Government submitted inventory plans showing that this cell had measured 7.4 sq. m.

(vii)  Cell no. 269

58.  This cell was located in block no. 2 of the prison.

59.  According to the applicant, the conditions of detention had been similar to those in cell no. 430 (see below). The only difference was that there had been one more square metre of personal space and the window had not been covered with a metal grill, but could be opened.

60.  The Government submitted inventory plans showing that this cell had measured 8.4 sq. m.

(viii)  Cell no. 420

61.  This cell was located in block no. 4 of the prison.

62.  According to the applicant, the cell had measured some 33 sq. m. for fourteen detainees, including areas of around 7.5 sq. m for a table, 1.70 sq. m for a toilet and a sink, and 5.50 sq. m for beds. The personal space for each of the detainees had accordingly been around 2 sq. m. The toilet had not been partitioned.

63.  The Government submitted inventory plans showing that this cell had measured 38.7 sq. m.

(ix)  Cell no. 430

64.  This cell was located in block no. 4 of the prison.

65.  According to the applicant, the cell had measured some 4.5 sq. m for two detainees, including approximately 1.50 sq. m for a toilet and 0.80 sq. m for a bed, and 0.90 sq. m for a table and a chair. Thus the personal space for each of them had been 0.65 sq. m. The window had been covered with a metal grill and could not be opened more than a few centimetres. The toilet had not been partitioned.

66.  The Government submitted inventory plans showing that the cell had measured 7.5 sq. m.

(x)  Cell no. 451

67.  This cell was located in block no. 4 of the prison.

68.  According to the applicant, the cell had held two people. The conditions of detention had been the same as in cell no. 430 (see above).

69.  The Government submitted inventory plans showing that the cell had measured 7.5 sq. m.

(xi)  Cell no. 525

70.  This cell was located in block no. 5 of the prison.

71.  According to the applicant, the cell had held eleven detainees and had measured some 20 sq. m, leaving not more than 1 sq. m of personal space for each of them. The cell had been damp, cold and draughty. On some days the radiators had given off no heat. Despite one daylight lamp, the cell had been quite dark. It had been equipped with an old table. The toilet had not been partitioned.

72.  The Government did not submit inventory plans for this cell because block no. 5 had been closed on an unknown date.

3.  Review of the applicant’s complaints

(a)  National Human Rights Office

73.  The Government submitted information attesting that on 12 April 2006 the National Human Rights Office (*Valsts Cilvēktiesību Birojs,* “the VCB”) had replied to numerous letters from the applicant in which he complained about the conditions of detention in Central Prison and Brasa Prison. The VCB had visited Brasa Prison in that regard, but there is no indication that they visited Central Prison.

(b)  Administrative proceedings

74.  On 21 April 2006 the applicant lodged an application with the Administrative District Court (*Administratīvā rajona tiesa*). He complained that on several occasions in January 2004 he had been held in a cell with no windows or heating system and he had not been provided with a mattress, blanket or pillow, so his hands and feet had been numb with cold. He had also been cold during the daily outdoor exercise. When he had asked to come in from the freezing cold, his request had been refused. The applicant complained that forcing him to stay outside in the cold had constituted an unlawful “action of a public authority” (*faktiskā rīcība*). He further complained of an unlawful “action of a public authority” in respect of an alleged lack of medical assistance in Brasa Prison in 2005. He requested compensation in the amount of 4,000 lati (LVL) (approximately 5,698 euros (EUR)).

75.  On 24 April 2006 the Administrative District Court refused the application, holding as follows: “[T]he applicant in essence is disappointed with the daily walks organised in Central Prison, [he] specifies that during these walks the weather conditions are inappropriate and their length is unsuitable”. The judge then went on to dismiss the complaint on the grounds that it was not subject to examination by the administrative courts. The applicant appealed against that decision, pointing out that his complaint did not concern walks in prison but rather medical assistance in Brasa Prison.

76.  On 21 June 2006 the Administrative Regional Court (*Administratīvā apgabaltiesa*) quashed the lower court’s decision on procedural grounds.

77.  On 31 August 2006 the Administrative District Court accepted the applicant’s application and commenced the administrative proceedings (no. A42483406).

78.  On 2 July 2007, after having been released from prison, the applicant wrote to the Administrative District Court with a view to withdrawing his application, as he no longer wished to pursue his complaints against the State. Subsequently, on 8 August 2007 the administrative proceedings were terminated. That decision was subject to appeal, but the applicant did not lodge an appeal against it.

79.  According to the information provided to the Government by the Administrative District Court, since 2005 the applicant had instituted some 300 sets of proceedings before that court, which were at various stages of procedure. They were able to identify at least seven sets of proceedings concerning conditions of detention in Central Prison. In three of those (nos. A42483406, A420817910 and A8011711) the applicant had withdrawn his complaints. Other cases concerned an alleged refusal to accept the applicant’s clothes in the laundry (no. A7014009), an alleged lack of access to hot water at night in his cell (no. A420546810), and an alleged lack of personal space (no. A420491511).

4.  The applicant’s correspondence

(a)  Monitoring of correspondence

80.  On 4 August 2005 the applicant was transferred to Brasa Prison. He was held there until 25 April 2006.

81.  On numerous occasions the domestic courts and the prosecuting authorities sent the applicant letters, documents and case materials in connection with various civil and criminal proceedings. The correspondence was addressed to the prison governor, who was asked to “hand it over to the applicant”. The applicant specified in detail the correspondence that he had received in such a manner in Central Prison and Brasa Prison (see the admissibility decision in the present case: *Ignats v. Latvia* (dec.), no. 38494/05, §§ 48-55, 15 February 2011.

82.  On 22 December 2005 the VCB examined the applicant’s complaint that the prosecution authorities and the courts had often addressed their letters not to the applicant himself but instead to the prison governor. In reply they noted that correspondence between a detainee and the prosecution authorities and the courts should not be monitored. The prosecution authorities and the courts should have addressed their letters directly to the applicant himself and not to the prison administration. The VCB undertook to inform the competent authorities with a view to harmonising the approach taken by the domestic authorities when addressing letters to detainees.

83.  On 10 January 2006 the Office of the Prosecutor General issued common guidelines to all senior prosecutors advising them, in view of the VCB’s request, that “the established practice in relation to correspondence with convicts should be reviewed and measures should be taken to ensure that replies to convicts are addressed to them personally and not to the administration of the relevant prison”. A similar procedure was also to be applied in respect of detainees’ complaints.

84.  On 28 February 2006 the head of the Criminal Cases Division of the Senate of the Supreme Court issued guidelines to all domestic courts, in view of the VCB’s request. He wrote as follows: “in order to establish a common approach in implementing [the relevant legal provisions on correspondence], from now on replies to applications and complaints from [convicted persons and detainees] should be addressed to them personally. The administration may be informed about [the fact of] correspondence. This is not prohibited by law”.

85.  According to the applicant, he continued to receive correspondence from the domestic courts and the prosecution authorities through the prison governor of Brasa Prison (see *Ignats* (dec.), cited above, § 57).

86.  On 25 April 2006 the applicant was transferred to Valmiera Prison.

87.  According to the applicant, he continued to receive correspondence through the prison governor of Valmiera Prison (see *Ignats* (dec.), cited above, §§ 58 and 59).

88.  On 12 January 2007 the applicant was released from Valmiera Prison.

(b)  Administrative proceedings

89.  On 13 March 2006 the applicant lodged an application with the Administrative District Court complaining that the prosecutor’s office had not addressed its letter of 10 September 2005 to him personally but rather to the governor of Brasa Prison, who had been asked to “hand it over to the applicant”.

90.  On 16 March 2006 the complaint was dismissed for not falling within the competence of the administrative courts. On 1 June 2006, following an ancillary complaint lodged by the applicant, the Administrative Regional Court upheld that decision. Lastly, on 8 August 2006 the Administrative Cases Division of the Senate of the Supreme Court set aside those decisions, on the grounds that the applicant’s complaint did not concern criminal proceedings, as had been wrongly decided by the lower courts.

91.  On 18 August 2006 another judge of the Administrative District Court examined the application, partly exempted the applicant from the payment of State duty, and requested that he pay LVL 1 and submit additional documents. The applicant did not appeal against that decision.

92.  On 28 August and 25 September 2006 the judge allowed the application, commenced the administrative proceedings and invited the prosecutor’s office to submit written observations on two of the complaints: the addressing of the applicant’s letter to the governor of Brasa Prison; and the refusal by the same prosecutor’s office to examine the applicant’s complaints of 2 and 25 November 2005 on their merits.

93.  On 26 September 2006 the judge decided to examine the case following a written procedure. The applicant attempted to lodge a complaint against that decision, but he appears not to have complied with the legal requirements.

94.  On 24 July 2008 the administrative proceedings were terminated on unspecified grounds. It appears that the applicant did not contest that decision, which took effect on 5 August 2008.

B.  Relevant domestic law and practice

1.  In relation to detention conditions and administrative procedure

95.  Regulation no. 211 (2003) of the Cabinet of Ministers, in force at the material time and effective until 1 April 2006, laid down the standards governing detention conditions in remand wings of prisons. Under paragraph 27 of that regulation a detainee had the right to lodge applications, complaints and suggestions with State, municipal and international institutions.

96.  Regulation no. 395 (2003) of the Cabinet of Ministers, in force at the material time and effective until 5 November 2005, provided that the head of the Prisons Administration had to decide on “administrative acts” issued by its subordinated institutions or “actions of a public authority” taken by its subordinated officials, which had been challenged by private individuals, unless otherwise prescribed by law (paragraph 8). Furthermore, the Inspector General of the Ministry of Justice (*Tieslietu ministrijas Ieslodzījumu vietu pārvaldes ģenerālinspektors*) had to decide on “administrative acts” issued by or “actions of a public authority” taken by the head of the Prisons Administration, which had been challenged by private individuals, unless otherwise prescribed by law (paragraph 9).

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

2.  Correspondence procedure

98.  The procedure for monitoring detainees’ correspondence between 1 May 2003 and 1 April 2006 was set out in Regulation no. 211 (2003) of the Cabinet of Ministers entitled “The rules of internal order in investigative prisons” (“*Izmeklēšanas cietuma iekšējās kārtības noteikumi”*). Under paragraphs 28 and 30, the monitoring of correspondence between detainees and human rights organisations, the prosecutor’s office, the courts and counsel was prohibited. The transitional provisions of the Criminal Procedure Law, effective since 1 October 2005, specified that Regulation no. 211 (2003) would remain effective until new legislation on detention procedure was enacted, but not beyond 1 April 2006.

99.  The procedure for monitoring detainees’ correspondence from 20 April to 18 July 2006 was prescribed by the Detention Procedure Law, adopted by the Cabinet of Ministers under Article 81 of the Constitution (the procedure under that Article was abrogated on 31 May 2007). Under section 23(2) of that law, the monitoring of correspondence between detainees and domestic and international human rights organisations, the competent parliamentary committee, the prosecutor’s office, the courts, the competent investigative authority and counsel was prohibited.

100. The Detention Procedure Law was passed by Parliament on 18 July 2006 and has been in effect since then. The relevant provision concerning the ban on monitoring detainees’ correspondence is contained in section 15(2) of that law; the scope of the provision remains the same as that in the former section 23(2).

101.  The monitoring of convicts’ correspondence is governed by the Sentence Enforcement Code (*Sodu izpildes kodekss*). The relevant provision is contained in Article 50 § 2, which also prohibits the monitoring of correspondence, *inter alia,* with the courts and the prosecutor’s office.

COMPLAINTS

102.  In his first letter, sent to the Court on 12 October 2005, the applicant complained that conditions of detention in Central Prison had been contrary to Article 3 of the Convention. In particular, he complained about the conditions in cells nos. 30, 430, 451, 211, 89, 525, 31, 32, and 209. On 4 November 2005 the applicant submitted a completed application form and further substantiated this complaint. He also introduced a new complaint about the conditions of detention in cells nos. 36, 269, 420 and 38 in Central Prison (see *Ignats*,cited above, §§ 91, 94, 97 and 98).

103.  The applicant also complained that letters from the domestic courts and the prosecutor’s office had been addressed not to him personally but rather to the prison administrations in Central Prison, Brasa Prison and Valmiera Prison (see *Ignats*, cited above, §§ 100, 101, 104, 108 and 111). Thus the prison administrations had been able to monitor his correspondence.

THE LAW

A.  In relation to Article 3 of the Convention

104.  The applicant complained about the conditions of detention in Central Prison. He relied on Article 3 of the Convention, which reads as follows:

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

105.  The Government disputed the admissibility of this complaint as the applicant had failed to exhaust domestic remedies. They noted that the applicant’s fears of reprisals had been unfounded. He had not only approached the Prisons Administration with various complaints (29 complaints in 2005, 10 in 2008, and 289 in 2009-11), but had also lodged some 300 complaints with the administrative courts since 2005; at least seven of them concerned the detention conditions in Central Prison. The Government noted, in particular, that the applicant had instituted administrative proceedings in 2006, complaining of the detention conditions in cell no. 30 of Central Prison. One year later, however, he had revoked that complaint. The Government pointed out that he had done so after his release from prison.

106.  The Government insisted that the administrative procedure was a legal and practical domestic remedy available to detainees wishing to complain about the conditions of their detention. Having exhausted the extrajudicial appeals procedure (recourse to the administration of Central Prison, the head of the Prisons Administration and the Inspector General of the Ministry of Justice), the applicant could have applied to the administrative courts under the Administrative Procedure Law. In this connection, the Government referred to the information provided by the Supreme Court of Latvia for the purposes of another case pending at that time before the Court, noting that in 2007 the Administrative District Court had examined on the merits some ten cases about the actions of public authorities in prisons (see, for the same argument, the Government’s submissions in *Savičs v. Latvia*, no. 17892/03, §§ 88-89, 27 November 2012). In particular, the Government mentioned one specific example of a case (no. A42510707) concerning the conditions in the temporary detention facility in Ventspils during various periods between 17 September 2004 and April 2005 (see, for the same reference to domestic case-law, the Government’s submissions in *Timofejevi v. Latvia*, no. 45393/04, § 69, 11 December 2012).

107.  The applicant disagreed. He considered that he had done everything possible to inform State institutions and the courts about the humiliating conditions in the prisons, yet he had received only formalistic replies. Furthermore, the domestic remedies were not effective in his case because they were too specific and narrow in scope. In this regard, he referred to the regulations issued by the Cabinet of Ministers. The applicant considered that in view of the uniformity of prison conditions from one detention institution to another, he could not be reasonably expected to submit objections to each and every institution. He considered that his detention in humiliating conditions was a continuous situation. Moreover, the administrative courts had long “queues” of cases before them. He argued that it was not reasonable to require him to lodge a new application with the administrative courts for each and every repeated breach of his rights.

108.  While the Court has found that recourse to the administrative courts was not a remedy accessible in practice to detainees, at least before 15 June 2006 (see *Melnītis*, cited above, §§ 46-53, 28 February 2012; *Katajevs* *v. Latvia* (dec.), no. 1710/06, § 19, 11 September 2012; and *Timofejevi*, cited above, §§ 71-73), it cannot do so in the present case for the following reasons.

109.  The Court observes that the applicant approached the administrative courts with a claim that related at least in part to the conditions of detention in Central Prison. It cannot therefore be said that the administrative courts were not accessible to him. Although initially his claim was not accepted, eventually it was allowed and the administrative proceedings were commenced (contrast with the above-cited *Savičs* case). About one year later, in 2007, the applicant withdrew his complaint and the proceedings were terminated. The applicant has not provided any reasons for his actions to the Court. His allegation that he was afraid of reprisals was rebutted by the Government – by the time he withdrew his complaints, he had been released from prison for nearly six months.

110.  The Court recalls its conclusions in *Melnītis* and, in particular, that it was “highly unclear if the administrative courts at the time of lodging of the present application and in any event at least until 15 June 2006 examined detainees’ complaints about the conditions of their detention” and that “the Government have not discharged the onus on them to convince the Court that an application to the administrative courts to complain about conditions of detention was a remedy accessible in practice to detainees such as the applicant” (see *Melnītis*, cited above, §§ 52 and 53). By contrast, the Court observes that since its judgment in *Melnītis*, it has received more examples in which the administrative courts have dealt with such complaints (see also, in relation to improved clarity of the applicable legislation as of 23 December 2008 and the subsequent practice of administrative courts, *Savičs*, cited above, §§ 111-12). To cite a further example, the Court refers to the Government’s submissions in *Timofejevi* and their specific reference to domestic case-law (case no. A42583206). Although at the time of the adoption of the *Timofejevi* judgment the domestic proceedings in that case had not yet been terminated, they were concluded soon thereafter on 13 December 2012. In that case, the administrative courts examined the administrative-law concept of “an action of a public authority”, scrutinized the conditions of detention in a detention facility from 27 July 2005 to 4 August 2006, which period partly coincides with the present applicant’s detention, and awarded compensation amounting to LVL 8,000 (approximately EUR 11,000).

111.  The Court cannot examine the applicant’s argument in relation to the length of the administrative proceedings and whether or not it has any impact on the effectiveness of this remedy in the present case. The applicant lodged claims with the administrative courts on 21 April and 31 August 2006, they were accepted and the proceedings were commenced. The period of four months in this connection cannot be considered unreasonable. The Court is precluded from pronouncing on the overall length of the proceedings, since the applicant himself withdrew his complaint and the proceedings, having lasted for about one year and two months, were terminated. The applicant does not claim that he pursued the administrative proceedings as a preventive remedy (see, for two types of relief for Article 3 complaints, *Melnītis*, cited above, § 47). Given that the present applicant was held in Central Prison until 4 August 2005 and instituted the administrative proceedings only on 21 April 2006, the Court considers that in such circumstances, these proceedings should rather be seen as a compensatory remedy.

112.  The Court has already stated that, in principle, applicants who complain about detention conditions after their release from the facility may have to make use of a compensatory remedy at national level in order to meet the requirement of the exhaustion of domestic remedies (see *mutatis mutandis Norbert Sikorski v. Poland*, no. 17599/05, § 116, 22 October 2009; *Lienhardt v. France* (dec.), no.12139/10, 13 September 2011; and *Rhazali and Others v. France* (dec.), no. 37568/09, 10 April 2012).

113.  The Court observes that recourse to the administrative courts as a compensatory remedy was accessible to the present applicant, and that he used it. In view of the evolution of the administrative court’s case-law, which has been brought to the Court’s attention and which largely relates to the period in which the applicant was detained in Central Prison, the Court considers that this development should have been sufficient for him to explore the effectiveness of this remedy.

114.  The Court emphasises in this connection that where there is a doubt about the effectiveness of a remedy, the issue should be tested before the national courts (see *Roseiro Bento v. Portugal* (dec.), no. 29288/02, ECHR 2004-XII (extracts); and more recently, in the context of Article 3 complaints concerning detention conditions, the above-cited decisions in *Lienhardt* and *Rhazali and Others*). Moreover, the Court considers that the fact that the applicant applied to the administrative courts shows that he had *a priori* deemed, contrary to his allegations before the Court, that it would be an effective remedy.

115.  It was therefore incumbent on the applicant to pursue his case in the first-instance administrative court, which would then have been amenable to judicial review on appeal and appeal on points of law.

116.  In view of the foregoing considerations, the Court finds that the applicant’s complaint under Article 3 of the Convention should be dismissed, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

B.  In relation to Article 8 of the Convention

117.  The applicant complained that his incoming correspondence in Central Prison, Brasa Prison and Valmiera Prison could be monitored. He relied on Article 8 of the Convention, which reads as follows:

“1.  Everyone has the right to respect for his private and family life, his home and his correspondence.

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

118.  The Government contested the admissibility of this complaint on several grounds. They argued, among other things, that the applicant had failed to exhaust domestic remedies, as he had not lodged an application with the administrative courts. In their submission, the administrative courts were a legal and practical remedy accessible to the applicant. They submitted two specific examples of domestic case-law in this respect. The first concerned a complaint that the prosecutor’s office had indicated an identity code on the envelope addressed to a detainee, which had constituted an unlawful “action of a public authority”. On 4 December 2009 the Administrative Cases Division of the Senate of the Supreme Court quashed the decision of a lower court and indicated that those actions constituted an “action of a public authority” to be scrutinised by the administrative courts (no. SKA-0897-09). The second example concerned a complaint that letters from the Court, the domestic courts and the prosecutor’s office had been opened in Jelgava Prison on several occasions in June 2006. On 30 July 2007 the first-instance court upheld that complaint; no appeal was lodged against that ruling (no. 42424207) (see *Čuprakovs v. Latvia*, no. 8543/04, § 19, 18 December 2012). The Government pointed out that that remedy was inaccessible to the applicant, since he had lodged some 300 applications concerning different issues before the administrative courts.

119.  The applicant disagreed and submitted that, like any other person in prison, he had not been informed about the procedure for lodging an application with the domestic courts. He alleged that he had done everything to defend his interests, but had not been aware of the specific procedure to follow.

120.  The Court has already accepted that that the administrative courts are an effective remedy for complaints relating to the opening of correspondence in prison (see *Čuprakovs*, cited above, § 67). The Court considers that the present applicant’s complaint is no different from the one examined in the *Čuprakovs* case, since his correspondence was also opened by prison staff. Although the reason for opening the letters was different as the domestic authorities had addressed the letters to the prison governor, the fact remains that they were opened before being handed to the applicant.

121.  Turning to the present case, the Court notes that the applicant complained to the administrative courts that the prosecutor’s office had addressed correspondence to the prison governor, asking him to hand it to the applicant on at least one occasion. It cannot therefore be said that the administrative courts were not accessible to the applicant. It appears from the case material that he has lodged some 300 complaints with the administrative courts since 2005. Although initially the applicant’s complaint was not accepted, eventually it was allowed and administrative proceedings were commenced. The reasons for the termination of those proceedings have not been made known to the Court.

122.  The Court reiterates that it falls to the applicant to establish that he exhausted the proposed remedy or that it was inadequate or ineffective in the particular circumstances of his case, or that there existed special circumstances absolving him from the requirement (see *Melnītis*, cited above, § 46). The Court notes that the applicant has failed to advance any argument in this connection. He has therefore failed to convince the Court that he did not need to further pursue his complaint before the administrative courts.

123.  In view of the above-mentioned considerations, the Court upholds the Government’s preliminary objection as regards the effectiveness of recourse to the administrative courts. There is thus no further need to examine the other preliminary objections raised by the Government.

124.  It follows that this complaint must be dismissed under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously,

*Declares* inadmissible the remainder of the application.

 Françoise Elens-Passos David Thór Björgvinsson
 Registrar President