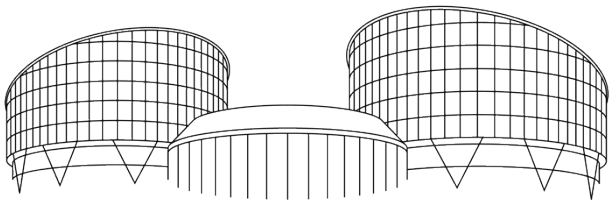

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 35021/05
Gatis KOVAĻKOVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 31 January 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 21 September 2005,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Gatis Kovaļkovs, is a Latvian national who was born in 1970 and lives in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

A. The circumstances of the case

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

1. The background

3. On 18 February 2002 the Jelgava Court convicted the applicant of attempted robbery. He was sentenced to six years' imprisonment, suspended for two years. On 5 November 2003 the Dobele District Court established that during that two-year period the applicant had committed various infractions. For that reason it ordered the applicant to start serving his sentence pursuant to the Jelgava Court's judgment of 18 February 2002, effective immediately.

4. On 13 November 2003 the applicant was transferred from the Central prison in Rīga to serve his sentence in Pārlielupe prison in Jelgava. According to the applicant, soon after his arrival at Pārlielupe prison he began to have disagreements with the administration of the prison and with his cellmates. It appears that the primary cause of conflict was the fact that almost all of the prisoners and staff at Pārlielupe prison spoke Russian. According to the applicant, their knowledge of Latvian – the official language of Latvia and the applicant's native language – was limited or non-existent. The applicant made numerous requests to be transferred to a place of imprisonment where he could freely communicate in Latvian. However, all his requests to that effect were rejected.

5. It furthermore appears that at the relevant time the applicant frequently made dismissive and disparaging oral remarks concerning the Russian minority of Latvia. Similar statements were also included in the applicant's correspondence with State authorities and in articles which he regularly published in an extreme right-wing magazine. As a result, other inmates became hostile towards the applicant.

2. The applicant's transfers between prisons

6. On 18 August 2005 the applicant was transferred from Pārlielupe prison to Jēkabpils prison after the governor of Pārlielupe prison had written a report in which it was noted that the applicant "constantly provoke[d] conflicts with the administration of the prison by sending unsubstantiated complaints to various Latvian newspapers".

7. On 7 October 2005 the applicant was transferred to Valmiera prison.

8. On 7 November 2005 the applicant was transferred to Matīsa prison in Rīga (in 2009 Matīsa prison merged with the adjacent Central prison). The report concerning the desirability of the applicant's transfer noted that "all of the [applicant's] conflicts and disagreements in prison [were] caused by himself, [he] provoke[d] the [prison] administration and incite[d] other prisoners to write complaints". At the applicant's request, one month after

his arrival in Matīsa prison he was placed in an individual cell. The applicant remained in Matīsa prison until his release upon having served his sentence on 8 January 2009.

3. The applicant's religion

9. The applicant alleges that his cellmates and also the chaplain at Pārlielupe prison ridiculed him because of his religious beliefs. He furthermore alleges that he was prevented from adequately performing the fundamental rituals of Vaishnavism (the Hare Krishna movement).

10. On 19 May 2005 the applicant complained about the purported infringements of his religious freedoms to the Directorate of Religious Affairs (*Reliģijas lietu pārvalde*) of the Ministry of Justice. In particular he complained that the chaplain of Pārlielupe prison had described the Hare Krishna movement as a "satanic" religion. He also pointed out that he was not receiving the same level of spiritual support as the prisoners belonging to the Christian faith.

11. On 8 June 2005 the applicant submitted a request to the governor of Pārlielupe prison. He explained that in prison he worked as a cobbler. Part of his earnings he had to spend to buy food in the prison store, since his religion did not allow him to eat some of the food served by the prison canteen. He furthermore complained that in his cell he was unable to read religious writings because of his cellmates' tendency to discuss their immoral lifestyles by using countless swear words. He invoked Articles 9 and 14 of the Convention and requested to be placed in a separate (individual) cell. It appears that he did not receive any written response.

12. In a letter from the Directorate of Religious Affairs of 20 June 2005 the applicant was informed that his religious rights were being respected "in so far as it was possible". He was furthermore informed that a Christian education programme was operating in Pārlielupe prison.

13. On 27 June 2005 the applicant complained to the Prison Administration (*Ieslodzījuma vietu pārvalde*) of being mocked and humiliated by the prison staff and his fellow prisoners because of his religious beliefs. He invoked Articles 9 and 14 of the Convention and complained that the circumstances in his cell and the negative attitude of his cellmates prevented him from devoting himself to meditation and studies of Vaishnavism.

14. On 15 July 2005 the deputy governor of the Prison Administration replied to the applicant by explaining that it was not appropriate to perform religious rituals in a common cell, since it might disturb other prisoners. However, the applicant was informed that the administration of the prison would set aside a specific time for him to visit the prison chapel or another appropriate space so that he would be alone for praying, reading religious literature, and meditating. According to the applicant, that never happened.

15. On 16 November 2005 the deputy governor of the Prison Administration responded to an enquiry from the Ministry of Justice for information about the applicant. The letter referred to an unspecified prison where the applicant had been held and indicated, *inter alia*:

> "[the applicant's] religious activities create tense situations. [The applicant] in the presence of other convicted persons in the residential areas regularly and openly performs religious rituals – singing, meditation, massages with oils and so on – thus disturbing the other convicted persons. Despite the fact that the administration of the prison indicated [to the applicant] that residential areas are not meant for carrying out religious activities and offered the use of another room for this purpose, [the applicant] refused and stubbornly continued to perform religious rituals in the residential areas. ... With his actions [the applicant] offends the honour and dignity of other convicted persons and creates a negative attitude towards himself."

16. During a search of the applicant's belongings at Matīsa prison on 20 January 2006 a guard found and confiscated some incense sticks. According to the applicant, the incense was necessary for him to perform the religious rituals of Vaishnavism. The record of the search contains a space for any objections that the prisoner might have. The applicant signed the record but the space for objections was left blank.

17. On 13 June 2007 the Prison Administration wrote to the president of the Rīga Chapter of the International Society of Krishna Consciousness asking for an explanation of certain religious rituals that several prisoners had sought to perform in prisons. Namely, the Prison Administration wished to ascertain whether Vaishnavism required a twice-daily loud chanting of mantras for fifteen minutes. The president of the Rīga Chapter responded on 28 June 2007. He explained that there existed two methods for praying to Krishna. The first – *japa* – involves the repetition of a mantra in a soft voice by using prayer beads. The second – *kirtan* – is chanting of the Hare Krishna mantra at a regular volume. Typically *kirtan* is performed by a group of devotees as a form of a religious service. It appears that both forms of prayer are equally acceptable.

18. At the request of the Agent of the Government, on 2 November 2007 the Directorate of Religious Affairs provided certain information concerning the organisation of religious life in prisons, about the applicant's complaints received by the Directorate, and concerning certain specific aspects of Vaishnavism. Concerning the latter, members of the Rīga congregation had explained to representatives of the Directorate that some of the basic rituals of Vaishnavism were the burning of incense sticks, a daily washing, a special diet, studies of religious writings, and meetings with other followers of Vaishnavism. The obligation to observe those rituals was, however, conditional. For instance, if circumstances did not permit it, the burning of incense sticks was not mandatory. According to the members of the congregation, in a prison environment it would recommendable for a follower of Vaishnavism to be placed in a single cell, since the observance of the religious rituals in a shared cell could incite a negative attitude among

other prisoners. Concerning religious literature, the members of the congregation affirmed that upon request religious writings could and would be sent to inmates. Lastly, concerning the dietary requirements it was emphasised that the ban on eating meat products was particularly significant for followers of Vaishnavism.

4. The events of 1 September 2005 and the subsequent investigation

19. On 1 September 2005 the applicant refused to stay in his wing of Jēkabpils prison. He submitted a written statement to the Prison Administration, in which he requested to be moved to Jelgava prison and explained that he was in danger in Jēkabpils prison. According to the applicant, he orally informed the representatives of the administration of Jēkabpils prison that on that day he had been beaten by other prisoners. He also complained that the smallest detention wing that had been offered to him held forty other prisoners.

20. On the same day the administration of Jēkabpils prison took a written statement from several prisoners saying that the applicant had not been subjected to physical or mental harassment and that he had not had any conflicts with any of the inmates. Two hours after the applicant had refused to return to his wing he was seen by a medical assistant (*feldšere*) who examined him and did not find any bruises on his body. The relevant excerpt from the applicant's medical record reads as follows:

> "At 15.40 brought for examination due to bodily injuries.
>
> Does not have any complaints. According to the prisoner, there is no need for a medical examination.
>
> Body examined in its entirety.
>
> Concl[usion]: No bruises or subcutaneous haematomas have been observed."

The applicant received a disciplinary penalty in the form of seven days' detention in a punishment cell for the refusal to return to his wing.

21. On 5 September 2005 the applicant was moved to a different wing of Jēkabpils prison where the prisoners are placed in cells (as opposed to dormitories in the rest of the prison).

22. On 10 and 13 October 2005 the applicant submitted complaints to the Specialised Public Prosecutor's Office (*Specializētā vairāku nozaru prokuratūra*). He stated that in Jēkabpils prison he had been beaten by "Russian speakers" who had been incited to do so by one of the wardens. The applicant asked to be moved to Matīsa prison because he felt threatened in all the other prisons in Latvia.

23. The applicant's complaint was forwarded to the Prison Administration, which on 28 October 2005 refused to initiate criminal proceedings concerning the applicant's alleged beating in Jēkabpils prison. An inspector of the Prison Administration took into account written reports

that had been drawn up by the administration of Jēkabpils prison and written statements from the applicant's cellmates. It was found that all the information in the file consistently pointed to the conclusion that the applicant had not been attacked by anyone.

24. On 14 November 2005 the applicant appealed to the Specialised Public Prosecutor's Office for Organised Crime and Other Offences (*Organizētās noziedzības un citu nozaru specializētā prokuratūra*) against the Prison Administration's refusal to initiate criminal proceedings. He named two prisoners who had allegedly beaten him and complained that the investigator of the Prison Administration had not questioned them. He furthermore pointed out that immediately after his arrival at Jēkabpils prison as well as on 31 August 2005 he had complained to representatives of the administration that he was threatened by other inmates, yet no action had been taken. The applicant noted that the prisoners who had been questioned by the investigator of the Prison Administration had been the ones friendly to him and that there had been no reason to question them in relation to his alleged beating. Concerning his medical examination on 1 September 2005 the applicant submitted that the medical assistant had observed him "while holding a cup of coffee in her hands". She had declared that the applicant had a "red head" and had only noticed a scratch on his skin when the applicant himself had pointed it out. The medical assistant had refused to give any treatment for the scratch or for the applicant's headache and had not even recorded his complaints.

25. On 28 November 2005 his appeal was rejected by a senior prosecutor of the Specialised Public Prosecutor's Office. In reply to the applicant's complaint that the investigator of the Prison Administration had not questioned the two inmates whom he had singled out as being responsible for his beating, the prosecutor explained that persons could be questioned only after criminal proceedings had been initiated. Considering that, in the absence of any recorded injuries, there was no reason to initiate criminal proceedings concerning the applicant's alleged beating, the two prisoners named by the applicant could not be questioned.

26. On 1 December 2005 the applicant appealed against the reply of 28 November 2005. He essentially repeated the arguments that had been set out in his previous complaints, namely, that he had identified by name a prisoner who had threatened and then beaten him, yet that person had never been questioned and that his medical examination on 1 September 2005 had been very superficial.

27. In a final decision of 14 December 2005 another senior prosecutor of the Specialised Public Prosecutor's Office for Organised Crime and Other Offences rejected the applicant's complaint. The response was essentially identical to the previous ones given to the applicant but also added that the "lodging of complaints is to be seen as a counteraction against the

administration of the prison and against prisoners negatively disposed towards [the applicant]".

5. Other events

28. On 12 February 2004 the Criminal Law was amended. Among other things, the minimum prison term for robbery was reduced. The applicant wrote numerous letters to the Supreme Court and to prosecutors requesting that his sentence be reduced. He received an explanation that the transitional provisions concerning the entry into force of the amendments to the Criminal Law provided that the reduction in the minimum term of imprisonment was not applicable to persons sentenced prior to 1 January 2005, the date when the amendments to the law came into effect. The applicant's subsequent attempts to appeal to the Constitutional Court remained unsuccessful.

29. Also in 2005 the applicant enquired with the State authorities about the possibility of changing his Russian-sounding surname (Kovaļkovs) to the surname which he had had until the age of five (Bite). He received a response stating that under the law he could not change his name before his criminal record was expunged.

30. In a letter of 7 March 2006 which was addressed to the Human Rights Bureau (*Cilvēktiesību birojs*) the director of the Prison Administration described the applicant's personal situation and characterised the applicant in negative terms. The applicant subsequently sought in vain to initiate criminal proceedings for defamation against the director of the Prison Administration. In July 2006 the applicant requested State-granted legal aid in order to lodge a civil claim for damages against the director of the Prison Administration. On 9 July 2006 the Legal Aid Administration (*Juridiskās palīdzības administrācija*) rejected the applicant's request for the reason that the law did not provide for legal aid for such claims. The claim which had been drafted by the applicant himself was not accepted by the Rīga City Latgale District Court for procedural reasons. The final decision in that regard was adopted on 14 September 2006.

31. On 1 November 2007 (after the case had been communicated to the Government) a psychiatrist issued a one-paragraph report on the applicant's mental health, finding him to be a querulent personality with a tendency to misinterpret other people's actions towards him as hostile or dismissive and to "aggressively exaggerate his rights by incessantly writing unsubstantiated complaints".

B. Relevant domestic law and Council of Europe documents

32. Article 46[1] of the Sentence Enforcement Code (*Sodu izpildes kodekss*), as in force at the relevant time, provided for the existence of a chaplaincy service in prisons and indicated that the prisoners' meetings with clerics and their participation in "moral development activities" were to be regulated by the Internal Rules of Order of an Institution of Deprivation of Liberty, which were contained in regulations of the Cabinet of Ministers.

33. As in force until 3 June 2006, Regulation of the Cabinet of Ministers no. 73 (2002) provided in paragraph 36 that the chaplains and other staff members of prisons were to organise "moral development activities", such as lectures, educational talks and musical performances. The "moral development" also included religious events organised by chaplains, such as studies of religious literature, services, sacraments and other ceremonies. It was also noted that "convicted persons shall have the opportunity to educate themselves individually". Paragraph 37 provided that with the permission of the prison governor or of the director of the Prison Administration "representatives of registered religious and public organisations" could be involved in the organisation of the educational activities for prisoners.

34. Paragraph 46 of the Regulation provided that convicts could only keep a limited selection of objects in their cells, which was exhaustively listed in amendment no. 3 to that Regulation. The list in the amendment did not include incense sticks.

35. On 3 June 2006 the previous Regulation was replaced by Regulation of the Cabinet of Ministers no. 423 (2006). Paragraph 35 of the new Regulation provides that the spiritual care of convicted persons is to be organised or performed by chaplains. Paragraph 39 provides that "[o]nly the religious organisations listed in the normative acts concerning the chaplaincy service shall be authorised to distribute religious literature in prisons".

36. At the relevant time the chaplains' work in prisons was regulated by Regulation of the Cabinet of Ministers no. 277 (2002), entitled "Regulations on the Chaplaincy Service" (*Noteikumi par kapelānu dienestu*). The second paragraph of the Regulation provided that chaplains were responsible for ensuring respect for freedom of religion in, among other institutions, prisons. Paragraph 3 provided that chaplains were nominated by the leaders of the Lutheran, Catholic, Orthodox, Old Believer, Methodist, Baptist, Seventh-day Adventist, Jewish, and Pentecostal denominations.

37. Paragraph 15 of Regulation no. 277 specified that chaplains were to ensure the spiritual care of prisoners, to lend them moral support and to give them consultations concerning questions of religion and ethics when necessary. According to the information furnished by the Directorate of Religious Affairs the chaplaincy service was ecumenical. Prison chaplains were obliged to provide spiritual support to all prisoners, irrespective of

their faith, or, should that prove to be impossible, they could invite representatives of the respective religious movement to assist them in their work. Since 31 March 2006 those principles have been specifically laid down in an internal instruction of the Prison Administration entitled the Regulation on the Prison Chaplaincy Service (*Ieslodzījuma vietu kapelānu dienesta reglaments*).

38. In addition, Regulation no. 423 provided that convicted persons could only keep a limited selection of objects in their cells, which was exhaustively listed in amendment no. 1 to that Regulation. The list in the amendment did not include any objects of a religious character, although some of the objects, such as books, photographs and headwear could have religious significance.

39. In 2010 the constitutionality of amendment no. 1 to Regulation no. 423 was challenged in the Constitutional Court. In a judgment of 18 March 2011 in case no. 2010-50-03 the Constitutional Court declared amendment no. 1, in so far as it did not allow the storage of religious objects, unconstitutional and void as of 1 October 2011.

40. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member states on the European Prison Rules, which lay down the following guidelines:

> "*Freedom of thought, conscience and religion*
>
> 29.1 Prisoners' freedom of thought, conscience and religion shall be respected.
>
> 29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs."

COMPLAINTS

41. Without invoking any specific articles of the Convention the applicant complained that he had been beaten by other inmates in Jēkabpils prison and that the domestic authorities had refused to initiate criminal proceedings in that regard.

42. The applicant complained of repeated violations of his freedom of religion. He relied on Article 9 of the Convention.

43. The applicant further complained of discrimination based on his religious beliefs. He relied on Article 14 of the Convention in conjunction with Article 9 of the Convention and on Article 1 of Protocol No. 12.

44. Lastly, without invoking any particular Articles of the Convention, the applicant complained about the impossibility to use the Latvian language in communication with other prisoners as well as with certain

members of the administrations of the prisons where he had been detained; about the impossibility to benefit from a retroactive application of the amendments to the Criminal Law; about the impossibility to change his name from Kovaļkovs to Bite; about the impossibility to start civil proceedings for defamation against the director of the Prison Administration; and, lastly, about the general situation of Latvian-speaking prisoners in Latvian prisons.

THE LAW

A. Article 3 of the Convention

45. The applicant's complaints that he had been beaten by other inmates in Jēkabpils prison and that the domestic authorities had refused to initiate criminal proceedings in that regard were communicated to the respondent Government under the substantive and procedural limbs of Article 3 of the Convention, which reads as follows:

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

46. The Government argued that the applicant had not complained about the actions of State agents or persons acting on their behalf. For that reason the State could not be held responsible for his alleged beating.

47. The Court observes that according to its constant case-law the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment administered not only by State agents but also by private individuals (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V). In the case of prisoners, the Court has consistently stressed that the Contracting States must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 93-94, ECHR 2000-XI). It follows that the State was under an obligation to secure the applicant's health and well-being, including against attacks from other prisoners.

48. In so far as the applicant's complaint of the inadequacy of the investigation into the alleged attack against him is concerned, the

responsibility of the domestic authorities is engaged directly. Accordingly, the objection of the Government concerning the non-attribution of the applicant's complaints to the State is dismissed.

49. The applicant argued that he had been beaten and that the investigation had been defective because the persons responsible for the beating had not been questioned.

50. The Government emphasised that the swift and thorough preliminary investigation into the applicant's complaints had proven that those complaints were not true and were not supported by appropriate evidence. The evidence that was available did not disclose that the minimum level of severity of ill-treatment necessary for it to fall within the scope of Article 3 had been attained in the present case. The Government furthermore insisted that the national authorities had done their utmost to ensure that the conditions of the applicant's imprisonment had been safe (referring to the applicant's transfers between different prisons). Lastly it was pointed out that the applicant's difficult relations with other prisoners had been provoked by his own actions.

51. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (among many other examples, see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999).

52. The Court further points out that when assessing evidence concerning alleged ill-treatment in violation of Article 3 of the Convention it has generally applied the standard of proof "beyond reasonable doubt" (see, among others, *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004). Such proof may, however, follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25, and *Gharibashvili v. Georgia*, no. 11830/03, § 56, 29 July 2008).

53. Turning to the circumstances of the present case, the Court notes that the only proof available to it concerning the applicant's alleged ill-treatment consists of the applicant's own assertions and an excerpt from his medical record (see above, paragraph 20). The applicant's submissions are not detailed or precise. He alleges to have been beaten by two other prisoners. Yet he has not provided any details concerning the nature of the blows he allegedly received such as the number of blows and the body parts struck. Even if it were to be assumed that the excerpt from the applicant's medical record does not fully and adequately describe his actual state of health after the alleged beating, the only discrepancies pointed out by the applicant in his submissions to the domestic authorities are that the medical assistant had

orally told him that he had a "red head" and that the applicant himself had had to point out a scratch on his skin which was then not noted in his medical record (see above, paragraph 24). In those circumstances, after reviewing the material in its possession, the Court cannot consider the applicant's impugned ill-treatment in custody an established fact "beyond reasonable doubt". Accordingly the applicant's complaint about the alleged violation of the substantive aspect of Article 3 of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

54. In the light of its findings above the Court considers that the applicant's complaint of 1 September 2005 (see above, paragraph 19) and his later complaints of 10 and 13 October 2005 (see above, paragraph 22) lacked details and credibility. He did not make credible assertions of ill-treatment that would entail a procedural obligation under Article 3 of the Convention for the domestic authorities to investigate his allegations (see *Kuralić v. Croatia*, 50700/07, §§ 29 and 36, 15 October 2009). Therefore his complaint about the alleged violation of the procedural aspect of Article 3 of the Convention is also manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

55. The applicant's complaints concerning Article 3 of the Convention must therefore be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Article 9 of the Convention

56. The applicant complained of repeated violations of his freedom of religion. He relied on Article 9 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

57. As a preliminary issue the Court takes note of the Government's argument that the applicant could not be considered a victim of the alleged infringement of his freedom of religion, since he was not a follower of Vaishnavism. The Government based their argument on the fact that in 2004 the applicant had participated in a distance-learning Bible study course. The Court takes this opportunity to underline the fact that in no way can a person's choice to educate himself – be it on religious or other topics – be objectively held to affect that person's belief system. The Government further referred to a letter of 8 November 2007 signed by the State Secretary

of the Ministry of Justice which included a statement that the applicant "currently does not belong to the International Krishna Consciousness Society, does not support it and does not propagate its beliefs". Since that statement is not supported by any evidence, the Court does not consider it a reliable indicator of the applicant's religious leanings. Lastly, it has to be noted that none of the domestic authorities to which the applicant addressed his complaints concerning the alleged interference with his freedom of religion appear to have questioned the genuineness of his faith. In principle, the State's duty of neutrality and impartiality, as defined in the Court's case-law (see, for example, *Miroļubovs and Others v. Latvia*, no. 798/05, § 80, 15 September 2009), is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (ibid., and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 107, ECHR 2005-XI) The Court sees no reason to question the genuineness of the applicant's faith either. Therefore the Government's argument concerning the applicant's victim status is dismissed.

58. In his application to the Court the applicant formulated his complaint under Article 9 in rather general terms. He stated that he had been "denied the freedom of faith [and] forbidden to devote [himself] to [his] religious convictions by following religious customs".

59. The Court will focus its analysis on the supposed restrictions of the applicant's ability to follow the fundamental requirements of Vaishnavism.

60. Clearly, it is not the Court's task to determine what principles and beliefs are to be considered central to the applicant's religion or to enter into any other sort of interpretation of religious questions (see the case-law references above, paragraph 57). However, certain core principles emerge from the applicant's complaints to various domestic authorities and to the Court as well as from the response given to the Prison Administration by the president of the Rīga Chapter of the International Society of Krishna Consciousness (see above, paragraph 17) and the information received from members of the Rīga congregation and summarised by the Directorate of Religious Affairs (see above, paragraph 18). In the light of that information, the Court will concentrate on the applicant's purported inability to read religious literature, to meditate and to pray because of being placed in a cell together with other prisoners and on the fact that incense sticks were taken away from his cell. The Court considers that the applicant's wish to pray, to meditate, to read religious literature and to worship by burning incense sticks can be regarded as motivated or inspired by a religion and not unreasonable (see *Jakóbski v. Poland*, no. 18429/06, § 45, ECHR 2010-...).

61. The Court notes that Article 9 of the Convention lists the various forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see *Jakóbski*, cited above, § 44). At the same time, it does not protect every act motivated or inspired by a religion or belief (see *Leyla Şahin*, cited above, § 78).

62. The Court views the applicant's complaint that he was not placed in a single cell or at least given access to a room where he could pray, meditate and read religious literature undisturbed by other prisoners from the standpoint of the respondent State's positive obligations (see, *mutatis mutandis*, *Jakóbski*, cited above, § 46). At the same time, the applicant's complaint that incense sticks were taken away from him pertains to the State's obligation to restrain from interference with the applicant's right to manifest his religion. However, for practical purposes, whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicant's rights under Article 9 § 1 or in terms of an interference by a public authority to be justified in accordance with Article 9 § 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 9, in striking the required balance the aims mentioned in the second paragraph may be of certain relevance (*Jakóbski*, cited above, § 47).

63. The Court is prepared to accept that there has been an interference with the applicant's rights under Article 9 on both counts. The argument of the Government that the applicant's demands should not take precedence over the rights and needs of other prisoners pertains more to the analysis of proportionality rather than to the existence of an interference.

64. The Court, similarly to its approach in the above-cited *Jakóbski* case, is also prepared to accept that financial implications for a custodial institution which can have an indirect impact on the quality of treatment of other inmates can serve as a legitimate aim, namely, the protection of the rights and freedoms of others (cited above, § 50). Another aspect to be taken into account in that regard is other prisoners' wish not to be disturbed by the applicant's performance of religious rituals. Concerning the confiscation of the incense sticks, the legitimate aim is the protection of the rights and freedoms of others and public safety by limiting the types of objects that may be kept in prison cells.

65. The limitations of the applicant's rights to manifest his religion were also prescribed by law. Nothing in the legislation concerning spiritual care in Latvian prisons (see above, paragraphs 32-39) provided for a right to be placed in a single cell or to be authorised to use other premises for praying, meditating or reading religious literature. Regulation of the Cabinet of Ministers no. 73 (2002) (see above, paragraphs 33-34) did not include incense sticks in the list of items authorised for storage in prison cells. The Court reiterates that in 2011 a constitutional challenge by another convicted person against the applicable legal regulation concerning the storage of

religious items in prison cells was successful and the storage of such items is permitted as of 1 October 2011 (see above, paragraph 39). However, at the time under review in the present case the storage of such items was not authorised by law and the applicant did not challenge this regulation in the Constitutional Court.

66. In any event, taking into account the margin of appreciation left to the States in guaranteeing the rights under Article 9 (see above, paragraph 62), the Court considers that the impugned restrictions of the applicant's freedom of religion were proportionate to the legitimate aims sought to be achieved for the following reasons.

67. As regards the issue of the applicant's wish to read religious literature, to meditate and to pray in isolation from other prisoners, what needs to be balanced is the degree of the interference with the applicant's right to manifest his religion on the one hand and the rights of other prisoners on the other hand. The Court also takes into account that it appears from the documents submitted by the Government and it has not been disputed by the applicant that on at least one occasion he had been offered the use of alternative premises for performing religious rituals and had refused to accept that offer (see above, paragraph 15). The interference with the applicant's right is not such as to completely prevent him from manifesting his religion. The Court considers having to pray, read religious literature and to meditate in the presence of others is an inconvenience, which is almost inescapable in prisons (see, *mutatis mutandis*, *Estrikh v. Latvia*, no. 73819/01, § 166, 18 January 2007, and *Golder v. the United Kingdom*, 21 February 1975, § 45, Series A no. 18), yet which does not go against the very essence of the freedom to manifest one's religion. In the circumstances where the prison authorities, on at least one occasion, offered the applicant the use of separate premises for performing religious rituals and the applicant refused that offer without any apparent reason, the balance between the legitimate aims sought to be achieved and the minor interference with the applicant's freedom to manifest his religion has clearly been achieved.

68. Concerning the confiscated incense sticks, the Court does not consider it necessary to examine whether the applicant has exhausted the domestic remedies in the light of his failure to mount a constitutional challenge against the applicable legal regulation concerning the storage of religious items in prison cells (see above, paragraph 65), since the applicant's complaint is in any case manifestly ill-founded, for the following reasons. The Court takes into account the information provided to the Directorate of Religious Affairs by members of the Rīga Vaishnavist congregation (see above, paragraph 18). In particular, it notes that the obligation to observe the religious tradition of burning incense sticks depends on the circumstances of the person in question. The applicant did not dispute that information. The Court further notes that the burning of

incense sticks typically creates a powerful odour which is not pleasant to everyone and which might be disturbing to other prisoners. Taking the above-mentioned considerations into account, the Court considers that restricting the list of items permitted for storage in prison cells by excluding items (such as incense sticks) which are not essential for manifesting a prisoner's religion is a proportionate response to the necessity to protect the rights and freedoms of others.

69. The applicant's complaints concerning Article 9 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Article 14 of the Convention

70. The applicant further complained of discrimination based on his religious beliefs. He relied on Article 14 of the Convention in conjunction with Article 9 of the Convention and on Article 1 of Protocol No. 12. Since Latvia has not ratified Protocol No. 12, the Court deems it appropriate to view the applicant's complaint of religious discrimination under Article 14, which reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as [..] religion [..]"

71. The Government contested that argument.

72. It appears that the applicant's complaint pertains to the fact that one of the chaplains of Pārlielupe prison allegedly called him a Satanist and described Vaishnavism as a satanic religion.

73. The Court has consistently held that Article 14 proscribes a discriminatory difference in treatment between persons in analogous or relevantly similar positions without a legitimate aim or in the absence of a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Van Raalte v. the Netherlands*, 21 February 1997, § 39, *Reports of Judgments and Decisions* 1997-I; *Larkos v. Cyprus* [GC], no. 29515/95, § 29, ECHR 1999-I; and *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 51, ECHR 2006-...).

74. In the present case the applicant has not complained that he received any different treatment from persons in relevantly similar positions. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Other complaints

75. Lastly, without invoking any particular Articles of the Convention, the applicant submitted numerous other complaints (see above, paragraph 44).

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President