Prisoners' safety and human rights: Protecting prisoners from physical attacks and victimisation.

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The European Convention on Human Rights 1950, together with the Human Rights Act 1998, and domestic common law, allow prisoners to bring legal actions in respect of inhuman and degrading prison conditions and their negligent treatment whilst in prison.[1] In particular, these actions can result from mistreatment of prisoners by fellow prisoners,[2] for which the State can be liable under its positive obligations in human rights law.[3] Both domestic and European courts accept that prisons are inherently dangerous places, and have adjusted the duty of care accordingly, imposing liability only in clear cases of negligence.[4] Despite this, there are a number of successful cases where prisoners have gained private law and human rights remedies against prison authorities for attacks by fellow prisoners.[5] These attacks largely cause physical harm to the prisoner, although a recent decision of the European Court of Human Rights highlights that prison authorities can be liable for emotional abuse suffered by prisoners at the hands of other prisoners in addition to any physical harm suffered by attacks or other treatment they have suffered.[6]

This article firstly outlines the relevant legal and administrative rules surrounding prisoner safety before examining leading case law in this area, from both the Strasbourg Court and the domestic courts. It will then study this recent decision and attempt to assess its potential impact on the law and prison authorities when prisoners are subjected not only to physical harm, but also to emotional or mental ill-treatment by fellow prisoners.

Prisoners' safety: Administrative guidance

Before examining the issue of prisoner safety before the courts, it is useful to outline how the prison authorities attempt to safeguard prisoners from attacks by fellow prisoners.

First, prisoners can be protected under Rule 45 of Prison Rules 1999. This provides that where it appears desirable for the maintenance of good order or discipline *or in his own interests* that a prisoner should not associate with other prisoners, the governor may arrange for the prisoner's removal from association for up to 72 hours.[7] This rule can be used to protect vulnerable prisoners such as those convicted of sexual offences, although liability for attacks on such prisoners is not automatic.[8] Further, under Rule 46, the Secretary of State may direct a prisoner's removal from association and order his placement in a close supervision centre of a prison where it appears desirable for the maintenance of good order or discipline or to ensure the safety of officers, prisoners, or any other person, that a prisoner should not associate with other prisoners.[9] Then, in terms of general safety, Prison Service Instruction 64/201 sets out the HM Prisons and Probation Service (HMPPS) framework for delivering safer custody procedures and practices to ensure that prisons are safe places for all those who live and work there. This framework aims, inter alia, to identify, manage, and support prisoners and detainees who are at risk of harm to self, others, and from others; manage and reduce violence; and to ensure appropriate responses and investigations to incidents, so as to prevent future occurrences and improve local delivery of safer custody services.

1. Owen, T., & MacDonald, A. (2018). *Prison Law.* Oxford University Press.
2. Foster, S. (2005). The negligence of prison authorities and the protection of prisoners' rights. *Liverpool Law Review, 26*(1), 75-99.
3. *Osman v United Kingdom* (2000). 29 EHRR 245.
4. *Edwards v United Kingdom* (2002). 35 EHRR 19.
5. See footnote 2: Foster, S. (2005), pages 78-83 and 84-85.
6. *SP and other v Russia,* Application No. 36462/11 and 10 others, decision of the European Court of Human Rights, 2 May 2023.
7. This decision can then be renewed under Rule 45(2). The details of segregation are included in Prison Service Order (PSO) 1700.
8. *See Egerton v Home Office* (1978). *Criminal Law Review* 494; *Steel v Northern Ireland* Office (1998). 12 NIJB 1.
9. The procedure for operating the CSC system is set out in the 'Close Supervision Centres Operating Manual' 2014 ('The Manual'). The operation of this system was under scrutiny in the case of *Newell v Ministry of Justice* [2021] EWHC 810 (QB), considered below,

More specifically, Prison Service Instruction 20/2015 provides updated and clearer guidance and instructions on the Cell Sharing Risk Assessment (CSRA) process.[10] The instruction established two risk categories, high risk and standard risk.[11] A high risk prisoner is one for whom there is (from evidence) a clear indication of a high level of risk that they may be severely violent to a cell mate, or that a cell mate may be severely violent to them. A standard risk prisoner is then one for whom (based on available evidence) there is no immediate risk of severe cell-based violence. The instruction also establishes mandatory high-risk prisoners, who have committed particular offences that are so significant in cell sharing risk terms, that they should always initially be categorised as high risk.[12]

These measures accommodate the prison authorities' general duty to maintain good order and discipline as well as the safety of prisoners, and complement any legal obligations, considered below.

Common law and human rights duties of the State to protect prisoner safety

Prison authorities owe a common law duty of care towards prisoners to ensure their safety, including safeguarding prisoners from threats from fellow prisoners. Further, under both Article 2 (the right to life) and Article 3 (freedom from inhuman and degrading treatment and punishment) of the ECHR, States have a duty to ensure that individuals are not exposed to a real and immediate risk to their life or other ill-treatment, where they knew or ought to have known of that risk.[13]

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The State's primary duty under Article 13 of the Convention is to ensure that domestic law provides the necessary protection and remedies to such prisoners.[14] In cases of actionable neglect, a prisoner may bring a direct action for breach of Convention rights under the Human Rights Act 1998, or can use Convention claims when bringing a private action in negligence. However, this duty is far from absolute and the courts provide the authorities with a reasonably wide margin of discretion in assessing whether there was a breach of duty on the facts. That the courts might be reluctant to find liability in the absence of a clear breach of duty can be seen in *Palmer v Home Office*.[15] Here, it was held that the Home Office was not liable where a prisoner had been attacked with a pair of scissors allocated for tailoring work in the workshop to another prisoner with a very violent criminal and prison record. Although it was foreseeable that the prisoner might attack a fellow prisoner, the prison authorities had a twofold duty: to ensure the safety of fellow prisoners, and to provide all prisoners with a constructive working regime. Thus, as the authorities had to balance the protection of prisoners with their duty to provide other prisoners with suitable employment they were reluctant to interfere with the prison's judgment in this instance.

As evidenced from *Palmer,* a major obstacle in negligence actions is the judicial recognition of the fact that prisons are inherently dangerous places and that the standard of care expected from the defendant authorities has to be judged accordingly.[16] This includes recognising that the authorities must balance their duty of care to ensure prisoner safety with other duties such as the rehabilitation and training of potentially dangerous fellow prisoners.[17] This principle also applies even where the prisoner is already specifically at risk. For example, in R *(Bloggs) v Secretary of State for the Home Department,*[18] the Court of Appeal found that the Prison Service's decision to remove the prisoner

10. This process was introduced in response to the decision of the European Court of Human Rights decision in *Edwards v United Kingdom* (2002) 35 EHRR 19.
11. HM Prisons and Probation Service PSI 20/2015, Cell Sharing Risk Assessment, at 3.8
12. HM Prisons and Probation Service PSI 20/2015, Cell Sharing Risk Assessment, at 3.9. These prisoners will have long term, static risk, and the offences are: murder or manslaughter of another prisoner; assisting in the suicide of another prisoner; committing a life threatening assault on another prisoner; raping or committing a serious sexual assault on an adult victim of the same sex.
13. *Osman v United Kingdom* (1998). 29 EHRR 245.
14. In *SP v Russia,* see footnote 6, the authorities must have known of the abuse in the penal system and the resultant risks, but failed to provide any effective system to control that situation, or provide any effective system of internal or judicial redress.
15. *The Guardian,* 31 March 1988.
16. There is, of course, a strong argument for imposing a *greater* and *stricter* liability on the prison authorities for that reason.
17. Thus, in *Thomas v Home Office* [2001] EWCA CIV 331, a youth offender institute had not been negligent in adopting a policy of supplying razors to prisoners when the claimant had been the subject of an unprovoked attack and had suffered severe injuries. See also *Stenning v Home Office* [2002] EWCA Civ 793
18. *The Times* July 4 2003.

from a protected witness unit and return him to mainstream prison system was not in violation of Article 2 ECHR. In the Court's view, there had been a substantial reduction of risk to the prisoner's life once the authorities had decided not to prosecute the person who posed the threat to them.[19]

However, the courts have always been more prepared to question the authorities' judgment where they are in breach of their own procedures.[20] This approach was applied in the case of *Newell v Ministry of Justice.*[21] Newell was convicted of murder and had been serving a whole life term. On 27 November 2014, Vinter, another whole-life term prisoner who had a history of violent and disruptive behaviour, attacked Newell whilst they were in the exercise yard, Newell suffering significant injuries, including brain damage and the loss of sight in his right eye. The prison operated a system of unlock levels for prisoners deemed more dangerous: a single unlock imposed where a prisoner's risk to others was considered too high to enable him to participate in mixed association or mixed activities, and unlock level three where three prison officers would be required safely to unlock a prisoner from his cell. Vinter was subjected to a Dynamic Risk Assessment (DRAM) on 26 November, it being recorded that he was unsettled because of a delay in his transfer to another prison, and that there was an opportunity for him to assault another prisoner in his association group in the exercise yard. The court found that the decision of the DRAM to allow Vinter to associate with Newell was in breach of the Ministry's duty of care. This was because the risk at that time was high, and the effect of maintaining the three officer unlock meant that Vinter's opportunity to use the violence that he was well known for would have arisen in the exercise yard when he was with other prisoners in his association group; the prison officers being locked outside the yard. Thus, had that risk been discussed, the conclusion that should have been reached was to take steps to remove Vinter's association with other prisoners.[22]

As with actions brought in UK domestic law, claims brought before the European Court are more likely to succeed if there is evidence of systemic failures, or if the authorities have shown gross neglect and misjudgement. For example, in *Edwards v United Kingdom,*[23] a violation of Article 2 was found where the applicant's son had been killed by his cell mate, who had a history of violent outbursts and assaults, and who had been diagnosed as schizophrenic. In this case, the emergency buzzer in the cell was malfunctioning and by the time officers heard a disturbance and went to investigate, the applicant's son had been stamped and kicked to death. The European Court found that the cell mate posed a real and serious risk to the applicant's son and that the prison authorities had not been properly informed of the cell mate's medical history and perceived dangerousness. The cell mate should not have been placed in the cell in the first place and the inadequate screening process disclosed a breach of the State's obligation to protect the life of the applicants' son.[24]

Extending the duty of care: The decision in SP v Russia

The above cases all relate to prisoners suffering *physical* loss from attacks by fellow prisoners for which the authorities were responsible in civil or human rights law. However, Article 3 ECHR also has potential to compensate for mental and psychological harm, including emotional distress and anxiety resulting from a physical attack.[25] Significantly, a recent decision of the European Court of Human Rights declared a violation of Article 3 when prisoners had been subjected to humiliating treatment by other prisoners, and had thus suffered inhuman and degrading treatment on account of their status as 'outcast' prisoners in the informal prisoner hierarchy.[26] The case raises the question whether prison authorities are responsible under Article 3, or possibly under civil law, for loss other than physical harm, and whether there is a general duty to safeguard prisoners against inmate's behaviour or the impact of the prison environment that might humiliate or debase the prisoner.

In *SP v Russia,* convicted prisoners complained that they were subjected to inhuman and degrading treatment on account of their subordinate status in an

19. This is far removed from systemic neglect and breach of duty witnessed in SP, shows that if the authorities attempt to gather and assess the relative evidence and risks before making a decision, then they will be allowed discretion.
20. Thus in *Burt v Home Office,* unreported, decision of Norwich County Court 27 June 1995, the prison authorities were negligent when a vulnerable prisoner was attacked by other prisoners while being escorted from a segregation unit through the general prison. The officers had walked in front of the prisoner, instead, of behind him.
21. [2021] EWHC 810 (QB).
22. *Newell v Ministry of Justice*, at 82-83. The court felt that the appropriate award was £85,000 for general damages, with interest (at 108, 110). Compare with SP, below, where most of the claims were based on the humiliation and psychological harm suffered by the prisoners, rather than for physical loss.
23. (2002) 35 EHRR 19.
24. *Edwards v United Kingdom,* [64]. See the administrative measures relating to cell sharing contained above. These regulations were brought into effect after the decision in *Edwards,* above.
25. *See Ananyev and Others,* Applications nos. 42732/12 and 8 others, decision of the European Court of Human Rights 10 December 2020, and *Begheluri v. Georgia,* Application No. 28490/02, decision of the European Court of Human Rights, 7 October 2014.
26. *SP and other v Russia,* Application No. 36462/11 and 10 others, decision of the European Court of Human Rights, 2 May 2023.

unofficial prisoner hierarchy in Russian correctional facilities, supported by an informal code of conduct of the criminal underworld commonly referred to as 'the rules'.[27] The code divides prisoners into four major categories or 'castes'. The group at the top are the 'criminal elite' or 'made men' whose function includes maintenance and interpretation of the informal inmate code, particularly when dealing with inter-prisoner conflicts. These are usually 'hardened' criminals, who enforce the informal hierarchy by threats and violence. Next are 'collaborators' who work with prison officers to enforce order or carry out administrative tasks such as managing or distributing supplies. The vast majority of prisoners then fall into the broad category of 'blokes' or 'lads' who accept the informal code of conduct while refraining from active cooperation with the prison authorities. Finally, the applicants belonged to the category at the bottom of the informal prisoner hierarchy, 'outcasts', also known as 'cocks' 'untouchables' or 'downgraded'. 'Outcasts' are allocated jobs that are considered unsuitable for other prisoners due to their 'unclean' nature, it being alleged that prison staff ensured that a specific number of 'outcasts' were available in each brigade to carry out the 'dirty work' that was considered degrading and was shunned by other prisoners. Some of the applicants were assigned to this category after they had been convicted of sexual offences, and in the case of one of the applicants, the authorities disclosed information about his offences by placing his photograph on a notice board in a common area with the caption 'inclined to paedophilia'. Another of the applicants had been forced to provide sexual services to other prisoners and contracted HIV.

'Outcasts' were assigned separate and distinct living quarters and had to have their own cutlery and kitchen utensils, and were forbidden from touching other prisoners' furniture, cutlery, or personal items. They were also forbidden from touching or shaking hands with others. They were subjected to verbal abuse and threats of violence, with one being a victim of physical violence. Another reported being regularly beaten during his time at the facility, and being stabbed in the chest with a sharp object.[28]

According to the applicants, the prison authorities were not just aware of the existing informal hierarchy system, but also complicit in it, rendering any complaints to the administration ineffective and dangerous. Further, complaints to regional departments of the Federal Service for the Execution of Sentences (via the Ombudsman), and a complaint to the Federal Security Service,[29] were either refuted by the authorities, or the applicants received no response to their complaints.[30] The applicants complained that they had suffered inhuman and degrading treatment because of their status as 'outcasts' in the informal prisoner hierarchy (Article 3), and that they had had no effective domestic remedy for their grievances (Article 13).

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The European Court reiterated that Article 3 imposed an obligation on Contracting States to take the necessary preventive measures to ensure the physical and psychological integrity and well-being of persons deprived of their liberty.[31] In particular, it must ensure that prison conditions do not subject a prisoner to distress or hardship 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.[32] The Court noted that another important factor is whether the prisoner was part of a particularly vulnerable group,[33] for instance because he belongs to a category at a heightened risk of abuse, for example, people who are gay,[34] people who collaborate with the police,[35] or prisoners convicted of sexual offences.[36] The Court then noted that the applicants had provided evidence to

27. The Regulations on Prisoner Units in Correctional Institutions, approved by Ministry of Justice Order no. 259 of 20 December 2005.
28. Article 12: 2 of the Code on the Execution of Sentences (Law no. 1-FZ of 8 January 1997) provides that prisoners have the right to be treated courteously by prison officers and must not be subjected to cruel or degrading treatment or punishment.
29. Under Article 12 (4) of the code, prisoners have the right to send suggestions, applications and complaints to the administration of the penal facility, the higher prison authorities, the courts, prosecutor's offices, and other bodies for the protection of human rights.
30. See footnote 26, [25],
31. Footnote 26, [79], citing *Premininy v. Russia,* Application No. 44973/04, decision of the European Court, 10 February 2011, [83].
32. Footnote 26, [79], citing *Muršic' v. Croatia* [GC], Application No. 7334/13, decision of the European Court 20 October 2016 [99].
33. Footnote 26, [80].
34. *Stasi v. France,* Application No. 25001/07, decision of the European Court 20 October 2011, [91].
35. *JL v. Latvia,* Application No.23893/06, decision of the European Court 17 April 2012, [68].
36. *MC v. Poland,* Application No. 23692/09, decision of the European Court 3March 2015, [90].

support their claims, including specific details and, in one case documented medical records, and it was clear that both other prisoners and prison staff were aware of their 'outcast' status. Further, the informal hierarchy appeared to be an entrenched feature of Russian correctional facilities, and that there were sufficiently strong indications that the domestic authorities have been aware of the informal hierarchy.[37]

Turning to Article 3, the Court noted that although ill-treatment usually involves actual bodily injury or intense physical or mental suffering, it also covers the infliction of psychological suffering. Thus, Article 3 covers treatment that humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance.[38] It then noted that in this case two applicants had suffered physical attacks, while one was forced to provide sexual services to a member of 'criminal elite'. Those acts, in the Court's view, constituted forms of ill-treatment falling within the scope of Article 3. Acts of abuse other than physical violence can constitute ill-treatment because of the psychological harm they cause to human dignity, in particular because of the fear of violence it instils in the victim and the mental suffering it entails.[39] Living in a state of mental anguish and fear of ill-treatment was an integral part of the applicants' experience as 'outcast' prisoners, which undermined the human dignity of the applicants by debasing them and instilling in them a sense of inferiority *vis-à-vis* other prisoners.[40]

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The Court also considered other less severe treatment, finding that further indication of degrading treatment manifested itself in the arbitrary restrictions and deprivations the prisoners endured in their daily life, such as being forbidden from coming into proximity, let alone touching, other prisoners under threat that that person would become 'contaminated'. In the Court's view, denial of human contact is a dehumanising practice that reinforces the idea that certain people are inferior and not worthy of equal treatment and respect, and the resulting social isolation and marginalisation of the 'outcast' applicants must have caused serious psychological consequences. In addition, the status-based allocation of work served to perpetuate the separation of the 'outcast' applicants: they were assigned to do 'dirty work' because of their status, and anyone who, be it by accident, touched an item deemed 'unclean' was liable to 'downgrading'. It also noted that the sense of inferiority and powerlessness among 'outcast' applicants would have been intensified due to the permanence of the stigma attached to their low status.[41]

With respect to the state's obligation to protect the applicants from ill-treatment, the Russian Government had declined to take any responsibility for the alleged illtreatment, denying any failure or omission on the part of the prison staff. In *Premininy v Russia,*[42] the Court established that national authorities have an obligation to ensure that individuals within their jurisdiction are not subjected to inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.[43] In the present case, the Court noted that the treatment of "outcasts' had been a widespread and well-known problem in Russian penal facilities, and that prison the authorities ought to have been aware both of the existence of the prisoner hierarchy and of the applicants' status within it.[44]

The Court then stressed that responding to abuse and ill-treatment in a prison context requires prompt action by prison staff, ensuring that the victim is protected from recurrent abuse and can access the necessary medical and mental health services.[45] However, in the present case, notwithstanding the existence of a serious and continued risk to the applicants' well-being, prison staff did not deploy any specific and prompt security or surveillance measures to prevent the informal code of conduct from being

37. Footnote 26, [84-88].
38. Footnote 26, [90], citing *Ananyev and Others,* Applications Nos. 42732/12 and 8 others, and *Begheluri v. Georgia,* Application No. 28490/02, decision of the European Court of Human Rights 7 October 2014, [100].
39. Footnote 26, [92], citing *Gäfgen v. Germany* [GC], Application No. 22978/05, decision of the European Court 1 June 2010, [108].
40. Footnote 26, [91-92].
41. Footnote 26, [93-95].
42. Application No. 44973/04, decision of the European Court 10 February 2011, [88-89]
43. Footnote 26, [98], also citing *Stasi v France,* Application No. 25001/07, decision of the European Court 20 October 2011, [79].
44. Footnote 26, [99], citing *DF v Latvia,* Application No. 11160/07, decision of the European Court 29 October 2013, [87].
45. Footnote 26, [100], citing *Premininy v Russia,* [88].

enforced on the applicants, or consider how the applicants could be protected from abuse and harassment.[46] Further, there was no indication that prison staff had a standardised policy of punishments for prisoners who perpetrated violence in enforcing the informal code of conduct on others.[47] Accordingly, there had been a violation of Article 3, and a violation of Article 13 in respect of the applicants who raised that complaint.[48]

SP and the extent of liability for the acts of fellow prisoners

As seen in SP, the State and prison authorities have a duty to take measures to protect prisoners from acts of intimidation and violence from other prisoners, including a duty to respond adequately to any arguable claim of such ill-treatment by conducting an effective investigation and, if appropriate, initiating criminal proceedings.[49] With respect to the protection of prisoners from violence by other prisoners, to succeed under Article 3 the applicant needs to demonstrate that the authorities had not taken all steps that could have been reasonably expected of them, to prevent real and immediate risks to their physical integrity, of which the authorities had or ought to have had knowledge. That does not require it to be shown that 'but for' the failing or omission of the public authority the ill-treatment would not have occurred, and whether the authorities fulfilled their positive obligation under Article 3 will depend on all the circumstances of the case under examination.[50] Thus, in *Premininy v Russia,*[51] the Court had to establish the facts to see whether the authorities knew or ought to have known that a prisoner was suffering or at risk of being subjected to ill-treatment at the hands of his or her cell mates. If so, it is then a question of whether the authorities, within the limits of their official powers, took reasonable steps to eliminate those risks and to protect the prisoner from that abuse.[52] The European Court can also consider evidence from outside bodies, including third party interveners, as seen in the SP case. Thus, in *Gjini v. Serbia,*[53] it accepted that the applicant had suffered ill-treatment at the hands of his cell mates, using evidence from the Committee for the Prevention of Torture, despite the fact that he had never lodged an official complaint.[54]

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The duty under Article 3 is intensified where a prisoner is especially vulnerable because of their history, personal characteristics, or the nature of their offence. For example, in *DF v Latvia,*[55] the Court found a violation of Article 3 where the prisoner, a former paid police informant and convicted of sex offences, complained of his fear of imminent risk of ill-treatment for over a year. The Court found that the authorities had failed to effectively coordinate their activities, despite them being aware that such a risk existed.[56] However, as with actions in civil law, the Court will conduct a full investigation into the facts and liability is not automatic simply because the prisoner is in a

46. Ibid. The staff did not have a proper classification policy that would have included screening for the risk of victimisation and abusiveness to ensure that potential predators and potential victims are not housed together.
47. Footnote 26, [100]. There was no action plan to address the problem at structural level and were unable to indicate any effective domestic remedies capable of offering redress (at 101-102).
48. Footnote 26, [108.]. In awarding just satisfaction, the Court awarded the applicants 20,000 euros each or such smaller amount as was actually claimed, in respect of non-pecuniary damage (109-115).
49. *See Edwards v United Kingdom* (2002) 35 EHRR 19. See also *Amin v Secretary of State for the Home Department* [2004] 1 AC 653 with respect to the Home Secretary's duty to conduct a formal investigation into deaths in prison.
50. *Pantea v. Romania,* Application Nos 33343/96, judgment of the European Court of Human Rights 3 June 2003 [191-196]; and *Premininy v. Russia,* [84].
51. Application No. 44973/04, decision of the European Court 10 February 2011,
52. *Premininy v. Russia,* [28], uncontroverted evidence that the applicant had suffered systematic abuse for at least a week at the hands of fellow prisoners, resulting in serious bodily injuries and deterioration in his mental health, that the authorities could reasonably have foreseen would affect this particularly vulnerable detainee. [85-91].
53. Application No. 1128/16), decision of the European Court of Human Rights 15 January 2019.
54. The Committee for the Prevention of Torture (CPT) had reported inter-prisoner violence in the prison in question and had repeatedly pointed that out as a serious problem, both before and after the events in the applicant's case. The CPT had noted a high number of cases concerning inter-prisoner violence and had observed that no action whatsoever had been taken by the prison or State authorities to correct such behaviour or reduce it.
55. Application No. 11160/07), decision of the European Court of Human Rights, 29 October 2013.
56. *DF v Latvia* [81-95]. See also *Rodic and others v Bosnia and Hezegovina* [68-73] with respect to the risk of ethnically motivated violence.

vulnerable category. Thus, in *Stasi v. France,*[57] although the prisoner claimed a failure of the authorities to protect him from the violence of other prisoners due to his homosexuality, the Court considered that the authorities had taken all the measures that could reasonably be expected of them to protect the applicant from physical harm, and thus found no violation.[58]

Given the case law in this area, the decision in *SP* was inevitable. Not only was the Russian authority's approach to this problem at the very least ambivalent, but they had obstructed every effort to provide the prisoners with any redress, internal and judicial. What is more interesting, however, is the Court's use of previous jurisprudence to extend the protection of prisoners from physical and sexual abuse to treatment by fellow prisoners that is intended to humiliate and demean the vulnerable prisoner. This is an interesting development of the threshold question, as even those prisoners who had not been subject to physical or sexual abuse succeeded in their claim. However, this, in turn, provided some difficulties in respect of the quantum of compensation (just satisfaction) for non-pecuniary loss, the Court awarding relatively modest sums to the successful applicants.

The Court's acceptance that Article 3 protects the basic dignity of prisoners from violation of other prisoners, even in the absence of physical or sexual abuse, opens up a number of possible actions from prisoners who may be subject to constant taunting from, or ostracising by, fellow prisoners. Both domestic courts and the Strasbourg Court would then face the dilemma of deciding both the accountability and threshold questions raised in those cases, and in circumstances very less clear-cut than witnessed in SP.

Such a possibility might also require domestic prison authorities to revisit their policies on prisoner safety, which currently focus on the identification of prisoners who are likely to pose a threat of *physical* violence to other prisoners. The expansion of the duty of care under Article 3 to *mental or psychological* harm caused by the actions of fellow prisoners would, therefore, require prison authorities to construct new policies to provide more specific protection for the prisoners' mental and emotional health.

The decision in *SP* also raises the issue of the role played in prisons of cliques or gangs in the context of protecting prisoners from physical attacks and other ill-treatment. Prison Service Instruction 64/2011 covers this area, recognising that such groups can range from serious organised criminal networks through to unorganised, informal peer groups, and that they can exist for different reasons, operate in different ways, and pose different risks. The level of their organisation, and their acceptance by the Russian authorities, as seen in *SP*, obviously made the European Court's judgment on Article 3 easier, but the presence of such groups and the operation of a hierarchy of prisoners in any country obviously heightens the risk of physical attacks and other form of ill-treatment.

Conclusions

Prisoners are especially vulnerable to the dangers of attack and abuse from fellow prisoners, and it is clear that in prescribed circumstances the State will be liable for such attacks. However, despite the fact that being in prison increases the risk of physical and other violence, both the domestic courts and the Strasbourg Court have been careful not to impose an impossible burden on State agents to protect the lives and physical and mental integrity of those in detention. In cases involving attacks by fellow prisoners, both courts accept that prisons are inherently dangerous places, although in *SP*, the vulnerability of the prisoners and the State's ambivalence to the existence of, and collusion in, the corruption of the prison system and its inherent risks to prisoners, led the Court to find a clear violation of Article 3.

In that sense, the decision might be of little guidance to those States with ordered and monitored penal systems, but for those without such systems it serves as a stark warning to comply with the rule of law and basic standards of decency, and protection of prisoners' fundamental rights. More significantly, the decision might lead to a wider examination of prisoners' mental and emotional health.

57. Application No. 25001/07, decision of the European Court of Human Rights, 20 October 2011, [90-101].
58. The prisoner had never complained of them to the prison authorities and to the building supervisors who had received him. Thus, the prison authorities could not have been aware of the acts of violence committed against him.