



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

THIRD SECTION

CASE OF MELNĪTIS v. LATVIA

(Application no. 30779/05)

JUDGMENT

STRASBOURG

28 February 2012

FINAL

09/07/2012

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

In the case of Melnītis v. Latvia,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 7 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 30779/05) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Latvian national, Mr Aigars Melnītis (“the applicant”), on 15 August 2005.

2. The applicant, who had been granted legal aid, was represented by Ms I. Betkere, a lawyer practising in Rīga. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that the conditions of his pre-trial detention in Valmiera Prison had amounted to inhuman and degrading treatment.

4. On 16 May 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Rencēni parish in Latvia.

A. The applicant's pre-trial detention and conviction

6. On 19 May 2005 the applicant was placed in cell no. 26 in a remand wing of Valmiera Prison.

7. On 14 October 2005 the Valmiera District Court (*Valmieras rajona tiesa*) convicted the applicant of resistance to a public official and sentenced him to three years' imprisonment but suspended the sentence. It appears that no appeal was lodged against this judgment.

8. On the same date, the court ordered the applicant's release.

B. Conditions of detention in Valmiera Prison

9. According to the applicant, the cell where he was placed together with other detainees had been very poorly lit and poorly ventilated. The toilets had not been separated from the living area and had emitted a foul smell that had lingered in the air. Detainees had thus been forced to eat their meals in close proximity to the toilets. The applicant also alleged that the cell had been overpopulated, each detainee having had less than the domestic standard of 2.5 sq. m of living space per male adult detainee.

10. The Government disagreed with the applicant's version of facts. They noted that cell no. 26 had had artificial and natural light and a ventilation system and they submitted that the toilet area in the cell had been separated off with a screen. The Government submitted that cell no. 26 had measured 23.6 sq. m. and had accommodated no more than eight detainees at a time, including the applicant.

11. In addition, the applicant contended that he had not received any personal hygiene products, save for a quarter of a bar of laundry soap. He had not been provided with toilet soap, a toothbrush, toothpaste and toilet paper, in violation of domestic law (see paragraph 21 below).

12. The Government did not deny that the applicant had not been provided with these products.

13. On an unspecified date in October 2005 the applicant had received 200 g of laundry soap, one toothbrush, 50 g of toothpaste and one 30 m roll of toilet paper.

C. Review of the applicant's complaints

14. On 13 July 2005, upon the applicant's complaint addressed to the prosecutor's office, the Prisons Administration (*Ieslodzījuma vietu pārvalde*) informed him that the prison lacked the financial resources to provide him with the personal hygiene products as laid down in Cabinet Regulation no. 339 (2002).

15. On 8 August 2005 the Valmiera Prison administration confirmed that there were no financial resources to provide the relevant personal hygiene products, save for one 200 g bar of laundry soap per month.

16. On 22 July 2005 the National Human Rights Office replied to the applicant in general terms that they had found during their onsite visits that penal institutions did not comply with many legal requirements. They noted, among other things, that they had drawn the attention of the relevant domestic authorities in March 2005 to insufficient financial resources having been allocated to the purchase of personal hygiene products. Finally, the applicant was informed of his right to submit an individual petition to the Court.

II. RELEVANT INTERNATIONAL LEGAL MATERIAL AND DOMESTIC LAW

A. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

17. Prior to 2011, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) had not visited Valmiera Prison, where the applicant was placed during his pre-trial detention.

18. However, during its *ad hoc* visit from 5 to 12 May 2004 to several police headquarters (in Daugavpils, Liepāja and Ventspils) and prisons (in Rīga and Daugavpils) it noted that detainees and prisoners were not provided with basic personal hygiene products and recommended that immediate steps be taken to ensure that all detainees and prisoners be provided with adequate quantities of essential personal hygiene products (see paragraphs 20 and 60 of the relevant report: CPT/Inf (2008) 15). The CPT also found that toilets were not adequately partitioned off in a number of cells.

19. In its response, the Latvian Government (see the relevant document: CPT/Inf (2008) 16) noted that due to a lack of funding it was not possible to fully comply with the CPT’s recommendations. The Government noted that prisoners could purchase the necessary products in a prison shop. At the same time, they noted that prison authorities used humanitarian aid to help prisoners who did not have sufficient financial means.

B. European Prison Rules

20. The European Prison Rules, adopted on 11 January 2006, are recommendations of the Committee of Ministers to member States of the Council of Europe as to the minimum standards to be applied in prisons.

States are encouraged to be guided in legislation and policies by those rules and to ensure wide dissemination of the Rules to their judicial authorities as well as to prison staff and inmates. The relevant parts read as follows:

“18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation.

18.2 In all buildings where prisoners are required to live, work or congregate:

a. the windows shall be large enough to enable the prisoners to read or work by natural light in normal conditions and shall allow the entrance of fresh air except where there is an adequate air conditioning system;

b. artificial light shall satisfy recognised technical standards; and

c. there shall be an alarm system that enables prisoners to contact the staff without delay.

18.3 Specific minimum requirements in respect of the matters referred to in paragraphs 1 and 2 shall be set in national law.

...

19.5 Prisoners shall keep their persons, clothing and sleeping accommodation clean and tidy.

19.6 The prison authorities shall provide them with the means for doing so including toiletries and general cleaning implements and materials.”

C. Relevant domestic law and practice

1. Standards concerning personal hygiene products

21. Cabinet Regulation no. 339 (2002), in force at the material time and effective until 20 June 2008, laid down the standards governing the basic personal hygiene products to be provided to detainees. A healthy adult male detainee was to receive 200 g of laundry soap, 50 g of toothpaste and one 30 m roll of toilet paper every month and one toothbrush every six months. No toilet soap was to be provided.

2. Standards concerning detention conditions

22. Cabinet Regulation no. 211 (2003), in force at the material time and effective until 1 April 2006, laid down the standards governing detention conditions in remand wings of prisons. It contained no provision on the partitioning off of toilets in cells.

23. Subsequently, the requirement to separate the toilet from the rest of the cell was laid down, initially, in cabinet regulations and, later, in law.

3. *Administrative proceedings*

24. The Law of Administrative Procedure (*Administratīvā procesa likums*) took effect on 1 February 2004. It provides for the right to challenge administrative acts (*administratīvais akts*) and actions of a public authority (*faktiskā rīcība*) before the administrative courts.

25. At the material time, section 89 of the Law of Administrative Procedure defined an action of a public authority as “an action within the sphere of public law which is not aimed at issuing an administrative act, provided that its results have or might infringe the rights or legal interests of an individual concerned”. An action of a public authority also included “an omission on the part of a public authority provided that such authority has an obligation under the law to take a specific action”. The 2006 amendments to the Law, which took effect on 1 December 2006, further clarified this definition.

26. Under section 92 of the Law of Administrative Procedure everyone has the right to receive appropriate compensation for pecuniary and non-pecuniary damage caused by an administrative act or action of a public authority. Under section 93 of the same Law, a claim for compensation can be submitted either together with an application to the administrative courts to have an administrative act or action of a public authority declared unlawful or to the public authority concerned following a judgment adopted in such proceedings.

4. *Domestic reports on practice and case-law*

27. In its annual report dedicated to human rights issues in Latvia for the year 2005¹, the National Human Rights Office (VCB), noted that prisoners most commonly complained about the conditions of their detention and, in particular, about the lack of separation of toilets from other cell areas. Although they had paid a visit to Valmiera Prison, the report did not describe the results of that visit in full. It was merely stated that:

“The VCB has concluded that improvement in conditions of detention is connected to the lack of funding and that in many prisons, for example in ... Valmiera Prison, it will be impossible to ensure normal conditions of detention without construction works.

Therefore, in spring 2005 the VCB sent a letter to the Prime Minister, pointing out the possible problems [that might occur] if detainees were to lodge applications under Article 3 of the Convention with the Court. Regrettably, the competent authorities did not always follow the VCB’s recommendations and the VCB [was left with no other

¹ Available at: <http://www.politika.lv/temas/cilvektiesibas/10018/>

possibility than to] advise detainees to lodge applications with the Court. [If] any improvements had been made, the VCB had not been informed of them”.

28. On 1 December 2006 the Supreme Court issued a compilation and analysis of the domestic case-law on definition and interpretation of the administrative law concept of an action of a public authority (*Tiesu prakses apkopojums par faktiskās rīcības jēdzienu un interpretāciju*). It was noted that only some 10% of cases before the administrative courts had concerned actions of a public authority.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION

29. The applicant complained that the conditions of his detention in Valmiera Prison had been inhuman and degrading, in breach of Article 3 of the Convention. In particular, he submitted that as a result of the prison administration’s refusal to provide him with personal hygiene products such as toilet soap, a toothbrush, toothpaste and toilet paper he had constantly felt dirty and humiliated. He also alleged that the toilets were not separated from the rest of the cell.

30. Article 3 of the Convention reads as follows:

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

A. Application of Article 37 § 1 (b) of the Convention

1. *The parties’ submissions*

31. The Government invited the Court to strike the case out of its list of cases, in accordance with Article 37 § 1 (b) of the Convention. The Government relied in this connection on the fact that in October 2005 the applicant had been provided with personal hygiene products. They took the view that the situation complained of by the applicant had thus ceased to exist and that the matter giving rise to the applicant’s Article 3 complaint had thereby been resolved. In the Government’s submission, there was no particular reason relating to respect for human rights as defined in the Convention which would require the Court to continue its examination of the application.

32. The applicant objected to the Government's request to strike out the application and invited the Court to proceed with its examination of the case. He submitted that even though he had received personal hygiene products in October 2005, this had not sufficiently redressed the lack of those products in past.

2. The Court's assessment

33. In order to ascertain whether Article 37 § 1 (b) applies to the present case, the Court must answer two questions in turn: firstly, whether the circumstances complained of directly by the applicant still pertain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have been redressed (see *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I). This approach reflects the structure of the Convention's supervisory machinery, which provides both for a reasoned decision or judgment as to whether the facts in issue are compatible with the requirements of the Convention (Article 45), and, if they are not, for an award of just satisfaction if necessary (Article 41) (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 42, 24 October 2002).

34. In the present case, that entails first of all establishing whether the conditions of the applicant's detention persist. After that, the Court must consider whether the measures taken by the authorities constitute redress for the applicant's complaint.

35. As to the first of these, it is clear that the situation complained of no longer pertains, since the applicant received personal hygiene products in October 2005. Subsequently, on 14 October 2005 he was released from Valmiera Prison.

36. As regards the second question, the Court has to determine if the domestic authorities have adequately and sufficiently redressed the situation complained of (see *Sisojeva and Others*, cited above, § 102, and *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 33, 20 December 2007).

37. The Court notes that the situation complained of concerns the conditions of detention in Valmiera Prison, including the allegation that the toilets were not separated from the rest of the cell and a complete lack of personal hygiene products for nearly five months. The applicant's complaint therefore relates to the suffering he had to endure in that period. In the Court's view, the fact that he later received such products or that he was subsequently released merely denotes the end of the situation complained of and, opposite to what has been suggested by the Government, it does not provide any redress to the applicant. To hold the contrary would render the protection of human rights under the Convention – in particular, as regards possible violations emanating from State agents' omissions – theoretical and illusory.

38. In conclusion, as the aforementioned conditions have not been met, there can be no question of striking the application out of the list in application of Article 37 § 1 (b) of the Convention.

B. Admissibility

1. Non-exhaustion of the domestic remedies

(a) The parties' submissions

39. The Government argued that the applicant had failed to use the remedies established by the Law of Administrative Procedure. They asserted that the remedies provided therein were effective, accessible and offered reasonable prospects of success. In this connection they referred to the ruling of the Administrative Department of the Supreme Court in the case of *Stāmers*, adopted on 15 June 2006, whereby it had established that “in order to admit for examination within administrative proceedings an act or an action of a public authority *vis-à-vis*, *inter alia*, persons deprived of their liberty, it is necessary to establish whether the act or action concerned has significantly interfered with human rights”. The Government submitted that the Supreme Court had set aside the conclusions of two lower administrative courts that all complaints arising out of a public authority’s action should be examined following a “subordination procedure”, that is to say, by lodging a complaint with a hierarchically higher institution and not through administrative proceedings in court.

40. The Government asserted that the *Stāmers* case had been examined at the domestic level around the time when the events of which the applicant complained in the present case had taken place. However, the Government did not furnish the Court with a copy of the ruling of 15 June 2006. Nor did they inform the Court about the outcome of those proceedings. They merely stated that the Supreme Court had set aside the decision of a lower court and had sent the case back for fresh examination.

41. The applicant disagreed. He submitted that the ruling of 15 June 2006 had been the first decision whereby the Supreme Court had acknowledged that a detainee’s complaint about conditions of detention could be examined by the administrative courts. The applicant contended that before that date the administrative courts had refused to examine detainees’ complaints about conditions of detention for more than two years. The prevailing view, as evidenced by two rulings of the lower courts in the *Stāmers* case, had been that such complaints were to be examined following a “subordination procedure”, in other words, by a hierarchically higher institution and not by the administrative courts.

42. The applicant contested the Government's assertion that the case of *Stāmers* had been examined at the same time as the events complained of in the present case had taken place. According to the applicant, the *Stāmers* case had been lodged with the administrative courts on 24 February 2006 and the above-mentioned ruling of the Supreme Court had been adopted almost four months later. The applicant, however, had complained of events that had taken place one year earlier, as the date of introduction of the applicant's complaint to the Court dated back to 15 August 2005. The applicant's argument was that in a new, post-communist legal system, such as the one established following the restoration of the independence of the Republic of Latvia, one year is a long period viewed in terms of the evolution of the interpretation of domestic law – even more so given that the Law of Administrative Procedure, effective since 1 February 2004, had also established new remedies.

43. In their additional observations, the Government did not deny that the administrative courts were a relatively new judicial institution at the time of the events. They contented that the very reason for having a three-level court system had been to allow the courts to examine a case thoroughly. It implied that a higher court could overrule a lower court's ruling.

44. Furthermore, the Government noted that other applicants before the administrative courts had been in the same position as the applicant – they had all had to make recourse to a relatively new remedy in order to defend their rights. The Government considered that the applicant could not be released from the obligation to exhaust domestic remedies, as to release him from that obligation would be unfair to those people who had used the newly established remedy, thereby contributing to the development of domestic case-law and proving its effectiveness. Finally, they noted that the applicant had not indicated any particular reason for which he had not exhausted the available domestic remedy.

45. In reply to the Government's additional observations, the applicant stressed that, at the time of lodging the complaint with the Court, the administrative courts had not interpreted domestic law in a way that would have lead to the conclusion that it was an effective remedy for detainees' complaints about conditions of detention. Instead, they had ruled that such complaints were to be examined by a hierarchically superior institution. The applicant maintained that an application to the administrative courts had not constituted an effective remedy and had not offered reasonable prospects of success at the time. Finally, having not had a lawyer, he had relied on the information given by the National Human Rights Office to the effect that he could apply to the Court.

(b) The Court's assessment

46. The Court recalls that in the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV; *Menteş and Others v. Turkey*, 28 November 1997, § 57, *Reports* 1997-VIII; and, more recently, *Bazjaks v. Latvia*, no. 71572/01, § 85, 19 October 2010).

47. In the area of complaints of inhuman or degrading conditions of detention, the Court has already observed that two types of relief are possible: an improvement in the material conditions of detention; and compensation for the damage or loss sustained on account of such conditions (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007, and *Roman Karasev v. Russia*, no. 30251/03, § 79, 25 November 2010). If an applicant has been held in conditions that are in breach of Article 3, a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. Once, however, the applicant has left the facility in which he or she endured the inadequate conditions, he or she should have an enforceable right to compensation for the violation that has already occurred.

48. Where the fundamental right to protection against torture or against inhuman or degrading treatment is concerned, the preventive and compensatory remedies, in principle, should be complementary in order to be considered effective. In contrast to the cases concerning the length of judicial proceedings or non-enforcement of judgments, where the Court has accepted in principle that a compensatory remedy alone might suffice (see *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII; *Scordino v. Italy* (no. 1) [GC], no. 36813/97, § 187, ECHR 2006-V; and *Burdov v. Russia* (no. 2), no. 33509/04, § 99, ECHR 2009 (extracts)), the existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3 (see also *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, §§ 54-55, 22 November 2011). Indeed, the special importance attached by the Convention to that provision requires, in the Court's view, that the

States parties establish an effective mechanism in order to put an end to any such treatment rapidly.

49. In the light of the principles reiterated above, the Court observes that in the present case the Government argued that recourse to the administrative courts was a proper remedy for the applicant's complaint. It further notes that at the material time the administrative courts were a new judicial institution in Latvia that had been established in 2004 with a view to the judicial review of administrative acts and actions of public authorities. The Court is also aware that at the material time the prosecution authorities had general competence to supervise prisons and to protect the rights of detained persons (see *Kadiķis v. Latvia* (no. 2), no. 62393/00, §§ 29 and 62, 4 May 2006). The entry into force of the Law of Administrative Procedure did not clarify the scope of these remedies. The Court has already found that recourse to the prosecution authorities was not an effective remedy in circumstances where they were aware of the problem of prison overcrowding but failed to act to remedy that situation (see *Bazjaks*, cited above, §§ 88 to 89). Similarly, in the present case the prosecutor's office was aware of the lack of personal hygiene items for detainees but did not act in any way to remedy the applicant's situation – his complaint in this connection was merely forwarded to the Prisons Administration. In view of such circumstances and clearly conflicting opinions at the national level (see also the position of the National Human Rights Office noted in paragraphs 16 and 27 above) as concerns the proper domestic remedy for the applicant's complaint, the Court will examine whether review by the administrative courts at the material time was the appropriate course of action.

50. From the outset, the Court recognises the importance, underlined by the Government, of allowing relatively new remedies to develop, if necessary, through rulings of the State's higher courts setting aside those of the lower courts. It is nevertheless the case that, in the absence of a specifically introduced remedy, the development and availability of a remedy said to exist, its scope and application must be clearly set out and confirmed or complemented by the domestic courts' case-law (see, *mutatis mutandis*, *Šoć v. Croatia*, no. 47863/99, §§ 93-94, 9 May 2003; *Apostol v. Georgia*, no. 40765/02, § 38, ECHR 2006-XIV; and, most recently, *McFarlane v. Ireland* [GC], no. 31333/06, § 120, 10 September 2010). Referring to the principles established above (see paragraph 46), the Court would add that the burden of proof in this regard lies with the Government and it is for the Government to submit any pertinent examples of domestic case-law to the Court with a view to demonstrating the scope of a newly established remedy and its application in practice.

51. Turning to the circumstances of the present case, the Court acknowledges that at the time of lodging of the present application with the Court, the administrative courts in Latvia had been operating for more than

one year. To meet the burden incumbent on the Government to prove the effectiveness of the newly established remedy in theory and practice, they submitted information about one ruling of the Administrative Department of the Supreme Court, namely, the decision in the *Stāmers* case. According to the information provided by the applicant, which was not contested by the Government, the ruling in the *Stāmers* case was the first decision recognising the administrative courts' competence to review detainees' complaints about the conditions of their detention and introducing for that purpose the "significant interference" test. Regrettably, the Court has not been furnished with a copy of that decision or any other relevant ruling showing that conditions of detention fall within the notion of "the action of a public authority" (see paragraph 25 above) to which the administrative courts' review extends. It appears that the application of this notion in practice was not uniform among the administrative courts at the material time and that this problem prompted the Supreme Court to examine the existing domestic practice (see paragraph 28 above). Furthermore, it remains uncertain which complaints would satisfy "the significant interference" test as developed by the administrative courts to be accepted for review and whether that test is similar or equal to that of the "minimum level of severity" as developed by the Court in relation to Article 3 of the Convention. The Court would add, in this respect, that it is not for the Convention organs to cure on their own motion any shortcomings or lack of precision in the respondent Government's submissions (see *Bazjaks*, cited above, § 133).

52. Thus it remains highly unclear if the administrative courts at the time of lodging of the present application and in any event at least until 15 June 2006 examined detainees' complaints about the conditions of their detention, as evidenced by the lower administrative courts in the *Stāmers* case.

53. Taking into account the aforementioned, the Court considers that the Government have not discharged the onus on them to convince the Court that an application to the administrative courts to complain about conditions of detention was a remedy accessible in practice to detainees such as the applicant. It therefore dismisses the Government's preliminary objection in this regard.

2. Abuse of the right of application

(a) The parties' submissions

54. In their additional observations, the Government relied on the Court's decision in the case of *Bock v. Germany* (no. 22051/07, 19 January 2010) to argue that in view of "the petty nature of the applicant's complaint" it had to be rejected as an abuse of the right of application.

55. The applicant disagreed and added that the complaint in the present case could not be regarded as trivial, contrary to the circumstances of the case of *Bock v. Germany*.

(b) The Court's assessment

56. The Court notes that the decision in the *Bock* case was taken in the particular circumstances of that case (where the applicant complained of the length of civil proceedings that he had instituted for reimbursement of the cost of a dietary supplement, the sum claimed being 7.99 euros (EUR)). The Court considers that the applicant's complaint in the present case cannot be considered as being "petty". It concerns a complaint about the conditions of his detention and raises issues under Article 3 of the Convention.

57. In view of above, the Court dismisses the Government's preliminary objection in this regard.

3. Conclusion on admissibility

58. Having established that the application cannot be struck off of its list of cases and having rejected the preliminary objections raised by the Government, the Court notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

59. The Government submitted that the applicant's statements about the conditions of his detention were not supported by any evidence and that the standard of proof "beyond reasonable doubt" had not been met.

60. In their view, the detention conditions in cell no. 26 in Valmiera Prison had not been ideal, but referring to their version of facts (see paragraph 10 above) they contented that the conditions of the applicant's detention had not attained the minimum level of severity within the meaning of Article 3 of the Convention.

61. In so far as the complaint concerned the lack of personal hygiene products, the Government added that the applicant could have and, indeed, had bought these products himself. The Government relied in this regard on a record of the applicant's purchases in the prison shop, which showed that on 5 September 2005 the applicant had bought two bars of soap and a tube of toothpaste.

62. The applicant pointed out that the Government's version of facts was not supported by sufficient evidence. The Government had not provided a plan of cell no. 26 showing the separation of the toilets from the rest of the cell or evidenced that a large, clean and transparent window had provided

access to daylight. Nor had there been any evidence concerning the presence of sufficient artificial light or ventilation. The same applied to the numbers indicating available space per detainee in cell no. 26. It remained the applicant's submission that the toilets had not been separated off from the rest of the cell and that they had released an unbearable smell and that the ventilation system had not worked.

63. The applicant maintained that he had not been provided with a toothbrush, toothpaste or toilet paper and that he had been unable to keep up his personal hygiene in detention. Even if he had been able to buy some (but not all) of the basic personal hygiene products on 5 September 2005, he had not received any from the prison authorities. The applicant additionally relied on the parties' submissions in the *Peers* case to argue that the possibility for a detainee to obtain toiletries and toilet paper from another source did not absolve the respondent State from its responsibility under the Convention (see *Peers v. Greece*, no. 28524/95, § 64, ECHR 2001-III).

64. Together with their additional observations, the Government submitted an inventory plan of cell no. 26. They stated that inventory plans by definition did not indicate minor structures, such as a partition separating the toilet from the rest of the cell.

65. The Government noted that the conditions of detention in the above-cited *Peers* case could not be compared to those in Valmiera Prison. In the present case, the applicant had not been detained in "claustrophobic" conditions or in an overcrowded cell. The Government was not in a position to refer to any conclusions made by independent monitoring bodies, because such bodies had never visited Valmiera Prison. They maintained, however, that there had been enough natural and artificial light in the cell, that the ventilation system had been functioning and that the toilets had been separated off from the rest of the cell.

66. Finally, the Government argued that the lack of a toothbrush, toothpaste and toilet paper could hardly be seen as raising an issue under Article 3 of the Convention, especially given that the applicant could have purchased these products in the prison shop.

67. In reply to the Government's additional observations, the applicant stressed that there was still no evidence concerning the number of detainees who had been held in cell no. 26 at the material time.

2. The Court's assessment

(a) General principles

68. From the outset, concerning the facts that are in dispute, the Court reiterates its jurisprudence confirming the standard of proof "beyond reasonable doubt" in its assessment of evidence. A "reasonable doubt" is not a doubt based on a merely theoretical possibility or raised in order to avoid a disagreeable conclusion, but a doubt for which reasons can be drawn from

the facts presented. The proof of treatment contrary to Article 3 of the Convention may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Farbtuhs v. Latvia*, no. 4672/02, § 54, 2 December 2004). In this context, the conduct of the parties when evidence is being obtained has to be taken into account.

69. Furthermore, the State 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, § 94, ECHR 2000-XI, and *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI; and *Ostrovar v. Moldova*, no. 35207/03, § 80, 13 September 2005).

70. The Court has also held that the absence of an adequate supply of personal hygiene products in prison, such as toilet paper, may raise an issue under Article 3 of the Convention in itself (see *Valašinas*, cited above, § 104) or in combination with other factors (see *Karalevičius v. Lithuania*, no. 53254/99, § 40, 7 April 2005, and *Bazjaks v. Latvia*, no. 71572/01, § 116, 19 October 2010).

(b) Application of these principles to the present case

71. The Court observes that the applicant's complaint relates to the conditions of his detention in Valmiera Prison for nearly five months. It relates, in particular, to the lack of personal hygiene products and to the allegation that the toilets were not separated from the rest of the cell.

72. The parties hold divergent views in relation to whether or not the lack of hygiene products attained the threshold of the "minimum level of severity" required to fall within the scope of Article 3 of the Convention. The Court is thus required, firstly, to establish the conditions of the applicant's detention in Valmiera Prison at the material time and, secondly, to analyse whether they reached the level of severity required for Article 3 of the Convention.

73. First of all, the Court notes, on the one hand, that it is common ground between the parties that the applicant did not receive basic personal hygiene products, such as a toothbrush, toothpaste and toilet paper, from the prison authorities from 19 May 2005 until October 2005. On the other hand, the parties are in disagreement about other characteristics of the detention conditions in cell no. 26 in Valmiera Prison – in particular, as regards the

applicant's allegation that the toilets were not separated from the rest of the cell.

74. The Court notes that the applicant's account in this latter regard is not only clear and concordant, it is also consistent with the conclusions of the national human rights monitoring body, which had visited Valmiera Prison at the material time (see paragraph 27 above), and with the CPT's conclusions concerning other prisons in Latvia (see paragraph 18 above), which evidence the fact that in the Latvian prison system it has been quite common for toilets not to be partitioned off from other cell areas. In such circumstances, the burden of proof rests on the Government to prove the contrary in the instant case. The Government's failure to present convincing evidence that would overturn the applicant's submissions, for example by submitting a full report or recommendations and conclusions made by the National Human Rights Office in 2005 concerning Valmiera Prison or any other similar report (for example, a report drawn up by the Prisons Administration, see the above-cited *Bazjaks* case, § 102), allows the Court to draw negative inferences. Moreover, the lack of any legal standards at the domestic level on the issue of partitioning off of toilets at the material time further supports the applicant's allegation, even more so in the light of subsequent legislative developments (see paragraphs 22 and 23 above). Taking into account the above-mentioned considerations, the Court finds it established "beyond reasonable doubt" that the toilets in the applicant's cell were not partitioned off from the rest of the cell.

75. Turning to the second point in its analysis, the Court finds that the lack of personal hygiene products in detention for nearly five months is incompatible with respect for human dignity. The applicant was unable to keep up his personal hygiene on a daily basis for a prolonged period and he constantly felt dirty and humiliated. This clearly caused distress and hardship of a level that goes beyond the suffering inherent in detention. Moreover, the domestic authorities' failure to provide these products contravened international standards (see paragraphs 18 and 20 above) and domestic law (see paragraph 21 above). In any event, the possibility for the applicant to buy such items in the prison shop or otherwise receive them did not absolve the Government from its obligations under the Convention, amongst which is the obligation to ensure that persons are detained in conditions which are compatible with respect for their human dignity.

76. In such circumstances, the domestic authorities' dismissive attitude – plainly refusing the applicant's legitimate request to be provided with personal hygiene products – is even more unacceptable. Such unwarranted refusal applied to persons in custody inevitably contributes to feelings of subordination, total dependence, powerlessness and, consequently, humiliation. The Court highlights in this connection that it is incumbent on the respondent Government to organise its penal system in such a way as to

ensure respect for the dignity of detainees, which failure the Government cannot justify by the lack of resources (see *Bazjaks*, cited above, § 111).

77. The Court further notes that it has established to the required standard of proof that in the applicant's cell, which he shared with at least seven other detainees, toilets were not separated from the rest of cell. The applicant therefore had to use the toilet in the presence and vision of several other detainees and be present and himself witness when the toilet was being used by them.

78. The Court holds the opinion that the above mentioned detention conditions diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance. The Court notes, in this connection, that the absence of an intention of humiliating or debasing the applicant on the part of the domestic authorities cannot exclude a finding of a violation of Article 3 of the Convention (see *Peers*, cited above, § 74, and *Kalashnikov*, cited above, § 101).

79. The above factors are sufficient for the Court to conclude, without exploring other aspects of the complaint, that the conditions in which the applicant was held in Valmiera Prison reached the threshold of severity required under Article 3 of the Convention and that there has been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed 5,000 Latvian lati (approximately EUR 7,114) in respect of non-pecuniary damage. He submitted that the violation of his Convention rights had entailed serious detriment to his physical and mental well-being and had caused him to suffer a substantial degree of anxiety and distress.

82. The Government considered the applicant's claim exorbitant. They submitted that the finding of a violation would constitute adequate compensation in the present case in view of the petty nature of the applicant's complaint. Alternatively, they considered that any award should not exceed EUR 7,000, the amount awarded in the case of *Kadiķis v. Latvia* (no. 2) (cited above, § 67).

83. Taking into consideration all the relevant factors, including the period of time spent by the applicant in conditions of detention contrary to Article 3 of the Convention, the Court, deciding on an equitable basis, awards the applicant EUR 7,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

84. The applicant did not lodge any claim under this head.

C. Default interest

85. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
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, EUR 7,000 (seven thousand euros), to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President