FOURTH SECTION

**CASE OF SAPOŽKOVS v. LATVIA**

*(Application no. 8550/03)*

JUDGMENT

STRASBOURG

11 February 2014

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Sapožkovs v. Latvia,

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

 Päivi Hirvelä, *President,* Ineta Ziemele, George Nicolaou, Zdravka Kalaydjieva, Vincent A. De Gaetano, Paul Mahoney, Krzysztof Wojtyczek, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 21 January 2014,

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

PROCEDURE

1.  The case originated in an application (no. 8550/03) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a “permanently resident non-citizen” of the Republic of Latvia, Mr Aleksandrs Sapožkovs (“the applicant”), on 5 March 2003.

2.  The applicant, who had been granted legal aid, was represented by Mr A. Zvejsalnieks, a lawyer practising in Riga. The Latvian Government (“the Government”) were represented by their Agents, Mrs I. Reine and subsequently by Mrs K. Līce.

3.  On 6 December 2011 the application was declared partly inadmissible and the complaint of ill-treatment on 1 July 2009 and about its investigation was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1959 and is currently serving a prison sentence in Jelgava Prison.

A.  The applicant’s conviction and imprisonment

5.  On 4 October 1999 the applicant was arrested on suspicion of murder.

6.  On 13 September 2002 the Riga Regional Court (*Rīgas apgabaltiesa*) convicted the applicant of aggravated murder, burglary and theft and sentenced him to fifteen years’ imprisonment.

7.  On 3 February 2003 the Criminal Cases Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*) upheld the conviction for burglary and theft, acquitted the applicant of the charge of aggravated murder, and convicted him of murder instead. The sentence was reduced to twelve years’ imprisonment.

8.  On 17 March 2003 the Senate of the Supreme Court (*Augstākās tiesas Senāts*) dismissed an appeal on points of law by the applicant in a preparatory meeting.

9.  The applicant has since been serving his sentence in various prisons: Central Prison, Brasa Prison, Matīsa Prison, Jelgava Prison, Daugavpils Prison and Daugavgrīva Prison.

10.  On 18 October 2007 the applicant was convicted of attacking a member of prison staff in Daugavpils Prison. He was sentenced to six years’ imprisonment.

B.  Events of 1 July 2009 in Daugavgrīva Prison and investigation thereof

1.  The use of force on the applicant and his state of health

11.  On 1 July 2009, at around 10 a.m., the applicant was searched, as he was scheduled to be transferred to Jelgava Prison. The applicant had more than 30 kg of personal effects, which was the maximum, so he was asked to leave some things behind. A dispute ensued between the applicant and prison officers M.B., A.F. and K.D., who had carried out the search.

12.  According to the Government, the applicant tried to obstruct the search, insulted the prison officers, used contemptuous and abusive language, and made threats. In particular, he said he was “a former boxer” and that he could “kill anyone” since he had “nothing left to lose”. The prison officers tried to calm the applicant down and verbally ordered him to stop behaving aggressively. The applicant ignored those requests and, instead, at around 10.20 a.m., grabbed M.B. by the arm and tried to hit him. M.B. avoided the blow. Prison officers A.F. and K.D. used restraint measures (blows with rubber truncheons) to stop the applicant’s aggressive behaviour, for about three minutes.

13.  The applicant did not contest the Government’s version of events, but said that he was brutally beaten by three prison officers until he fell to the ground unconscious. He received more blows when he regained consciousness.

14.  At around 10.50 a.m. the applicant was taken to the prison medical unit. A doctor wrote a note indicating that the applicant had “many bruises on [his] body, arms and legs”. The following remarks were made in the applicant’s medical record: “A dark violet, elongated haematoma 20 x 2 cm in the right shoulder blade area. A dark violet haematoma 25 x 17 cm in the left shoulder blade area. A haematoma 16 x 6 cm on the left (upper) arm. A haematoma 8 x 3 cm on the left forearm. A haematoma 20 x 3 cm on the right (upper) arm. A haematoma 10 x 2 cm on the right forearm. Small abrasions and haematomas on both legs.”

15.  After the incident, on 1 July 2009, prison officers A.F. and K.D. filled in a report form on the use of restraint measures. It was mentioned that the applicant had issued threats against the prison guards, had attempted to hit M.B., and that A.F. and K.D. had intervened to stop the attack. They had used restraint measures (blows with truncheons) for about three minutes, from 10.20 to 10.23 a.m. The doctor made an entry in the report, with the same remarks as he had made in the applicant’s medical record (see paragraph 14 above). In the field for the applicant’s comments, he requested that criminal proceedings be instituted in connection with this incident. He submitted that the conflict had been provoked by the prison officers and that he had been brutally beaten by them with truncheons on the head and body.

16.  On 1 July 2009, at an unspecified time, the applicant was transferred to Central Prison.

17.  On 2 July 2009 he underwent a medical examination in Central Prison. An X-ray was carried out, but no broken bones were detected.

18.  On 3 July 2009 the applicant was transferred to Jelgava Prison to continue serving his sentence there.

2.  Investigation of the incident of 1 July 2009

19.  On 2 July 2009 the applicant complained to a prosecutor about the incident that had taken place the day before. The complaint was forwarded to the Prisons Administration (*Ieslodzījuma vietu pārvalde*).

20.  On 16 July 2009 the Prisons Administration forwarded the complaint to Daugavgrīva Prison for an internal inquiry (*resoriskā pārbaude*) together with instructions to conduct detailed questioning of prison officers about their actions in relation to the applicant, and to adduce these statements together with medical records and internal reports. A time-limit of 30 July 2009 was set for the inquiry to be carried out and for its results to be submitted to the Prisons Administration.

21.  On 28 July 2009 prison officers K.D., M.B. and A.F. made statements in writing. These indicated that the applicant had been aggressive and had threatened them, had not complied with their order to calm down, and had attempted to attack M.B. At that point K.D. and A.F. had hit him with truncheons.

22.  On 29 July 2009 a senior inspector (investigator) of Daugavgrīva Prison drew up an internal inquiry report (*resoriskās pārbaudes slēdziens*), which was approved by the governor of Daugavgrīva Prison. The senior inspector relied on the statements given by the prison officers and on the applicant’s medical record; he noted that no injuries to the applicant’s face had been recorded. The conclusion was drawn that the restraint measures (blows with truncheons) had been used in compliance with domestic law.

23.  On 3 August 2009 a senior inspector of the Investigation Unit of the Prisons Administration refused to institute criminal proceedings. No reasons were given. The applicant was informed about the decision and, on 17 August 2009, he lodged an appeal against it.

24.  On 7 September 2009 a prosecutor quashed that decision, instituted criminal proceedings, and tasked the Prisons Administration with conducting an investigation. On 9 September 2009 the applicant was informed of this, and the case material was sent to the Prisons Administration.

25.  On 15 October 2009 another senior investigator of Daugavgrīva Prison took a statement from a member of prison staff about video surveillance in the prison; that member of staff stated that the room where the applicant had been searched did not come within the field of vision of the security cameras and, in any event, video recordings were kept for only four days.

26.  On 16 October 2009 the investigator took statements from A.F. and M.B., but not from K.D.

27.  A.F. stated that he had inflicted approximately four blows on the applicant’s back with the truncheon, he had not hit him on the head, and he did not know how many blows had been inflicted by K.D.

28.  M.B. stated that his colleagues had inflicted some five to ten blows with truncheons to the applicant’s arms, legs and back.

29.  On 16 and 19 October 2009 the senior investigator of Daugavgrīva Prison took statements from two more prison officers, who were eyewitnesses to the events of 1 July 2009. They both stated that the applicant had attempted to attack M.B.

30.  On 1 November 2010 the applicant submitted a handwritten statement to the prosecutor with a view to having it added to the case material; it was forwarded to the Prisons Administration. According to the applicant, A.F. had delivered blows to his lower jaw and the left side of his chest. Blows to his arms had ensued as he was trying to cover his face. He had then received an order to face the wall; M.B., and an unknown officer had taken their truncheons and all three of them had started hitting him on the body in a cruel manner. He had fallen to the ground unconscious. After he regained consciousness, he sat up with his back against the wall. M.B. had come forward and started beating him on the legs.

31.  On 17 November 2009 the applicant gave evidence to a senior investigator of Jelgava Prison. He did not deny that he had had a verbal altercation or that he had threatened M.B. with physical violence. The applicant stated that A.F. had beaten him with a truncheon in a cruel manner. He had received blows to his jaw, the left side of his chest, both arms and other parts of his body; he could not remember the number of blows. M.B. and a guard whose name he did not know had joined in and they had delivered numerous blows to his body with truncheons. He had eventually lost consciousness and fallen to the ground. After he had regained consciousness M.B. had continued beating him with a truncheon.

32.  On 18 December 2009 the senior investigator of Daugavgrīva Prison, on the instructions of the senior investigator of Jelgava Prison, took a statement from the doctor of the medical unit, who had nothing to say as he did not remember the events. He stated that all matters related to the applicant’s state of health had been entered in his medical record.

33.  On 18 January 2010 the senior investigator of Jelgava Prison took statements from two doctors of the medical unit about the applicant’s medical examination on admission to that prison. The following day the senior investigator ordered a forensic medical examination to determine the severity of the applicant’s injuries.

34.  On 19 January 2010 an expert examined the applicant’s medical documentation and drew up report no. 10. On the basis of the applicant’s medical records the expert established that the applicant had the following injuries: injuries with two ecchymoses on his back in the area of shoulder blades, an injury with an ecchymosis on both the upper and lower left arm, an injury with an ecchymosis on the lower right arm, an injury with an ecchymosis (on the back) on the right thigh, an injury with an ecchymosis on the lower right leg and skin abrasions on both legs. These were classified as minor injuries. The expert considered that these injuries might have been inflicted on 1 July 2009 by a hard, blunt, truncheon-like object. Considering the nature and location of the bruises, the expert concluded that there had been not less than two blows on the back, and not less than one blow to each forearm, (upper) arm, right thigh and right leg and that the applicant could not have inflicted such injuries on himself.

35.  On 28 January 2010 the senior investigator of Jelgava Prison adopted a decision whereby the applicant was declared a victim in connection with the criminal proceedings. He was interviewed and maintained his previous statements.

36.  On 11 February 2010 another senior investigator of Daugavgrīva Prison, upon instructions from the Investigation Unit of the Prisons Administration, took a statement from an inmate who had been in that prison at the time of the incident. He had not seen but had heard restraint measures being used on the applicant. In his submission, prison officers had exceeded their authority, as they had not stopped beating the applicant even when he was [lying] on the ground and had asked them to stop.

37.  On 11 March 2010, upon a complaint by the applicant, the Prisons Administration informed him that certain unspecified investigative measures were being taken by the senior investigator of Jelgava Prison.

38.  On 15 June 2010, upon a complaint by the applicant, the Prisons Administration informed him that a procedural decision would be taken soon and that he would be informed of it as soon as it was adopted.

39.  On 6 July 2010 the chief inspector of the Investigation Unit of the Prisons Administration adopted a decision to terminate the criminal proceedings. The decision contained references to the applicant’s testimony, the statements of the prison officers and the doctors, and the conclusions drawn in forensic report no. 10. The evidence given by the inmate was not taken into account, since he had not been an eyewitness and had been some fifteen metres away from the scene. The conclusion was that on 1 July 2009 the prison officers had not used excessive force on the applicant and that the restraint measures (blows with truncheons) had been applied following a procedure prescribed by law. Therefore, the prison officers had not exceeded their official powers. The criminal proceedings were terminated on the grounds of absence of a crime.

40.  On 3 August 2010 a prosecutor dismissed the applicant’s complaint. She agreed with the chief inspector’s conclusions that the use of physical force and restraint measures on the applicant was justified and complied with domestic law and instructions, that it was proportionate in the circumstances, and that official powers had not been exceeded.

41.  On 30 August 2010 another prosecutor dismissed allegations by the applicant relating to the opportunity to acquaint himself with the case material.

42.  On 1 October 2010 a superior prosecutor concluded that the applicant had acquainted himself with the case material with the assistance of an interpreter.

43.  On 19 October 2010 another superior prosecutor adopted a final decision in respect of the applicant’s complaints. He concluded that the decision to terminate criminal proceedings was justified, that the applicant had received a copy of it, and that he had acquainted himself with the case material with the assistance of an interpreter.

II.  RELEVANT INTERNATIONAL MATERIAL AND DOMESTIC LAW

A.  Council of Europe material

44.  The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the “CPT”) has called upon the Latvian authorities on numerous occasions to take immediate steps to ensure that investigations of allegations of ill-treatment by staff in prisons are carried out by an independent and impartial body. The relevant parts of the CPT reports following its visits to Latvia read as follows:

The CPT visit from 27 November to 7 December 2007 (CPT/Inf (2009) 35):

“97. The CPT noted that, following the 2004 visit, the former Security Departments had been split into two separate entities, a security division (which reports directly to the prison governor) and an investigation division (which is subordinated to the deputy governor responsible for internal security). ... [T]wo major deficiencies still persist, despite the specific recommendations made by the Committee after the two previous visits. ... Secondly, prison officers (now members of the establishments’ investigation division) still carried out criminal investigations into allegations of ill-treatment by staff, initially on their own, and, subsequently, under the supervision of the competent prosecutor. The CPT wishes to recall once again that any investigations carried out by prison officers against other members of staff of the same establishment may be compromised as not being independent and impartial.

**The Committee calls upon the Latvian authorities to take immediate steps in the entire prison system to ensure that: ...**

**- officers of investigation divisions no longer carry out criminal investigations into alleged instances of ill-treatment by staff. Such investigations should be conducted by a body which is independent of the establishment concerned, and preferably of the prison system as a whole.”**

The CPT visit from 3 to 8 December 2009 (CPT/Inf (2011) 22):

“8. One of the most effective means of preventing ill-treatment by prison officers lies in the diligent examination of complaints of ill-treatment and, when appropriate, the imposition of suitable penalties. In this regard, it is regrettable that the role of the prison investigation divisions has not changed, despite the specific recommendation repeatedly made by the Committee after previous visits; investigations into possible ill-treatment by prison staff are still conducted by officers (of the investigation division) of the same establishment.

This is not acceptable; investigations into allegations of ill-treatment by prison staff should be carried out by a body which is independent of the establishment concerned, and preferably of the prison system as a whole. **The CPT calls upon the Latvian authorities to take immediate steps to ensure that this requirement is met (if necessary, by amending the relevant legal provisions).”**

The CPT visit from 5 to 15 September 2011 (CPT/Inf (2013) 20):

“109. Further, it remained the case that prison officers (members of the establishments’ investigation division) still carried out criminal investigations into allegations of ill-treatment by staff, initially on their own, and, subsequently, under the supervision of the competent prosecutor. This is unacceptable; such investigations should be conducted by a body which is independent of the establishment concerned, and preferably of the prison system as a whole.

In this connection, the delegation was informed by the Ministry of Justice officials that a working group had been set up in order to elaborate the necessary legislative amendments with a view to ensuring that investigations into allegations of ill-treatment by prison staff were carried out by the police.

**The Committee calls upon the Latvian authorities to take immediate steps throughout the prison system to ensure that officers of investigation divisions no longer carry out criminal investigations into alleged instances of ill-treatment by staff.”**

45.  The Latvian Government provided the following response to the CPT’s reports on visits to Latvia:

Response as regards visits from 27 November to 7 December 2007
(CPT/Inf (2009) 36):

“According to requirements of [sections] 28, 386 and 387 of the Criminal Procedure Law (effective from 1 October 2005) investigation institutions in prisons do exist and investigators are authorised as independent persons, who investigate crimes committed by prisoners as well as by prison [staff] ... Ministry will advance revision of this recommendation in working group created for elaboration of the Criminal Procedure Law in the beginning of 2009.”

Response as regards visit from 3 to 8 December 2009 (CPT/Inf (2011) 23):

“8. ... In the central [apparatus] of the [Prisons Administration, *the LPA*] the investigation division exists with three posts, whereas 17 inspectors execute investigation in prisons. Thereby prisons inspectors execute pre-trial investigations in criminal proceedings on severe criminal offences performed by prisoners, freelance employees in a territory of [a prison], as well as LPA officials....”

Response as regards visit from 5 to 15 September 2011 (CPT/Inf (2013) 21):

**“Paragraphs 108-109**

Pursuant to the provisions of section 387(5) of the Criminal Procedure Law, officials authorised by the Latvian Prisons Administration shall investigate criminal offences committed by detainees or prisoners, or by prison staff in prisons. Prison investigators perform pre-trial investigation in criminal proceedings regarding serious and especially serious criminal offences committed by detainees or prisoners, hired labour staff in the territory of the prison, as well as officials of the Latvian Prisons Administration. ...

In turn, pursuant to the provisions of Section 394(1) and (2) of the Criminal Procedure Law, an investigator or public prosecutor may assign the performance of separate procedural actions or tasks to another investigating institution or an official authorised to perform criminal proceedings and the assignment shall be given in writing, indicating the matters that shall be ascertained by performing the relevant investigation activity or other operation.

It is prescribed by Section 22(1)(5) of the Prisons Administration Law that an official, in performing service tasks, has the right to perform pre-trial investigations in conformity with the competence specified in the Criminal Procedure Law. Pursuant to the regulations of the Latvian Prison Administration, the competence of the heads of a prison provides for authorising the officials of the prison, in compliance with the Criminal Procedure Law, to investigate criminal offences committed by prisoners. Investigators of prisons are subjected to the head of the prison only.

Taking into consideration the above mentioned, at present investigatory activities in prisons are performed in accordance with regulatory enactments in force.

As it has already been referred to in the information regarding the implementation of the recommendations specified in Paragraphs 50-55 of the Committee report, the informative report Regarding Proposals for Ensuring an Effective Mechanism for Clarifying Possible Violations of Officials Who Carry out Investigatory Activities and Holding Them Liable was reviewed in the meeting of the [Cabinet of Ministers] on 10 January 2012 (minutes No. 2 §45), and the Ministry of Justice was assigned to prepare within six month period and submit pursuant to the specified procedure for review in the Cabinet [of Ministers] the draft law Amendments to the Criminal Procedure Law, in order to determine that criminal offences related to violence and committed by the staff of the Latvian Prisons Administration and officials of an Institution of the Ministry of the Interior system when fulfilling their official duties shall be investigated by the Internal Security Office. At present, the Ministry of Justice continues work at the execution of the referred to task.”

B.  Relevant domestic law

46.  Sections 386 and 387(5) of the Criminal Procedure Law (*Kriminālprocesa* *likums*) provide that the Prisons Administration and its authorised officers (*amatpersonas*) are to conduct criminal proceedings and investigate criminal offences committed by detainees, prisoners and prison staff (*Ieslodzījuma vietu pārvaldes darbinieki*) in prisons.

47.  Section 2(1) of the Law on Prisons Administration (*Ieslodzījuma vietu pārvaldes likums*) stipulates that the Prisons Administration is a State institution subordinated to the Ministry of Justice. Section 2(2) provides that the Head of the Prisons Administration is appointed and dismissed by the Minister of Justice. Section 2(3) provides that this institution consists of a central directorate, a training centre and places of deprivation of liberty and investigating prisons (hereinafter “prisons”, *ieslodzījuma vieta*). Section 4(1) lays down that the Prisons Administration’s personnel consists of officers (*amatpersonas*), civil servants (*ierēdņi*) and employees (*darbinieki*). Section 4(2) provides that an officer is an individual with appropriate training, qualifications and a special service rank, who has taken an oath and is in the service of the Prisons Administration. Finally, according to section 6(3), a prison is a structural unit of the Prisons Administration.

48.  Section 23(1) of the Law on Prisons Administration provides for circumstances in which prison officers (*amatpersonas*) are authorised to use physical force, restraint techniques (*speciālie cīņas paņēmieni*)and restraint measures (*speciālie līdzekļi*), including blows with rubber truncheons (*steki*). These circumstances include, among other things, to prevent an attack on oneself or another individual and to prevent riots (*masu nekārtības*). The governor of a prison shall immediately (no later than within twenty-four hours) report to the head of the Prisons Administration, the Ministry of Justice (the Secretary of State) and a prosecutor all occasions of the use of physical force or measures of restraint (section 23(3)).

49.  Sections 1635 and 1779 of the Civil Law are quoted in full in *Zavoloka v. Latvia* (no. 58447/00, §§ 17-9, 7 July 2009). They are further described in *Holodenko v. Latvia* (no. 17215/07, § 45, 2 July 2013).

THE LAW

I.   ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE EVENTS OF 1 JULY 2009

50.  The applicant asserted that excessive force had been used during the search of 1 July 2009 in Daugavgrīva Prison. He further complained about the investigation carried out in connection with the matter. The Court will examine this complaint under Article 3 of the Convention, which reads as follows:

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

A.  Admissibility

1.  The parties’ submissions

51.  The Government raised a preliminary objection of non-exhaustion of domestic remedies and argued that the applicant should have lodged a claim for compensation in the civil courts. They relied on sections 1635 and 1779 of the Civil Law in this regard. The Government emphasised that the outcome of the criminal proceedings was not determinative for the success of compensation proceedings. According to the Government, the Court reached similar conclusions in cases such as *Plotiņa v. Latvia* ((dec.), no. 16825/02, 3 June 2008); *Pundurs v. Latvia* (dec.), no. 43372/02, 20 September 2011); and *Blumberga v. Latvia* (no. 70930/01, 14 October 2008).

52.  Concerning the effectiveness of the available compensation proceedings, the Government submitted examples of civil proceedings in which compensation had been awarded for damages sustained as a result of unlawful actions on the part of State officials. The Government observed that the applicant had never lodged a civil claim, and thus the State had been denied the opportunity to remedy the matter before it reached the Court.

53.  The applicant considered that the domestic case-law referred to by the Government was not relevant. He conceded that civil proceedings would be beneficial to the applicant only if the actions of prison staff were found unlawful. Taking into account that no breaches were found in the framework of criminal proceedings, the civil proceedings were not effective.

2.  The Court’s assessment

54.  As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake. In cases of wilful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010, with further references).

55.  The requirement for compensation to remedy a breach of Article 3 at national level is in addition to the requirement of a thorough and effective investigation (ibid., § 118); it is not an alternative. The Court notes that the purely compensatory remedy referred to by the Government cannot be therefore regarded as sufficient for a Contracting State’s obligations under Article 3 of the Convention, as it is aimed at awarding damages rather than identifying and punishing those responsible.

56.  The Court has no evidence in the instant case which would require it to depart from the above-mentioned findings. It therefore dismisses the Government’s preliminary objection.

57.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The parties’ submissions

58.  The applicant maintained that there had been a breach of Article 3 of the Convention. According to the applicant, the prison officers had “used violence and caused injuries” to him. He considered these actions unlawful. The applicant referred to his injuries as identified following a forensic medical examination (see paragraph 34 above). With a reference to the *Ribitsch* judgement (see *Ribitsch v. Austria*, 4 December 1995, Series A no.  336), he alleged that physical force against him had not been necessary. He further argued that the use of restraint measures against him had not been justified or proportionate, as his behaviour could not have been considered an attack on prison officers. The applicant pointed out that there were three prison officers against him. He had been in prison for a long time, was not armed, and was far from young.

59.  The applicant did not provide any comment regarding an effective investigation of his allegations.

60.  The Government argued that the use of restraint measures (blows with truncheons) was necessary and pursued the legitimate aim of securing order in prison; they referred to the *Ivan Vasilev* judgment in this regard (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). In arguing that the use of force had been proportionate, the Government pointed out that the applicant’s threats, verbal insults and attacks constituted a gross violation of the prison regime. Next, they indicated the applicant’s aggressive and provocative behaviour, his threats to kill a prison officer, his statement that he had been a boxer, and his attempted attack on prison officer M.B. The applicant’s previous violent behaviour towards prison officers had been recorded. In the Government’s submission, no more force than strictly necessary had been used. The nature and position of the applicant’s injuries was fully consistent with the prison officers’ statements. The Government argued that the injuries suffered by the applicant had been minor and had not reached the minimum level of severity under Article 3 to apply. Finally, they indicated certain discrepancies in the applicant’s submissions which cast doubt on his version of the events.

61.  As regards the effectiveness of the investigation, the Government considered that the domestic authorities had taken all reasonable steps to secure evidence: detailed statements from the victim, eyewitness statements, and the forensic evidence concerning the cause and scope of the injuries. The prison officers who had carried out the search had submitted statements, the required domestic reports on the use of restraint measures had been drawn up, and the applicant had been examined by a doctor soon after the incident. Three other prison officers and an inmate had also been questioned. No video surveillance recordings were available, as they were automatically deleted after some seven days due to limited storage availability. Furthermore, the Government noted that the applicant was medically examined on three occasions before the forensic examination was ordered. The Government concluded that the investigation had been thorough.

62.  It was the Government’s opinion that the investigation by the Prisons Administration had complied with the requirement of independence. They distinguished the present case from *Lobanovs*, which concerned an internal investigation carried out by the governor of Daugavpils Prison (see *Lobanovs v. Latvia* (dec.), no. 16987/02, § 42, 28 September 2010). In the instant case, however, the investigation had been carried out by the Prisons Administration. In the Government’s submission, the prison officers who had allegedly inflicted injuries on the applicant did not belong to the Prisons Administration organisationally, nor were they subordinated hierarchically. These officers belonged to Daugavgrīva Prison. The decision adopted by the Prisons Administration on 6 July 2010, while being affirmative as to the conclusions of the internal inquiry carried out by Daugavgrīva Prison, was based on the results of its own actions, as the Prisons Administration questioned the witnesses individually and ordered a forensic medical examination. Finally, the Government insisted that all the decisions adopted during the course of the investigation had been placed under the thorough scrutiny of prosecutors.

2.  The Court’s assessment

63.  The Court reiterates that it has spelled out the applicable principles in cases relating to allegations of ill-treatment while in detention or otherwise under the control of the police and the State’s obligation to investigate such allegations on numerous occasions in cases against Latvia (see *Vovruško v. Latvia*, no. 11065/02, §§ 41-43, 11 December 2012; *Timofejevi v. Latvia*, no. 45393/04, §§ 92-95, 11 December 2012; *Sorokins and Sorokina v. Latvia*, no. 45476/04, § 95, 28 May 2013; *Grimailovs v. Latvia*, no. 6087/03, §§ 100-106, 25 June 2013; and *Holodenko v. Latvia*, no. 17215/07, § 64, 2 July 2013).

64.  Furthermore, the Court is mindful of the potential for violence that exists in detention facilities and of the fact that disobedience by detainees may quickly degenerate into a riot. The Court accepts that the use of force may be necessary on occasion to ensure prison security, and to maintain order or to prevent crime in detention facilities. Nevertheless, such force may be used only if unavoidable, and must not be excessive. Recourse to physical force which has not been made strictly necessary by the detainee’s own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see, among many other authorities, *Dedovskiy and Others v. Russia*, no. 7178/03, § 81, ECHR 2008 (extracts), and *Korobov and Others v. Estonia*, no. 10195/08, § 97, 28 March 2013, with further references).

65.  The Court observes that the circumstances surrounding the use of restraint measures (blows with truncheons) are only partly in dispute. While the applicant did not deny either to the domestic authorities or to the Court that he had issued threats to the prison officers and behaved aggressively, he considered that his behaviour did not necessitate the use of restraint measures. Similarly, there is no dispute concerning the nature of the applicant’s injuries, as both parties agree that multiple bruises were found on the applicant’s back, arms and legs and that they were sustained as a result of the prison guards inflicting blows with truncheons on the applicant.

66.  The Court observes that the applicant raised an “arguable claim” with the domestic authorities that the prison officers had used excessive force on him. However, on the basis of the evidence before it, the Court cannot establish whether the use of force on the applicant in the circumstances of the present case was strictly necessary and proportionate. For the reasons set out below, it considers that the difficulty in determining this issue rests with the authorities’ failure to investigate the applicant’s complaint effectively (see *Grimailovs*, cited above, § 109, and references cited therein). The Court will now examine this matter further.

67.  The Court notes at the outset that it is not disputed by the parties that the State was under a procedural obligation, arising from Article 3 of the Convention, to carry out an effective investigation of the applicant’s allegations of excessive use of force by the prison officers on him in Daugavgrīva Prison.

68.  The Court notes that the authorities carried out an inquiry into the applicant’s complaint, but it is not convinced that that the inquiry complied with the requirements of Article 3 of the Convention.

69.  Taking into account the Government’s position, namely that the investigation carried out by the Prisons Administration in the present case complied with the requirement for an independent investigation, the Court will, first of all, examine this argument in detail.

70.  The Court reiterates that for an investigation to be effective it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent of those implicated in the events being investigated. This means not only a lack of hierarchical or institutional connection but also independence in practice (see, as recent authorities, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011, and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 300, ECHR 2011 (extracts)). The requirement of independence, while spelled out by the Court in cases concerning effectiveness of an investigation into alleged unlawful killing by State agents in connection with complaints under Article 2, is also applicable to investigations of allegations of ill-treatment by State agents under Article 3 (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004; *Barbu Anghelescu v. Romania*, no. 46430/99, § 66, 5 October 2004; *Dolenec v. Croatia*, no. 25282/06, § 152, 26 November 2009; *Đurđević v. Croatia*, no. 52442/09, § 85, ECHR 2011 (extracts); *Timofejevi*, cited above, § 95; *Grimailovs*, cited above, § 105; and *Holodenko*, cited above, § 78).

71.  The Court observes that the investigative activities in the present case were carried out by senior investigators of Daugavgrīva and Jelgava Prison. The senior investigators of Daugavgrīva Prison took statements from a member of prison staff, two of the three officers implicated in the events, and two more prison officers as witnesses, a doctor and an inmate. The senior investigator of Jelgava Prison took a statement from the applicant, ordered a forensic examination, declared the applicant a victim in the proceedings, and took statements from two more doctors. Reports prepared by the CPT following its 2007, 2009 and 2011 visits to Latvian prisons indicate that at the relevant time and thereafter criminal investigations of allegations of ill-treatment by prison staff were carried out by investigators, who were members of the prison investigation division and were subordinate to the deputy governor of the relevant prison (see paragraph 44 above). The Latvian Government have acknowledged this, and, in their response to the CPT, have described the investigating procedure as operating in accordance with the domestic law (see paragraph 45 above).

72.  Furthermore, as far as the connection between the Prisons Administration and prisons is concerned, the Court observes that prisons in Latvia are structural units of the Prisons Administration (see paragraph 47 above). The same applies to the central directorate of the Prisons Administration, including its Investigation Unit. Again with reference to the CPT’s findings and the Latvian Government’s comments to the CPT, the Court notes that the Investigation Unit of the central directorate of this institution had only three people in post in 2009, and that the remaining seventeen inspectors formed part of investigation divisions in prisons (see paragraphs 44 and 45 above). Moreover, all prison officers, irrespective of their place of work in one prison or another, are considered to be in the service of the Prisons Administration (see paragraph 47 above). Finally, any and all instances of the use of force or measures of restraint by prison officers are to be immediately reported to the head of the Prisons Administration (see paragraph 48 above).

73.  In view of the above considerations the Court cannot accept the Government’s argument that the persons responsible for and carrying out the investigation were independent of those implicated in the events. Irrespective of their service rank, the investigators were all subordinate to the head of the Prisons Administration and accordingly had to follow the same chain of command as the prison officers in issue. Notwithstanding the fact that the case file does not contain any specific indications of actual collusion or bias on the part of the investigators, the Court is of the view that neither of the investigators presented an appearance of independence; nor did it appear that there were sufficient guarantees against pressure from hierarchical superiors. The Court notes that lack of independence in investigations of ill-treatment by prison staff has been consistently highlighted by the CPT following its 2007, 2009 and 2011 visits to Latvian prisons, and that its recommendation that immediate steps be taken to remedy this situation has remained without implementation for a considerable period of time (see paragraphs 44 and 45 above).

74.  The Court further observes that in the case at hand the senior investigator of Daugavgrīva Prison played a crucial role, as the investigator was the only person who took statements from the prison officers implicated in the events. The investigator was in fact carrying out an investigation of actions by officers of the very same prison. Furthermore, the investigator did not take statements from all the prison officers who were implicated in the events, as statements from only two of them taken by the investigator appear to be on the record. This casts doubt on the thoroughness of the investigation, taking into account that officer K.D., from whom no statement was taken, did in fact participate in the actual use of the restraint measures (blows with truncheons) on the applicant.

75.  Secondly, it remains to be examined whether the above-mentioned shortcomings could, to a certain extent, be counterbalanced by effective supervision of the investigation (see *Vovruško*, cited above, § 51, and *Grimailovs*, cited above, § 114).

76.  The Court notes that the prosecution authorities did not order or indeed take any further investigative steps. The prosecution placed significant emphasis on the results of the internal inquiry and the investigative material collected by the investigators, who lacked the necessary independence to carry out their tasks. At no point in the investigation was any consideration given to the applicant’s allegation that he continued receiving blows with truncheons on his body even after he had fallen to the ground, which allegation was also supported by evidence from another inmate. The proportionality of the use of force after this point during the events in question has never been examined by any responsible authority at the domestic level.

77.  It follows that the investigation of the applicant’s allegation of excessive use of force by the prison officers did not comply with the Convention requirements of institutional, hierarchical and practical independence and that the investigation was not sufficiently thorough in that the proportionality of the use of force after the applicant had fallen to the ground was not at all examined. The Court further observes that the domestic authorities continue to be bound by an obligation to carry out, in so far as possible, an effective investigation into the applicant’s allegations of ill-treatment.

78.  There has accordingly been a violation of the procedural aspect of Article 3 of the Convention.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

79.  Article 41 of the Convention provides:

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

A.  Damage

80.  The applicant claimed 90,000 euros (EUR) in compensation for non-pecuniary damage.

81.  The Government contested this claim

82.  The Court, deciding on an equitable basis, awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B.  Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the remainder of the application admissible;

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

3.  *Holds*

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

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Françoise Elens-Passos Päivi Hirvelä
 Registrar President