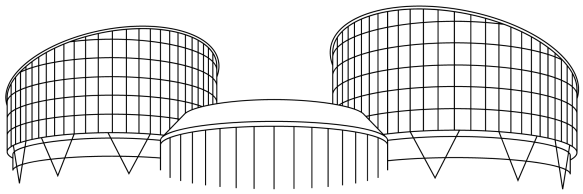

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF JULIN v. ESTONIA

*(Applications nos. 16563/08, 40841/08, 8192/10 and 18656/10)*

JUDGMENT

STRASBOURG

29 May 2012

*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 Julin v. Estonia,**

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

Nina Vajić, *President,*
Peer Lorenzen,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
Oliver Kask, ad hoc *judge,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 April 2012,

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

# PROCEDURE

1. The case originated in four applications (nos. 16563/08, 40841/08, 8192/10 and 18656/10) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Mr Vyacheslav Julin ("the applicant"), on 12 March 2008, 30 July 2008, 3 February 2010 and 18 March 2010 respectively.

2. The applicant was represented by Mr A. Sirendi, a lawyer practising in Tartu. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been ill-treated by prison officers and there had been no effective investigation into this ill-treatment, that he had had no access to court in respect of his complaints concerning prison conditions and the actions of prison officers, and that he had been strip-searched in a humiliating manner, and without respect for his private life.

4. On 17 March 2011 the applications were communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

5. Julia Laffranque, the judge elected in respect of Estonia, was unable to sit in the case (Rule 28). On 17 May 2011 the President of the Chamber decided to appoint Oliver Kask to sit as an *ad hoc* judge (Rule 29 § 1(b)).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1981 and lived in Tallinn until his arrest. He is currently serving a prison sentence.

### A. Application no. 16563/08

#### *1. The applicant's imprisonment in Murru Prison and his transfer to Tartu Prison*

7. In 2007 the applicant was serving a prison sentence in Murru Prison.

On 29 March 2007 he was placed in a punishment cell for thirty days as a disciplinary penalty. Initially, he was placed in punishment cell no. 140. On 9 April 2007 he was transferred to punishment cell no. 122. He made several applications and complaints to the prison director concerning the condition of the cells.

8. On 1 June 2007 the applicant's marriage to I. was dissolved.

9. On 4 July 2007 the applicant made a request to the prison administration to be allowed an overnight visit from his family. He was given authorisation for a visit for 7 and 8 August 2007.

10. On 11 July 2007 the applicant was assaulted by co-prisoners in Murru Prison. He sustained thirteen stab wounds. He was taken to a hospital in Tallinn and later to the Prison Hospital in Maardu. On 16 July 2007 he was taken back to Murru Prison, where he was placed, for security reasons, in cell no. 147. That cell was in the closed disciplinary section of the prison. He was kept in cell no. 147 for ten days.

11. On 27 July 2007 the director of Murru Prison requested the Ministry of Justice to transfer the applicant to Tartu Prison for security reasons. On 1 August 2007 the Ministry acceded to that request. Although the applicant sought postponement of his transfer so that he could receive the family visit planned for 7 and 8 August, he was transferred to Tartu on 7 August 2007 and no visit took place.

12. Upon arrival at Tartu Prison the applicant was placed in the reception section. On 17 August 2007 his request for an overnight visit was dismissed since such visits were not allowed in the reception section. A person may be kept in the reception section for up to three months.

13. On 19 September 2007 the applicant sewed his mouth together with five stitches and announced that he was commencing a hunger strike, apparently mainly because of the prison administration's failure to place him in a different cell despite his requests referring to the dangerousness of

V., with whom he was sharing the cell. Initially he refused medical assistance, but it appears that the stitches were removed on the next day by medical staff and the applicant terminated his hunger strike.

14. On 21 September 2007, finding that the applicant was suicidal and might continue to harm himself, the prison director decided to apply certain additional security measures to him. In particular, he ordered the applicant's placement in a locked isolation cell and prohibited him from wearing personal clothing or using personal effects. The necessity of the continued application of these measures was to be reviewed once a month.

*2. Court proceedings initiated by the applicant*

**(a) Jurisdiction over the applicant's complaints**

15. The complaints against the administration of Murru Prison (see paragraphs 16 and 21 below) were originally lodged with the Tallinn Administrative Court. As the applicant was subsequently transferred to Tartu Prison, on 14 August 2007 the Tallinn Administrative Court transferred the cases to the Tartu Administrative Court, which had jurisdiction over them after the applicant's transfer.

**(b) Administrative case no. 3-07-1000**

16. On 17 May 2007 the Tallinn Administrative Court received a complaint from the applicant about Murru Prison. He claimed compensation for non-pecuniary damage caused by the degrading conditions in punishment cells nos. 140 and 122. He argued that the windows of the cells had been dirty and could not be opened, there had been no fresh air, the temperature had been too low and the lighting too dim; for two days there had been no lighting at all as the bulb had burnt out; the noise level had been high, the plumbing had been inadequate and blockages had occurred; there had been an unpleasant smell, the washbasin had been directly above the open toilet, the bedding had been dirty, and so on. He requested exemption from the State fee (*riigilõiv*) payable on the complaint.

17. On 22 October 2007 the Tartu Administrative Court dismissed the applicant's request for exemption. It observed that the applicant had no means to pay the State fee of 1,000 kroons (EEK) (corresponding to approximately 64 euros (EUR)), but considered that this fact did not automatically mean that he should be granted exemption. The purpose of the possibility of granting an exemption was to secure the right to a court regardless of a person's economic situation. At the same time, the requirement to pay the State fee served the purpose of discouraging the lodging of ill-considered complaints. In deciding whether to exempt an indigent person from the obligation to pay the State fee, a court had to make a preliminary assessment of the necessity and importance of the protection

of the person's rights. The more important the right to be protected and the fewer the possibilities for protecting it by other means, the more justified was the exemption from the State fee. The opposite was also true: it was not justified to exempt an indigent person from the State fee in cases where there were no rights to be protected or the matter was of no importance for the person concerned. The Administrative Court considered that the applicant's claim was not a matter of importance for him. The court considered that important matters in this context were ones relating to a person's essential interests or his or her way of life. The receipt of a pecuniary award for alleged emotional and physical suffering of a temporary nature was not of such importance as to justify his exemption from the State fee. The court referred to the State Legal Aid Act (*Riigi õigusabi seadus*), which stipulated that State legal aid was not granted if it was requested in order to claim compensation for non-pecuniary damage and there was no predominant public interest involved. The court also noted that the applicant had directly applied to an administrative court, whereas he could have first claimed compensation from the prison administration without needing to pay a State fee. In respect of the well-foundedness and prospects of success of the applicant's complaint, the court considered that the applicant's placement in a punishment cell might have caused him emotional hardship and inconvenience but the existence of the non-pecuniary damage that allegedly ensued was questionable and had not been adequately substantiated in the complaint.

18. On 6 December 2007 the Tartu Court of Appeal dismissed the applicant's appeal against the Administrative Court's decision. The Court of Appeal made reference to the Supreme Court's judgment of 6 September 2007 in case no. 3-3-1-40-07 (see paragraph 93 below), according to which, in assessing whether an indigent person's exemption from the State fee was justified, a court inevitably had to make a preliminary assessment of the necessity and importance of the protection of the complainant's rights. It referred to the circumstances of the applicant's case and found that – assuming that all of the applicant's allegations were true – the applicant might have suffered inconvenience but it was questionable whether he had sustained such non-pecuniary damage as required compensation. It considered that the applicant's claim for damages lacked prospects of success.

19. The applicant appealed to the Supreme Court. On 9 January 2008 the Supreme Court granted the applicant's request for exemption from the payment of security (*kautsjon*) for his appeal. On 5 March 2008 the Supreme Court declined to hear the applicant's appeal.

20. As the applicant's request for exemption from the State fee had been finally turned down by the Supreme Court's decision, on 14 March 2008 the Tartu Administrative Court gave the applicant fifteen days to pay the State fee. On 3 April 2008 the Administrative Court returned the applicant's

complaint to him as he had failed to pay the fee. The applicant sought to appeal against that decision but since he failed to bring the appeal into conformity with the applicable requirements, as requested by the Administrative Court, on 29 April 2008 the court refused to examine the appeal and returned it to the applicant.

**(c) Administrative case no. 3-07-1624**

21. On 13 August 2007 the applicant lodged a complaint against Murru Prison with the Tallinn Administrative Court. He claimed compensation for non-pecuniary damage caused by the degrading conditions in cell no. 147. In particular, he submitted that the window of the cell had been dirty and could not be opened, there had been no fresh air, the temperature had been too low and the humidity level too high, the toilet and washbasin had been in the same corner, leading to difficulties in their use, there had been no table, chairs or hangers for clothes, the noise level had been high, the bedding had been dirty. In the same complaint he argued that his transfer from Murru to Tartu on the day of the planned family visit had been unlawful, and claimed compensation for a violation of his right to family life. He requested exemption from the State fee payable on the complaint.

22. On 29 October 2007 the Tartu Administrative Court severed these two complaints into two separate sets of proceedings: case no. 3-07-1624 concerning the conditions in cell no. 147 and case no. 3-07-2184 concerning the family visit (in respect of the latter, see paragraph 27 below).

23. On 29 October 2007 the Tartu Administrative Court dismissed the applicant's request for exemption from the State fee. The reasons for its decision were substantially the same as those given in the Tartu Administrative Court's decision of 22 October 2007 in administrative case no. 3-07-1000 (see paragraph 17 above).

24. On 5 December 2007 the Tartu Court of Appeal dismissed the applicant's appeal against the Administrative Court's decision. Its reasoning was similar to that of the Tartu Court of Appeal's decision of 6 December 2007 in case no. 3-07-1000 (see paragraph 18 above).

25. The applicant appealed to the Supreme Court. On 9 January 2008 the Supreme Court granted the applicant's request for exemption from the payment of security for his appeal. On 5 March 2008 it declined to hear the applicant's appeal.

26. As the applicant's request for exemption from the State fee had been finally turned down by the Supreme Court's decision, on 14 March 2008 the Tartu Administrative Court gave the applicant fifteen days to pay the State fee. On 3 April 2008 the Administrative Court returned the applicant's complaint to him as he had failed to pay the fee. The applicant sought to appeal against that decision but since he failed to bring the appeal into conformity with the applicable requirements, as requested by the Administrative Court, on 29 April 2008 the court refused to examine the

appeal and returned it to the applicant. He sought to appeal against that decision but since he failed to bring the appeal into conformity with the applicable requirements, as requested by the Administrative Court, on 29 April 2008 the court refused to examine the appeal and returned it to him.

**(d) Administrative case no. 3-07-2184**

27. On 29 October 2007 the Tartu Administrative Court severed the applicant's complaints into separate sets of proceedings (see paragraph 22 above) and registered under no. 3-07-2184 the complaint that his transfer from Murru to Tartu on the day of the planned family visit had been unlawful. In this complaint the applicant claimed compensation for a violation of his right to family life. He also requested exemption from the State fee payable on the complaint.

28. Also on 29 October 2007, the Tartu Administrative Court ruled on the applicant's request for exemption. It gave reasons substantially the same as those given in its decision of 22 October 2007 in administrative case no. 3-07-1000 (see paragraph 17 above). However, since it was not convinced that the complaint was devoid of all prospects of success, it granted the applicant partial exemption from the State fee and ordered him to pay EEK 80 (EUR 5) instead of the full fee of EEK 1,000 (EUR 64).

29. On 19 November 2007 the Tartu Court of Appeal dismissed the applicant's appeal against the Administrative Court's decision, relying on reasoning similar to that of its decision of 6 December 2007 in case no. 3-07-1000 (see paragraph 18 above).

30. The applicant appealed to the Supreme Court. On 9 January 2008 the Supreme Court granted the applicant's request for exemption from the payment of security for his appeal. On 5 March 2008 the Supreme Court declined to hear the applicant's appeal.

31. As the applicant's request for full exemption from the State fee had been finally turned down by the Supreme Court's decision, on 14 March 2008 the Tartu Administrative Court gave the applicant fifteen days to pay the State fee. On 3 April 2008 the Administrative Court returned the applicant's complaint to him as he had failed to pay the fee. He sought to appeal against that decision but since he failed to bring the appeal into conformity with the applicable requirements, as requested by the Administrative Court, on 29 April 2008 the court refused to examine the appeal and returned it to him.

**(e) Administrative case no. 3-07-1873**

32. On 25 September 2007 the Tartu Administrative Court received a complaint from the applicant about Tartu Prison. He claimed compensation for non-pecuniary damage caused by the regime applied to him in Tartu Prison. In particular, he was dissatisfied that he had not been allowed to

receive an overnight visit, he had not been able to make phone calls, to visit a gym, to take part in the Estonian language classes, or to read fresh newspapers and magazines. He had been placed in a cell with a dangerous prisoner convicted of murder. After his placement in the locked isolation cell, he had been prohibited from using personal effects and thereby his correspondence had also been restricted for two days. Furthermore, he considered that the restrictions imposed on taking walks, his placement in conditions threatening his life and health, his placement in a cell designated for use by aggressive persons, and the application of additional security measures had been unlawful. He requested exemption from the State fee payable on the complaint.

33. On 25 October 2007 the Tartu Administrative Court dismissed the applicant's request for exemption. The reasons for its decision were substantially the same as those given in its decision of 22 October 2007 in administrative case no. 3-07-1000 (see paragraph 17 above).

34. On 6 December 2007 the Tartu Court of Appeal dismissed the applicant's appeal against the Administrative Court's decision. It employed reasoning similar to that of its decision of 6 December 2007 in case no. 3-07-1000 (see paragraph 18 above).

35. The applicant appealed to the Supreme Court. On 9 January 2008 the Supreme Court granted the applicant's request for exemption from the payment of security for his appeal. On 5 March 2008 the Supreme Court declined to hear the applicant's appeal.

36. As the applicant's request for exemption from the State fee had been finally turned down by the Supreme Court's decision, on 14 March 2008 the Tartu Administrative Court gave the applicant fifteen days to pay the State fee. On 3 April 2008 it returned the applicant's complaint to him as he had failed to pay the fee. He sought to appeal against the latter decision but since he failed to bring the appeal into conformity with the applicable requirements, as requested by the Administrative Court, on 29 April 2008 the court refused to examine the appeal and returned it to him.

### B. Application no. 40841/08

37. On 31 May 2007 the director of Murru Prison ordered the applicant's placement in a punishment cell for nineteen days as a disciplinary sanction for concluding a transaction prohibited in prison (sale of a radio tape recorder to another prisoner). On 20 June 2007 he was placed in cell no. 155.

38. On 13 November 2007 the applicant lodged a complaint with the Tartu Administrative Court (case no. 3-07-2318). He considered that the order of the prison director had in itself been unlawful as there had been no grounds for his punishment. Further, he complained about the conditions of detention in cell no. 155. According to the applicant, the bars on the window

of the cell had limited the access of natural light through the dirty glass and had prevented the window from being opened for ventilation. The temperature in the cell had been too low, the noise level high and the artificial lighting insufficient. The washbasin had been directly above the toilet, preventing its normal use. The toilet had been an open one; it had been in an unsanitary state and spread an unpleasant smell, and the bedding had been dirty. The applicant claimed compensation for non-pecuniary damage, the amount to be determined by the court. He requested exemption from the State fee payable on the complaint.

39. On 10 December 2007 the Tartu Administrative Court dismissed the applicant's request for exemption. The reasons for its decision were substantially the same as those given in its decision of 22 October 2007 in administrative case no. 3-07-1000 (see paragraph 17 above).

40. On 21 January 2008 the Tartu Court of Appeal dismissed the applicant's appeal against the Administrative Court's decision. Its reasoning was similar to that of the Tartu Court of Appeal's decision of 6 December 2007 in case no. 3-07-1000 (see paragraph 18 above).

41. The applicant appealed to the Supreme Court. On 20 February 2008 the Supreme Court granted the applicant's request for exemption from the payment of security for his appeal. On 27 March 2008 the Supreme Court declined to hear the applicant's appeal.

42. As the applicant's request for exemption from the State fee had been finally turned down by the Supreme Court's decision, on 7 April 2008 the Tartu Administrative Court gave the applicant fifteen days to pay the State fee. On 24 April 2008 it returned the applicant's complaint to him as he had failed to pay the fee. On 26 May 2008 the Tartu Court of Appeal dismissed his appeal against the Administrative Court's decision. On 19 June 2008 the Supreme Court granted the applicant's request for exemption from the payment of security for his appeal. By a decision of 20 June 2008 the Supreme Court declined to hear the applicant's appeal.

### C. Application no. 8192/10

43. On 26 May 2009 the applicant was strip-searched on his return to Tartu Prison from an administrative court hearing.

44. According to the applicant, out of seven inmates who were escorted to the prison together in the same vehicle, he was the only one searched in such a manner. In his application to the Court the applicant submitted that he had been searched in the presence of five prison officers. He had been ordered to undress, lift his sexual organ and squat. He had had to open his mouth and his ears had been visually inspected. According to the applicant, the officers had laughed at him. Prison officer O. had also wanted to carry out a digital rectal examination but the applicant had refused, arguing that such an examination had to be performed by a doctor. He had then been

taken to the medical unit and a female doctor had carried out the procedure in the presence of two officers. The applicant's request for a male doctor had been rejected and he had been warned that force could be used if he refused to comply.

45. In the applicant's subsequent observations to the Court it was submitted that he had been searched, naked, by a doctor in front of seven prison officers.

46. According to the Government the applicant had protested when ordered by the prison officers to go to the search room after his return from the court hearing. Relying on the information provided by the prison, the Government submitted that after the order for the search had been given, the applicant himself had made a show of lowering his trousers in the search room. A male prison officer had then ordered the applicant to bend over and spread his buttocks. The applicant had refused and demanded a doctor. He had then been taken to the medical unit, where the examination had been conducted by a female doctor. There were no male doctors in Tartu Prison.

47. There is a copy of a report on the search in the case file which indicates that the search was carried out by five prison officers, whose names appear on the report along with their signatures. It is stated in the report that a "full search" was performed and that no items prohibited in prison were found. The report does not describe the way in which the search was carried out. It further contains a statement by the applicant that he had not agreed to the search since he had been naked and felt his human dignity was being degraded.

48. According to the applicant, O. subsequently instituted disciplinary proceedings for non-compliance with his orders. There is no information on the outcome of these proceedings.

49. The applicant made several complaints and applications to the prison administration, the Ministry of Justice and the Tartu Administrative Court in connection with his search of 26 May 2009.

50. Notably, on 8 June 2009 the applicant claimed EEK 30,000 (EUR 1,920) from Tartu Prison for non-pecuniary damage caused by the search, which he stated had been carried out in a degrading manner.

51. The prison director replied by a letter of 31 July 2009. He considered that the applicant's claim could not be dealt with since it was unclear what, in particular, had rendered the actions of the prison administration unlawful in the applicant's opinion. According to the director it was mandatory to search a prisoner when he or she entered or left the prison. The strip search also had a basis in legislation. The director gave the applicant two weeks to amend his claim and requested him to provide further information as follows:

> "1. ... what rendered the search unlawful and the officers culpable (*milles seisnes läbiotsimise õigusvastasus ja ametnike süü*);

2. what damage you sustained, that is, which of the consequences listed in sections 8 and 9(1) of the State Liability Act (*Riigivastutuse seadus*) form the basis for your claim for compensation;

3. by what evidence (documentary evidence, witnesses, inspection of the scene, expert opinion) can you prove the existence of the harmful consequences. If you cannot provide the evidence you must indicate where the evidence can be found so that the prison may access it;

4. if financial compensation is claimed, justification for the sum claimed and the reason why you consider that the damage caused can only be compensated by money."

52. On 1 August 2009 the applicant amended his claim, stating that the officers had violated his privacy and mocked him. A search report drawn up on 26 May 2009 and signed by five officers served as proof. The applicant also pointed out that he had made a number of written complaints to the prison director about the search in question in which everything had been described in detail. He submitted that the officers had caused him deep emotional pain, offended him and caused him resentment. Since then, he had suffered psychologically. He referred to Article 25 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), which stipulated that everyone had a right to compensation for non-pecuniary and pecuniary damage caused by the unlawful actions of another. He evaluated the damage caused to him at EEK 30,000 and considered that the prison officers, and the prison, were liable for their actions.

53. On 1 September 2009 the prison administration informed the applicant that in their opinion he had failed to remedy the deficiencies in his claim. The administration had no information which indicated that the search of the applicant had been unlawful or that the prison officers had wrongfully caused him more inconvenience than was inevitably involved in detention. Therefore, the administration deemed it unnecessary to assess whether the applicant's claim was justified. They refused to consider the claim and informed the applicant that the proceedings were thereby terminated and he had no right to lodge a further complaint with an administrative court in the same matter.

54. Nevertheless, on 14 September 2009 the applicant lodged a complaint with the Tartu Administrative Court (case no. 3-09-2015). He claimed EEK 30,000 in compensation for non-pecuniary damage caused by the strip search, which had been carried out in a degrading manner.

55. By a decision of 24 September 2009 the Administrative Court refused to examine the complaint since the applicant had failed to comply with the mandatory procedure, which required a prior extra-judicial adjudication of the matter.

56. On 14 December 2009 the Tartu Court of Appeal dismissed the applicant's appeal.

57. On 27 January 2010 the Supreme Court declined to hear his appeal.

## D. Application no. 18656/10

### *1. Incidents on 22 and 23 October 2009*

58. On 22 October 2009, at around 10 a.m., an incident occurred between the applicant and prison officers. According to the official reports, the applicant requested permission to store some documents in the storage room of the disciplinary section of the prison and to take out certain legal texts that he had previously stored there. A prison officer noticed that the applicant had hidden tobacco between the papers, and tobacco was not allowed in the punishment cell. A conflict arose and the applicant became aggressive, used offensive language against the officers and, after being taken to his cell, banged at length against the door. When an officer requested him to complete a letter of explanation, the applicant hit his hand while grabbing the paper from him, crumpled the paper and threw it on the floor. He also threatened the officers with physical violence after his release.

59. According to report no. 57 on the use of the means of restraint, it was necessary to confine the applicant to a restraint bed "because [he became] aggressive when prohibited from taking tobacco to the punishment cell, made threats, used foul language, banged at length against the door, struck a prison officer on the hand while taking from him a letter of explanation [form], did not comply with the lawful orders of the prison officers." It was noted in the report that the applicant had been warned in advance that measures of restraint could be applied, and that he had not needed medical assistance after the use of the means of restraint.

60. The applicant was confined in the bed from 10.40 a.m. to 7.30 p.m. on 22 October 2009. His condition was monitored once an hour, when the necessity of the continued use of the means of restraint was assessed on the basis of his behaviour.

61. The report contains the following entries. At 11.40 a.m., 12.40 p.m. and 1.40 p.m.: "[use of the restraint measures] to be continued, [the applicant is] aggressive and using foul language". At 2.40 p.m. and 3.40 p.m.: "[use of the restraint measures] to be continued, obscenities". At 4.40 p.m. and 5.40 p.m.: "[use of the restraint measures] to be continued, behaviour abnormal, [the applicant is] silent". At 6.40 p.m.: "[use of the restraint measures] to be continued, provocative behaviour". At 7.30 p.m.: "[use of the restraint measures] to be discontinued, [the applicant] has calmed down." The report also contains entries according to which medical staff checked on the applicant's situation at 11.15 a.m. and 7.30 p.m.

62. According to the applicant, he had had no intention of taking tobacco from the store room; rather, he had been provoked by an officer. He was

taken back to his cell, where he refused to write a letter of explanation and refused to talk to the officers, who were demanding explanations. After twenty minutes, officers in masks and equipped with shields burst into the cell, surrounded him, threw him to the floor and handcuffed him, even though he was not resisting but merely verbally expressing his opinion about the unlawful actions of the officers. He was then confined to the restraint bed. He was not given any drink or food and was prevented from going to the toilet for nine hours.

63. Also on 22 October 2009, the prison administration ordered the application of further measures of restraint in respect of the applicant. In order to prevent the commission of serious offences and to ensure overall security in the prison, the applicant was to wear handcuffs at all times when outside his cell except in the walking yard. Handcuffs were also to be used within his cell whenever an officer needed to enter it. The additional measures were to remain in place until necessary and reviewed on the first Monday of every month.

64. On 23 October 2009, at 8 a.m., according to reports drawn up by prison officers, the applicant did not comply with a lawful order to be handcuffed, and he used offensive language. Physical force had to be employed to put the handcuffs on him. According to a report drawn up by a nurse, the applicant had an abrasion measuring 0.5 cm by 0.5 cm next to his left eye and four bluish marks on his neck.

65. According to the applicant, the officers wanted to put handcuffs on him but he asked to be shown an official decision authorising the use of this means of restraint. After ten minutes officers in masks and equipped with shields burst into the cell, hit him with a shield and pushed his face against the window bars. The applicant protested; an officer, O., told him to shut up and grabbed his neck. When the applicant started screaming owing to suffocation, O. placed his fingers in his nostrils and started to pull him up, causing him severe pain. He was then forced to the floor and handcuffed. After two minutes the handcuffs were taken off, he was told to lie face down on the floor and the officers left the cell. Then a doctor came; she examined him and left. The door was closed.

66. On 14 April 2010 the application of the measure of restraint (the use of handcuffs) ordered in respect of the applicant on 22 October 2009 was terminated.

*2. Disciplinary proceedings against the applicant*

67. Two separate sets of disciplinary proceedings were initiated against the applicant, the first in respect of the use of offensive language against prison officers and hitting an officer on 22 October 2009, and the second concerning his failure to comply with the lawful order of an officer and the use of offensive language on 23 October 2009.

68. Two reports on the disciplinary proceedings (dated 11 November and 13 November 2009) were drawn up. Statements by the prison officers involved in the incidents and by the applicant, as well as report no. 57 on the use of the means of restraint, and a medical report, were appended to the reports on the disciplinary proceedings.

69. On 20 November 2009 two separate decisions were taken sanctioning the applicant by twenty days' confinement in a punishment cell in each case.

*3. The applicant's offence reports*

70. On 11 and 12 November 2009 the applicant lodged offence reports with the Lõuna District Prosecutor's Office. Referring to the incidents of 22 and 23 October 2009, he complained of physical violence and unlawful treatment by prison officers.

71. The District Prosecutor's Office requested the material relating to the incidents of 22 and 23 October 2009 from the prison.

72. On 23 November 2009 the prosecutor's office refused to initiate criminal proceedings. The prosecutor relied on the material relating to the disciplinary proceedings against the applicant, comprising statements by the prison officers and the applicant, report no. 57 on the use of the means of restraint, the order concerning the further application of means of restraint, and the medical report. The prosecutor was of the opinion that the applicant had breached the prison rules both on 22 and 23 October 2009 and that the use of means of restraint and physical force against him had been lawful. The length of the use of the restraint bed had been dependent on the applicant's behaviour. The injuries established on 23 October 2009 could have been sustained in the course of suppressing his resistance when he had refused to comply with the lawful orders of the prison officers.

73. The applicant appealed to the State Prosecutor's Office, arguing, *inter alia*, that the district prosecutor had approached the matter in a biased manner as only the prison officers' point of view had been taken into account. The applicant had not been interviewed and he had not been afforded a lawyer.

74. On 4 December 2009 the State Prosecutor's Office dismissed the applicant's appeal. The State prosecutor noted that the applicant's point of view had been expressed in his offence report and it had not been overlooked. As the materials which the prosecutor had been in possession of had not warranted the institution of criminal proceedings, no procedural steps such as interviewing the persons involved had been taken.

75. On 9 December 2009 the applicant lodged a complaint with the Tartu Court of Appeal against the decision of the State Prosecutor's Office. He also requested legal aid, as under the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) such a complaint had to be drawn up by an advocate but the applicant did not have the means to pay for a lawyer.

76. On 29 December 2009 the Tartu Court of Appeal dismissed the legal aid request. It considered that the prospects of success of the complaint were slight in the circumstances. It noted that the applicant himself had behaved in a wrongful manner which had escalated into aggression against prison officers, and there was no evidence of unlawful treatment of the applicant or physical ill-treatment; the use of force by the prison officers had been within the lawful limits.

77. On 10 February 2010 the Supreme Court dismissed the applicant's request for legal aid, finding that his appeal had no prospects of success.

*4. Administrative court proceedings initiated by the applicant*

78. The applicant lodged several complaints with the Tartu Administrative Court in relation to the events of 22 and 23 October 2009. In particular, he complained about his placement in the restraint bed on 22 October 2009 (case no. 3-09-2774), against the order of 22 October 2009 concerning the prospective use of handcuffs (case no. 3-09-2951), and about the actual use of handcuffs on 23 October 2009 (case no. 3-09-3063). The Administrative Court exempted him from the payment of the State fee on these complaints. On 5 February 2010 the applicant informed the Administrative Court that he wished to withdraw the cases. By decisions of 9 and 10 February 2010 the Administrative Court accepted that request and terminated the proceedings in each case.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Relevant domestic law

*1. The State Fees Act*

79. The State Fees Act (*Riigilõivuseadus*), as in force in 2007, provided that the State fee (*riigilõiv*) for a complaint lodged with an administrative court was EEK 80 (EUR 5) (section 56(10)). If the complaint concerned compensation for damage, the State fee was 3% of the sum claimed but not less than EEK 80 and not more than the amount payable on the filing of a civil action in civil court proceedings in respect of a similar amount (section 56(11)). If the complainant claimed compensation for non-pecuniary damage and left the amount of compensation to be determined by the court, a State fee of EEK 1,000 (EUR 64) was payable (section 56(12)). The State fee to be paid on an appeal against a judgment of an administrative court was the same as upon the initial filing of the complaint with that court (section 56(18)).

*2. The State Legal Aid Act*

80. The State Legal Aid Act (*Riigi õigusabi seadus*) provides that State legal aid is not granted if the applicant's attempt to protect his or her rights is clearly unlikely to succeed given the circumstances (section 7(1)(5)). Nor is State legal aid granted if it is applied for in order to lodge a claim for compensation for non-pecuniary damage (*mittevaraline kahju*) and there is no predominant public interest involved (section 7(1)(6)).

*3. The Code of Criminal Procedure*

81. Pursuant to Article 208 of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), the victim of an alleged offence can lodge a complaint with a court of appeal against a refusal by the Public Prosecutor's Office to initiate criminal proceedings. Such a complaint must be lodged through an advocate.

*4. The Penal Code*

82. Article 121 of the Penal Code (*Karistusseadustik*) stipulates that causing damage to the health of another person, or battery or other physical abuse which causes pain, is punishable by a fine or up to three years' imprisonment. Article 324 of the Code provides for criminal responsibility for the unlawful treatment of prisoners or persons in detention or custody. According to this provision, an officer of a custodial institution who, taking advantage of his or her official position, degrades the dignity of a prisoner or a person in detention or custody, or discriminates against such a person or unlawfully restricts his or her rights, is punished by a fine or up to one year's imprisonment.

*5. The State Liability Act*

83. The State Liability Act (*Riigivastutuse seadus*) sets out the rules concerning compensation for pecuniary damage (*varaline kahju*) in section 8. In respect of compensation for non-pecuniary damage (*mittevaraline kahju*), section 9 stipulates as follows:

> "(1) A natural person may claim financial compensation (*rahaline hüvitamine*) for non-pecuniary damage resulting from wrongful (*süüline*) degradation of dignity, damage to health, deprivation of liberty, violation of the inviolability of the [person's] home or private life or of the confidentiality of [their] correspondence, or defamation of the person's honour or good name.
>
> (2) Non-pecuniary damage shall be compensated for in proportion to the gravity of the offence (*õiguserikkumine*), taking into account the form and gravity of the wrongful act (*süü vorm ja raskus*).
>
> ..."

*6. The Imprisonment Act*

84. Section 1-1 of the Imprisonment Act (*Vangistusseadus*), as in force until 23 July 2009, provided that prisoners could lodge complaints with an administrative court against administrative acts issued or measures taken by a prison, on the basis of and pursuant to the procedure provided in the Code of Administrative Court Procedure, and on condition that the prisoner had previously lodged a complaint with the Ministry of Justice and the Ministry of Justice had returned the complaint, rejected it or failed to take a decision within the applicable time-limit (subsection 5).

85. Subsection 8 provided that a prisoner had the right of recourse to an administrative court for compensation for damage caused by a prison on condition that the prisoner had previously submitted to the prison an application for compensation for damage in accordance with the procedure provided for in the State Liability Act, and the prison had returned the application or refused to satisfy it or to review it within the applicable time-limit.

86. Section 1-1 of the Imprisonment Act, as in force from 24 July 2009, provides for the Ministry of Justice to review complaints concerning administrative acts issued or measures taken by a prison director. The prison director reviews complaints against administrative acts issued or measures taken by other prison officers (subsection 4-1). Subsection 5, as in force from 24 July 2009, contains amendments in the light of the new subsection 4-1, according to which complaints against a prison director are reviewed by the Ministry of Justice, and complaints against other prison officers by a prison director. The amendments to subsection 8 are not relevant for the present case.

87. A new subsection 8-1 entered into force on 24 July 2009, according to which, where a complaint or application is returned because its author has failed to rectify deficiencies within the applicable time-limit, he or she has no right to lodge another complaint or application with an administrative court in respect of the same matter.

88. Section 14(4) provides that a prisoner must not be kept in a reception section for more than three months. Pursuant to section 25(3), no overnight visits may be received by a prisoner in the reception section.

89. Section 68 provides that a prison officer of the same sex may search a prisoner in order to discover prohibited items or substances. The search procedure is established by a regulation of the Minister of Justice.

90. Sections 69, 70, 70-1 and 71 provide as follows:

**Section 69 – Additional security measures**

"(1) Additional security measures shall be imposed with regard to a prisoner who regularly violates the requirements of this Act or the internal rules of the prison, damages his or her health or is likely to attempt suicide or escape, or to a prisoner who

poses a threat to other persons or to security in the prison. Additional security measures may also be imposed for the prevention of serious offences.

(2) It is permitted to apply the following as additional security measures:

1) restriction on a prisoner's freedom of movement and communication inside the prison;

2) prohibition on a prisoner wearing personal clothing or using personal effects;

3) prohibition on a prisoner taking part in sports;

4) commission of a prisoner to a locked isolation cell;

5) use of means of restraint.

(3) The application of additional security measures shall be terminated if the circumstances specified in subsection (1) of this section cease to exist.

(4) Additional security measures shall be imposed by the prison service. In emergencies, additional security measures shall be imposed by the highest prison officer present at the time."

**Section 70 – Use of means of restraint**

"(1) It is permitted to use physical restraint, handcuffs, ankle cuffs or a restraint jacket as the means of restraint provided for in section 69(2)(5) of this Act. Means of restraint may also be used when a prisoner is being escorted. Ankle cuffs may be used as a means of restraint only while escorting a prisoner or placing a prisoner inside the prison.

(2) Means of restraint shall not be applied for longer than twelve hours."

**Section 70-1 – Special equipment and service weapons used in prisons**

"(1) The following constitute special equipment for use in prisons:

1) protective helmet;

2) body armour and other types of bulletproof vests;

3) ballistic shields and other impact-resistant shields;

4) clothing used for special operations and face shields against caustic substances;

5) lighting and audio equipment;

6) colouring and marking devices for special purposes;

7) tear gas and smoke grenades (and equipment);

8) blasting devices for special purposes (not used against persons);

9) means for stopping vehicles;

10) armoured vehicles and other vehicles for special purposes;

11) service dogs.

(2) The following are service weapons used in prisons:

1) truncheon and telescopic baton;

2) gas weapons;

3) pneumatic weapons;

4) firearms."

**Section 71 – Use of special equipment and service weapons in prisons**

"(1) Prison officers are permitted to use special equipment and service weapons only as a measure of last resort, if all the remaining measures to prevent a prisoner's escape have been exhausted, to apprehend an escaped prisoner, to neutralise an armed or otherwise dangerous prisoner or to prevent attack or the intrusion of other people in the prison. In using special equipment and service weapons, one must avoid causing harm to the health of persons in so far as possible in a particular case.

(2) A prison officer has the right to use self-defence equipment and physical force in the performance of service duties or for ensuring his or her own safety.

..."

### *7. Regulation no. 23 of the Minister of Justice*

91. Regulation no. 23 of the Minister of Justice on the Procedure for Supervisory Control over the Execution of Imprisonment and Provisional Custody (*Vangistuse ja eelvangistuse täideviimise üle järelevalve korraldamine*), adopted on 1 April 2003, provides as follows:

**Section 47 – Search of a person**

"(1) A person may be searched fully or partly.

(2) A person's full search shall be conducted in a place where his privacy is secured.

(3) A person shall be searched by persons of the same sex.

..."

**Section 48 – Search of an imprisoned person**

"(1) The search of an imprisoned person is obligatory in the following instances:

1) upon entering and leaving the prison;

2) before and after a visit;

3) if the imprisoned person is on premises which are being searched;

4) before escorting a prisoner.

(2) An officer of the prison service also has the right to search an imprisoned person in cases not listed in subsection 1."

*8. Regulation no. 273 of the Government*

92. Regulation no. 273 of the Government on the Enactment of the Minimum Salary (*Palga alammäära kehtestamine*), adopted on 21 December 2006, provided that as from 1 January 2007 the minimum monthly salary was EEK 3,600 (EUR 230).

## B. Relevant domestic case-law

93. The Administrative Law Chamber of the Supreme Court held in its judgment of 6 September 2007 (case no. 3-3-1-40-07):

"11. ... The first sentence of Article 15 § 1 of the Constitution guarantees everyone whose rights and freedoms are violated a right of recourse to the courts. This does not mean that a person who considers that his or her rights have been violated must have an unrestricted right of recourse to the courts. This fundamental right can be reasonably restricted if the restriction has a legitimate aim and the principle of proportionality is taken into consideration. Certain limitations on the right of recourse to the courts are necessary for legal certainty and in order to avoid overloading of the court system.

In assessing whether the exemption from the State fee of an indigent person is justified, a court must inevitably make a preliminary assessment of the necessity and importance of the protection of the complainant's rights. If the obligation to pay the State fee is to help to avoid recourse to the administrative courts with manifestly ill-founded complaints, then the possibility of granting exemption from the payment of the State fee serves to ensure that a person's important rights do not remain unprotected because of his or her indigence. The purpose of the administrative court procedure is not to ensure the largest possible number of complaints to the administrative courts but rather to secure a seamless right to recourse for the protection of a person's important rights."

94. In its judgment of 14 March 2012 (case no. 3-3-1-80-11), the Administrative Law Chamber of the Supreme Court dealt with a complaint from a prisoner of Tartu Prison about his confinement to a restraint bed for

four hours. It found that the scope of regulation of the use of that means of restraint was insufficient and therefore its subsequent judicial review was seriously impeded. The report drawn up in respect of the use of the measure had not contained sufficient reasoning. Therefore, it was not possible to assess the considerations of the prison administration in finding that the prisoner had continued to behave aggressively for four hours, how the aggressiveness had been established or what kind of threat he had posed to the security of the prison or to himself. The Supreme Court found that the complainant's placement in the restraint bed for four hours had been unlawful.

## III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

### *1. Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006 (Appendix)*

95. The relevant extracts from the Appendix to the Recommendation, adopted at the 952nd meeting of the Committee of Ministers, read as follows:

**Instruments of restraint**

"68.1 The use of chains and irons shall be prohibited.

68.2 Handcuffs, restraint jackets and other body restraints shall not be used except:

a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or

b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.

68.3 Instruments of restraint shall not be applied for any longer time than is strictly necessary.

68.4 The manner of use of instruments of restraint shall be specified in national law."

### *2. The 2nd General Report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT)*

96. The relevant part of the 2nd General Report of the CPT (CPT/Inf (92) 3) reads as follows:

> "53. Prison staff will on occasion have to use force to control violent prisoners and, exceptionally, may even need to resort to instruments of physical restraint. These are clearly high risk situations insofar as the possible ill-treatment of prisoners is concerned, and as such call for specific safeguards.
>
> A prisoner against whom any means of force have been used should have the right to be immediately examined and, if necessary, treated by a medical doctor. This examination should be conducted out of the hearing and preferably out of the sight of non-medical staff, and the results of the examination (including any relevant statements by the prisoner and the doctor's conclusions) should be formally recorded and made available to the prisoner. In those rare cases when resort to instruments of physical restraint is required, the prisoner concerned should be kept under constant and adequate supervision. Further, instruments of restraint should be removed at the earliest possible opportunity; they should never be applied, or their application prolonged, as a punishment. Finally, a record should be kept of every instance of the use of force against prisoners."

### *3. Findings of the CPT*

97. In May 2007 the CPT carried out a visit to Estonia. On 19 April 2011 it published a report of its visit (CPT/Inf (2011) 15), which contains the following findings relating to Tartu Prison:

> "90. At the end of 2006, cell No. 1001 had been equipped with a special restraint bed (covered with a mattress) for five-point fixation (wrists, ankles, abdomen) of agitated prisoners with cloth straps. Due to the lack of a special register, the delegation was not in the position to establish the precise frequency and duration of the resort to this type of physical restraint.
>
> In the CPT's view, every resort to the physical restraint of a prisoner should be recorded in a special register (as well as in the individual file of the prisoner concerned). The information recorded should include the date and time of the beginning and end of the measure, the reasons for resorting to the measure, the name of the doctor who ordered or approved it and an account of any injuries sustained by inmates or staff.
>
> The CPT recommends that a special register on resort to means of physical restraint be introduced at Tartu Prison and, if appropriate, in other prisons in Estonia, in the light of the preceding remarks.
>
> 91. Under the Imprisonment Act, the decision to apply means of restraint must be taken by the prison governor (except in emergencies), and such means may only be applied for a maximum period of twelve hours. The Act does not expressly refer to beds equipped with fixation points, nor does it specify the procedure for their use. The

delegation was unable to obtain precise and comprehensive information on the subject during the visit.

The CPT would like to receive detailed information on the procedure in force regarding the use of the bed equipped with fixation points in cell No. 1001 in Tartu Prison and, in particular, on the circumstances in which this bed is used, the arrangements for the involvement of a doctor and the manner in which the monitoring of immobilised inmates is organised. The Committee would also like to receive information on the training of staff required to use this equipment."

# THE LAW

## I. JOINDER OF THE APPLICATIONS

98. Given that these four applications have been submitted by the same applicant and that they concern similar or related facts and complaints and raise issues under the Convention which are related to each other, the Court decides to consider them in a single judgment (Rule 42 § 1 of the Rules of Court).

## II. THE GOVERNMENT'S PRELIMINARY OBJECTION

99. The Government called on the Court to reject the applications because the applicant had abused the right of individual application. They pointed out that, in addition to the court proceedings dealt with in the present case, the applicant had since 2008 lodged at least eighty-five complaints with the administrative court against prisons and the Ministry of Justice. At the same time, on 4 and 8 February 2010 he had withdrawn eighteen complaints lodged with the administrative court. In the Government's view the massive filing of complaints and withdrawing of a large number of them in the initial stage of the proceedings raised doubts as to the seriousness of the complaints and gave the impression that the applicant might be abusing the right of petition. The Government also referred to the Court's overload and the fact that a large number of applications raising serious human rights issues were pending before it.

100. The applicant did not comment on that matter.

101. The Court is mindful of the fact that extensive use of court proceedings contributes to the congestion of the courts at the domestic level and thus to one of the causes for the excessive length of court proceedings. It notes the remarkable number of complaints lodged by the applicant with the national courts as well as with this Court. Nevertheless, having regard to the circumstances of the case, the issues raised by the applicant, and his

personal situation, the Court does not consider that the present case can be declared inadmissible because of an abuse of the right of individual application (compare and contrast *Bock v. Germany* (dec.), no. 22051/07, 19 January 2010, and *Dudek (VIII) v. Germany* (dec.), nos. 12977/09, 15856/09, 15890/09, 15892/09 and 16119/09, 23 November 2010). Therefore, the Government's preliminary objection must be dismissed.

## III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

102. The applicant complained that he had been confined to the restraint bed on 22 October 2009 and that force and handcuffs had been used on him on 23 October 2009. He relied on Article 3 of the Convention, which reads as follows:

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

### A. The parties' submissions

103. The applicant considered that his confinement to the restraint bed on 22 October 2009 and the use of force and handcuffs on him on the following day amounted to torture and inhuman punishment in violation of Article 3 of the Convention. He argued that the measures of restraint had been used for punitive purposes. He had posed no danger to the officers since he had been in a locked cell and could only communicate with the prison officers through a hatch. He argued that in these circumstances the use of force against him had also been unlawful under the domestic law.

104. In respect of the confinement in the restraint bed, the applicant further complained that he had had no possibility of going to the toilet, drinking or eating during the period of confinement.

105. He was further dissatisfied that the prison officers who had used force against him and applied the means of restraint had not been held accountable under the criminal law. In respect of the investigation, he complained that he had not been interviewed by the prosecutor and had not been given legal aid, which had finally meant that he was unable to challenge the decision of the State Prosecutor's Office before a court of appeal.

106. The applicant submitted that although he had formally withdrawn his complaints to the administrative court, he had done so under pressure. A separate application had been lodged with the Court in that regard.

107. The Government argued that the applicant had not exhausted domestic remedies since he had withdrawn his complaints lodged with the Tartu Administrative Court in respect of these complaints (administrative cases nos. 3-09-2774, 3-09-2951 and 3-09-3063) (see paragraph 78 above).

108. The Government were of the opinion that the use of force and means of restraint on the applicant had been lawful under domestic law, and their application had been purposeful and proportionate in view of the applicant's behaviour.

109. The Government argued that the confinement of the applicant to the restraint bed on 22 October 2009 had been necessary because he had behaved aggressively towards prison officers. He had been confined for eight hours and fifty minutes and had been checked every hour to assess whether it was possible to stop the use of the restraint measure. In addition, the applicant's condition had been checked twice by a doctor. After the applicant had calmed down, the use of the restraint measure had been ended.

110. The Government argued that the applicant's behaviour during the period from 22 October 2009 to 14 April 2010 had been unpredictable and extremely negative towards prison officers. During this period six disciplinary violations had been recorded (threatening of prison officers with physical violence, use of obscene language, vandalising the door of the cell). The necessity for the continued use of handcuffs had been assessed by the security measures review committee once a month. In respect of the incident on 23 October 2009, the Government submitted that the applicant had sustained an abrasion and four bluish marks on his neck as a result of resisting the placement of the handcuffs on him. The recourse of the officers to physical force, which had been made strictly necessary by the applicant's conduct, had not diminished his human dignity.

111. The Government concluded that neither the use of the means of restraint nor the application of additional security measures had amounted to inhuman or degrading treatment or punishment.

112. As regards the investigation by the domestic authorities of the applicant's allegations of ill-treatment, the Government were of the opinion that Article 3 had not been breached. The Public Prosecutor's Office had investigated the use of force at the applicant's request but found that no grounds for initiating criminal proceedings existed as the prison officers had acted within the limits of the law and there had been no ill-treatment of the applicant. This position had been shared by the higher prosecutor and by the Tartu Court of Appeal and the Supreme Court. The Government also considered that the withdrawal by the applicant of his complaints to the administrative court indicated that he had reached the conclusion that his rights had not been violated.

## B. The Court's assessment

### *1. Admissibility*

113. The Court reiterates that the purpose of Article 35 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 (see, *inter alia*, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). Whereas 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 requires also that the 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 other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200; *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, §§ 604 and 605, 13 November 2003; and *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010-...).

114. The Court further notes that the only remedies which an applicant is required to exhaust are those that relate to the breaches alleged and which are likely to be effective and sufficient. Moreover, under the established case-law, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, ECHR 2009-...; *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009-...); *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III; and *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 84, ECHR 2008-...).

115. The Court notes that the applicant complained about the incidents of 22 and 23 October 2009 to the prosecuting authorities, arguing that he was a victim of physical violence and unlawful treatment by prison officers under Articles 121 and 324 of the Penal Code. Having regard to the fact that physical abuse and unlawful treatment of prisoners indeed constituted criminal offences under the Penal Code, the Court does not consider the applicant's choice of procedure unreasonable. The applicant thereby sought the punishment of the persons he believed to be guilty of criminal conduct towards him. In the Court's view the applicant was not required to embark on another set of proceedings before the administrative courts which served substantially the same purpose. It is not the Court's task to assess in the abstract whether administrative court proceedings might have been more appropriate for certain aspects of the applicant's complaints or whether such proceedings would have offered him better prospects of success. The Court finds that, given the nature of the applicant's complaints, it cannot be said that he chose an inappropriate remedy. The Government's plea of non-exhaustion of domestic remedies must therefore be rejected.

116. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

*2. Merits*

**(a) Alleged ill-treatment**

*(i) General principles*

117. As the Court has stated on many occasions, Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V).

118. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and health of the victim (see, among other authorities, *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III, and *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

119. Thus, treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI, and *Van der Ven v. the Netherlands*, no. 50901/99, § 48, ECHR 2003-II). In order for punishment or treatment to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see, for example, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX, and *Van der Ven*, loc. cit.).

120. The use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see, among other authorities and *mutatis mutandis*, *Raninen v. Finland*, 16 December 1997, § 56, *Reports* 1997-VIII; *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005-IX; and *Kuzmenko v. Russia*, no. 18541/04, § 45, 21 December 2010).

121. The Court is mindful of the potential for violence that exists in prison institutions and of the fact that disobedience by detainees may quickly degenerate (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). The Court accepts that the use of force may be necessary on occasion to ensure prison security, and to maintain order or prevent crime in detention facilities. Nevertheless, such force may be used only if indispensible and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, with further references). 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 others, *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Vladimir Romanov v. Russia*, no. 41461/02, § 63, 24 July 2008; and *Sharomov v. Russia*, no. 8927/02, § 27, 15 January 2009).

122. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, cited above, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

123. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32).

*(ii) Application of the principles to the present case*

(α) Confinement to the restraint bed

124. The Court notes that confinement of a person to a restraint bed is a measure of restraint that does not necessarily give rise to an issue under Article 3 of the Convention. However, the Court is mindful of the high risk

of ill-treatment of prisoners subjected to a means of restraint of such intensity. The application of such measure calls for a thorough scrutiny of its lawfulness as well as of the grounds for and the manner of its use.

125. As to the question of lawfulness, the Court notes that prosecutors at two levels of jurisdiction found that the use of the means of restraint had been lawful and caused by the applicant's own behaviour. This finding was in substance upheld by the courts. Nevertheless, the Court observes that domestic authorities' findings on that point included no consideration of the quality of the applicable law. The Court considers that the grounds, conditions and procedure for the use of so restrictive a means of restraint as that used in the present case need to be defined with the utmost precision in the domestic law. The Court has doubts whether this was so in the present case. It observes that the pertinent regulation was quite superficial and general, allowing the use of the means of restraint on the same grounds as, for example, the imposition on a prisoner of a prohibition from taking part in sports. Additional security measures (of which the use of means of restraint formed a part) could also be applied, for example, in case of regular violation of prison rules. Furthermore, the Imprisonment Act only referred to physical restraint, without specifying the exact nature of the means to be used and set out no details whatsoever in respect of the procedure to be followed during the use of a restraint bed. The only limitation was the twelve-hour maximum duration of the restraint. No regulation had been put in place in respect of the monitoring of the restrained prisoner or the frequency of checks by prison officers or medical staff. Furthermore, no regulation existed as to the records to be kept in respect of the use of the means of restraint. The Court also takes note of a recent judgment of the Estonian Supreme Court where it found that the law concerning the use of a restraint bed was not sufficiently detailed and that the reasons given by the prison administration for the use of this measure in that particular case (where the period of restraint was shorter than in the present case) had been insufficient (see paragraph 94 above).

126. The Court reiterates in this context that it is not its task to rule on national law and practice *in abstracto*. Instead it must confine itself to an examination of the concrete facts of the cases before it (see, for example, *Findlay v. the United Kingdom*, 25 February 1997, § 67, *Reports* 1997-I; *B. and P. v. the United Kingdom*, nos. 36337/97 and 35974/97, § 35, ECHR 2001-III; and *Olujić v. Croatia*, no. 22330/05, § 69, 5 February 2009). The Court observes that the way the authorities acted in the present case offered the applicant some further guarantees compared to those directly provided in the legislation: the applicant's situation was reviewed once an hour and he was seen twice by medical staff. Their observations were recorded in the report drawn up on the applicant's confinement in the restraint bed.

127. Nevertheless, the Court is concerned about the summary nature of the reasons given for the applicant's placement in the restraint bed, the even more concise remarks on the necessity to continue the use of this measure of restraint entered in the record and, in particular, the length of the period of use of the measure. It also notes that medical checks were only performed at the beginning and at the end of the applicant's confinement and that there was a period of more than eight hours when he was not seen by medical staff. The Court reiterates that means of restraint should never be used as a means of punishment but rather in order to avoid self-injury or serious danger to other persons or prison security. The Court accepts that the applicant's behaviour, as described in report no. 57, appears to have been aggressive and disturbing. However, considering that the applicant was locked in a single-occupancy disciplinary cell, the Court has doubts that at the material time he posed a threat to himself or others that would have justified applying such a severe measure. Even assuming that his banging on the door of the cell had severely disturbed peace and order in the prison, the Court doubts that confinement in the restraint bed can have been the least intrusive measure available in this context. There is no indication that before the applicant's placement in the restraint bed, or in the course of the application of this measure, alternatives such as confinement to a high-security cell were considered. Most importantly, even if the applicant's initial confinement in the restraint bed was justified, the Court is not persuaded that the situation remained as serious for nearly nine hours. Confinement to a restraint bed, without medical reasons – which have not been shown to have existed in the present case – should rarely need to be applied for more than a few hours. The Court notes that according to report no. 57, after the applicant had been confined in the restraint bed for six hours it was decided to continue his restraint because his "behaviour" was "abnormal" although he was "silent". An hour later it was decided to continue the restraint on the same grounds. The Court considers that these reasons are wholly insufficient for the extension of the restraint for such a long period of time. Having regard to the great distress and physical discomfort that the prolonged immobilisation must have caused to the applicant, the Court finds that the level of suffering and humiliation endured by him cannot be considered compatible with Article 3 standards (compare *Wiktorko v. Poland*, no. 14612/02, § 55, 31 March 2009).

128. It follows that there has been a violation of Article 3 of the Convention on that account.

(β) Use of force and handcuffs

129. The Court notes that following the incident on 22 October 2009 the prison administration decided that the applicant was to wear handcuffs at all times when outside his cell except in the exercise yard. Handcuffs were also

to be used whenever an officer needed to enter the cell. The need for the continued use of handcuffs was to be reviewed once a month.

130. The Court is satisfied that the use of handcuffs on 23 October 2009 had a legal basis and could be considered necessary in the circumstances. Unlike in some other cases the Court has examined, in the present case this measure was not applied as a part of the general prison regime in respect of a group of prisoners; rather it constituted an individual and periodically reviewable measure in respect of the applicant which related to a personal risk assessment based on his behaviour (compare and contrast, *Kashavelov v. Bulgaria*, no. 891/05, §§ 38-40, 20 January 2011).

131. Proceeding next to examine the use of force against the applicant in connection with his handcuffing on 23 October 2009, the Court notes that the applicant did not deny that he had refused to comply with the order to be handcuffed. Furthermore, the Court notes that the applicant did not allege that he had been beaten. According to him, he was hit with a shield, forced against the window bars and finally forced to the floor. In addition, the applicant submitted that an officer had grabbed his neck and pulled him by the nostrils.

132. The Court notes that the official reports did not contain a detailed description of the force used. According to the medical report, the applicant had an abrasion measuring 0.5 cm by 0.5 cm next to his left eye and four bluish marks on his neck.

133. The Court further notes that the applicant mainly appears to wish to complain about the use of force against him as such, and to a lesser extent that the force used was excessive. Indeed, given that the applicant resisted being handcuffed – which he did not deny – and given that he verbally expressed his discontent – which amounted to threats and insults according to the officers – the Court accepts that the prison officers may have needed to resort to physical force in order to handcuff him. Moreover, it has not been alleged that the applicant was beaten; rather, he appears to have been pushed with a shield against the bars in order to limit his freedom of movement and then forced to the floor where his resistance to the placement of handcuffs could be overcome. The Court is prepared to accept that the injuries on the applicant's body that were subsequently noted – a small abrasion next to his eye and four bluish marks on his neck – are consistent with the minor physical confrontation which occurred between the applicant and the prison officers when the latter suppressed his resistance. On the basis of the description of the events by those present, as well as the medical report, the accuracy of which has not been disputed by the applicant, the Court considers that the applicant must have felt some degree of pain when force was used. However, having regard to the circumstances of the case, and particularly to the fact that the prison officers acted in response to the applicant's disorderly conduct, the Court is unable to conclude that the authorities had recourse to physical force which had not been rendered

strictly necessary by the applicant's own behaviour. The Court is thus not persuaded that the force used had such an impact on the applicant's physical or mental well-being as to give rise to an issue under Article 3 of the Convention.

134. It follows that there has been no violation of Article 3 of the Convention under its substantive limb on that account.

**(b) Alleged inadequacy of the investigation**

*(i) General principles*

135. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by agents of the State, in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see, among others, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII).

136. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily come to a conclusion which coincides with the applicant's account of events. However, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006, with further references).

137. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and so on (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the applicable standard (see, among many authorities, *Mikheyev*, cited above, § 108).

*(ii) Application of the principles to the present case*

138. Turning to the present case, the Court notes that the applicant made a complaint to the prosecuting authorities that the prison officers had used violence against him, confined him to a restraint bed and used handcuffs. The prosecuting authorities refused to institute criminal proceedings. The

prosecutors examined the applicant's complaint at two levels. Firstly, it was examined by the Lõuna District Prosecutor's Office and, secondly, by the State Prosecutor's Office. The applicant also attempted to lodge a complaint with a court of appeal against the decision of the State Prosecutor's Office. However, such a complaint had to be lodged by a lawyer and the applicant's request for legal aid for that purpose was rejected by the court of appeal, which considered that the complaint had no prospects of success. The Supreme Court was of the same opinion.

139. The Court notes that the prosecutors relied on the applicant's written statements and the materials of the disciplinary proceedings concerning the events of 22 and 23 October 2009. The latter materials included reports on the disciplinary proceedings and the written statements of the prison officers who had been involved in the incidents, as well as the applicant's written accounts. They further comprised report no. 57 on the application of the means of restraint, and the medical report dated 23 October 2009.

140. As regards the medical report, the Court notes that it is a very short one, including only a brief description of the applicant's injuries, without any opinion as to their possible causes. However, the Court observes that the applicant never disputed the accuracy of the report and did not argue that any of the injuries he had sustained remained unrecorded. Furthermore, there is no dispute in the present case that the applicant could have sustained the injuries mentioned in the medical report in the course of the use of force against him on 23 October 2009. The district prosecutor's decision also noted that the applicant could have sustained these injuries in the course of the suppression of his resistance when he refused to comply with the lawful orders of the prison officers.

141. The Court further observes that while in many cases it may be preferable for an investigator or a prosecutor to interview in person the individuals involved in the events in question (see, for example, *Vanfuli v. Russia*, no. 24885/05, § 81, 3 November 2011), it does not consider that the failure to do so in the present case led to hasty conclusions or an ill-considered refusal to instigate criminal proceedings. The choice of procedural steps to be taken by the investigating authorities has to be assessed in the specific circumstances of the particular case. The Court observes that in the present case the descriptions of the events in the applicant's and the prison officers' written statements did not contain important differences. Their main difference appears to have been limited to different descriptions of the language used by the applicant to express his discontent. The applicant did not deny that he had refused to comply with the order to be handcuffed. The force used by the prison officers in response – even if one were to proceed from the applicant's account of the events – does not appear to have been disproportionate. Indeed, it would appear that the crux of the applicant's criminal complaint comprised an allegation that

his confinement in the restraint bed and the use of force and handcuffs were unlawful in themselves. The Public Prosecutor's Office did not share this opinion and found that the officers had acted lawfully.

142. Furthermore, in his complaint to the State Prosecutor's Office against the decision of the District Prosecutor's Office, the applicant appears to have complained that the district prosecutor had relied only on the account of the prison officers, that he had not been interviewed and that he had not been given legal aid. It seems that the applicant did not contend that it was necessary to examine further witnesses or perform other procedural steps. In response, the State prosecutor noted that the applicant's point of view had been expressed in his offence report and it had not been overlooked. However, the materials in the possession of the prosecutor had not warranted the institution of criminal proceedings.

143. The Court considers that there is nothing to indicate that the prosecutors assessed the material before them in an arbitrary manner. Furthermore, the prosecuting authorities acted with sufficient promptness.

144. The Court also notes that a criminal investigation was not the only remedy available to the applicant. He also made complaints to an administrative court about his confinement in the restraint bed and the use of force and handcuffs, but subsequently withdrew these complaints, although the outcome of the administrative court proceedings was not predetermined by the conclusions of the investigating authorities in the criminal proceedings.

145. Having regard to the circumstances of the case, the Court is unable to conclude that the prosecuting authorities' investigation into the incidents fell short of the procedural obligation under Article 3 of the Convention.

146. There has accordingly been no violation of Article 3 of the Convention under its procedural limb.

## IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE COMPLAINTS CONCERNING CONDITIONS OF DETENTION

147. The applicant complained that he had no access to court in respect of his compensation claims for non-pecuniary damage allegedly caused by the degrading conditions of detention because he lacked the means to pay the required State fee. He relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

148. The Government contested that argument.

## A. Admissibility

149. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The parties' submissions*

150. The applicant complained that he had had no access to a court because he had lacked the means to pay the required State fee. The complaint concerned three sets of administrative court proceedings which he had sought to initiate in respect of the conditions of his detention during various periods of incarceration in different punishment cells in Tallinn Prison.

151. The Government contended that payment of the State fee was one of the preconditions for access to the court and there was no reason to doubt its justification. Such restrictions on the right of access to a court could be justified when they served either the protection of the legitimate interests of the other party against irrecoverable legal costs or the protection of the legal system against an unmeritorious appeal. The Government noted that the introduction of a fee was also being discussed in connection with proceedings before the European Court of Human Rights.

152. The Government emphasised that Estonian legislation provided for exemption from or reduction of the State fee on certain grounds. The precondition for exemption from the State fee was indigence, along with the requirement that the complaint should have some prospect of success. The Government argued that in the present case the applicant's complaints had had little prospect of success. The courts had thoroughly analysed the practicality and justifiability of exempting the applicant from the State fee, had assessed the circumstances of the particular complaints, and had found that the complaints had no prospect of success. Thus, the refusal to exempt the applicant from the State fee had been proportionate and in conformity with Article 6 § 1. The Government stressed that the applicant's request for exemption had been examined at three levels of jurisdiction and the Supreme Court had exempted him from the payment of security and asked the opinion of the respondent on each occasion. Thus, the applicant had been able to exercise his right of appeal up to the highest court and that court had found that he had to pay the State fee if he wished the examination of his complaints to continue.

153. The Government also referred to the instances where the applicant had been exempted from the State fee but had withdrawn his complaints (for

example, administrative court cases nos. 3-09-2774, 3-09-2951 and 3-09-3063, see paragraph 78 above).

154. In respect of the amount of the State fee, the Government noted that the State fee for the applicant's claims ("compensation for non-pecuniary damage at the discretion of the court") was EEK 1,000 (EUR 64). However, the applicant could have chosen another type of claim where the State fee would have been lower, for example an action for ascertaining whether a measure was unlawful (EEK 80 (EUR 5)) or a claim in respect of non-pecuniary damage for a specific sum. In the latter case, for example, the State fee for a claim for EEK 3,000 (EUR 191) would have been EEK 90 (EUR 6) (see also the relevant legislation, paragraph 79 above).

155. Moreover, since the time-limit for lodging the claim in question was three years, the applicant could have saved up the money for the payment of the fee. Instead, he had chosen to spend money in the prison shop (for example, EEK 359.50 (EUR 23) on 17 September 2007).

156. The Government concluded that the reduction of and exemption from the State fee were provided for by legislation and used in practice. With regard to the refusal to exempt the applicant from the State fee, the Government had relied on the assessment of the domestic courts that no reason for exemption had existed in the applicant's cases. Thus, the restriction entailing the obligation to pay the State fee in administrative cases nos. 3-07-1000, 3-07-1624 and 3-07-2318 had been justified and proportionate and in conformity with Article 6 § 1 of the Convention. The applicant's right of access to court under the Convention had not been unduly restricted

*2. The Court's assessment*

**(a) General principles**

157. The Court reiterates that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect (see, for example, *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18, and *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 91, ECHR 2001-V). There can be no doubt that Article 6 § 1 applies to a civil claim for compensation in respect of ill-treatment allegedly committed by agents of the State (see, *Tomasi v. France*, 27 August 1992, §§ 121-22, Series A no. 241-A, and *Aksoy v. Turkey*, 18 December 1996, § 92, *Reports* 1996-VI) or in respect of the actions of prison authorities (see, *mutatis mutandis*, *Skorobogatykh v. Russia* (dec.), no. 37966/02, 8 June 2006, and *Artyomov v. Russia*, no. 14146/02, § 197, 27 May 2010).

158. The right of access to the courts secured by Article 6 § 1 of the Convention is not absolute. It may be subject to limitations permitted by implication since the right of access by its very nature calls for regulation by

the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Z and Others v. the United Kingdom*, cited above, § 93, and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 44, ECHR 2001-VIII).

159. The Court has held that the amount of fees, assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them and the phase of the proceedings at which that restriction has been imposed, are factors which are material in determining whether or not a person enjoyed his or her right of access to a court or whether, on account of the amount of fees payable, the very essence of the right of access to a court has been impaired (see *Kreuz v. Poland*, no. 28249/95, § 60, ECHR 2001-VI, and *Georgel and Georgeta Stoicescu v. Romania*, no. 9718/03, § 69, 26 July 2011).

**(b) Application of the principles to the present case**

160. Turning to the present case, the Court has no reason to question the legitimate aim of the requirement to pay the State fees in question. Such fees can be seen as contributing to the financing of the judicial system as well as securing its proper functioning by limiting the number of unmeritorious complaints.

161. The Court notes that the fees the applicant was required to pay – the equivalent of EUR 64 – do not seem high in themselves. These sums represented about a quarter of the national minimum monthly salary at the material time (see paragraph 92 above). Nevertheless, the Court has to examine the applicant's actual ability to pay these sums in the particular circumstances of the case, as well as his chances of obtaining exemption from these fees, in order to assess whether they effectively prevented the applicant from exercising his right of access to a court.

162. The Court notes in this context that the applicant was serving a prison sentence at the material time. He did not work in prison and apparently had no income apart from some occasional financial support from outside the prison. The Court has had regard to the Government's argument that even if the applicant did not have the money in question at the time he decided to file his complaints, he could have saved it over a period of time. They submitted that the applicant had had certain sums at his disposal shortly after he had lodged the complaints but he had preferred to spend them in the prison shop. The Court considers that the applicant had

certain modest sums at his disposal, but these were not sufficient to pay the fees in question.

163. The Court also notes that in the Government's opinion the applicant could have reduced the sum payable by choosing another type of action (for ascertaining the lawfulness of the measures) or by claiming a specific sum as compensation. The Court has no reason to doubt that such options may have been open to the applicant. However, bearing in mind that the applicant's complaints concerned an alleged violation of his right not to be subjected to inhuman and degrading conditions of detention (Article 3 of the Convention), the Court reiterates that non-pecuniary damage is in such circumstances inherently difficult to assess and, therefore, the applicant cannot be blamed for leaving the amount of the award to be determined by the court (compare *Stankov v. Bulgaria*, no. 68490/01, § 62, 12 July 2007). For these reasons, the Court does not consider that the applicant can be criticised for having chosen to make the particular claims he did.

164. However, the inability to pay the required State fees did not constitute an absolute obstacle to the applicant's access to a court. The applicant could have sought – and he indeed did seek – exemption from the payment of the fees within the framework of the State legal aid scheme. The Court will therefore proceed to examine the procedure in which the applicant's exemption requests were dealt with.

165. The Court observes in this connection that the decisions whether to exempt the applicant from the State fees were made by courts, they contained reasons and the applicant was able to appeal against them (see, for comparison and in contrast, *Bakan v. Turkey*, no. 50939/99, § 76, 12 June 2007). Indeed, the applicant's requests for exemption were examined at three levels of jurisdiction and the first- and second-instance courts gave reasoned decisions, although the Supreme Court declined to hear the appeals. Furthermore, the legislation and practice allowed for reductions of or exemptions from the State fees under certain conditions (see, in contrast, *Stankov*, cited above, § 64). The Court considers that these elements provided important safeguards for the applicant.

166. Moreover, the Court attaches importance to the fact that, unlike in several other cases it has dealt with, in the applicant's case the domestic courts assessed the prospects of success of his claims and found that such prospects were lacking (see, in contrast, *Teltronic-CATV v. Poland*, no. 48140/99, § 61, 10 January 2006, and *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65 *in fine*, 26 July 2005). It is true that in the applicant's case the question of the State fees was determined at the preliminary stage of the proceedings on the basis of his written submissions, which meant that his claims were never examined on the merits (compare *Weissman and Others v. Romania*, no. 63945/00, § 42, ECHR 2006-VII (extracts), and *Bakan*, cited above, § 78). However, the Court accepts that a preliminary assessment of the prospects of success of a complaint cannot

involve an establishment of the facts in the same manner and to the same extent as in the main proceedings. Furthermore, it observes that the Administrative Court found that the existence of non-pecuniary damage allegedly sustained by the applicant was questionable (see paragraph 17 above) and that the Court of Appeal considered that, even assuming that all of the applicant's allegations were true, it was questionable whether he had sustained such non-pecuniary damage as required compensation (see paragraph 18 above). The Supreme Court in substance endorsed the lower courts' findings, declining to examine the applicant's appeals. Thus, the applicant was able to present to two appellate jurisdictions his arguments against the lower courts' refusal to grant the exemption. The Court, reiterating that it is not its task to replace the assessment of the domestic courts by an assessment of its own (compare *Bakan*, cited above, § 76), considers that the procedure of reviewing the applicant's requests for exemption from the State fees offered him sufficient guarantees and that his right of access to a court was not restricted in a disproportionate manner.

167. There has accordingly been no violation of Article 6 § 1 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE COMPLAINT CONCERNING THE APPLICANT'S STRIP SEARCH

168. The applicant complained of a violation of his right of access to a court in respect of his complaint about his strip search on 26 May 2009. He relied on Article 6 § 1 of the Convention.

169. The Government contested that argument.

### A. Admissibility

170. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### *1. The parties' submissions*

171. The applicant complained that he had not had access to a court in the proceedings concerning his complaint about his strip search on 26 May 2009, which had amounted to degrading treatment and an infringement of his right to respect for his private life. Although he had lodged complaints

with the prison administration before applying to the administrative court, the court had refused to examine his complaint, finding that he had failed to comply with the mandatory procedure, which required a prior extra-judicial adjudication of the matter. The court had done so without checking whether the applicant had in fact rectified the deficiencies in his complaints in the extra-judicial proceedings.

172. The Government argued that the right to a court was not absolute, but was subject to limitations. Under Estonian legislation, a prisoner first had to make a complaint to the prison or the Ministry of Justice, and could only thereafter lodge a complaint with an administrative court. If he or she failed to eliminate any deficiencies in the first complaint within the designated term, he or she had no right to file a complaint with an administrative court in the same matter.

173. In the Government's opinion, this procedure allowed such matters to be resolved and violations to be rectified at the lowest possible level, swiftly and free of charge. It also meant a reduction in the workload of the courts. At the same time, the prisoners' right to have recourse to a court was not restricted: if they did not agree with the decision of the prison administration or the Ministry of Justice, they could file a complaint with an administrative court. Thus, the requirement of pre-trial proceedings was practical and proportionate.

174. The Government noted that the applicant's request for compensation had contained deficiencies with regard to the reasoning and he had failed to eliminate these deficiencies by the expiry of the time-limit set by the prison administration. Therefore, Tartu Prison had had to return the request without deciding on it. As the applicant had failed to complete the stage of mandatory extra-judicial proceedings, the courts had then returned his complaints without examination. The Government emphasised that this conclusion had been shared by the court of appeal and the Supreme Court.

*2. The Court's assessment*

175. The relevant principles established in the Court's case-law concerning the right of access to a court have been summarised in paragraphs 157 to 159 above. In the context of the present complaint, the Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is to verify whether the effects of such interpretation are compatible with the Convention (see, as a recent authority, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, 20 October 2011, § 49, with further references). Furthermore, the Court has in several cases found that a particularly strict construction of procedural rules by the courts deprived applicants of their right of access to a court (see, *mutatis mutandis* and

among others, *Běleš and Others v. the Czech Republic*, no. 47273/99, §§ 51 and 69, ECHR 2002-IX; *Efstathiou and Others v. Greece*, no. 36998/02, § 33, 27 July 2006; *Kemp and Others v. Luxembourg*, no. 17140/05, § 59, 24 April 2008; *Reklos and Davourlis v. Greece*, no. 1234/05, § 28, 15 January 2009; and *RTBF v. Belgium*, no. 50084/06, § 74, 29 March 2011).

176. The Court notes that in the present case the prison administration was of the view that there had been deficiencies in the applicant's complaint which he had failed to eliminate upon being notified of them. However, the Court observes that the applicant in his claim did set out the factual and legal basis for his compensation claim: he claimed compensation for non-pecuniary damage caused by degrading treatment and an infringement of his right to respect for his private life on account of the strip search on 26 May 2006. In doing so, he relied on the relevant provision of the Constitution. Even if it could be said that a more profound legal analysis in the applicant's complaint would have been preferable and would have facilitated the examination of the complaint, the Court observes in this context that the applicant was a prisoner serving his sentence, was a native Russian speaker, and was complaining about an intrusion into his intimate sphere. In the Court's opinion, it was at least questionable in the circumstances not to examine the merits of his complaint and to effectively bar him from lodging a further complaint with the courts.

177. As regards the subsequent handling of the applicant's complaints by the courts, which he nevertheless continued to apply to, the Court observes that in their decisions they merely noted that the applicant had failed to complete the stage of prior extra-judicial proceedings, without analysing whether his complaint to the prison administration and its supplements did indeed fall short of the requirements. It appears that the courts limited their examination to endorsing the assessment carried out by the prison administration. The Court considers that by taking such a limited approach the courts effectively allowed the prison administration to decide whether a complaint against its decision was to be examined by the courts.

178. The Court considers that such a restriction on the right of access to a court was disproportionate and impaired the very essence of that right.

179. There has accordingly been a violation of Article 6 § 1 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION RELATING TO THE STRIP SEARCH ON 26 MAY 2009

180. The applicant complained that his strip search on 26 May 2009 had amounted to degrading treatment and an infringement of his right to respect

for his private life. He invoked Articles 3 and 8 of the Convention, which read as follows:

**Article 3**

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

**Article 8**

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

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

## A. The parties' submissions

181. The applicant complained about his strip search on 26 May 2009 on return from an administrative court hearing. He argued that of the seven inmates who had been escorted back to the prison in the same vehicle, he was the only one who had been searched in such a manner. The search had been in breach of his right to respect for his private life as it had been carried out in a humiliating manner and in the presence of five prison officers who had laughed at him. The applicant considered that his human dignity had been humiliated in revenge for having stood up for his rights in the administrative court.

182. The Government submitted that the search of the applicant upon his return to the prison had had a legal basis. It had served the legitimate aim of ensuring security and legal order in the prison. The Government pointed out that the applicant had repeatedly been caught in the possession of items prohibited in prison, for which he had had disciplinary punishments imposed. Thus, a complete search of the applicant had been a proportionate measure.

183. The Government asserted that the applicant's allegation that only he had been strip-searched was neither correct nor proven. They referred in this context to a written reply from the prison administration to the applicant in which the administration had refused to disclose the names of those in respect of whom a rectal examination had been carried out on 26 May 2009.

184. In respect of the conduct of the body search, the Government considered that spreading one's buttocks in itself did not require the presence of a doctor, because if a prisoner did that voluntarily – as had been

the case with the applicant – his bodily integrity was not violated. The presence of a doctor only became necessary when a need for body cavity procedures or for the use of medical equipment arose. However, in the applicant's case a doctor had been involved at the applicant's request and further procedures had been carried out by her. The Government submitted that there was no male doctor in Tartu Prison and therefore it had been impossible for the applicant's rectal examination to be performed by a doctor of the same sex as the applicant. All the other persons present during the search had been male.

### B. The Court's assessment

*Admissibility*

185. The Court has already examined the compatibility of strip and intimate body searches with the Convention in a number of cases. It has found that whilst strip searches may be necessary on occasion to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner and must be justified (see *Yankov v. Bulgaria*, no. 39084/97, § 110, ECHR 2003-XII (extracts); *Valašinas v. Lithuania*, no. 44558/98, § 117, ECHR 2001-VIII; and *Iwańczuk v. Poland*, no. 25196/94, § 59, 15 November 2001). However, where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation of the procedure, Article 3 has been engaged: for example, where a prisoner was obliged to strip in the presence of a female officer, and his sexual organs and food were touched with bare hands (*Valašinas*, loc. cit.), and where a search was conducted in front of four guards who derided and verbally abused the prisoner (*Iwańczuk*, loc. cit.). Similarly, where the search has no established connection with the preservation of prison security and the prevention of crime or disorder, issues may arise (see, for example, *Iwańczuk*, cited above, §§ 58-59, where a search of the applicant, a remand prisoner detained on charges of non-violent crimes, was conducted when he wished to exercise his right to vote; *Van der Ven*, cited above, §§ 61-62, where strip-searching was a systematic and long-term practice without convincing security needs). Where the treatment in question does not reach the minimum level of severity prohibited by Article 3, it may nevertheless be in breach of the requirements under Article 8 § 2 of the Convention (see *Wainwright v. the United Kingdom,* no. 12350/04, 20 September 2006).

186. Turning to the present case, the Court notes at the outset that no issue of exhaustion of domestic remedies arises in the present case on account of the above finding of a violation of the applicant's right of access to a court in relation to this complaint (see paragraphs 168 to 179 above).

187. Furthermore, since the substance of the applicant's complaints has not been examined by the domestic courts, the exact circumstances of his search are not entirely clear. According to the applicant, he was the only one out of the seven inmates to be strip-searched on their return from an administrative court hearing. The Government disputed this allegation. The Court notes that there appears to be no dispute that for the search the applicant was taken to a room designated for that purpose.

188. As regards the conduct of the search, the applicant submitted that he had been told to undress and to squat and bend over, while a prison officer with a glove on his hand was preparing to carry out a rectal examination. It would appear from the Government's submissions, which were based on information they had received from Tartu Prison and which the applicant did not substantially contest in his submissions in reply, that the applicant, who was disturbed at the thought of being searched, refused to comply with the order to bend over and spread his buttocks. The Court concludes that even if the prison officer in charge had initially intended to perform the examination himself, as alleged by the applicant, he must have changed his mind and acceded to the applicant's request to be taken to a doctor. The applicant did not claim that the rectal examination had in fact been carried out by the prison officers, or indeed that any physical contact had been involved. As regards the applicant's allegation that he had been derided by the prison officers present during this phase of his search and that his examination at the medical unit had been attended by two officers, there is no evidence to corroborate these statements. However, the Court notes that the report drawn up on the applicant's search was signed by five prison officers. This is in line with the applicant's assertion that the search was attended by five prison guards.

189. The Court considers that the applicant's strip search in the present case did not involve the elements which have led it in several previous cases to the finding that a prisoner's or detainee's strip search amounted to degrading treatment. Thus, the Court observes that the applicant's complaint does not concern a routine practice of body searches, unlike in the cases of *Ciupercescu v. Romania* (no. 35555/03, 15 June 2010), *Van der Ven* (cited above), *Lorsé and Others v. the Netherlands* (no. 52750/99, 4 February 2003), and *McFeeley and Others v. the United Kingdom*, (no. 8317/78, Commission decision of 15 May 1980, Decisions and Reports 20, p. 44), or a number of searches, as in the cases of *El Shennawy v. France* (no. 51246/08, 20 January 2011) or *Frérot v. France* (no. 70204/01, 12 June 2007). Rather, the applicant's complaint relates to a strip search on one occasion. The Court has also found a breach of the applicants' rights if the manner in which a search was carried out had debasing elements which significantly aggravated the inevitable humiliation of the procedure. In this context, the Court observes that the applicant's search was carried out in a room set aside for that purpose and not in front of other detainees (see, by

contrast, *Malenko v. Ukraine*, no. 18660/03, § 61, 19 February 2009). The search was performed by prison officers of the same sex (compare *Valašinas* and *Wiktorko*, both cited above). Furthermore, while the applicant, like all detainees, was in a vulnerable position in the hands of the authorities, he does not appear to have been in a particularly helpless situation (compare and contrast, *Wieser v. Austria*, no. 2293/03, § 40, 22 February 2007, and *Wiktorko*, cited above, §§ 53-54). The Court has also taken note of the Government's submission according to which the applicant was on several occasions caught in the possession of items prohibited in prison and had had a number of disciplinary punishments imposed on him. Furthermore, the Court notes that the applicant's behaviour, including his repeated conflicts with the prison administration, as well as his behaviour towards himself (for example, stitching his mouth, see paragraph 13 above), appears to have given the authorities grounds to consider him as posing a higher than average security risk for the prison (contrast *Iwańczuk*, cited above, § 52, where the Court took into consideration the applicant's personality, his peaceful behaviour throughout his detention, and the fact that he was not charged with a violent crime and had no previous criminal record). For this reason, and taking into account that the search was performed on the applicant's return to the prison, the Court is satisfied that the authorities had sufficient justification for the applicant's search. The Court has no doubt that the search in question did cause the applicant distress, but that distress did not, in the Court's view, reach the minimum level of severity prohibited by Article 3.

190. The Court finds that this is a case which falls within the scope of Article 8 of the Convention and which requires due justification under its second paragraph (compare *Wainwright*, cited above, § 46, and *Kleuver v. Norway* (dec.), no. 45837/99, 30 April 2002).

191. The Court notes that there is no dispute that the search had a legal basis. It is further satisfied that it pursued the legitimate aim of prevention of disorder and crime. The Court therefore needs to proceed to determine whether the search in question, in the manner in which it was carried out, was proportionate to that legitimate aim.

192. In this context, the Court reiterates that the applicant was searched in the presence of five prison officers. The Court is mindful that the attendance of several persons could have exacerbated the discomfort inevitably felt by the applicant owing to the intense interference with his intimate sphere and that the situation could have been capable of causing him to feel that he was being derided even in the absence of any such intention on the part of the officers. The Court is also mindful that the presence of more than one officer can be seen as a safeguard against abuse (compare *McFeeley*, cited above), and although the presence of prison staff during a body search should be kept to an absolutely necessary minimum in order to minimise the discomfort and distress which the procedure

necessarily entails, the Court is not convinced that this was not done in the present case. Thus, having regard to the applicant's record of unruly and at times violent behaviour, the Court considers that the presence of five prison officers during the applicant's strip search did not render the interference with his right to respect for his private life disproportionate. As concerns the applicant's allegation that his examination in the medical unit took place in full view of two guards, the Court, assuming that this allegation is true, finds that there was no apparent reason to consider the applicant less dangerous when being taken to the medical unit and notes that the number of guards allegedly attending that procedure was nevertheless reduced. The Court therefore considers that there is no appearance of a disproportionate interference with the applicant's right to respect for his private life in this respect.

193. In these circumstances the Court finds 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.

## VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

194. The applicant made a number of further complaints under Articles 1, 3, 6, 8, 13 and 14 of the Convention. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the provisions invoked. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

195. 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

196. The applicant claimed the sum of 80,000 euros (EUR) in respect of non-pecuniary damage.

197. The Government argued that the applicant could have claimed compensation for the alleged damage before the domestic authorities and under domestic law.

198. Furthermore, the Government considered the applicant's claim unsubstantiated and unreasonable. They submitted that, should the Court find a violation of the applicant's rights, a finding of a violation would constitute sufficient just satisfaction. Should the Court nevertheless decide to make an award for non-pecuniary damage, the Government called on it to determine a reasonable sum.

199. As regards the Government's argument that the applicant could have sought compensation under the national law, the Court reiterates that an applicant who has already exhausted domestic remedies to no avail before complaining to this Court of a violation of his or her rights is not obliged to do so a second time in order to be able to obtain just satisfaction from the Court (see *De Wilde, Ooms and Versyp v. Belgium* (Article 50), 10 March 1972, § 16, Series A no. 14, and, more recently, *Jalloh v. Germany* [GC], no. 54810/00, § 129, ECHR 2006-IX). Accordingly, the Court is not prevented from making an award on that account.

200. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated solely by a finding of a violation. In view of the circumstances of the present case, and ruling on an equitable basis, it therefore awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax which may be chargeable on that amount

### B. Costs and expenses

201. As the applicant made no claim for costs and expenses, there is no call for the Court to make any award under this head.

### C. Default interest

202. 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

1. *Decides* unanimously to join the applications;

2. *Declares* unanimously admissible the complaints concerning:
   - the alleged ill-treatment on 22 October and 23 October 2009 and the lack of an effective and thorough investigation into those allegations;
   - the lack of access to a court in respect of the complaints concerning the applicant's conditions of detention;

- the lack of access to a court in respect of the complaint concerning the applicant's strip search on 26 May 2009;

3. *Declares* unanimously the remainder of the complaints inadmissible;

4. *Holds* unanimously that there has been a violation of Article 3 of the Convention on account of the applicant's confinement to a restraint bed on 22 October 2009;

5. *Holds* by six votes to one that there has been no violation of Article 3 of the Convention on account of the use of force and handcuffs on 23 October 2009;

6. *Holds* unanimously that there has been no violation of Article 3 of the Convention in respect of the effectiveness and thoroughness of the investigation into the applicant's allegations concerning his ill-treatment;

7. *Holds* unanimously that there has been no violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court in connection with his complaints concerning his conditions of detention;

8. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention in respect of the applicant's right of access to a court in connection with his complaint concerning his strip search on 26 May 2009;

9. *Holds* unanimously
(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand 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;

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

Done in English, and notified in writing on 29 May 2012 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| André Wampach | Nina Vajić |
| Deputy Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge N. Vajić is annexed to this judgment.

N.A.V.
A.M.W.

# DISSENTING OPINION OF JUDGE VAJIĆ

I do not agree with the majority's finding that there has been no violation of Article 3 of the Convention on account of the use of force against the applicant in connection with his handcuffing on 23 October 2009.

Prisoners often refuse to comply with orders by prison guards, as did the applicant when he refused to comply with the handcuffing order. Prison guards, who are specially trained to cope with such situations, are supposed to carry out their orders without beating or otherwise ill-treating prisoners, even in cases where they have to have recourse to some degree of physical force to cope with a prisoner's disorderly behaviour. This is particularly true in a situation such as the present one for which they are able to prepare and plan in advance (which would also include anticipating the necessary number of officers, the appropriate equipment and other arrangements).

However, the physical confrontation during which the applicant sustained abrasions next to his left eye and four bluish marks on his neck (see paragraph 132 of the judgment) was carried out using physical force and it does not seem to have been established that such a degree of physical force was indeed strictly necessary. The applicant's personality and history of incidents were well known to the prison authorities and they should have done their best to avoid physical confrontation in a situation in which they could easily have foreseen it. The fact that the prison officers did not use truncheons or other active defence equipment, but rather relied on the use of shields, does not make much difference. In addition to the precautions taken to protect the prison officers – the provision of masks and shields (see paragraphs 65 and 133), the prison authorities could also have been expected to take steps to avoid causing injuries to the applicant.

The applicant was pushed against the window bars with shields and forced to the floor (see paragraph 133) during which he sustained injuries that were subsequently confirmed by a medical report. In addition, the incident took place immediately after another restraint measure had been applied to the applicant, namely, confining him to a restraint bed from 10.40 a.m. to 7.30 p.m. the previous day and in respect of which measure a violation of Article 3 of the Convention has been found in the present case.

In view of the above, I find that there has also been a violation of Article 3 as regards inhuman treatment during the incident on 23 October 2009.

Lastly, I would also like to make a remark going beyond the incident in question, as I find it rather surprising that the prison authorities repeatedly responded by confrontation and the use of physical force to the numerous instances of disorderly conduct and other incidents provoked by the applicant without using other methods when trying to cope with such behaviour. Having regard to the lengthy prison term imposed on the

applicant and to the fact that his behaviour repeatedly caused problems, the prison authorities, in my view, could and should have drawn up a specific programme and regime of detention for the applicant (including the use of different kinds of additional measures, such as, for instance, educational and medical ones) in order to avoid having to respond to confrontations directly, each time they arose, and thus contribute themselves to a never-ending confrontational circle. With all due respect, and being aware that it is for the domestic authorities to decide how to perform their obligations under the Convention, the approach used in the present case does not seem to have produced the most appropriate solutions for long-term problems of the kind encountered here.