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Meeting: 1310th meeting (March 2018) (DH)

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Communication from Latvia concerning the cases of D.F. and J.L. v. Latvia (Applications No. 11160/07, 23893/06)

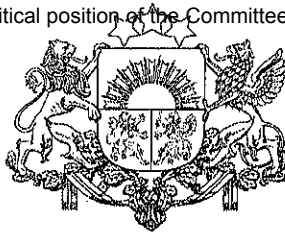
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Réunion : 1310^e réunion (mars 2018) (DH)

Référence du point : Bilan d'action

Communication de la Lettonie concernant les affaires D.F. et J.L. c. Lettonie (requêtes n° 11160/07, 23893/06) (**anglais uniquement**)



LATVIJAS REPUBLIKAS ĀRLIETU MINISTRIJA

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LATVIA

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Mr Pavlo Pushkar
Head of Division
Department for the Execution of Judgments
of the European Court of Human Rights
DGI – Directorate General of Human Rights and Rule of Law
Council of Europe

No. 03 - 5724

Rīga, 1 March 2018

Dear Mr Pushkar,

Please find enclosed the revised action report concerning the case *J.L. v. Latvia* (appl.no.23893/06, judgment of 17 April 2012) and *D.F. v. Latvia* (appl.no.11160/07, judgment of 29 October 2013) by the Government of the Republic of Latvia.

This letter and the attachments thereto have been sent by e-mail only.

Yours sincerely,

Kristīne Līce

Agent for the Government of the Republic of Latvia

DGI

01 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

REVISED ACTION REPORT

of the Government of the Republic of Latvia on the execution of the judgments of the European Court of Human Rights in the cases of

J.L. v. LATVIA
application no.23893/06
Judgment of 17 April 2012
Final on 17 July 2012

D.F. v. LATVIA
application no.11160/07
Judgment of 29 October 2013
Final on 29 January 2014

I. INTRODUCTION

1. In the context of the working methods for the supervision of the execution of the Court's judgments and decisions adopted by the Committee of Ministers on 4 December 2010, the Government of the Republic of Latvia presents the Revised Action Report setting out the execution measures taken in the cases of *J.L. v. Latvia* and *D.F. v. Latvia* with regard to the violations of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

II. DESCRIPTION OF THE CASES

II.1. *J.L. v. Latvia* (application no.23893/06)

2. The applicant is a Latvian national who was born in 1980. On November 2005 his wife's car was stolen and, having reported the theft to the police, he was involved in the arrest of the culprit G. In particular, in co-operation with the police, the applicant met G. and gave him money for the stolen car whilst recording their conversation on an audio-tape. G. was subsequently charged with theft and extortion.
3. Meanwhile, charges had been brought against the applicant for repeated misappropriation. On 4 January 2006 he was sentenced to three years and nine months' imprisonment.
4. The applicant alleged that, having been immediately taken to the Central Prison following his conviction, he was assaulted and raped during the night of 5 to 6 January 2006 by two of his fellow inmates because of his previous cooperation with the police. His nose was broken and he complained about that to the prison doctor, who rendered medical assistance. No medical report was, however, drawn up and the prison guard refused to launch an investigation of the assault.
5. In January and February 2006 the applicant repeated his allegations both to the national courts during the appeals in his case, as well as in a letter to the prosecuting authorities requesting a reduction of his sentence, claiming also that he was continuing to have problems in prison because of his co-operation with the police. On 30 March 2006 the applicant was transferred to the Jēkabpils Prison.
6. Following a complaint by the applicant to Ombudsperson (the Bureau for the Protection of Human Rights at that time) in August 2006, the Prison Administration requested the Central Prison to carry out an investigation. Three out of the applicant's 11 fellow inmates were questioned: all denied that the applicant had been assaulted.
7. In September 2006 the prosecuting authorities specifically requested the applicant's transfer to the specialized detention facilities of the Central Prison in order to ensure the applicant's attendance at G.'s trial, in which he was the victim and main witness. As a result on two occasions the applicant was transferred to the specialised detention facilities in the Central Prison.

8. On 2 June 2006, the applicant submitted an application to the Court. Invoking Articles 3 and 13 of the Convention, the applicant complained that the staff of the Central Prison had refused to investigate the physical ill-treatment to which the applicant had been subjected by fellow inmates, and that he therefore had no effective remedy. The applicant further complained of threats to his physical safety in the Jēkabpils Prison, and that the authorities had refused to transfer him to specialised detention facilities in the Central Prison.
9. On 17 April 2012, the Court unanimously found a violation under the procedural limb of Article 3 of the Convention. The Court considered that the investigative measures taken by the Prison Administration and Central Prison administration in response to the applicant's complaint of ill-treatment cannot be regarded as independent and as intending to establish what actually took place. The Court found that information concerning the applicant's ill-treatment at least on two occasions was provided to the Prosecutor's Office, however the allegations of ill-treatment were left unexamined. Finally, the Court noted the lack of sufficient coordination among the investigators, the prosecution and the detention institutions to prevent possible ill-treatment of detainees who, owing to cooperation in disclosure of criminal offences, have become particularly vulnerable and prone to violence in prison.

II.2. *D.F. v. Latvia (application no.11160/07)*

10. The applicant is a Latvian national who was born in 1963. According to the applicant, he had worked as a police informant during the 1990s.
11. In October 2005, the applicant was arrested on charges of rape and indecent assault on minors and placed in pre-trial detention. In March 2006, he was convicted on those charges and sentenced to 13 years and one month's imprisonment. The judgment was upheld by the Supreme Court in December 2006.
12. Between 25 October 2005 and 26 October 2006, the applicant was kept in the Daugavpils Prison. He alleged that during this period he had been subjected to violence by other inmates because they knew he had been a police informant and a sex offender. The applicant maintained that the prison administration had frequently moved him from one cell to another, exposing him to a large number of other prisoners.
13. The applicant filed several requests to be moved to a specialised unit of the Central prison in Riga, but they were repeatedly rejected, in particular because the Prison Administration did not establish that the applicant had been a police informant. Following the applicant's complaint to the Prosecutor General in August 2006, in October 2006 the applicant was informed that his collaboration had been confirmed, and subsequently he was transferred to another prison.
14. Relying on Article 3 (prohibition of inhuman and degrading treatment) of the Convention, the applicant complained that he had been unable to obtain a transfer

to another prison and therefore had been exposed to violence, humiliation and mental suffering in Daugavpils Prison.

15. The Court held that, owing to the authorities' failure to coordinate effectively, the applicant had been exposed to the fear of imminent risk of ill-treatment for over a year, despite the authorities being aware that such a risk existed. Given the aforementioned circumstances, the Court found that there had been a violation of Article 3 of the Convention.

III. INDIVIDUAL MEASURES

III.1 J.L. v. Latvia

16. The Court awarded the applicant just satisfaction in the amount of EUR 10,000.00 in respect of non-pecuniary damage. The just satisfaction in the amount of EUR 10,001.37 was paid to the applicant on 4 October 2012. The Government has notified the Execution Department and submitted evidence concerning the payment of just satisfaction by e-mail.
17. The applicant was released from prison in June 2007, following a reduction by one year of his sentence, because he had reported a serious criminal offence.
18. As concerns the possibility of conducting a new investigation into the applicant's allegations, the competent authorities (the Prison Administration and the Prosecutor's General office) have reviewed the facts of the case after the Court's judgment. In their view, considering the nature of the case and the passage of time since the alleged incidents, such new investigation would not be able to remedy the shortcomings of the original investigation and would not give tangible results. In particular, it would not be possible to gather evidence (e.g. new medical examination of the applicant) that reasonably give necessary information about the offence (sexual and physical violence) against the applicant in 2006. In any event, the statutory limitation of ten years has passed and no further steps can therefore be taken.
19. Given the foregoing, no further individual measures appear to be necessary in the case of *J.L. v. Latvia*.

III.2 D.F. v. Latvia

20. The Court awarded the applicant just satisfaction in the amount of EUR 8,000 in respect of non-pecuniary damage. The just satisfaction awarded by the Court was paid to the applicant on 27 March 2014. The Government has notified the Execution Department and submitted evidence concerning the payment of just satisfaction by e-mail.
21. With regard to the case of *D.F. v. Latvia* (application no.11160/07) the applicant has been transferred and currently is serving his sentence in a specialised unit of the Central Prison. Following this transfer the applicant has not complained about an inter-prisoner violence.

22. Taking into account the nature of the violation found by the Court, the Government considers that no further individual measures are required in the case of *D.F. v. Latvia*.

IV. GENERAL MEASURES

23. The violation of procedural obligations of Article 3 of the Convention found in the case of *J.L. v. Latvia*, in so far as it concerns the lack of effective investigation, resulted both from the existing legal framework and practice.
24. Violation of Article 3 of the Convention in the case of *D.F. v. Latvia* resulted from the domestic authorities' failure to acknowledge the applicant's previous collaboration in an urgent manner and from the lack of sufficiently clear domestic rules regulating the coordination among investigators, prosecutors and penal institutions with a view to prevent possible ill-treatment of vulnerable detainees.
25. The Court in the case of *D.F. v. Latvia* has referred to the recommendations of the CPT, underlining that the responsible authorities in the Member States had an obligation to take all steps that could be reasonably expected to prevent ill-treatment of prisoners of which they had or ought to have had knowledge. In the case of *J.L. v. Latvia* the Court likewise referred to the CPT observations after the visit to Latvia relating to the lack of proper investigation of inmates' complaints of ill-treatment and failure to properly record prisoners' injuries in the medical files.
26. The Government believes that in order to avoid similar violations in the future, translation, publication and dissemination of the Court's judgments, as well as establishment of clear legal framework, improvement of practice of investigating inter-prison violence, and strengthening the coordination among competent national authorities are the most appropriate measures.

IV.1 Translation, publication and dissemination of the judgment

27. First of all, it should be pointed out that the Convention has direct effect in the Latvian legal system.
28. On the day of the delivery of the judgments in the cases of *J.L. v. Latvia* and *D.F. v. Latvia*, a press release on the Court's judgments were issued, summarising the facts of each case, the Court's conclusions and reasoning, including references to the judgments and a link to the website of the Court's case-law.¹ The Ministry of Justice, the Prison Administration, the Ministry of the Interior and the Prosecutor General Office were informed about the shortcomings identified by the Court in the cases *J.L. v. Latvia* and *D.F. v. Latvia*.
29. The full texts and the summaries of the Court's judgments in both cases have been translated into Latvian and published on the official website of the Supreme

¹ The press release and facts of the case of *J.L. v. Latvia* (application no.23893/06) available at: <http://www.mfa.gov.lv/lv/Jaunumi/zinas/2012/aprilis/17-5/>; The press release and facts of the case of *D.F. v. Latvia* (application no.11160/07) available at: <http://www.mfa.gov.lv/lv/Jaunumi/zinas/2013/oktobris/29-2/>.

Court of Latvia.² Furthermore, full text of the judgment in the case *D.F. v. Latvia* has been published on the official website of domestic courts of the Republic of Latvia at www.tiesas.lv.³

30. Furthermore, the Court's judgments have been analysed during the annual Human Rights Conference held in Riga on 22 April 2013⁴ and 30 April 2014⁵, which are widely attended by the representatives of domestic judiciaries, the Prosecutor Office and by representatives of other competent State authorities. The conclusions of the Court in both cases have also been examined in the presentations by the Government Agent during various seminars for judges and law enforcement authorities organised by the Latvian Judicial Training Centre.

IV.2 As to the investigations of inmates' complaints of inter-prisoner violence

31. Following the publication and dissemination of the judgments in 2012 and 2013, the competent authorities devote particular attention to ensure the effectiveness of investigation of complaints from inmates.
32. In 2012 the Prison Administration registered 6749 inmates' complaints. 672 complaints, which constitute 9,9% of the total amount of complaints and an increase of 3,9% in comparison with 2011, concerned the safety of inmates in Latvian prisons, inter alia, inter-prisoner violence. All the complaints concerning the safety of inmates were duly examined. For example, as a result of investigation, in 2012 24 criminal proceedings concerning inter-prisoner violence were initiated, and in first three months of 2013 9 criminal proceedings had been initiated.
33. It is also possible for inmates to submit an application (complaint) to the Prosecutor's Office. The Prosecutor's Office carries out the initial assessment of the complaint, and if the alleged violence constitutes a criminal offence, case file on alleged violence is handed over to investigators and criminal proceedings are initiated. The investigators in the specific inter-prisoner violence cases are located in the places of deprivation of liberty but together they form an Investigative Unit of the Prison Administration and are directly subordinated to the Prison Administration. Legality and justification of decisions adopted by the relevant prison investigative authorities are supervised by the Prosecutor's Office.
34. Furthermore, any information concerning alleged violence among the prisoners is registered irrespective of whether an actual inmate's complaint has been submitted to the prison authorities. In particular, if the prison officials find that an inmate has allegedly suffered from violence (for instance, bodily injuries are

² Latvian translations of the judgments in cases of *J.L. v. Latvia* (application no.23893/06) and *D.F. v. Latvia* (application no.11160/07) are available at: <https://www.tiesas.lv/eiropas-cilvektiesibu-tiesas-ect-spriedumi-un-lemumi>.

³ Latvian translation of the judgment in case of *D.F. v. Latvia* (application no.11160/07) is available at: <http://at.gov.lv/en/court-proceedings-in-the-supreme-court/archive-of-case-law-decisions/>.

⁴ Available at: <http://www.rgsl.edu.lv/en/news-and-events/515/annual-discussion-current-human-rights-issues-in-latvia>.

⁵ Available at: <http://www.rgsl.edu.lv/en/news/video-annual-discussion-on-current-human-rights-issues-in-latvia>.

caused to an inmate), the prison officials report the fact in writing to the prison authorities.

35. Additionally, on 2 June 2015, the Cabinet of Ministers adopted Regulation No.276 *Health care provision procedure for detained and imprisoned persons*, providing clear instructions and document forms for medical personnel for recording bodily injuries of imprisoned persons in places of deprivation of liberty. According to the above Regulation, a medical specialist must examine and record all injuries when a person arrives at the prison for the first time, is transferred to another prison or prison hospital. If the medical personnel find body injuries during the examination of a prisoner, injuries inspection form is filled out and added to the medical file, as well as a written report to the head of the prison about the injured prisoner is prepared. According to the established practice, medical personnel use inspection forms to record all body injuries, including small everyday injuries and sports injuries.
36. On 1 November 2015, the *Law on Internal Security Office* entered into force, and as of that date the Internal Security Office has the authority to investigate all offences allegedly committed by the officials *inter alia* in the places of deprivation of liberty. The Internal Security Office has a separate budget and is institutionally supervised by the Minister of the Interior. The *Law on the Internal Security Office* ensures the institutional and practical independence of the officials of the Internal Security Office when investigating offences committed by the prison staff.

IV.3 As to the prevention of inter-prisoner violence

37. The Government is mindful of the CPT's call to Latvian authorities to develop a comprehensive strategy with a view to addressing the problem of inter-prisoner violence. Having examined the existing legal framework, the relevant legislative measures to prevent the inter-prisoner violence have been adopted.
38. The amendments to *the Code on Enforcement of Sentences* that entered into force on 1 May 2007, was supplemented the *Code* with Article 13¹ that contains criteria for the placement of convicts. According to the said Article, the Head of the Prison Administration determines the placement of convicts in particular place of deprivation of liberty, taking into account medical, safety and crime prevention criteria.
39. On the basis of Article 13¹ of *the Code on Enforcement of Sentences*, *the Law on Procedure for Keeping in Detention* and *the Law on Special Protection of Individuals*, on 26 August 2013 the Head of the Prisons Administration issued Order No.204 *On Placement of Imprisoned Persons*. The first paragraph of the Order lists the categories of imprisoned persons who are to be placed in the specialised unit of the Central Prison, *inter alia*, those inmates who need special isolation and whose safety is jeopardised in other places of deprivation of liberty. According to the information provided by the Prisons Administration, both the Central Prison and other places of deprivation of liberty ensure the imprisoned persons' isolation and safety while the verification on whether paragraph 1 of the Order is applicable with regard to the specific inmate is carried out.

40. According to the amendments of 1 August 2011 and 1 April 2013 to Article 615 of *the Code on Enforcement of Sentences*, the head of the institution of deprivation of liberty is to ensure the assessment of risks and needs of the convicted persons within two months after they have been placed in the institution for serving a sentence. The responsible officials and employees (senior officers, community workers and psychologists) of prisons are to assess the necessity of re-socialization of the convicted persons, as well as assess the risk of anti-social behaviour (including incidents of violent behaviour before and during a sentence and risk of committing a repeated criminal offence while being in prison). If the assessment indicates that the convicted persons lack the social skills to resolve disputes without the violence, voluntary visits to psychologists and relevant re-socialization programmes are provided.
41. Further, on 1 February 2010, an internal legal act on mutual cooperation between the Prison Administration and the State Police was issued. This document sets out detailed rules concerning the cooperation between those two institutions in cases when it is necessary to establish the fact of an imprisoned person's previous collaboration with the law enforcement authorities with a view to preventing possible risks for such an inmate. According to the regulation, the exchange of information between the competent authorities is in writing.
42. The State Police is obliged to deal with the written inquiries received from the Prisons Administration in an urgent manner but not later than within a period of two month. If a prisoner asks to move him to the specialised unit of the Central Prison because of his previous collaboration with the police, the Prison Administration sends a request to the State Police asking to verify and confirm or reject the information about the imprisoned persons' previous collaboration with the police. The places of deprivation ensure imprisoned persons' isolation and safety while the State Police verifies the information. Therefore, regardless of the time required for the verification of the information, places of deprivation respond immediately to the prisoners' request.
43. If the fact of previous collaboration is established, the State Police immediately notifies the Prison Administration thereof, as well as requests to undertake the necessary measures in order to ensure the imprisoned person's safety.
44. Information about imprisoned persons' previous collaboration with the law enforcement authorities is stored in the archive of the Prison Administration and in case of repeated detention or imprisonment a person is placed in specialized unit of the Central Prison within a few days.
45. According to the statistical data provided by the Prison Administration, in 2012 the Prison Administration sent 20 and in 2013 – 22 information requests to the law enforcement authorities concerning prisoners' previous collaboration with the police, while in 2014 the Prisons Administration has sent 49 information requests and in 2015 – 48 information requests to the law enforcement authorities. Furthermore, in 2013 113 inmates, and 74 inmates during the first half of 2014, have been transferred to the specialised unit of the Central Prison on the account

of their or their close relatives' previous employment in, or collaboration with the law enforcement authorities.

46. Finally, additional education is ensured for officials of places of deprivation of liberty. The lifelong learning program "*Guard of places of deprivation*" includes several subjects teaching officials how to react when a prisoner informs about his conflict with other prisoners or about threats to his health or life, as well as when a prisoner informs about threats because of his previous collaboration with the police.
47. In the light of afore-mentioned measures, the Government believes that no further general measures appear to be necessary in the present cases.

V. CONCLUSION OF THE MEMBER STATE

48. The Government believes that no further individual measures are necessary in the present case. The general measures undertaken fulfil the requirements arising from the Court's judgments and prevent similar violations from occurring in the future. Accordingly, it is sufficient to conclude that Latvia has complied with its obligation under Article 46, paragraph 1, of the Convention concerning the violation of Article 3 of the Convention and the examination of the case *D.F. v. Latvia* and *J.L. v. Latvia* should be closed.



Kristīne Līce

Agent of the Government of the Republic of Latvia
Riga, 1 March 2018