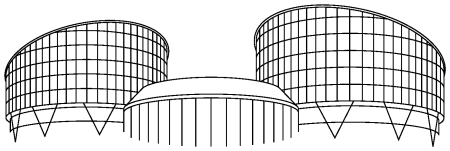

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 53281/08
Jevgēņijs JEGOROVS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 1 July 2014 as a Chamber composed of:

Päivi Hirvelä, *President,*
Ineta Ziemele,
George Nicolaou,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 27 October 2008,

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 Jevgēņijs Jegorovs, is a "permanently resident non-citizen" of the Republic of Latvia, who was born in 1981 and is currently serving a prison sentence in Olaine. He was represented before the Court by Ms A. Kalēja, a lawyer practising in Riga.

2. The Latvian Government ("the Government") were represented by their Agent at the time, Ms I. Reine, and subsequently by Ms K. Līce.

A. The circumstances of the case

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

1. The applicant's state of health prior to detention

4. On 11 September 2003 the applicant was admitted to hospital with severe head injuries. Information provided by the Health Inspectorate (*Veselības Inspekcija*) on 7 May 2010 stated that he "had undergone an urgent operation – skull trephination".

5. The hospital records stated that on 21 September 2003 the applicant "had fled" from the hospital. According to information provided by the Health Inspectorate on 7 May 2010, he had left the hospital "without completing the treatment, which [included] possible plastic surgery on his skull, and without receiving further recommendations for treatment ...". It appears that after having left the hospital the applicant did not request medical assistance.

6. On 2 March 2004 a doctor visited the applicant at home in connection with cramps. The applicant refused to go to a hospital.

7. According to the applicant, he started to have epileptic seizures eight months after the surgery in 2003. He learnt from a conversation with a doctor who had operated on him that he would need to pay for the plastic surgery and he could not afford it. On 27 April 2009 the applicant informed the Court that he had enquired with the State authorities whether he could donate one of his kidneys in exchange for payment, in order to have the plastic surgery.

2. The applicant's detention

8. On 2 September 2005 the applicant was detained in Central Prison.

9. On 25 January 2007 the applicant was transferred from Central Prison to Daugavpils Prison.

10. On 1 November 2008 Daugavpils Prison was merged with Grīva Prison. The newly established prison was renamed Daugavgrīva Prison.

11. The applicant was held in the Daugavpils wing of Daugavgrīva Prison.

12. The applicant submitted that he had been placed in the following prison cells:

- cell no. 203, between February 2007 and 22 April 2008;
- cell no. 205, between 22 April and 8 May 2008;
- cell no. 401, between 8 and 9 May 2008 (investigation cell);
- cell no. 107, between 9 and 10 May 2008 (quarantine cell);
- cell no. 205, between 10 and 14 May 2008;
- cell no. 212, between 14 and 19 May 2008;
- cell no. 217, between 19 May 2008 and an unspecified date.

13. On 12 November 2010 the applicant was transferred to Olaine Prison to serve the remainder of his sentence.

3. The applicant's medical care in detention

14. On 6 or 7 September 2005 the applicant underwent a medical examination in Central Prison. The diagnosis read as follows:

> "Consequences following a head trauma with skull trephination in 2003. Symptomatic epilepsy (?) Post-traumatic encephalopathy. Alcohol and heroine dependency since 2001."

15. According to information from the Health Inspectorate dated 25 February 2008 (see paragraph 63 below), on 7 September 2005 the applicant had stated that he was having seizures in which he lost consciousness. A prison psychiatrist then recommended that a warden (*uzraugs*) be assigned to the applicant and that he be supervised by medical staff.

16. On 26 October 2005 the following entry was made in the applicant's medical file: "Condition after a paroxysmal seizure with loss of consciousness (*stāvoklis pēc paroksizmālas samaņas zuduma lēkmes*)". It was noted that half an hour earlier the applicant had had a seizure with loss of consciousness and cramps, but without biting of the tongue.

17. In that connection, the applicant was prescribed anti-epileptic medication. He was hospitalised from 11 to 28 November 2005 for monitoring and treatment, and received preventive treatment (Finlepsin). No seizures were observed.

18. On 29 January 2007 the applicant requested that the Inspectorate of Quality Control for Medical Care and Working Capability ("the MADEKKI") refer him to a hospital for treatment. On 12 February 2007 the MADEKKI responded that the request was outside its competence and advised the applicant to consult the prison medical staff.

19. In 2007 the applicant requested a disability assessment, which he had not had prior to his detention.

20. In October 2007 the applicant underwent a full medical examination, including a pulmonary X-ray.

21. On 18 October 2007 an electro-encephalogram revealed "slightly increased epileptiform activity (*nedaudz izteikta epileptiforma aktivitāte*)". The applicant was administered medication for the treatment of epilepsy and for the improvement of the brain function, and tranquilisers.

22. On 4 December 2007 the applicant was certified category 3 disabled (moderate disability) due to the consequences of the head injuries in 2003 and post-traumatic encephalopathy.

23. In 2007 the applicant had twenty-eight out-patient medical examinations, fifteen of which related to headaches. In 2008 he had five out-patient examinations, four of which concerned headaches.

24. The applicant did not have a pulmonary X-ray examination in 2008.

25. On 11 May 2009 the applicant underwent a pulmonary X-ray examination.

26. On 21 May 2009 the applicant was taken to the prison hospital in Olaine with suspected tuberculosis.

27. At the hospital the following diagnosis was made:

> "Infiltrative tuberculosis pneumonia [of] the left lung ... Consequences following a serious head trauma with skull trephination in 2003. Symptomatic epilepsy. Prolonged depressive reaction. Alcohol and heroine dependency. Factors contributing to illness – smoking as of age eleven [and] use of alcohol and drugs."

28. A neurologist at the prison hospital in Olaine concluded that the applicant had not had an epileptic seizure for a considerable period of time and epileptiform activity had not been observed. Therefore, the applicant was prescribed an anti-epileptic drug (Finlepsin) for six months. The doctor noted that in six months' time the applicant should undergo an electrocardiogram and a decision would be made about stopping the anticonvulsant medication.

29. The applicant remained in hospital until 1 December 2009.

30. On 3 December 2009 the applicant was transported back to Daugavgrīva Prison.

31. In 2009 the applicant had ten out-patient medical examinations, three of which concerned headaches.

32. The information from the Health Inspectorate dated 7 May 2010 stated that the applicant did not appear to have had any epileptic seizures while in detention, but that he had received "throughout his detention anti-epileptic medication (Finlepsin, carbamazepine) ... in order to prevent possible epileptic seizures ...". It was also noted that while in detention he had periodically refused to take the medication, which fact had been attested by entries in his medical file.

33. With respect to tuberculosis, information from the Ministry of Justice dated 10 May 2010 stated that in 2009 the applicant had been provided with full treatment. He had been cured and discharged in a satisfactory state of health.

34. According to the applicant, he experienced epileptic seizures and required plastic surgery on his skull.

35. In response to the Government's additional observations, the applicant submitted the decision establishing his disability for the period from 8 January 2013 to 7 January 2018. That decision stated that the applicant had functional limitations related to traumatic epileptic seizures. It was based on an expert report of 8 January 2013. The applicant did not furnish a similar report indicating that he had experienced epileptic seizures while in Daugavgrīva Prison up until 2010 (see paragraph 13 above).

4. The applicant's complaints to the domestic authorities

(a) In relation to the conditions of his detention

36. On 11 May 2008 the applicant complained to the Prisons Administration and the prosecution about the conditions in Daugavpils Prison. He described the conditions of detention and specified the state of affairs in cell no. 205. The description he gave appeared to be broadly the same as the one he submitted before the Court (see paragraph 79 below). He indicated, *inter alia*, that the conditions were in breach of Article 3 of the Convention and requested that his complaint be considered in substance.

37. The prosecution forwarded the submission to the Prisons Administration.

38. In connection with the applicant's complaints, on 9 June 2008 Daugavpils Prison informed the Prisons Administration that the applicant had been held in cell no. 205, which complied with article 77 of the Sentence Enforcement Code but was in need of "cosmetic repair".

39. The Prisons Administration's response no. 1/12-J/2198/2261 dated 12 June 2008 stated that in the course of its inquiry it had been established that cell no. 205 in Daugavpils Prison, in which "[the applicant] had stayed, [did] not, indeed, comply with the ... statutory requirements and cosmetic repair of the cell [was needed] ...".

40. The letter also stated that following the applicant's submission of 3 June 2008 to the Prisons Administration, the matters raised by him had been explained to him and that he had no claims against Daugavpils Prison. The Prisons Administration thus deemed that it had examined the applicant's complaints of 11 May 2008.

41. According to the applicant, he withdrew his complaints under pressure from the Daugavpils Prison administration.

(b) In connection with tuberculosis

42. It appears that in July and August 2009 the applicant wrote to the Health Inspectorate, the prosecution and the Prisons Administration in connection with his having contracted tuberculosis.

43. The applicant claimed that, whereas he was supposed to have been X-rayed every twelve months, he had not been X-rayed at all in 2008 and had had to wait nineteen months, until May 2009, for an X-ray. Referring to document no. 1/12-J/2198/2261 (see paragraph 39 above), he pointed out that the prison governor had agreed that the cells were damp and had told him that there were no funds for repair work. He requested that a comment be made on the fact that he had fallen ill with tuberculosis. The relevant documents would then be attached to his complaint and sent to the Court.

44. In its reply of 19 August 2009 the Health Inspectorate indicated that the applicant had been suspected of having contracted tuberculosis on 21 May 2009, after the annual pulmonary X-ray, as required by paragraph 5

of Cabinet of Ministers Regulation no. 199 (2007). The applicant had then been referred to the prison hospital.

45. The Inspectorate stressed that the applicant had had no clinical indications of tuberculosis requiring an unplanned X-ray examination.

46. The Inspectorate also stated that it had sent to the Prisons Administration the part of the applicant's request concerning unsatisfactory living conditions in Daugavgrīva Prison.

47. The Inspectorate did not indicate in its letter that the responses given could be appealed against.

48. In August 2009 the Prisons Administration received the applicant's three complaints. One of them had been forwarded by the Health Inspectorate and another by the prosecution.

49. On 10 and 27 August 2009 the Prisons Administration gave the applicant identical responses to all three complaints, to the effect that they had not been made in the State language. The Prisons Administration referred to section 10(2) of the State Language Law (*Valsts valodas likums*) and indicated as follows:

> "Documents may be submitted in a foreign language in exceptional situations, where immediate action by the State operational services or other competent institutions is required in order to protect a person's rights and property interests, which may be violated as a result of unforeseen, exceptional circumstances or an offence committed or planned."

The Prisons Administration found that the circumstances set out in the applicant's complaints did not amount to exceptional circumstances in which a document in another language could be considered. It refused, therefore, to consider the applicant's complaints.

50. The Prisons Administration indicated that each of the three refusals could be appealed against to the Ministry of Justice.

51. On 14 September 2009 the applicant informed the Court that as of February 2009 he had been complaining to the prison medical unit of weight loss. Therefore he had difficulty understanding the Health Inspectorate's response of 19 August 2009 (see paragraphs 44 and 45 above).

(c) In relation to plastic surgery

52. On 9 June 2007 the MADEKKI received a request from the applicant to expedite the surgery recommended on his skull because he had been suffering from headaches and epileptic seizures.

53. Between June and September 2007 the MADEKKI carried out an inquiry.

54. On 20 September 2007 the MADEKKI declared that it had found no violations in the applicant's treatment in Daugavpils Prison. It stated that no one had seen the applicant's epileptic seizures and that no related injuries

had been observed. The applicant had not submitted any documents on the recommended surgery and his medical file contained no entries about it.

55. The MADEKKI decided to terminate the administrative violation proceedings.

56. That decision was subject to appeal to the head of the MADEKKI.

57. On 24 October 2007 the MADEKKI received a request from the applicant concerning the refusal to carry out a head tomography free of charge at the prison hospital.

58. Between October and November 2007 the Health Inspectorate (former MADEKKI) carried out an inquiry.

59. On 28 November 2007 the Health Inspectorate found no violations in the applicant's treatment between 4 September and 15 November 2007. It noted that he had complained of headaches and dizziness, and had claimed to have had epileptic seizures, which no one had ever seen. Furthermore, on 6 September 2007 he had refused to take his medication.

60. It decided to terminate the administrative violation proceedings.

61. That decision was subject to appeal to the head of the Health Inspectorate.

62. On 5 February 2008 the Health Inspectorate received a complaint from the applicant that the head of the Daugavpils Prison medical unit had not provided in the notes on the applicant's health (*veselības izziņas*) the dates of his epileptic seizures.

63. On 25 February 2008 the Health Inspectorate responded that it had never been recorded in the applicant's medical file that he had been observed in a state of unconsciousness, suffering from cramps or the consequences of seizures – a bitten tongue or signs of injuries, or in a state of confusion. Seizures with loss of consciousness had been recorded on 2 March 2004, when a doctor had visited the applicant at home, and on 7 September 2005, when the applicant had been examined in Central Prison. However, those entries had been based on information given by the applicant himself. The Inspectorate further provided information as outlined above (see paragraphs 15-17 above).

64. On 12 March and 1 April 2008 the Health Inspectorate received requests from the applicant that plastic surgery be carried out on his skull because during epileptic seizures he could sustain a brain injury and die.

65. Between March and May 2008 the Health Inspectorate carried out an inquiry.

66. On 8 May 2008 the Health Inspectorate established that the applicant had regularly been administered Finlepsin and had received treatment with respect to his complaints of dizziness. The Inspectorate concluded that the applicant was continuing to claim that he was having epileptic seizures which no one had ever observed. The Inspectorate found no violations in the applicant's treatment in Daugavpils Prison.

67. It decided to terminate the administrative violation proceedings.

68. That decision was subject to appeal to the head of the Health Inspectorate.

69. Following the Court's inquiry, on 27 April 2009 the applicant stated that he had appealed against the Health Inspectorate's decision of 8 May 2008. The appeal had been sent from the prison on 14 May 2008, but it had not been received by the Health Inspectorate.

(d) Complaints to the administrative courts

70. In his application to the Court the applicant stated that he could have applied to the administrative courts, but that submissions needed to be made in the State language, which he barely knew. No translation service was provided for detainees, and in any case he could not have afforded such a service.

B. Relevant domestic law

1. In relation to conditions in detention

71. Article 77 of the Sentence Enforcement Code (*Sodu izpildes kodekss*) reads as follows:

> "Convicted persons ... shall be ensured living conditions that are in conformity with epidemiological safety and hygiene standards. The standard living space in dormitory-type prison premises for one convicted person may be no less than 2.5 square metres for men ... but in single-occupancy cells – no less than 9 square metres.
>
> Convicted persons shall be allotted an individual sleeping place (*guļamvieta*) and shall be provided with bedding items (*gultas piederumi*). Convicted persons shall be provided with underwear (*veļa*) corresponding to the season.
>
> ...
>
> Convicted persons shall receive nutrition that ensures the normal functioning of the body. Nutritional norms may vary in view of the nature of work performed by a convicted person.
>
> ..."

72. Paragraph 17 of Cabinet of Ministers Regulation no. 423 (2006), effective from 3 June 2006, provides that penal institutions must ensure that hygiene standards of convicted persons are complied with. Under paragraph 19 of the Regulation, a convicted person must take a sauna or a shower, and change underwear and bed linen, at least once a week.

2. In relation to medical treatment in detention

73. The Cabinet of Ministers Regulation no. 199 (2007), effective between 28 March 2007 and 23 January 2014, governed the medical care of convicts in penal institutions. Its relevant provisions were cited in the case of *Fedosejevs v. Latvia* ((dec.), no. 37546/06, § 34, 19 November 2013).

Furthermore, under paragraph 5 of the Regulation a preventive examination of a convicted person had to be carried out once a year. The types of preventive examination were determined every year by the head of the Prisons Administration.

3. In relation to the administrative procedure

74. The functions under the domestic law of the MADEKKI and its successor, the Health Inspectorate, have been set out in the case of *Antonovs v. Latvia* ((dec.), no. 19437/05, §§ 63 et seq., 11 February 2014). The Cabinet of Ministers Regulation no. 76 (2008), in force as of 9 February 2008, stipulates the functions of the Health Inspectorate. Its relevant provisions read as follows:

> "11. Decisions and action of a public authority (*faktiskā rīcība*) of the [Health] Inspectorate's officials may be appealed against ... to the head of the Inspectorate. A decision of the head of the Inspectorate may be appealed against to a court.
>
> 12. Decisions and action of a public authority ... of the head of the [Health] Inspectorate ... may be appealed against to the Ministry of Health. A decision of the Ministry of Health may be appealed against to a court."

75. Paragraph 14 of Cabinet of Ministers Regulation no. 827 (2005), effective from 5 November 2005, reads as follows:

> "Administrative acts (*administratīvie akti*) issued by the head of the [Prisons] Administration and his or her action of a public authority may be disputed by applying to the Ministry of Justice. A decision of the Ministry of Justice may be appealed against to a court."

76. The Administrative Procedure Law (*Administratīvā procesa likums*) took effect on 1 February 2004. It provides, among other things, for the right to challenge administrative acts and actions of public authorities before the administrative courts (see *D.F. v. Latvia*, no. 11160/07, § 40, 29 October 2013, and *Melnītis v. Latvia*, no. 30779/05, § 24, 28 February 2012).

4. In relation to the use of the State language

77. Section 10 of the State Language Law, which was passed on 9 December 1999 and entered into force on 1 September 2000, reads as follows:

> "(1) All institutions, organisations and establishments (companies) shall ensure acceptance and examination of documents drawn up in the State language.
>
> (2) State and local government institutions, courts and institutions belonging to the judicial system, and State or local government establishments (companies) shall accept ... and examine only documents in the State language, except in cases as prescribed in subsection (3) ... The provisions of this section do not apply to submissions of persons to the police and medical institutions, rescue services and other institutions in cases of urgent calls for medical assistance, the commission of

crimes or other violations of the law, or calls for emergency assistance in cases of fire, accident or other emergencies.

(3) Documents ... in a foreign language shall be accepted if attached thereto is a translation into the State language, certified in accordance with the procedures prescribed by the Cabinet of Ministers, or notarised. Documents issued on the territory of Latvia by the day this Law comes into force do not require translation into the State language.

..."

COMPLAINTS

78. Relying on Articles 3, 14 and 17 of the Convention, the applicant lodged several complaints before the Court.

79. He complained of poor conditions in Daugavpils Prison: the cells, particularly cell no. 205, had been in a state of disrepair. There had been a lack of hot water and an infestation of rodents and insects. A hot shower had been available only once a week. In addition, the applicant complained with respect to cell no. 205 that the skirting boards had been torn off, there had been pieces of dried cement and holes in the floor, the toilet seat had been broken and the sink had been damaged, which had caused a leakage. Also, half of the lamps had not worked. The windows had been covered with a double layer of bars, which had made it difficult for fresh air to enter. Apart from cell no. 205, there had been only one other cell in Daugavpils Prison – cell no. 206 – in such a state.

80. On 8 June 2009 the applicant supplemented his complaint by adding that he had contracted tuberculosis as a result of the poor conditions in the prison. He claimed that he had had to wait one year and six months before being X-rayed, even though an X-ray had been required every year.

81. The applicant also complained that while in detention he had feared for his life. As of 2003 the left side of his brain had not been protected by a bone, and he had been afraid of falling as a result of an epileptic seizure and of hitting the unprotected part of his head. He averred that according to his diagnosis, he had been experiencing epileptic seizures. Based on that diagnosis he had been certified category 3 disabled. The applicant complained that the Daugavpils Prison medical unit had not considered that he needed plastic surgery on his head.

THE LAW

A. Scope of the case

82. After communication of the application to the Government, the applicant, referring to Articles 3, 13, 14 and 16 of the Convention, formulated numerous complaints. In particular, he complained that a certain doctor had ill-treated inmates, that the lack of healthcare and inadequate medical assistance in the prison had contributed to his contracting tuberculosis and that he had been humiliated due to the failure on part of the prison to react to his submissions between February and May 2009 with respect to the deterioration of his health, and that Daugavgrīva Prison and the Prisons Administration had not examined his complaints in substance. He also raised a complaint specifically with regard to prison cells nos. 203, 217, 219, 224, 210, 212, 206, 223, 213, 208, 221, 109, 112 and 107. He submitted a new description of the circumstances in which his transfer between the cells had taken place. Also, he argued that in view of his status as a person with a disability, his detention amounted to inhumane treatment.

83. As it has decided in previous cases, the Court need not rule on complaints raised after communication of an application to the Government (see *Ruža v. Latvia* (dec.), no. 33798/05, § 30, 11 May 2010 and the case-law cited therein).

84. Given that those complaints were not raised before communication of the present application, they are not part of the case referred to the Court. However, the applicant has the opportunity to lodge a new application in respect of those complaints (ibid., § 31).

B. Alleged violation of Article 3 of the Convention on account of the conditions in Daugavpils Prison and contraction of tuberculosis

85. Relying on Articles 3, 14 and 17 of the Convention, the applicant complained that the prison cells, particularly cell no. 205, had been in a state of disrepair and there had been a lack of hot water and an infestation of rodents and insects. A hot shower had been available only once a week. With respect to cell no. 205 the applicant complained that the skirting boards had been torn off, there had been pieces of dried cement and holes in the floor, the toilet seat had been broken, and the sink had been damaged, causing a leakage. Also, half of the lamps had not worked. The windows had been covered with a double layer of bars, which had made it difficult for fresh air to enter. Apart from cell no. 205, there was only one other cell in Daugavpils Prison – cell no. 206 – in such a state.

86. On 8 June 2009 the applicant supplemented his complaint with the allegation that he had contracted tuberculosis as a result of the conditions in

the prison. He claimed that he had had to wait one year and six months before being X-rayed, even though an X-ray had been required every year.

87. The Court finds that this complaint falls to be examined under Article 3 of the Convention, which reads as follows:

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

1. Conditions of detention in Daugavpils Prison

(a) The parties' submissions

(i) The Government

88. First, the Government argued that the applicant had not exhausted the domestic remedies available.

89. In particular, he had not appealed to the Ministry of Justice against the Prisons Administration's decisions of 12 June 2008 and 10 and 27 August 2009. That possibility had been available under paragraph 14 of Cabinet of Ministers Regulation no. 827 (2005). A decision of the Ministry of Justice could be appealed against to the administrative courts.

90. In their additional observations the Government provided some examples of domestic case-law, where the national administrative courts had examined whether the domestic authorities' refusal to consider complaints made in a language other than the State language had been lawful.

91. In particular, on 11 October 2010 the Administrative Regional Court (*Administratīvā apgabaltiesa*) (in case no. AA43-3108-10/2) granted an ancillary complaint lodged by a detainee in connection with the Prisons Administration's refusal of September 2008, based on the State Language Law and upheld by the Ministry of Justice, to examine a complaint that he had drafted in a foreign language about restrictions on detainees' telephone calls. The Regional Court quashed the lower court's decision and remitted the case for a fresh examination. It indicated that the Prisons Administration and the Ministry of Justice had been under an obligation to review the complaint submitted in a foreign language.

92. The Government referred to a number of other decisions handed down by the administrative courts. The Administrative Regional Court on 20 November 2008 (in case no. A42661508), and the Administrative District Court (*Administratīvā rajona tiesa*) on 4 August 2009 (in case no. A42669607), 15 July 2011 (in case no. A420652110) and 13 December 2011 (in case no. A420594610), dismissed complaints in proceedings concerning the Prisons Administration's refusal to examine submissions for their non-compliance with the State-language requirement. In those cases the administrative courts considered whether such refusals had been lawful.

93. In particular, in the first case (no. A42661508), the Administrative Regional Court decided on an ancillary complaint lodged against the lower court's refusal to order an interim measure. The Regional Court endorsed the lower court's reasoning in that between January and March 2008 the detainee had complained to the Prisons Administration about the refusal to supply him with paper and a pen in the isolation cell and the lack of a table on which to write a complaint; the prison governor's order regarding day procedures in the lower prison regime; the disciplinary penalty; and the restriction on his right to dispute administrative acts. Those complaints had been left without consideration based on section 10(2) of the State Language Law: the administrative courts were of the view that those matters fell out with the provisions of section 10(2) of the Law allowing a request in a foreign language, as they were not such that the person's security, health or life was in danger requiring immediate action on the part of an authority. Furthermore, they reasoned that administrative proceedings had been instituted regarding the prison governor's decision to impose a disciplinary penalty – placement in an isolation cell for eight days. Therefore, the person's right to appeal against that decision had not been restricted by the Prisons Administration's refusal to consider his complaint. Also, they noted that the person had lodged more than thirty claims before the Administrative District Court, all of which had been drafted in the State language. Therefore, he was able to submit requests in the State language also to the State institutions.

94. In the second case (no. A42669607), the claimant had disputed before the Administrative District Court the Prisons Administration's refusal of August 2007 to consider the various complaints that he had drafted in a non-State language. The Prisons Administration, drawing attention to section 10(2) of the State Language Law, had indicated that only submissions drafted in the State language would be accepted and reviewed. The District Court reasoned that the circumstances of the case did not fall within the scope of situations where a person was exempted from the statutory requirement to use the State language.

95. The third case (no. A420652110) related to the Prisons Administration's refusal of January 2010, based on section 10(2) and (3) of the State Language Law, to answer a query drafted by a detainee in a foreign language about the right to receive parcels containing tobacco products. That refusal had been upheld on appeal by the Ministry of Justice. The District Court considered whether conditions under section 10(2) of the Law had been present, allowing a request in a foreign language. It ruled, however, that the claim in question did not relate to circumstances in which a direct threat to the person's life, health or property or other similar important interests had to be prevented immediately. It further observed that the claimant had had an opportunity to ensure that his submissions were translated into the State language.

96. In the last case (no. A420594610), in June 2009 a detainee submitted complaints in a foreign language about the use of force on her in prison and her disciplinary punishment. The Prisons Administration left the complaints without consideration. That refusal was upheld on appeal by the Ministry of Justice. The Administrative District Court examined whether circumstances under section 10(2) of the State Language Law had existed, allowing the detainee to complain in a foreign language. It considered the content of the detainee's complaints, including the circumstances of the alleged incident, and deemed that they were not such as to require immediate action on the part of the competent officials. Furthermore, the District Court took into consideration that the claimant had been represented by an authorised person who had drafted and made submissions in the State language. The same representative had also acted on her behalf previously. The District Court observed that according to the representative, the claimant had informed him about the incident on the telephone. The District Court therefore ascertained that the person could have prepared a claim in the State language through her representative and protected her interests.

97. Next, the Government argued that the applicant's complaint in the present case was manifestly ill-founded.

98. The Government acknowledged that conditions in Daugavpils Prison had not been ideal. However, they insisted that, whether taken separately or cumulatively, the conditions had not been in violation of Article 3 of the Convention.

99. Referring to the information provided by Daugavpils Prison on 9 June 2008 and by the Ministry of Justice on 10 May 2010, the Government maintained that the prison cells, especially nos. 203, 205 and 217, had been in a satisfactory condition and had complied with article 77(1) of the Sentence Enforcement Code. Also, the cells had regularly been disinfected and sanitised. They had been equipped with adequately functioning ventilation and heating systems. In accordance with Cabinet of Ministers Regulation no. 423 (2006), the applicant had been provided with bed linen and a towel and, no less than every seven days, he had been able to shower, his bed linen had been changed and he had been able to maintain his personal hygiene.

(ii) The applicant

100. In connection with the Government's objection of non-exhaustion, the applicant argued that his complaints had not been dealt with because they had been written in Russian. Complaints had to be lodged before the national courts in the State language, but no translation service was provided for detainees and in any case he could not have afforded such a service.

101. In response to the Government's additional observations, the applicant commented that the examples of domestic case-law had involved

rights that were different from those in the present case. They had concerned 2010 and 2011, whereas the applicant had submitted his complaints in 2007. Therefore, those examples could not be used for the case at hand.

102. In response to the Government's observations, the applicant also maintained that conditions in the prison cells had not been properly assessed. He alleged that he had contracted tuberculosis as a result of the poor conditions in the prison.

(b) The Court's assessment

103. The Court reiterates that the purpose of 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 it. While Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge decisions already given. It normally also requires that complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010).

104. In the area of complaints of inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention; and compensation for the damage or loss sustained on account of such conditions. If an applicant has been held in conditions that are in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. Where the fundamental right to protection against torture or against inhuman or degrading treatment is concerned, the preventive and compensatory remedies, in principle, should be complementary in order to be considered effective (see *Melnītis*, cited above, §§ 47 and 48).

105. Moreover, an applicant who has availed himself of a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, for example, *Nada v. Switzerland* [GC], no. 10593/08, § 142, ECHR 2012).

106. Turning to the case at hand, the Court observes at the outset that as well as complaining to other domestic authorities, the applicant also wrote to the prosecution in relation to the conditions of detention. In previous cases the Court has been reluctant to accept that such a complaint was an effective remedy where the prosecution authorities were aware of a person's

situation in detention but failed to act to remedy that situation (see *Bazjaks v. Latvia*, no. 71572/01, §§ 88 and 89, 19 October 2010, and *Melnītis*, cited above, § 49). Also, the Court has not been persuaded that an applicant had at his disposal a possibility to seek compensatory redress (see *Bazjaks*, cited above, § 90).

107. In view of the Court's case-law mentioned above, the applicant has not explained why he deemed that a complaint to the prosecution would be an effective remedy. Furthermore, it is not entirely clear what the applicant's request to the prosecutor was, as on one occasion he requested that his complaint be considered in substance (see paragraph 36 above), and on another that a comment be provided (see paragraph 43 above).

108. Given that the applicant complained to the domestic authorities on numerous occasions (see paragraphs 42 et seq.), the Court is not persuaded by his allegation about the circumstances in which he withdrew his complaint of 2008 (see paragraph 41 above). Besides, the applicant claimed that he could have written to the administrative courts, but had a problem with the State-language requirement (see paragraph 70 above).

109. Irrespective of the applicant's allegation as to the withdrawal of his complaint of 2008, and leaving aside the issue of the State-language requirement at this point, the Court has already considered that it may be required for applicants who complain of detention conditions to make use of a compensatory remedy at national level in order to meet the requirement of exhaustion of domestic remedies (see *Ignats v. Latvia* (dec.), no. 38494/05, 24 September 2013, § 112). In principle, such a remedy could be considered capable of providing redress in respect of the applicant's complaint.

110. As the Court has more recently affirmed in *Iļjins v. Latvia* ((dec.), no. 1179/10, 5 November 2013, § 37 and the case-law cited therein), since its judgment in *Melnītis* (cited above), it has received more examples in which the administrative courts have dealt with detainees' complaints about the conditions of their detention. In view of the evolution of the administrative court's case-law, the Court considers that this development was sufficient for an applicant to be required to explore the effectiveness of that remedy.

111. In *Ignats* the Court noted the domestic case-law in which the conditions in a detention facility from 27 July 2005 to 4 August 2006 had been scrutinized (cited above, § 110). In the present case, the applicant was transferred to Daugavpils Prison at a later date, on 25 January 2007 (see paragraph 9 above). In the case of *Iļjins*, too, the Court had no reasons to doubt the adequacy of that remedy. As held by the Court, only consistent refusals by the domestic courts to take into account the nature of the complaint and to award adequate compensation could serve as a valid ground to relieve the applicant from the duty to exhaust domestic remedies before applying to the Court on the matter (see *Iļjins*, cited above, § 38).

112. In view of the Court's findings in *Iljins*, it remains to be established whether that remedy was accessible to the applicant, in the circumstances in which he found himself, namely, of being allegedly unable to lodge a claim in the State language.

113. At the outset, the Court considers that the existence of rules of procedure, such as those related to time-limits, form and language, is compatible with the proper administration of justice within domestic jurisdiction. With regard to the use of language, as pointed out by the Court previously, the fact remains that with the exception of the specific rights stated in Articles 5 § 2 and 6 § 3 (a) and (e), the Convention does not guarantee the right *per se* to use a particular language in communications with public authorities or the right to receive information in a language of one's choice. Consequently, provided that it respects the rights protected by the Convention, each Contracting State is at liberty to impose and regulate the use of its official language (see, *mutatis mutandis*, *Mentzen v. Latvia* (dec.), no. 71074/01, ECHR 2004-XII; *Bazjaks v. Latvia*, no. 71572/01, § 141, 19 October 2010; and *Şükran Aydın and Others v. Turkey*, nos. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, § 50, 22 January 2013).

114. The Court observes that the examples of domestic case-law relied on by the Government did not reveal that the administrative courts had taken a formalistic approach in connection with the State-language requirement. The examples show that the administrative courts examined in detail each situation as to the rights at stake and whether the person concerned had had a practical possibility to submit their complaint concerning the alleged abuse of their rights in the State language.

115. The Court is unable to accept the applicant's contention that the examples lacked pertinence to the case at hand. While the issues in dispute may indeed have varied, the matter of relevance is the authorities' application of the State Language Law in the course of administrative proceedings pursued by persons for the protection of their rights in relation to detention. Likewise, in the present case it was precisely the State Language Law on which the Prisons Administration based its refusal to consider the applicant's submissions in the context of his detention (see paragraph 49 above).

116. Similarly, the Court is not persuaded by the applicant's argument that the examples differed from his own situation on account of the difference in dates.

117. Prior to further consideration of this point, however, the Court points out that the Prisons Administration replied in substance on the applicant's submission of 11 May 2008 (see paragraphs 39 and 40 above). The applicant was concerned that further administrative proceedings with regard to all of his complaints would be hampered due to his lack of knowledge of the State language. The Court observes, however, that the

administrative courts' decisions submitted by the Government related to the Prisons Administration's refusals, which were based on the State Language Law dating back to 2007 – and including 2008, when the applicant had approached the domestic authorities (see paragraph 36 above).

118. As previously outlined by the Court, where there are doubts about the effectiveness of a remedy, the issue should be tested before the national courts (see *Iljins*, cited above, § 37, and *Ignats*, cited above, § 114).

119. It was therefore incumbent on the applicant, having complied with the extrajudicial procedure, 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.

120. In view of the foregoing considerations, the Court finds that the applicant's complaint under Article 3 of the Convention with regard to conditions in the prison should be dismissed, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

121. The Court therefore does not need to examine the Government's second objection.

2. The applicant's contraction of tuberculosis

(a) The parties' submissions

(i) The Government

122. The Government reiterated their preliminary objection of non-exhaustion, drawing attention to the fact that the applicant had not appealed against the Health Inspectorate's response of 19 August 2009.

123. In addition, the Government specified that the annual X-ray examinations had been performed in 2005, 2006, 2007 and 2009. It had not been possible to perform an examination in 2008 because the X-ray examination facilities were under reconstruction. Nevertheless, referring to the information provided by the Prisons Administration on 30 April 2010 and by the Ministry of Justice on 10 May 2010, the Government maintained that in 2008 the applicant had undergone ten check-ups, none of which had revealed any symptoms of a possible tuberculosis infection. The same had been concluded by the Health Inspectorate on 19 August 2009. The Government outlined that the applicant had been referred to a hospital immediately after the suspicion of tuberculosis had arisen.

124. The Government noted that deprivation of liberty was in itself a stressful experience and the applicant had also had alcohol and drug addictions since 2001. In this connection, they drew attention to the fact that a weak immune system, permanent stress and addiction to drugs and alcohol were factors that contributed to the likelihood of contracting tuberculosis.

(ii) The applicant

125. The applicant disagreed about the absence of symptoms of tuberculosis. Between January and May 2009 he had been fainting and constantly sweating and losing weight. He had constantly written to the prison about the deterioration of his health. Despite that, the prison had not carried out a proper investigation, nor provided adequate treatment.

126. The applicant argued that his state of health and his complaints had not been properly recorded in his prison medical file. Furthermore, the entries on drug and alcohol abuse had been invented: he had tried drugs only once.

(b) The Court's assessment

127. The applicant's complaint under Article 3 in relation to his contraction of tuberculosis concerned medical care in the prison. For that reason the Court finds it appropriate to consider this aspect separately.

128. At the outset the Court notes that it is not clear whether, having not received the impugned X-ray in 2008, the applicant asked the prison medical unit for one and, in the event that it was refused, pursued a complaint in administrative proceedings. As observed by the Court in *Antonovs*, an appeal with the administrative courts in the context of proceedings about lack of medical care in a prison was a remedy available to an individual (cited above, § 113). In *Antonovs* the Court considered the availability of this remedy in view of the domestic case-law dating back to 2005 (ibid.), which predates the impugned lack of X-ray in 2008 in the case at hand.

129. It is true that in *Antonovs* the Court made that assessment given that in that case there was no information as to whether the individual concerned was suffering from an acute disease liable to lead to an irreparable deterioration in his health (ibid., § 108).

130. With that in mind, the Court notes that in the present case the applicant indicated that he had experienced symptoms associated with tuberculosis after 2008, the year in which he had not been X-rayed, namely, between January and May 2009. It is therefore unclear whether he was already in urgent need of medical care in 2008.

131. The Court notes that the applicant pursued none of the remedies available – either by complaining to the Health Inspectorate requesting an assessment of the quality of medical care in the prison in view of the impugned failure to provide an X-ray examination in 2008, or by applying to the administrative courts to contest the refusal to provide an X-ray in the prison in 2008 (see *Antonovs*, cited above, § 114).

132. The applicant has asserted before the Court that subsequently, between January and May 2009, he had alerted the prison medical unit to the fact that he was experiencing symptoms associated with tuberculosis. However, he offered no proof of that allegation, which moreover, lacked

reasonable detail. For example, the applicant did not specify how many times he had addressed the medical unit, on what dates, or which particular medical professional he had contacted. The applicant's more detailed complaint in this regard is not part of the present case because he formulated it after communication of the application to the Government.

133. The applicant drew the matter of the X-ray to the attention of the domestic authorities, including the prosecutor's office, after being diagnosed with tuberculosis in 2009. Even if it were true that under the domestic law such an examination had to be carried out every twelve months, the Court is unable to agree that the prison's failure to provide an X-ray examination of the applicant in 2008 in itself raises an issue under Article 3. What is relevant here is whether the medical care provided was adequate, taking into account the applicant's state of health (see, *mutatis mutandis*, *Čuprakovs v. Latvia*, no. 8543/04, § 59, 18 December 2012). In that regard, the Court observes that the applicant did not indicate to the domestic authorities that the prison medical staff had neglected his complaints about the symptoms that had allegedly resulted in his health problems (see paragraph 43 above) (see ibid, §§ 58 and 59, and contrast *Mitkus v. Latvia*, no. 7259/03, § 33, 2 October 2012).

134. As the Court has previously held, even if an applicant were to contract tuberculosis while in detention, that in itself would not imply a violation of Article 3, provided that he received treatment for it (see *Pakhomov v. Russia*, no. 44917/08, § 65, 30 September 2010, and *Pitalev v. Russia*, no. 34393/03, § 53, 30 July 2009). In the present case, no complaint was raised by the applicant as to the treatment of his tuberculosis (see *Čuprakovs*, cited above, §§ 53, 55, 58 and 59).

135. With regard to the applicant's allegation about dampness in the prison cells (see paragraph 43 above), the Court observes that it was not entirely supported by the Prisons Administration's response of 12 June 2008, relied on by the applicant (see paragraphs 39 and 43 above). That response acknowledged that cell no. 205 did not comply with the statutory requirements and needed "cosmetic repair". Furthermore, it emerged that the applicant had spent limited periods of time in cell no. 205: on one occasion fourteen days and on another, five days (see paragraph 12 above).

136. In the view of above, the Court is not persuaded that the applicant brought before the domestic authorities a complaint of negligence on the part of the prison staff leading to his contraction of tuberculosis, so as to require a criminal investigation (see, *mutatis mutandis*, *Antonovs*, cited above, §§ 97 and 98). In these specific circumstances, the Court is unable to accept that the applicant was absolved from pursuing his grievance in administrative proceedings. Even though he had concerns as to the State-language requirement, which matter has been examined by the Court above, it was incumbent on him, having complied with the extrajudicial

procedure, to pursue his case in the first-instance administrative court. The matter would then have been amenable to judicial review on appeal and appeal on points of law.

137. While the Court does not underestimate the problems that emerged as a result of the conditions in Daugavpils prison, in the specific case of the applicant the Court finds that the 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.

138. The Court therefore does not need to examine the parties' further arguments.

C. Alleged violation of Article 3 of the Convention on account of the need for plastic surgery

139. Invoking Articles 3, 14 and 17 of the Convention the applicant complained that the Daugavpils Prison medical unit had not considered that he required plastic surgery on his skull. Accordingly, he had constantly feared for his life. He had been afraid to fall as a result of epileptic seizures and hit the part of his head that had remained unprotected by bone as of 2003. He averred that according to his diagnosis he had experienced epileptic seizures.

140. The Court finds that this complaint falls to be examined under Article 3 of the Convention.

1. The parties' submissions

(a) The Government

141. First, the Government argued that the applicant had failed to exhaust domestic remedies.

142. The Government emphasised the subsidiary character of the machinery of protection established by the Convention with respect to the national systems in safeguarding human rights.

143. In that light, they argued that the applicant had not appealed to the head of the Health Inspectorate against the Health Inspectorate's decision of 8 May 2008 (see paragraphs 66-68 above). Furthermore, a decision of the head of the Health Inspectorate could be disputed before the administrative courts.

144. Secondly, the Government insisted that the complaint was manifestly ill-founded.

145. Since sustaining head injuries in 2003, the applicant had never been prescribed plastic surgery on his skull by a doctor. His medical file had not contained any such instructions.

146. The Government drew attention to the fact that the domestic authorities had established that the alleged epileptic seizures and injuries

related to the epileptic seizures had never been observed. The applicant had regularly been examined by doctors and had been provided treatment for epilepsy.

(b) The applicant

147. In response to the Government's observations, the applicant insisted that his state of health and his complaints about his health had not been recorded properly in his medical file while in detention. The Health Inspectorate had therefore been prevented from ascertaining the true circumstances, because its assessment had been based on the records maintained by the prison. At the same time, in a letter sent to the Court on 14 July 2010, the applicant stated that his epileptic seizures had been recorded in June 2007 and on 7 November 2007 by medical staff of Riga Central Prison. On both occasions the applicant had been carried out of his cell and administered an injection.

148. In response to the Government's observations, the applicant recalled that on 18 October 2007 he had been diagnosed with epileptiform activity. Without further elaboration, he averred that given the information of 21 September 2003 from the hospital, there was no reason not to believe that he had experienced epileptic seizures. Furthermore, the fact that he had been administered medication for the treatment of epilepsy while in detention indicated that the prison had wished to hide the fact that he had been suffering from epilepsy.

149. In connection with the response from the MADEKKI of 20 September 2007 (see paragraph 54 above), the applicant appeared to submit that he had been in detention as of September 2005 and therefore had been unable to access other hospitals or institutions in order to obtain documents regarding the neurological surgery.

150. The applicant submitted that he had been provided with "appropriate treatment". However, the treatment had not been of "appropriate quality".

2. The Court's assessment

151. At the outset, the Court notes that it is disputed between the parties as to whether the applicant appealed against the Health Inspectorate's decision of 8 May 2008 (see paragraphs 69 and 143 above).

152. The applicant asserted that he had written the appeal but that it had not been delivered. However, it emerges from the facts that he had previously written several submissions to the MADEKKI and the Health Inspectorate, and that they had been received by the respective domestic authorities (see paragraphs 52, 57, 62 and 64 above). Besides, it does not appear that the applicant, having received no response, made any attempt to enquire with the Health Inspectorate about the fate of his appeal or, in the event that it had been lost, sought to lodge the appeal again.

153. Even if the Health Inspectorate did not consider the applicant's appeal, it was incumbent on the applicant to pursue the domestic remedies available. The Court makes that assessment in view of the fact that there is no information as to whether the impugned shortcoming in the applicant's treatment in prison was liable to lead to an irreparable deterioration in his health. It emerges that prior to his detention the applicant had already been suffering for more than a year from the medical condition claimed (see paragraphs 4, 7 and 8 above) (see *Čuprakovs*, cited above, § 53, and, *mutatis mutandis*, *Antonovs*, cited above, § 108).

154. In *Antonovs* (cited above) the Court scrutinised the effectiveness of domestic remedies for a complaint under Article 3 concerning lack of adequate medical care in prison. As held by the Court, the MADEKKI (subsequently the Health Inspectorate) assessment was only one of the possible pieces of evidence in other proceedings concerning the scope of medical care or compensation for damage to health (ibid., § 112).

155. The Court has no information that could lead it to conclude that the applicant, even without such an assessment, could not have directly requested the prison authorities to comply with their statutory obligations to provide appropriate medical care (ibid., § 112). The Court notes that the present applicant made several complaints to the MADEKKI and the Health Inspectorate. However, he has not furnished any proof that he lodged an appeal with the administrative courts disputing the alleged refusal by the prison staff to allow him to undergo surgery, in the context of the proceedings about the lack of medical care in Daugavpils Prison (ibid., § 113 and the domestic case-law referred to therein). In *Antonovs* the Court considered the availability of this remedy in view of the domestic case-law dating back to 2005 (ibid.), which predates the time when the present applicant raised the issue of surgery with the MADEKKI (see paragraph 52 above).

156. Even if the applicant had insisted on an assessment by the Health Inspectorate, as observed by the Court in *Antonovs*, an appeal lodged with the head of the organisation could subsequently have been pursued before the administrative courts. There is no evidence that, having received no response from the head of the Health Inspectorate to his appeal against the decision of 8 May 2008, the applicant sought to lodge a further appeal before the administrative courts (see, *mutatis mutandis*, ibid., § 110).

157. With regard to the applicant's contention that he had been unable to lodge his claims in the State language, the Court observes that the domestic authorities had in fact considered the applicant's requests in substance (see paragraphs 52-68 above). In any event, as noted by the Court above, it does not accept that the administrative courts would have taken a formalistic approach in applying the State Language Law in the applicant's case, had he appealed to the administrative courts (see paragraph 114 above).

158. Therefore the Court cannot but note that the applicant did not exhaust the remedies available. He neither lodged an appeal before the administrative courts against the Health Inspectorate's assessment of the quality of medical care provided to him in prison nor, having complied with the extrajudicial procedure, applied to the administrative courts contesting the prison's alleged refusal to provide him with surgery on his skull (ibid., § 114).

159. In view of the foregoing considerations, the Court finds that the applicant's complaint under Article 3 of the Convention alleging a lack of medical care should be dismissed, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies.

160. In view of that conclusion, the Court does not need to examine the Government's second objection.

D. Other alleged violations of the Convention

161. The applicant raised other complaints, relying on Articles 3, 14 and 17 of the Convention. He complained about his detention in cell no. 203, the prohibition on watching television programmes and the news, his transfer between the cells and the loss of his passport, and the non-payment of disability allowance.

162. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Françoise Elens-Passos
Registrar

Päivi Hirvelä
President