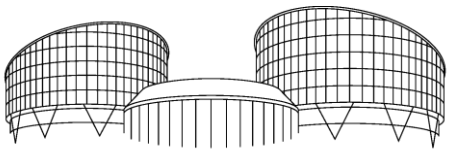

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TALI v. ESTONIA

(Application no. 66393/10)

JUDGMENT

STRASBOURG

13 February 2014

FINAL

13/05/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tali v. Estonia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 21 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 66393/10) 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 Andrei Tali ("the applicant"), on 7 November 2010.

2. The applicant was represented by Ms E. Ezhova, a lawyer from the Legal Information Centre for Human Rights, Tallinn. 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 subjected to ill-treatment in breach of Article 3 of the Convention.

4. On 7 September 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977. He is serving a life sentence in prison.

A. Background information about the applicant's convictions and behaviour in prison

6. According to an extract from the register of convictions provided by the Government, the applicant had nine criminal convictions and one misdemeanour punishment on record. He was serving a life sentence on the basis of his conviction in 2001 for the murder of two people and attempted manslaughter of another person. Furthermore, he had several convictions for attacking prison officers and other prisoners. In addition, a large number of disciplinary punishments had been imposed on him in prison, including for disobeying orders of and threatening prison officers. In the individual action plans (*kinnipeetava individuaalne täitmiskava*) drawn up in Tartu Prison and in Viru Prison, the applicant was characterised as a dangerous person lacking in self-control and capable of physically attacking others.

B. Events of 3 July 2009

7. On 3 July 2009 the applicant was informed by prison guard KA that he would be transferred to a punishment cell in the evening in order to serve a disciplinary punishment. The applicant was dissatisfied, as he had been led to understand that he would not have to serve the punishment in question until the resolution by the Chancellor of Justice (*Õiguskantsler*) of his complaint related to the matter. He said that he would not gather his belongings until he could clarify the situation with a security officer. KA told him that if he continued to object to going to the punishment cell, he would be taken there by force. The applicant replied that he would defend himself if unlawfully attacked.

8. At 5.45 p.m. KA, together with two further guards, MN and JT, went to the applicant's cell. KA had a plastic shield and MN and JT wore flak jackets and helmets. KA moved towards the applicant, keeping the shield in front of him. MN and JT followed him.

9. According to the applicant, KA came up to him and pressed the shield into his chest while the two other guards added pressure from behind. The applicant tried to push back against the shield, while MN and JT tried to grab his hands. Then KA let the shield fall and tried to grab the applicant's neck. The guards twisted his arms behind his back and ordered him to lie down on the floor. The applicant was brought down and KA pressed his neck so strongly that he lost his breath. According to the applicant, KA pinched his nose with his fingers, covered his mouth with his palm, pressed his knee into his neck and poked him in the eyes with two fingers. While on the floor, the applicant was handcuffed and kicked in the ribs so hard that he felt his left rib cracking. He was then raised up and escorted to the punishment cell. In the corridor the applicant lost his breath, cried that he

could not breathe and asked for permission to straighten up but the guards pressed him down and continued on their way.

10. According to the prison guards, the applicant attempted to hit them and had a scuffle with KA, in the course of which the latter sustained minor injuries. They denied having kicked or strangled the applicant and submitted that he had subsequently threatened to kill them one by one.

11. In the punishment cell, two nurses came to examine the applicant. They suspected a broken rib and told him to lie still until an X-ray image was taken (for the medical evidence in the case, see paragraphs 21 to 27 below). A guard told them that a medical certificate was required to keep a mattress in the punishment cell around the clock. According to the applicant a nurse confirmed that such a certificate would be drawn up.

C. Events of 4 July 2009

12. At 6.45 a.m. guard OV entered the applicant's cell and told him to hand in the mattress. The applicant explained that the nurses had drawn up a certificate stating that he needed the mattress around the clock because his rib was broken. The guard left.

13. At around 8.00 a.m. guards AR, VG, RT and OV came to the applicant's cell and told him to hand in the mattress. They had a discussion of some length, in the course of which the applicant requested that senior duty officer ML be called. Guard AR warned the applicant that force would be used if necessary. According to the statements of VG given in the subsequent criminal proceedings, the applicant threatened to kill them. The guards left and returned after about fifteen minutes. According to the Government the guards had in the meantime checked with the medical service that the applicant had not in fact been authorised to keep the mattress in the punishment cell.

14. At around 8.30 a.m. six guards arrived at the applicant's cell. AR and VG entered, four further guards remained in the corridor or stood at the door to the cell.

15. According to the applicant, AR came up to him, grabbed his left hand and told him that they were going to take the mattress from him. The applicant pulled his hand away and VG – unexpectedly and without any notice – sprayed pepper spray in his face while AR was attempting to twist his arm. The applicant ran out of the cell into the corridor, covering his face with his hands. Several guards attacked him from behind and he was forced down on the floor. He was repeatedly hit on the back after handcuffs had been put on him. After the applicant shouted that he could not breathe VG struck him a couple more times. He was then raised up off the floor, bent down and guided to the security room. According to the applicant, he fainted several times on the way because his injured rib caused him serious pain when being bent down.

16. The Government relied on the statements of the prison guards given in the subsequent criminal proceedings. All six prison guards present were interviewed in the criminal proceedings, either as suspects or witnesses. According to AR and VG, the applicant pushed AR when he attempted to take the mattress. Then VG used pepper spray. According to the statements of the guards, the applicant resisted strongly and was forced down on the floor in the corridor. According to VG, he struck the applicant, who was on all fours, three times with a telescopic baton in order to overcome his resistance and handcuff him. AR and RT were unable to give details about the blows inflicted by VG. Nor was OV initially able to provide such details, but at a second interview he stated that by the time he closed the handcuffs, the applicant had not yet been hit with the telescopic baton. AJ thought that the applicant had probably been handcuffed while he was being hit by VG. According to AT, the applicant had been handcuffed but had forcefully struggled and pushed VG with his shoulder, after which the latter had struck him one or two times without much force.

17. The applicant was then strapped to a restraint bed in accordance with the orders of duty officer ML, as he was still behaving aggressively and offering physical resistance to the officers.

18. According to the applicant he was suffocating from the pepper spray in his throat but the guards pressed him to the bed, strangled him and did not let him spit. Finally he was allowed to spit and given the water he had asked for.

19. According to a report on the use of the restraint bed, the applicant was strapped to the bed from 8.40 a.m. to 12.20 p.m. 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.

20. The report contains the following entries. At 8.40 a.m., 9.35 a.m., 10.30 a.m. and 11.25 a.m.: "[use of the restraint measures] to be continued, [the applicant is] aggressive". At 12.20 p.m.: "[use of the restraint measures] to be discontinued, [the applicant is] calm." The report also contains an entry according to which medical staff checked on the applicant; the time of the medical check-up recorded on the copy of the report on file is illegible.

D. Medical evidence

21. According to a medical certificate dated 3 July 2009 medical staff had been asked to establish the applicant's injuries in the punishment cell. It was stated in the certificate that the applicant had no visible injuries but there was crepitation in the area of the seventh rib on the left side. A rib fracture was suspected.

22. According to two medical certificates dated 4 July 2009 the applicant was examined by nurse RK at 8.50 a.m. and at 12.20 p.m. after his

release from the restraint bed. It is stated in the certificates that the applicant had no visible injuries and did not need medical assistance. According to the applicant these certificates were "fabricated" in order to cover up his beating and were in contradiction with other medical evidence.

23. On 4 July 2009 the applicant underwent an X-ray examination which revealed no clear traumatic changes. Photographs were taken of the haematomas (described below) on the applicant's body. He gave a urine sample. Urine test results, dated 6 July 2009, showed red blood cells in the urine.

24. According to a medical certificate dated 6 July 2009 the applicant had three haematomas measuring 20 by 1.5 cm on his back, a haematoma with a diameter of 8 cm on his right upper arm, a haematoma with a diameter of 3 cm on the right shin, swelling to the left wrist, crepitation in the region of the eighth and the ninth ribs on the left side. The applicant complained that he had been beaten on the back by the guards, complained of pain in his back and said that his urine had been red. The doctor considered that providing the applicant with a mattress was justified.

25. An ultrasound scan of the applicant's kidneys performed on 7 July 2009 revealed no signs of disease.

26. According to a medical certificate concerning the applicant's examination in a punishment cell on 9 July 2009, there were haematomas on the applicant's back and ribs. The applicant did not allow the doctor to touch him, was aggressive and demanded a mattress. However, the doctor considered that the applicant's chronic lower back pain did not serve as a reason for him to have a mattress. She made a recommendation "for further referral to a psychiatrist".

27. In a written explanation to the prison director by nurse RK, dated 21 July 2009, she submitted that she had been asked to examine the applicant, who had been strapped to the restraint bed on 4 July 2009. The applicant had complained, as he had already done on the day before, of pain in the chest under the ribs. The nurse and guards, as well as the applicant himself, had wiped his eyes with wet napkins. The nurse had issued a medical certificate stating that she had discovered no injuries on the applicant. At 12.20 p.m. on 4 July 2009, upon the applicant's release from the restraint bed, she had again been asked to examine him. He had no complaints, save for the previously known complaint of pain in the lower part of his chest. The nurse had issued a certificate stating that she had not discovered any injuries and that the applicant had not needed medical treatment. On both occasions the examination had been carried out visually and the nurse had asked the applicant about his complaints. She had only noticed the haematomas on the evening of 4 July 2009. She had not noticed them before and had not carried out a more detailed examination because this had not been requested by the applicant. Based on her earlier experience with the applicant, the nurse had known that he was very demanding in

respect of medical treatment. Thus, she had assumed that the applicant was not suffering from any serious conditions.

E. Criminal proceedings concerning abuse of authority

28. On 7 July 2009 the Prisons Department of the Ministry of Justice started a criminal investigation into the applicant's allegations of abuse of authority by prison guards. The investigation was carried out by Ida Police Headquarters.

29. On 8 July 2009 the applicant was interviewed as a victim. Between 7 and 28 July 2009 four guards (KA, MN, VG and JT) were interviewed as suspects. Six further prison officers (including OV), a prison doctor and a prisoner were interviewed as witnesses. Reports on the use of the special equipment and means of restraint (shield, helmets, flak jackets and handcuffs on 3 July 2009 and handcuffs and restraint bed on 4 July 2009), and written explanations to the prison director from prison officers involved in the incidents were also included in the criminal case file.

30. On 23 September 2009 prison guard OV was interviewed for the second time.

31. On 26 November 2009 the police requested additional information from the prison administration, including the applicant's medical records and information about the telescopic batons used in the prison.

32. On 15 December 2009 the police ordered a forensic expert examination of the applicant's injuries. The expert completed his report on 15 February 2010. He relied on the written materials in the criminal case file, including a report of the applicant's interview, medical documents and photos of the haematomas on the applicant's body. He was of the opinion that the stripe-shaped haematomas on the applicant's back had resulted from blows struck with a blunt instrument such as a stick or a baton, possibly on 4 July 2009. The haematomas on the applicant's upper arm and shin had resulted from blows struck with a blunt instrument or from the applicant's body being slammed against it. The haematoma and crepitation in the region of the eighth and the ninth ribs may have resulted from a rib fracture, but that diagnosis could not be confirmed without an X-ray examination. The expert concluded that the injuries in question were not life threatening and usually caused short-term health damage lasting from four days to four weeks.

33. On 5 February 2010 the applicant was interviewed for the second time.

34. On 10 February 2010 the police ordered a forensic expert examination of video recordings from prison security cameras. The expert completed his report on 13 April 2010. Having obtained forty-eight magnified and processed images from the video recordings, he concluded

that it was not possible to establish the exact time at which the applicant was hit.

35. On 15 June 2010 the police investigator discontinued the criminal proceedings. She considered that the use of force by the prison guards against the applicant on 3 and 4 July 2009 had been lawful, since he had not complied with their orders and had behaved in an aggressive manner. On 3 July 2009 he had refused to gather his belongings for his transfer to the punishment cell and had threatened to resist if force was used. On 4 July 2009 he had refused to comply with the prison's internal rules and hand in his mattress. The guards had not denied that they had used force but had asserted that this had been the only way to overcome the applicant's resistance. The applicant had attempted to escape and run out of the cell. Thus, the use of force had had a legal basis. It did not appear that VG had used the telescopic baton to deliberately cause injuries to the applicant. Nor could it be established that the force used by JT, VG, MN and KA had been excessive. They had countered an imminent attack after a more lenient response had not proved effective and the applicant had continued his resistance.

36. On 17 June 2010 the police investigator's decision to discontinue the criminal proceedings was approved by a circuit prosecutor.

37. On 25 August 2010 the State Prosecutor's Office dismissed the applicant's appeal. It considered that the use of force, special equipment and means of restraint had been caused by the applicant's behaviour, that is to say his failure to comply with the orders given to him and his physical and verbal aggressiveness towards the prison officers. It relied on the applicant's handwritten letter of explanation to the prison director, in which he had confirmed having said on 3 July 2009 that if the prison officers unlawfully attacked him, he would strike back. Furthermore, according to prison guard MN the applicant had threatened to kill them if force was used to transfer him to the punishment cell. Considering the applicant's extremely aggressive resistance, it had been proportionate to use force to bring him down to the floor and to hold him there.

38. In respect of the events of 4 July 2009 the State Prosecutor's Office referred to the statements of the suspects and witnesses, according to which the applicant had threatened the prison officers. It had been established that guard VG had used pepper spray after the applicant had pushed AR. The applicant had been engaged in an unlawful attack and the use of pepper spray against him had been lawful. Although the applicant's subsequent running into the corridor could not be seen as an attempt to escape, it had still been possible that the situation might have got out of the prison officers' control and they had had grounds to believe that the applicant would continue attacking them. To prevent such a scenario, the prison officers had legitimately acted in a quick and decisive manner, including through the use of the telescopic baton by VG. The incoherent statements of

the witnesses as to the issue of whether the blows with the telescopic baton had been delivered before or after the applicant's handcuffing did not allow for a firm conclusion to be made on that point. Nevertheless, based on the witness statements, the prosecutor considered it probable that the applicant had been hit before handcuffing. She also referred to the principle that any reasonable doubt should benefit the accused and considered that it had not been established that the prison guards had unlawfully used a weapon, special equipment or force against the applicant. In respect of the applicant's being strapped to the restraint bed, the State Prosecutor's Office concluded that the video recordings showed that after being handcuffed the applicant had remained aggressive and had offered physical resistance to the prison officers.

39. On 21 October 2010 the Tartu Court of Appeal dismissed the applicant's complaint against the decision of the State Prosecutor's Office. It found that it had been established that the applicant had offered resistance to the prison officers and therefore the use of special equipment and means of restraint had been legitimate. The court agreed with the position expressed in the decision of the State Prosecutor's Office that the special equipment had been used to the extent it had been necessary to overcome the applicant's resistance. Thus, there were no grounds to continue the criminal proceedings in respect of the prison officers.

F. Administrative Court proceedings

40. On 6 August 2009 the applicant filed a claim for non-pecuniary damage with the prison administration for his inhuman and degrading treatment on 3 and 4 July 2009. The claim was dismissed and the applicant filed a complaint with the Tartu Administrative Court.

41. In a judgment of 8 March 2010 the Tartu Administrative Court found for the applicant. It declared the use of the means of restraint, special equipment and service weapons in respect of the applicant unlawful. The court found that although the applicant's failure to comply with the orders given to him had undeniably constituted a threat to the general security of the prison, the use of handcuffs and his immobilisation had nevertheless not been justified, as there was no evidence and it had not been argued that the applicant had been armed or equipped with a dangerous item or that he had intended to escape or attack anyone. However, the court dismissed the applicant's claim for compensation, considering that the use of means of restraint and special equipment had been caused, to a large extent, by the applicant's own behaviour. He had disputed the officers' orders, engaged in an argument with them, voiced threats and offered physical resistance. In these circumstances the finding of the unlawfulness of the prison's actions constituted sufficient just satisfaction.

42. Both parties appealed against the Administrative Court's judgment. The applicant claimed monetary compensation and the prison administration contended that the prison officers had not acted unlawfully.

43. At the hearing of the Tartu Court of Appeal on 22 September 2010 the applicant submitted, *inter alia*, that on 3 July 2009 he had been kicked in ribs once and that on 4 July 2009 he had been hit with a telescopic baton after he had already been handcuffed. Video recordings concerning both 3 and 4 July 2009 were played at the hearing.

44. By a judgment of 14 October 2010 the Court of Appeal quashed the Administrative Court's judgment and dismissed the applicant's complaint. It found that the use of the means of restraint, special equipment, physical force and service weapons had been lawful. The court considered that the prison had been authorised to use preventive measures in case of a probable threat. It noted that the applicant was serving a life sentence and had two further convictions for attacking prison officers. In January 2009 he had also threatened to kill a prison officer.

45. In respect of the events of 3 July 2009 the Court of Appeal noted that there was no dispute that the applicant had repeatedly refused to comply with the prison officers' order to go to a punishment cell. Furthermore, he had offered physical resistance and caused minor injuries to KA. Therefore, physical force and handcuffs had been used. Considering the applicant's unlawful and aggressive behaviour, threats to the prison officers and to the general security in the prison, as well as the short duration (fifteen minutes) of the use of the handcuffs, the Court of Appeal found that the use of handcuffs had not been unlawful. In respect of the use of force, the court found that there was no evidence to prove that the applicant had been kicked, strangled or poked in the eyes with fingers. According to the medical evidence there had been crepitation but no fractures of the ribs. The court considered that pain in the applicant's chest that he had complained of could have resulted from his resistance, which had led to a scuffle and his being forced on the floor for handcuffing.

46. In respect of the events of 4 July 2009 the Court of Appeal considered it established that the applicant had displayed disobedience and threatened the prison officers. He had offered physical resistance against the guard who had attempted to take the mattress. Thus, the use of pepper spray had not been disproportionate or unlawful. Since the subsequent use of physical force had proved not effective, it had also been justified to use the telescopic baton in order to have the applicant handcuffed. The fact that the applicant had been aggressive at the time he was strapped to the restraint bed had also been proven by the video recording shown at the court hearing.

47. On 17 February 2011 the Supreme Court declined to hear the applicant's appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

48. Article 291 of the Penal Code (*Karistusseadustik*) stipulates that abuse of authority, that is unlawful use of a weapon, special equipment or violence by an official while performing his or her official duties, is punishable by a fine or by one to five years' imprisonment.

49. Relevant domestic law and practice concerning the use of special equipment and means of restraint in prison has been summarised in the judgement of *Julin v. Estonia* (nos. 16563/08, 40841/08, 8192/10 and 18656/10, §§ 84-90 and 94, 29 May 2012).

III. RELEVANT INTERNATIONAL STANDARDS

50. For relevant international instruments concerning the use of instruments of restraint, see *Julin*, cited above, §§ 95-97, and *Kummer v. the Czech Republic*, no. 32133/11, §§ 40-43, 25 July 2013.

51. According to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction of 13 January 1993 ("the CWC"), tear gas is not considered a chemical weapon and its use is authorised for the purpose of law enforcement, including domestic riot control (Article II § 9 (d)). The CWC entered into force with regard to Estonia on 25 June 1999.

52. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") has expressed its concerns over the use of such agents in law enforcement. For example, in the report on its visit to Bosnia and Herzegovina (CPT/Inf (2009) 25) it noted:

> "79. ... Pepper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control. Further, it should not form part of the standard equipment of a prison officer.
>
> The CPT recommends that the authorities of Bosnia and Herzegovina draw up a clear directive governing the use of pepper spray, which should include, as a minimum:
>
> - clear instructions as to when pepper spray may be used, which should state explicitly that pepper spray should not be used in a confined area;
>
> - the right of prisoners exposed to pepper spray to be granted immediate access to a doctor and to be offered an antidote;
>
> - the qualifications, training and skills of staff members authorised to use pepper spray;

- an adequate reporting and inspection mechanism with respect to the use of pepper spray."

Similar observations and recommendations were made by the CPT in paragraph 48 of the report on its visit to the Czech Republic (CPT/Inf (2009) 8).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant complained of ill-treatment on 3 and 4 July 2009 by prison officers in breach 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."

54. The Government contested that argument.

A. General principles

55. 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).

56. 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).

57. 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.).

58. 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).

59. The Court is mindful of the potential for violence that exists in penal institutions and of the fact that disobedience by detainees may quickly cause a situation to 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).

60. 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).

61. 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).

B. Application of the principles to the present case

1. Events of 3 July 2009

Admissibility

62. The Court notes that the applicant's complaint of ill-treatment on 3 July 2009 related to the force used by the prison officers in response to his refusal to comply with their order to move to a punishment cell. It can be understood on the basis of the available information that the applicant voiced threats against the guards, or at least explicitly declared his intention not to comply and, moreover, to even resist them (see paragraphs 7, 10 and 45 above). The Court notes that this was not denied by the applicant (see paragraph 37 above). Thus, in order to secure the fulfilment of the order, three prison officers went to the applicant's cell in order to handcuff him and take him to the punishment cell. The Court notes that the prison officers only relied on the use of a shield, flak jackets and helmets, that is to say, measures of passive defence.

63. As regards the intensity of the force used against the applicant, the Court notes that the applicant did not deny that he had resisted the prison officers. Furthermore, he did not allege that he had been beaten but mentioned having been kicked in the ribs once (see paragraphs 9 and 43 above), whereas the prison guards denied having kicked the applicant at all (see paragraph 10 above). Overall, the applicant's description of the events appears to refer to the use of immobilisation techniques by the guards rather than anything close to indiscriminate beating. The Court also notes in this regard that according to the medical evidence the applicant's only injury established in connection with the confrontation on 3 July 2009 was the crepitation in the area of the seventh rib. A broken rib was initially suspected but this was not confirmed by an X-ray examination. No other injuries were mentioned (see paragraphs 11, 21 and 23 above). The Court considers that it is not called upon to determine the exact origin of the applicant's chest injury – whether it originated in his having been abruptly forced to the floor, a kick from a prison officer or a combination thereof. Having had regard to all the information available to it including the findings of the domestic authorities in the criminal and administrative court

proceedings, the testimonies concerning the applicant's behaviour on 3 July 2009, the evidence related to his personality and prior behaviour and the medical evidence, the Court considers that the use of force on 3 July 2009 did not go beyond what may be considered necessary in the circumstances. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Events of 4 July 2009

(a) Admissibility

64. The Court notes that the complaint about the applicant's ill-treatment on 4 July 2009 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

(i) The parties' submissions

(α) The applicant

65. The applicant argued that he had been ill-treated by the prison officers on 4 July 2009 and that the ill-treatment in question had amounted to torture. The use of measures such as handcuffs, a telescopic baton, pepper spray and a restraint bed in relation to a single incident by a group of six prison officers had been entirely disproportionate. He submitted that he had been beaten, kicked and subjected to ill-treatment with pepper spray, as a result of which he had suffered intense pain over the course of several days. He also claimed that he had been traumatised by the experience and suffered from feelings of insecurity and helplessness.

66. The applicant contended that following the incident of 3 July 2009 he had had reason to believe that he was allowed to have a mattress in his cell on a permanent basis, based on his earlier medical examinations and the doctors' opinions.

67. The applicant disputed the Government's argument that he had been aggressive and had offered physical resistance. There was no evidence to that effect. On the contrary, he had not been in a condition to put up a fight against prison officers, due to the fact that he had been disabled by the pepper spray. In fact, he had been choking and in agony. The use of pepper spray against prisoners was not allowed and the use of physical force against him while handcuffed and otherwise being beaten pointed to the disproportionate use of force. The applicant referred to the statements of prison officers OV and AJ, according to whom he had first been handcuffed and thereafter beaten with a telescopic baton.

68. The applicant argued that the medical evidence indicated that the ill-treatment he had been subjected to on 4 July 2009 amounted to torture. In particular, he referred to a broken rib, scratches, abrasions and bruises, crepitation in the area of the eighth and ninth ribs and blood in the urine. The ill-treatment had been particularly serious and cruel and capable of causing "severe" pain and both physical and mental suffering within the meaning of Article 3 of the Convention.

(β) The Government

69. The Government noted at the outset that the day before the events constituting the immediate subject of the present case, the applicant had refused to comply with the prison officers' lawful orders and had offered physical resistance to them. On 4 July 2009 he had again refused to comply with an order to surrender the mattress. It was not acceptable to allow a situation where a prisoner could argue with an officer about the lawfulness of an order or about whether the officer should or could give such an order. In the present case the order given to the applicant had been lawful, clear and easy to comply with. The subsequent events had been prompted by the applicant's failure to obey a lawful order given by the prison officers. The Government also considered that the applicant's personality, his prior behaviour and the real danger posed by him required to be taken into account. They pointed out that the applicant was a life prisoner convicted of the brutal murder of two people and attempting to kill a third victim. He had continued committing crimes, both against prison officers and others, during his time in prison. At the time of the events he had had 29 disciplinary punishments on record and according to the assessment in the individual action plans drawn up for the applicant in Tartu Prison and in Viru Prison he was a dangerous person. Thus, based on the applicant's prior behaviour, he could be considered a high-risk prisoner whose unpredictable behaviour and instability could pose a serious danger to everybody in his vicinity.

70. The Government considered that the use of the means of restraint, special equipment and service weapons by the prison officers on 4 July 2009 had been lawful under sections 69, 70, 70-1 and 71 of the Imprisonment Act (*Vangistusseadus*).

71. The Government argued that the use of pepper spray by VG after the applicant had pushed AR had been lawful – as had also been found by the domestic courts – and the least injurious method available to the officers that would also allow them to get a dangerous prisoner under control and remove the danger posed. Nevertheless, as the prison officers had been unable to get the applicant under control, as he had still been actively resisting and disobeying the order to submit to the use of handcuffs, the use of a telescopic baton – a measure less damaging than a rubber baton – had been justified. Although it was not fully certain that the telescopic baton had been used prior to the applicant's handcuffing, this had been deemed more

likely by the domestic authorities. At the same time, there was no dispute that the applicant had refused to comply with the order to submit to the use of handcuffs and had struggled with the officers. In any event, the use of the telescopic baton could not be considered disproportionate and excessive in the circumstances of the case. Regard being had to the applicant's physical resistance and his threats to the life and health of the prison officers, as well as his previous pattern of behaviour, the force used against the applicant had not gone beyond what had been strictly necessary.

72. In respect of the use of handcuffs, the Government also considered that it had been lawful and necessary in the circumstances. They pointed out that the handcuffs had only been used in respect of the applicant for a few minutes until he had been taken to the restraint bed.

73. As concerns the applicant being strapped to the restraint bed, the Government contended that it had been lawful and justified as a measure of last resort, as all the previous measures had not succeeded in calming down the applicant. The Government noted that the strapping of the applicant to the restraint bed had only lasted for three hours and forty minutes, staff had checked on an hourly basis whether it was possible to release the applicant, and his condition had been checked twice by a doctor. The Government emphasised that the means of restraint had not been punitive but rather had been a preventive measure applicable in situations where there was a danger to the person's own life and health or that of others. In the present case, the applicant's behaviour had been extremely aggressive and disturbing and his immediate return to a single-occupancy disciplinary cell would not have guaranteed his calming down or prevented him, for example, from punching the walls and causing serious additional injuries to himself and possibly others. Thus, the threat posed by the applicant to himself and to others had justified the measure being applied. The Government maintained that Article 3 had not been breached thereby.

74. The Government submitted, in conclusion, that the use of pepper spray, handcuffs, physical force and a telescopic baton against the applicant, as well as his being strapped to a restraint bed, on 4 July 2009 had not exceeded the level of severity or disproportionality necessary to amount to a violation of Article 3 of the Convention.

(ii) The Court's assessment

75. The Court notes at the outset that it is aware of the difficulties the States may encounter in maintaining order and discipline in penal institutions. This is particularly so in cases of unruly behaviour by dangerous prisoners, a situation in which it is important to find a balance between the rights of different detainees or between the rights of the detainees and the safety of the prison officers.

76. In the present case, the Court has had regard to the evidence provided by the Government in respect of the risk posed by the applicant

(his convictions for murder, attempted manslaughter, attacks against prison officers and other prisoners, disciplinary punishments and his characterisation in the individual action plans, see paragraph 6 above). Thus, the Court accepts that the applicant's character and prior behaviour gave the prison officers reason to be alert in relation to their safety and for taking immediate measures when the applicant displayed disobedience, threats and aggression towards them. The Court also notes that in two separate sets of domestic proceedings (criminal and administrative) the domestic authorities established after a thorough examination of the events that the applicant had behaved aggressively and that it had therefore been justified to take different measures to combat that aggression.

77. The Court observes that the prison officers relied on the use of several immobilisation techniques and special equipment in respect of the applicant. Thus, in addition to physical force and handcuffs they also used pepper spray and a telescopic baton. The Court considers that the applicant's injuries, such as haematomas on his body and blood in his urine (see paragraphs 23, 24, 26 and 32 above) indicate that a degree of force was used against the applicant. As regards the use of the telescopic baton, the Court notes that the domestic authorities were unable to establish with certainty – despite a thorough examination of the evidence, including the video recordings of the security cameras, both in criminal and administrative court proceedings – whether the applicant was hit with the baton before or after he had been handcuffed. The Court notes that it is in no better position than the domestic authorities to establish the exact factual circumstances relating to the use of the telescopic baton.

78. As regards the legitimacy of the use of pepper spray against the applicant, the Court refers to the concerns expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") in respect of the use of such agents in law enforcement. According to the CPT pepper spray is a potentially dangerous substance and should not be used in confined spaces; if exceptionally it needs to be used in open spaces, there should be clearly defined safeguards in place. Pepper spray should never be deployed against a prisoner who has already been brought under control (see *İzci v. Turkey*, no. 42606/05, §§ 40-41, 23 July 2013, and *Ali Güneş v. Turkey*, no. 9829/07, §§ 39-40, 10 April 2012; see also paragraph 52 above). The Court also notes that although pepper spray is not considered a chemical weapon and its use is authorised for the purpose of law enforcement, it can produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it may cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging (haemorrhaging of the adrenal gland) (see *Ali Güneş*, cited above, §§ 37-38, with further reference to *Oya Ataman v. Turkey*,

no. 74552/01, §§ 17-18, ECHR 2006-XIII; see also *İzci*, cited above, § 35, and paragraph 51 above). Having regard to these potentially serious effects of the use of pepper spray in a confined space on the one hand and the alternative equipment at the disposal of the prison guards, such as flak jackets, helmets and shields on the other, the Court finds that the circumstances did not justify the use of pepper spray.

79. Furthermore, the Court reiterates that it has had occasion to deal with a complaint concerning strapping of a prisoner to a restraint bed in the recent case of *Julin v. Estonia* (cited above). In that case, the Court assessed both the domestic law underlying the use of this measure and its practice and application in that particular case (see *Julin*, cited above, §§ 124-128). The Court notes that the events giving rise to the complaint about the use of the restraint bed in the case of *Julin* and those of the present case took place at approximately the same time and under the same domestic law. In *Julin* the Court found that the applicant's strapping to the restraint bed for nearly nine hours had been in breach of Article 3 of the Convention.

80. The Government's main argument in the present case was that the applicant had been strapped to the restraint bed for three hours and forty minutes, in other words for a considerably shorter period of time than the applicant in the case of *Julin*. Furthermore, the Government pointed out that, unlike in *Julin*, the report drawn up in the present case had confirmed that the applicant had been aggressive throughout the period of his being strapped to the bed (see paragraph 20 above).

81. However, the Court considers that these factors are not sufficient to distinguish the present case from *Julin*. While it is true that the period for which the applicant was strapped to the restraint bed was shorter in the present case, and the report on the use of the restraint bed describes the applicant as having been aggressive, and notes that his situation was assessed on an hourly basis and that he was also checked on by medical staff, the Court nevertheless does not consider that these factors rendered the use of the restraint bed a justified measure in the circumstances of the present case. The Court notes that the applicant's behaviour was described as "aggressive" after a physical confrontation with prison officers. The Court reiterates, however, that means of restraint should never be used as a means of punishment, but rather in order to avoid self-harm or serious danger to other individuals or to prison security (see *Julin*, cited above, § 127). In the present case, the Court considers that it has not been convincingly shown that after the end of the confrontation with the prison officers the applicant – who had been locked in a single-occupancy disciplinary cell – posed a threat to himself or others that would have justified applying such a measure. Furthermore, the period for which he was strapped to the restraint bed was by no means negligible and the applicant's prolonged immobilisation must have caused him distress and physical discomfort.

82. In view of the above and considering the cumulative effect of the measures used in respect of the applicant on 4 July 2009, the Court finds that the applicant was subjected to inhuman and degrading treatment in violation of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

83. The applicant further complained of the authorities' failure to carry out an effective investigation into his allegations of ill-treatment on 3 and 4 July 2009. He relied on Articles 3 and 13 of the Convention.

84. 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 cited provisions. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

87. The Government considered that as the Convention had not been violated in respect of the applicant, there was no basis for awarding any compensation. Furthermore, they submitted that, should the Court find a violation of the applicant's rights, a finding of a violation would constitute sufficient just satisfaction, taking into account the aggressive and dangerous behaviour of the applicant himself. Should the Court nevertheless decide to make an award in respect of non-pecuniary damage, the Government called on it to determine a reasonable sum.

88. 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 5,000 in respect of non-pecuniary damage, plus any tax which may be chargeable on that amount.

B. Costs and expenses

89. The applicant also claimed EUR 1,776.20 for costs and expenses incurred before the Court.

90. The Government submitted that no award should be made in respect of legal expenses incurred in the domestic proceedings and that the administrative expenses had been calculated arbitrarily. In the event of a finding of a violation of the Convention, the Government left it for the Court to determine a reasonable sum to cover legal assistance in the proceedings before it.

91. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,776.20 covering costs and expenses under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the alleged ill-treatment on 4 July 2009 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's ill-treatment on 4 July 2009;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,776.20 (one thousand seven hundred and seventy-six euros and twenty cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 13 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President