



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

THIRD SECTION

CASE OF VIKULOV AND OTHERS v. LATVIA

(Application no. 16870/03)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

29/04/2013

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

In the case of Vikulov and Others v. Latvia,

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

Egbert Myjer, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Ineta Ziemeļe,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 4 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 16870/03) 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 three Russian nationals, Mr Sergey Vikulov, Mrs Galina Vikulova and Mr Anton Vikulov (“the applicants”), on 9 May 2003.

2. The applicants were represented by Mrs M. Portnova, a lawyer practising in Moscow. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine.

3. The applicants invoked, in particular, Article 3, Article 5 § 1 (f) and Article 8 of the Convention and complained about certain aspects of their detention in Rīga and Olaine.

4. By a decision of 25 March 2004 the above complaints were communicated to the Government and on 31 August 2006 the Court declared the application partly admissible concerning the aforementioned complaints.

5. The applicants and the Government each filed written observations on the merits and replied in writing to each other’s observations. In addition, third-party comments were received from the Government of the Russian Federation, who had exercised their right to intervene (Article 36 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant, Mr Sergey Vikulov, was born in Hungary in 1955. His wife, the second applicant, Mrs Galina Vikulova, was born in then the Russian Soviet Federative Socialist Republic in 1957. Their son, the third applicant, Mr Anton Vikulov, was born in then the Latvian Soviet Socialistic Republic (Latvian SSR) in 1986. They are now citizens of the Russian Federation and live in Kaliningrad.

A. Background to the complaint

7. The first applicant was an officer of the Soviet army. In 1985 he and his wife, the second applicant, entered the territory of Latvian SSR where the first applicant, together with other military personnel, was responsible for the supervision of the Soviet radar station in Skrunda.

8. In August 1991 Latvia regained its independence from the Soviet Union and in December 1991 the latter ceased to exist. In 28 January 1992 the Russian Federation assumed jurisdiction over the former Soviet Union armed forces, including those stationed in the territory of Latvia. Afterwards the applicants acquired the citizenship of the Russian Federation.

9. On 30 April 1994 the Republic of Latvia and the Russian Federation signed the treaty concerning the conditions, deadlines and procedure for the complete withdrawal of the armed forces of the Russian Federation from the Republic of Latvia, as well as their status during the withdrawal. On the same day both States entered into an agreement concerning the legal status and dismantling of the radar station in Skrunda, and the status of the military personnel deployed there. It provided that the radar station was to cease its operations by 31 August 1998 and that it was to be dismantled by 29 February 2000.

10. By an order of 29 September 1998 the first applicant was demobilised from the army with effect from 11 November 1998. The applicants' service visas were due to expire on 30 November 1998.

B. Proceedings concerning the applicants' stay in Latvia

11. In October 1998 the second applicant, acting on behalf of the other applicants, asked the Office of Citizenship and Migration Affairs (*Pilsonības un migrācijas lietu pārvalde*) to issue them with a residence permit. In support of her request she relied on the fact that her elderly

parents and her daughter lived in Latvia, and that the third applicant was a pupil at a State school.

12. On 8 April 1999 the Office of Citizenship and Migration Affairs dismissed the applicants' request, stating that they had entered the territory of Latvia because of the first applicant's military service. They were informed that in accordance with the Law on Aliens (*Par ārvalstnieku un bezvalstnieku ieceļošanu un uzturēšanos Latvijas Republikā*), there was no legal basis for them to obtain permanent residence permits in the Republic of Latvia, and that by virtue of the agreement concluded between the Republic of Latvia and the Russian Federation, the applicants had to leave the territory of Latvia.

13. The applicants appealed against that decision before the Rīga City Centre District Court, which dismissed their appeal. No further appeal was brought.

14. On 10 March 2000 the first and second applicants asked the Office of Citizenship and Migration Affairs to issue them with temporary residence permits.

15. On 23 May 2000 the Head of the Office of Citizenship and Migration Affairs issued an order for the applicants (the third applicant was mentioned in the order concerning the first applicant) to leave Latvian territory by 12 June 2000 and also imposed a five-year ban on their re-entering Latvia.

16. Appeals by the applicants against the orders were dismissed by the national courts at three levels of jurisdiction. The final decision was adopted by the Senate of the Supreme Court on 19 February 2003.

17. In a letter dated 25 February 2003 the Office of Citizenship and Migration Affairs reminded the first and second applicants of their obligation to leave the country or otherwise they would be deported in pursuance of section 47 of the Law on Aliens.

C. Procedure concerning the execution of the order to leave Latvian territory

18. It appears from the material in the case file that on 14 March 2003, during an interview with the Head of the Office of Citizenship and Migration Affairs, the applicants were informed that the period within which they had to leave the territory of Latvia had been extended until 15 June 2003 to allow the third applicant to finish the current school year.

19. On 3 September 2003, in the course of the execution of the aforementioned orders, the applicants were arrested by officers of the State Border Guard Service. The records of their arrest referred to the orders to leave of 23 May 2000 (see paragraph 15 above) and relied on section 51(1)(1), of the Immigration Law (*Imigrācijas likums*) (see "Relevant domestic law" below). The applicants refused to sign the records

of their arrest because they were drawn up in Latvian, a language which they allegedly did not understand.

20. On the same day the applicants were placed in the State Border Guard Service detention unit for illegal immigrants in Rīga (“the State Border Guard Service detention unit”).

21. On 8 September 2003 the Office of Citizenship and Migration Affairs, relying on section 47(1)(1) of the Immigration Law adopted a decision to deport the applicants. Pursuant to section 47(2) of the above law the decision was not subject to appeal. The applicants refused to take cognisance of the decision.

22. On 12 September 2003, by a decision of the Rīga City Zemgale District Court, the applicants’ detention was extended until 19 September 2003. The court established that at the time of their arrest the applicants had not presented any identity documents and that according to their Russian Federation passports, which they had presented only during the hearing, the applicants did not have a lawful basis to reside in Latvia.

23. On the same day the applicants were transferred to the accommodation centre for foreign detainees (*Aizturēto ārzemnieku izmitināšanas centrs*) in Olaine (“the Olaine accommodation centre”), where they stayed until 15 September 2003, when they were brought back to the State Border Guard Service detention unit. On 17 September 2003 the applicants were deported to the Russian Federation.

D. The applicants’ account of the conditions of their detention

24. On 3 September 2003 the applicants were taken to a cell. They first described the conditions in the cell in their initial separate complaints to the Court and later on in their joint application form. The facts as set out in the applicants’ initial separate complaints are referred to below in so far as they supplement the factual information presented in their later submissions.

1. Conditions in the State Border Guard Service detention unit from 3 to 12 September 2003 and from 15 to 17 September 2003

(a) Size and furnishing of the cell

25. The applicants stated that on 3 September 2003, after they had been searched without witnesses in the State Border Guard Service detention unit, they had each received a dirty and thin flannel blanket and a bed sheet, and had been placed together in a cell which was small (3 m by 3 m) and dirty, with a small window. The cell contained two steel bunk beds which were so hard that the second applicant’s back was constantly aching. There were steel chairs and a table screwed to the floor. The air was foul from the lavatory pan and washbasin in the cell, and as a result the applicants

suffered from headaches and their eyes were watering. There was an iron door with a small window used for handing the applicants food and supervising them. The light in the cell was on for twenty-four hours a day and during their fourteen days in the cell the applicants were only twice taken out for a walk, lasting ten to fifteen minutes.

26. According to the initial submissions of the first applicant, the sanitary facilities were separated from the rest of the cell by a low partition. This assertion was maintained in the applicants' later joint observations.

(b) Food

27. The applicants contended that the food at the State Border Guard Service detention unit was of bad quality, tasteless, insufficiently salty and not always fresh. Owing to the short periods between the meals (breakfast was at 10 a.m., lunch at 12 noon and dinner at 4 p.m.), the applicants were hungry in the evenings. Once they were given mouldy potatoes for dinner.

28. The third applicant added that they had been given metal tableware and that the cell was infested with ants, which were creeping everywhere. This allegation was repeated in the applicants' joint observations, which stated that in the cells there were large numbers of ants creeping into the food and spoiling it.

(c) Possibility for the applicants to meet relatives and to visit their former place of residence

29. During the applicants' stay in the State Border Guard Service detention unit they were only twice authorised to meet their relatives. They were also not authorised to return to their former place of residence to collect their belongings before their deportation. In their later joint observations the applicants added that an officer of the State Border Guard Service had told them that they would have an hour to go home on condition that they signed the records of their arrest and deportation.

(d) Privacy

30. On 9 September 2003 one of the detainees in the neighbouring cell behaved aggressively and the officers of the detention unit released a certain gas to calm him down. The applicants had to leave their cells and when they returned another woman was put into the applicants' cell for twenty-four hours. In her initial separate complaint the second applicant noted that the incident took place in the afternoon and that another person stayed in their cell for one day. In their joint observations the applicants stated that the woman stayed in their cell for two days.

31. In their joint observations the applicants furnished a plan of the cells in the State Border Guard Service detention unit, according to which cells nos. 1 and 2 (the applicants were held in the latter cell) were designed for four persons, cell no. 4 for two persons and cell no. 3, which was a isolation

cell, for one person, although the latter cell was not used because the window pane was broken. On 9 September 2003, when one of the three detainees in cell no. 1 started to behave aggressively, the other two men were transferred to cell no. 4, and a woman from cell no. 4 was transferred to the applicants' cell (no. 2). Their protests against the woman's transfer were ignored.

32. On 16 September 2011, a day before their deportation to the Russian Federation, a man was placed in their cell (cell no. 1). The applicants protested but the guards ignored them. In the evening they were moved to cell no. 4, which was meant for two persons. The first applicant therefore had to sleep on the floor.

(e) Outside walks

33. In the State Border Guard Service detention unit the applicants were only twice allowed to have walks of fifteen minutes in the inner courtyard, which was cemented over and surrounded by high concrete walls protected by barbed wire. On the second occasion, they were taken out of their cell after the incident referred to above (see paragraph 30 above) in order to air the cell after gas had penetrated into it.

2. Conditions in the Olaine accommodation centre from 12 to 15 September 2003

34. The applicants contended that the conditions in the Olaine accommodation centre were no better than in Riga. They were held in a separate cell with three beds, two tables and chairs, and they were given bed clothes. The cell was very dirty with dilapidated walls covered in graffiti. There were grilles on the windows. Outside there was a very high fence with barbed wire, and behind it was a watchtower. The applicants were given a bucket and a draining rack to wash the cell. They were given old dishes and food to last five days, which included approximately 2-3 kg of potatoes, 500 g of pasta, 300 g of rice, three small chicken legs, three small fish, 300 g of vegetable oil, bread and other vegetables. They had to do their own cooking in a kitchen which had a four-ring stove for ten people.

35. In their joint observations the applicants alleged that on the second day of their stay at the centre a man had been put in their cell. It appears from the first applicant's separate complaint and the later observations that the aforementioned incident took place at the State Border Guard Service detention unit rather than in Olaine (see paragraph 32 above).

3. Medical assistance and transport to the border

36. According to the applicants, on the morning of 17 September 2003, when they were informed of their deportation to the Russian border, the second applicant had a heart attack. For the previous two days she had

complained of heart pain and headaches but did not receive any treatment. In support of their allegation that the first and second applicants had already raised health-related complaints at the time of their detention, the applicants furnished copies of records of 3 September 2003 concerning all three applicants and records of 15 September 2003 concerning the second applicant, which stated that, on returning to the State Border Guard Service detention unit, she had complained of heart pain, intercostal neuralgia, low blood pressure and headaches.

37. Immediately after her heart attack on 17 September 2003, the second applicant received some injections and pills from the doctor of the State Border Guard Service detention unit. The applicants were put in a vehicle which was supposed to drive them to the border. It was stuffy, noisy and jolty in the car and the second applicant had another heart attack during the journey. When they stopped at the Olaine accommodation centre the second applicant was examined in the medical unit and received an injection and medication. Without having been given permission, the first applicant called for an ambulance, whose crew examined the second applicant.

38. In her separate complaint the second applicant noted that the ambulance crew had examined her and concluded that she had not had a heart attack.

39. After the medical check the applicants had to continue the five-hour-long trip to Zilupe, where they were kept detained until 9 p.m., and then took a train to Moscow in an ordinary carriage. They were hungry because that day they had received food in the morning only, and they did not have any money or belongings because the authorities had prevented them from taking anything with them or saying goodbye to their relatives.

E. The Government's account of the detention conditions

1. Conditions in the State Border Guard Service detention unit

40. The Government to a large extent contested the applicants' account of the facts. They relied on a report of 19 June 2004 addressed by the head of the Rīga Department of the State Border Guard Service to the Agent of the Government (for the relevant parts of the report see the admissibility decision in the present case: *Vikulov and Others v. Latvia* (dec.), no. 16870/03, 31 August 2006, section 4 (a)(ii) of the "Facts" part).

41. In their additional observations the Government furnished technical inventory documents and photos of the cell where the applicants were held. According to the inventory documentation held by the State Border Guard Service detention facilities, there were three cells measuring 17.7 sq. m, 14.6 sq. m and 11.3 sq. m, and an isolation cell measuring 7.1 sq. m. The windows were not narrower than 0.8 m. According to the inventory documents and photos, the sanitary facilities were separated from the rest of

the cell by a brick partition. According to the Regulations of 1 March 2002 on the State Border Guard Service short-term detention facilities, the partition was not higher than 1.2 m.

42. As to pest control, the Government submitted a copy of a report according to which inspections for rats and other parasites were carried out once a month. During the inspection on 4 September 2003 no parasites had been detected.

43. Concerning the adequacy of the food, the Government submitted copies of various internal regulations in force at the material time, which set out the type and quantity of dry products distributed to detainees during the weekend (for the relevant parts of these regulations see *Vikulov and Others* (dec.), cited above). The instruction concerning the daily regime of detainees in the State Border Guard Service detention unit provided as follows: morning routine, followed by an inspection of the cells from 7 to 9 a.m.; breakfast from 9 to 10 a.m.; meetings with officials of the State Border Guard Service from 10 a.m. to 4 p.m., with a lunch break from 12 noon to 1 p.m. Dinner was provided from 4 to 5 p.m., followed by free time from 5 to 10.30 p.m., which included cleaning and inspection of cells. Night hours began at 11 p.m.

44. With regard to outside walks, the Government relied on a report of an official of the State Border Guard Service who confirmed that walks were not regulated and that any time except between 10 p.m. and 6 a.m. could be used for walks in the inner courtyard, on condition that women, men and families were to have walks separately, and that outdoor exercise did not exceed one hour at a time.

45. As to the right to meet relatives, the Government furnished certified copies of the applicants' requests of 3, 4, 7, 15 and 16 September 2003 for authorisation to meet their relatives and to make phone calls to them. It appears from the copies that all the requests are marked as having been authorised. They also furnished copies of extracts from the register of visitors and parcels in the State Border Guard Service detention unit, according to which on 5, 9 and 11 September 2003 the applicants were visited by family members; on 5, 6, 9 and 11 September 2003 they received parcels; and on 16 September 2003 a representative of the Embassy of the Russian Federation visited them.

46. The Government submitted a report of 11 September 2003 drawn up by an officer of the State Border Guard Service, who reported to a superior officer that on 10 and 11 September 2003 he had visited the applicants in the State Border Guard Service detention unit in order to serve them with the deportation order, but that they had refused to sign it. The report also stated that the officer had offered to drive the applicants to collect their identity documents but they had not responded to this offer.

47. The Government further submitted a report of 16 September 2003 by the same officer, who informed that on the same day the applicants had

dismissed his offer to drive them to their former place of residence. The documents also contained a copy of a universal power of attorney dated 16 September 2003 and certified by a notary public in her premises in Rīga, in which the first applicant vested his daughter with broad powers in relation to, *inter alia*, his and the third applicant's property.

2. Conditions in the Olaine accommodation centre

48. In addition to the factual information provided in their earlier observations (see *Vikulov and Others* (dec.), cited above, section 4(b)(ii) of the "Facts" part) the Government furnished photocopies of a plan and pictures of the Olaine accommodation centre.

3. Medical assistance and transport to the border

49. The Government furnished copies of the records drawn up during the applicants' detention as well as medical reports. According to the records of 3 September 2003 concerning the examination of detained aliens, the second applicant complained of a headache, psoriasis and rheumatic heart disease, and the third applicant complained of psoriasis. According to the same records, on 12 September 2003 at 5.50 p.m. the first and second applicants confirmed in writing that they had received their belongings, such as keys, money and mobile phones which, at the time of their arrest, had been deposited with the State Border Guard Service detention unit.

50. According to the medical records of 12 September 2003, on arrival at the Olaine accommodation centre none of the applicants complained of any health problems.

51. According to the copies of the applicants' medical records, it was on 15 September 2003, at 11.20 a.m., that the second applicant complained of a headache. After having her blood pressure checked, the second applicant received one unit of spasmalgon, one unit of tempalgin and three units of panangin. On 16 September 2003 at 1.05 p.m. the second applicant repeatedly complained of a headache and intercostal neuralgia. She received an injection of diclofenac, one unit of tempalgin, corvalol and three units of panangin.

52. Lastly, at 12.15 p.m. on 17 September 2003, the day of the applicants' deportation, the second applicant complained of a headache. According to the medical report, she also showed signs of tachycardia and psycho-emotional reaction. Her blood pressure was measured twice, with a thirty-minute interval. She received an injection of spasmalgon, one unit of nitrong, panangin and valocordin drops. She also received at least seven units of three types of medication to take with her "to the border".

4. Other relevant information

53. Following a request by the Government Agent for information as to the existing remedies at the material time in respect of complaints concerning conditions of detention in centres for illegal immigrants, the Prosecutor's Office stated that pursuant to section 56 of the Immigration Law, it could receive complaints regarding any issue. It also noted that the domestic law did not explicitly provide for a right to complain about conditions of detention; nevertheless, applicants could avail themselves of the right to submit a complaint by virtue of the Law on Enquiries ("*Par iesniegumu, sūdzību un priekšlikumu izskatīšanas kārtību valsts un pašvaldību institūcijās*"). In response to a similar request the Office of Citizenship and Migration Affairs replied that questions concerning the arrest and detention of persons did not fall within its sphere of competence.

II. RELEVANT DOMESTIC LAW

A. Immigration Law, as in force at the material time

54. Section 51(1) of the law provides that an official of the State Border Guard Service has the right to detain an alien:

(1) if he or she has illegally crossed the State border of the Republic of Latvia or otherwise violated the procedures prescribed by regulatory enactments for the entry into and residence of aliens in the Republic of Latvia;

(2) if the alien poses a threat to State security and public order;

(3) in order to implement an order regarding removal of an alien from the Republic of Latvia.

As a result of the amendments of 21 June 2007, which became effective as from 19 July 2007, section 51 was subjected to merely textual changes.

55. By section 54(1), an official of the State Border Guard Service has the right to detain an alien for a period not exceeding ten days in the cases referred to in section 51 of the law.

56. Section 56 provides that in defence of their legitimate interests, foreign detainees have the right to appeal to the Prosecutor's Office, to contact a consular institution of their own country and to receive legal assistance. Aliens must be informed of these rights at the time of their detention.

B. Other relevant provisions of domestic law

57. Other provisions of domestic law that are relevant to the issues raised in the present case, such as the Immigration Law, Law of the Office

of the Prosecutor and Law on Enquiries, can be found in *Slivenko v. Latvia* [GC], no. 48321/99, §§ 49-63, ECHR 2003-X, and *Vikulov and Others* (dec.), cited above, part B.

III. REPORTS BY THE CPT

58. The relevant parts of the report of 10 May 2005 to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (“the CPT”) from 25 September to 4 October 2002 can be found in *Vikulov and Others* (dec.), cited above, part C.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

59. The applicants complained in general about the conditions in which the State authorities had deported them from Latvia. In particular, they submitted that the conditions of detention in the State Border Guard Service detention unit and the Olaine accommodation centre and the lack of adequate medical assistance, and privacy there had led to treatment prohibited by Articles 3 and 8 of the Convention, which read as follows:

Article 3

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

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The Government's preliminary objection

60. In the admissibility decision in the present case (see *Vikulov and Others* (dec.), cited above) the Court dismissed the non-exhaustion argument raised by the Government according to which the applicants had the possibility of complaining to the Prosecutor's Office about the conditions in short-term detention facilities for illegal immigrants. In response to an additional question from the Court as to whether there existed a specific remedy by which to complain about the conditions in which foreigners were detained, the Government reiterated that the applicants could have submitted a complaint to the Prosecutor's Office on the basis of section 15 of the Law on the Prosecutor's Office, section 56 of the Immigration Law or section 1 and 8 of the Law on Enquiries (see "Relevant domestic law" above). Alternatively, they could have relied, *inter alia*, on the same provisions in order to lodge a complaint with the State Border Guard Service and the Migration Board.

61. The applicants reiterated that they had not been aware of any domestic procedures for challenging the conditions of detention.

62. The Court observes that the Government have not submitted any new arguments which could persuade it to depart from its previous conclusions as to the ineffectiveness of complaints under the Law on the Prosecutor's Office and the Law on Enquiries in the particular circumstances of the case. The same applies to the other types of remedies referred to by the Government (see paragraph 53 above). As confirmed by the Court's case-law no legislative instrument at the material time provided for an explicit procedure whereby detainees, including foreigners, could complain about the conditions of their detention (see *Kadiķis v. Latvia* (no. 2), no. 62393/00, §§ 60-63, 4 May 2006). Moreover, the Court has already found that complaints to a higher administrative authority do not constitute an effective remedy (see also *Nikitenko v. Latvia*, no. 62609/00, §§ 28-30, 16 July 2009).

63. The objection must therefore be dismissed.

B. The merits

1. Submissions of the parties

64. A description of the parties' and the third party's initial observations is set out in *Vikulov and Others* (dec.), cited above, section 2(a) of the "Law" part.

65. In response to an additional question from the Court, the applicants furnished evidence in support of their allegations concerning the placement of other persons in their cells (see paragraph 31 above). They reiterated the allegation made for the first time in their earlier observations that they were

offered the opportunity to recover their personal belongings before their deportation only on condition that they sign the official record.

66. The Government submitted various copies of documents concerning detention conditions in the State Border Guard Service detention unit (see paragraphs 40-47 above). They noted that the complaint as to the restrictions on the applicants' recovery of their personal belongings had not been declared admissible by the Court and that in any event this complaint was ill-founded.

2. Submissions of the third party

67. In addition to their initial submissions, the Government of the Russian Federation maintained that the conditions at the State Border Guard Service detention unit had violated the applicants' rights under Article 3, especially as regards the quality of food, the provision of medical assistance and the failure to allow daily walks. They argued that there had also been a violation of Article 8 owing to the fact that other persons had been placed in the applicants' cells. As concerns the Olaine accommodation centre, the third party referred to cases such as *Valašinas v. Lithuania* (no. 44558/98, ECHR 2001-VIII) and *Kalashnikov v. Russia* (no. 47095/99, ECHR 2002-VI), in which the conditions of detention had been better than those complained of in the present case.

3. Establishment of the facts

(a) General principles

68. The Court notes the parties' disagreement concerning the conditions in both detention facilities, as well as the quality of the medical assistance rendered there. In assessing the evidence and establishing facts the Court applies the standard of "beyond reasonable doubt". The Court has established that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII). The Court adopts the conclusions that are, in its view, supported by free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (*ibid.*). According to its case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

69. While mindful of the objective difficulties of detained persons in substantiating their complaints concerning conditions of detention, the Court has consistently held that they are nevertheless required to submit a credible and reasonably detailed description of the facts (see *Fetisov and*

Others v. Russia, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 90, 17 January 2012) which is consistent and, as far as possible, supported by evidence (see, among other authorities, *Tarariyeva v. Russia*, no. 4353/03, § 108, ECHR 2006-XV, and, more recently, *Iglin v. Ukraine*, no. 39908/05, § 53, 12 January 2012), whereas failure by the Government to provide information in their possession capable of corroborating or refuting such allegations may give rise to the drawing of inferences as to the well-founded character of the applicant's complaints (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 254, ECHR 2004-III).

70. In the light of the above principles the Court will first address the dispute between the parties as to the factual circumstances of the various aspects of the conditions of the applicants' detention and medical treatment.

(b) Disputed evidence

71. The Court notes that in their initial observations the applicants insisted that the veracity of their submissions as to the conditions of their detention could be proved by questioning witnesses and launching a fact-finding mission. However, apart from the report of an officer of the State Border Guard Service and the CPT report, both examined below, the applicants did not contest the credibility or reliability of the documents furnished by the Government. The Court observes that the copies of the medical records, the documents relating to the applicants' detention and the inventory documents held by the detention facility contain references to the original documents (see, by contrast, *Kondratishko and Others v. Russia*, no. 3937/03, §§ 48 and 91, 19 July 2011). In the absence of any indications which may raise doubts as to the credibility of the evidence, they are therefore to be considered a valid source of factual information.

72. As concerns the applicants' argument that the CPT report in respect of the detention conditions at the Olaine accommodation centre fell short of reflecting the genuine situation there and was not public, the Court notes that the above report became public on 10 May 2005 (see paragraph 58 above). Moreover, the applicants have not made any substantive comments contesting the conclusions drawn up by the CPT.

73. The applicants further contested the validity of the report by the officer of the State Border Guard Service (see paragraph 46 above). According to the applicants, the officer had reported on his visit to Olaine accommodation centre. However, such a visit could not have taken place, since the applicants were taken to Olaine two days after the date of the report. The Court observes that, as appears from the copy of the contested report, it concerns the officer's visit to the State Border Guard Service detention unit and not the Olaine accommodation centre, as was alleged by the applicants. It is not disputed that at the material time the applicants were held in the State Border Guard Service detention unit.

74. In the light of the above the Court will therefore, if necessary, rely on the above reports in establishing the facts.

(c) Conditions in the State Border Guard Service detention unit

75. The Court notes certain inconsistencies in the applicants' submissions concerning the physical conditions in the State Border Guard Service detention unit, in particular with respect to the sanitary facilities and their partitioning (see paragraphs 25-26 above). Having regard to the parties' submissions, the Court finds it established that the cell where the applicants were held from 2 to 12 September 2003 measured 14.6 sq. m, the window there was not narrower than 0.8 m and the lavatory was separated from the rest of the cell by a brick partition which was at least 1.2 m high (see paragraph 41 above), in contrast to the conditions in *Melnītis v. Latvia* (no. 30779/05, §§ 61-63, 28 February 2012), where the alleged partitioning of the sanitary facilities in a cell was not reflected in the inventory documents.

76. The parties also disagreed as to the existence and the functioning of the ventilation system. In this connection the Court notes that certain impressions about the effectiveness of the ventilation system derive from the facts the applicants provided in relation to other complaints, in particular their complaint that they had to leave their cell for fifteen minutes so that it could be ventilated after gas had penetrated into it (see paragraphs 30 and 33 above). Observing that the applicants did not complain about the quality of the air after their return to the cell, the Court infers that the premises were ventilated to evacuate the substances concerned in a relatively short period, which would thus imply that the ventilation was functioning, at least to a certain extent.

77. Concerning walks outside, the applicants contended that they had been allowed to have them only twice during their stay at the State Border Guard Service detention unit. The Government submitted a copy of the detention unit's internal regulations, which stated that detainees had free time every day from 5 to 7 p.m. In a letter of 21 November 2006 an officer of the detention unit explained that at any time from 6 a.m. until 10 p.m. detainees could have daily walks. The Court doubts, however, whether the applicants could indeed take walks at any time they wished and therefore disobey the internal regulations, of which they were informed on their arrival and which did not provide for outdoor activities.

78. The Government further denied that any other persons had been placed in the applicants' cell in the State Border Guard Service detention unit at any time. The Court observes that the applicants' allegations are corroborated by the report on the composition of detainees in the detention centre (see *Vikulov and Others* (dec.), cited above, section A 4(ii) of the "Facts" part). However, their submissions are inconsistent as regards the length of the periods during which other persons were placed in their cells

(see paragraphs 30 and 32 above). The Court will assume that for two periods, neither of which exceeded twenty-four hours, another person was placed in the applicants' cell.

79. As to the presence of insects, the Court observes that in his initial complaint the third applicant alleged that "ants were everywhere" in the State Border Guard Service detention unit (see paragraph 28 above). No such complaints were raised in the applicants' combined application form. Further to a specific question from the Court, the applicants stated in December 2006 that ants had crept into the food in their cell, whereas according to the additional evidence furnished by the Government, pest-control measures had been taken throughout 2003 (see paragraph 42 above). Noting the absence of submissions on behalf of the applicants and the Government's uncontested arguments, the Court is not prepared to draw inferences as to the alleged failure to effectively control the presence of insects.

80. A similar conclusion is to be reached as regards the alleged restriction on visits from relatives, seeing that the Government submitted copies of requests made by the applicants from which it can be concluded that none of the requests were rejected and that the applicants met their relatives at various times during their stay in the detention unit (see paragraph 45 above).

81. As to the applicants' complaints that on the day they were deported to Russia they received food in the morning only, the Court observes that according to undisputed records, on 17 September 2003 at 12.15 p.m. the applicants were still in the premises of the State Border Guard Service detention unit, where the second applicant received medical assistance (see paragraph 52 above). Owing to the fact that her health check lasted not less than thirty minutes (*ibid.*), it appears that the applicants remained there at least until 1 p.m. According to the applicants' own submissions, lunch was served in the detention unit from 12 noon to 1 p.m. on working days. The Court therefore assumes it likely that on the day of their deportation (which was a working day) the applicants were provided with breakfast and lunch.

82. Finally, the parties disagreed as to the alleged restrictions and conditions imposed upon the applicants concerning the recovery of their belongings before their deportation. The Court notes that the applicants on 10 and 11 September 2003 refused to sign the official records of their detention and deportation (see paragraph 46 above), and there is no information as to what records they were allegedly told to sign on 16 September 2003 as a precondition to their return to their former place of residence. On the contrary, the Court observes that on the same day the first applicant was authorised to visit an office of the public notary in Rīga where he issued a general power of attorney in favour of his daughter (see paragraph 47 above). This may imply that, if the applicants had wished to, they would also have been taken to their former place of residence. In the

light of the above, the Court is not able to establish beyond reasonable doubt the veracity of the above allegation.

(d) Medical assistance and transport

83. The applicants disputed the Government's initial allegation that they had not had any health problems until 15 September 2003. The applicants contended that on 15 September 2003 the second applicant had received insufficient medical assistance, whereas on 17 September 2003 she had not received any medical assistance. Finally, their representative emphasised that given the second applicant's health complaints, transporting her to the border in an old minivan should be held to amount to inhuman treatment.

84. The Court notes that, contrary to the Government's submissions, it appears from the records furnished by the Government themselves that the applicants had already raised health-related issues at the time of their arrest (see paragraph 49 above). The Court also observes that the applicants have not disputed the credibility of the medical reports submitted by the Government which set out in detail the medical assistance provided to the second applicant (see paragraphs 51-52 above). It cannot disregard the second applicant's remark that as a result of an independent medical examination it was concluded that she had not had a heart attack (see paragraph 50 above).

4. Compliance with Article 3

(a) General principles

85. The Court reiterates that Article 3 of the Convention enshrines an absolute prohibition of torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

86. The Court further reiterates that, in accordance with its case-law, the ill-treatment must attain a minimum level of severity in order to fall within the scope of Article 3 of the Convention, and that the assessment of this minimum level depends on all the circumstances of the case, such as the stringency of the measure complained of, the objective pursued and its effects on the person concerned (*Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI). Among the other circumstances to be considered are the length of the period during which a person is detained in the conditions complained of (see *Fetisov and Others*, cited above, § 129) and whether the purpose of the treatment was to humiliate or debase the victim, however the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Labita*, cited above, § 120).

87. As concerning the detention conditions, Article 3 of the Convention requires the State to ensure that the conditions are compatible with respect

for human dignity, that the manner and method of the execution of the measure do not subject the detainees to distress or hardships of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given practical demands of imprisonment, their health and well-being are adequately secured (see *Kudla*, cited above, § 94).

(b) Application to the present case

88. In the light of the foregoing principles and relying on the facts as established above, the Court will assess whether the conditions of detention in the State Border Guard Service detention unit and the Olaine accommodation centre, as well as the medical assistance provided there, were compatible with the rights protected under Article 3 of the Convention.

89. At the outset the Court notes that the applicants relied on Article 8 in relation to their complaint that the authorities failed to respect their family privacy in the State Border Guard Service detention unit (see paragraph 30 above). In this connection the Court refers to its well-established case-law to the effect that while lawful detention by its nature imposes limitations on private and family life, it is an essential part of prisoners' right to respect for family life that prison authorities assist them in maintaining effective contact with close family members (see *Farrell v. the United Kingdom*, no. 9013/80, Commission decision of 11 December 1982, Decisions and Reports (DR) 30, p. 96, and, more recently, *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X). As a consequence the Court normally applies Article 8 in examining complaints of alleged interferences with detainees' rights to establish and develop relationships with other persons (see *X v. Iceland*, no. 6825/74, Commission decision of 18 May 1976, DR 5, p. 86). It may nevertheless happen that the circumstances relating to complaints of infringements of the right to respect for private and family life are closely linked to other complaints concerning detention conditions, such as overcrowding and poor hygiene and sanitary conditions. Therefore, in the present case the Court will take into consideration all the circumstances as a whole in order to assess whether the ill-treatment complained of attained the minimum level of severity prohibited under Article 3 of the Convention. The Court will accordingly examine this part of the complaint under Article 3.

90. The Court observes that in total the applicants spent thirteen days in a cell in the State Border Guard Service detention unit. Neither the size of the cell nor its furnishings and sanitary facilities can be considered incompatible with the requirements enshrined in Article 3 of the Convention (see paragraph 41 above). The fact that the cell contained properly partitioned sanitary facilities cannot as such raise a problem, especially as the applicants have not complained about the height of the partition. These circumstances must, nevertheless, be examined in conjunction with the applicants' complaints that the cell was poorly ventilated and that they were

not allowed to have regular outside walks. The Court has not been able to establish beyond reasonable doubt that the ventilation did not function properly (see paragraph 76 above). However, it has established that at the material time no particular measures were taken to organise outside walks (see paragraph 77 above), despite the fact that the State Border Guard Service detention unit had adequate facilities for such activities. The Court nevertheless observes that in the particular circumstances of the case this shortcoming does not reach the level of severity enshrined by Article 3 of the Convention and that the applicants could maintain regular contacts with other persons, including their family members (contrary to, for example, the situation in *Poltoratskiy v. Ukraine*, no. 38812/97, § 145, ECHR 2003-V).

91. This leads to the examination of the applicants' complaint concerning the presence of other persons in their family cell. As noted above, the Court has established that for two periods, neither of which exceeded twenty-four hours, another person was placed in the applicants' cell (see paragraphs 30, 32 and 78 above). At the outset, the Court is satisfied that from the beginning of their detention the authorities of the State Border Guard Service made arrangements to protect the applicants' family unity by placing them together in a separate cell. It considers that, once family unity has been ensured, it should be preserved, given the practical demands of detention. In this connection the Court notes that on two occasions the authorities were forced by unforeseen circumstances to temporarily put another person in the applicants' cell. The Court does not find any indication that such placements were intended to humiliate the applicants or to arouse feelings of discomfort in them. The Court further notes that the above-mentioned circumstances were not aggravated by other physical conditions of detention. In particular, as concerns the first instance when a woman was placed in the applicants' cell, the Court observes that the cell was designed and equipped for four persons. In the other instance, in order to protect the applicants' family unity they were transferred to a cell designed for two persons, but it has to be noted that such circumstances persisted for less than twenty-four hours.

92. As regards the applicants' complaints concerning the times at which food was served, the Court notes that even though, according to the internal rules, the meals in the detention unit were distributed at relatively short intervals (see paragraph 43 above), there is no evidence that the applicants were prevented from themselves adjusting the times at which they consumed the food. According to the records of the detention unit, the applicants were provided with tableware in the cell (see paragraph 28 above) and there are no indications that there were any obstacles impeding them from storing the food in their cell until later. Nevertheless, the Court has established that on the day of the applicants' deportation they were provided only with breakfast and lunch (see paragraph 81 above). In contrast to such cases as *Moisejevs v. Latvia* (no. 64846/01, § 80, 15 June

2006), where the detainee was regularly deprived of proper food at the end of the day, and *Jeronovičs v. Latvia* (no. 547/02, § 38, 1 December 2009), in which the detainee suffered from hunger for a period of more than twenty-seven hours, in the instant case the Court notes that, with the exception of the relatively short period mentioned above, the applicants were not in an especially vulnerable situation. According to their own submissions, at 9 p.m. on the day of their deportation they took a train in an ordinary carriage, where they were not subjected to any restrictions or limitations similar to those imposed on persons held in custody. In this connection the Court notes that, according to the records, the applicants confirmed that at the time of their release from the detention unit they received their belongings, including money, a fact which therefore casts doubt on their allegation that on the day of their deportation they had no means of subsistence (see paragraph 49 above). Besides, it has not been established that the applicants were prevented from returning to their previous place of residence in order to take any belongings they considered necessary (see paragraph 82 above).

93. As to the overall adequacy of the Olaine accommodation centre, the Court refers to the CPT's conclusions (see paragraph 58 above). Despite the fact that the CPT visited the centre a year before the applicants were placed there, in the absence of any reasonably precise allegations to the contrary, the Court accepts that the report reflects the situation in the centre at the material time and concludes that the detention conditions there were adequate.

94. With respect to the medical assistance provided to the second applicant, the Court, having assessed the second applicant's claims and the medical assistance rendered to her (see paragraph 84 above), does not find any indication of negligence on the part of the authorities, which, among other steps, obtained authorisation from independent medical personnel to continue the deportation procedure (see paragraph 52 above).

95. In the light of the above, the Court concludes that there has been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

96. The applicants alleged that their arrest had been unlawful in that they had been arrested on 3 September 2003, whereas the decision on their arrest and detention had been adopted only on 8 September 2003, thus leading to a violation of Article 5 § 1 of the Convention, the relevant parts of which read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

97. In addition to their initial submissions, the applicants maintained that they had been arrested without clear legal grounds in that even though they had been told that their arrest had been effected because of their illegal crossing of the border and unauthorised stay in the country, they had lived in their flat since 1989 and this fact was well known to the authorities.

98. The Government reiterated that the applicants had been detained by the State Border Guard Service on the basis that they had not complied with the order obliging them to leave the territory of Latvia by 15 June 2003. Accordingly, by the time of their arrest on 3 September 2003 the applicants had already been staying illegally on the territory of Latvia for several months. The Government further contended that the authorities had carried out the removal procedure within the time-limits set by the domestic law. They emphasised that the applicants had hindered the proceedings by refusing to cooperate with the national authorities and to disclose the location of their travel documents.

99. The Government of the Russian Federation stressed that the applicants’ arrest had been unlawful in that the decision to deport them had been adopted five days after their arrest.

100. The Court refers to the recent case of *Longa Yonkeu v. Latvia* (no. 57229/09, §§ 119-121 and 134, 15 November 2011), in which it reiterated the relevant principles applicable when examining complaints under Article 5 § 1 of the Convention.

101. In the *Longa Yonkeu* case the Court examined the quality of the provisions of the Immigration Law from the perspective of Article 5 § 1 (f) of the Convention. Even though that case concerned the removal of a failed asylum seeker and not aliens who had overstayed a residence permit, as in the present case, the applicable removal procedures were the same (see *Longa Yonkeu*, cited above, § 138).

102. Two removal procedures were examined in the *Longa Yonkeu* case. Under the first of them, the Office of Citizenship and Migration Affairs was authorised to issue an order to leave, followed by a deportation order if an alien did not comply voluntarily with the order to leave. Under the second procedure, the same authority was authorised to issue a deportation order if an alien had been detained by the State Border Guard Service for having infringed the rules of entry into and residence in the country (*ibid.*, § 139). In respect of Mr Longa Yonkeu, another removal procedure than that expressly provided for in the Immigration Law had initially been applied, with the result that the legal grounds for his detention with a view to his deportation fell short of the “quality of law” standard required under the

Convention (ibid., §140). Later on, however, the domestic authorities chose the second removal procedure, which was expressly laid down in the Immigration Law; it was sufficiently clear and precise: if an alien was detained for having infringed the rules on residence in the country, he or she faced deportation (ibid., § 142).

103. The Court notes that the removal procedures under the Immigration Law as applied to the applicants in the present case in 2003 and as applied to Mr Longa Yonkeu in 2009, did not substantially change over time (see paragraphs 54-56 above).

104. Turning to the facts of the present case, the Court observes that the orders for the applicants to leave were adopted on 23 May 2000 and became effective from 19 February 2003, when the Senate of the Supreme Court upheld them (see paragraph 16 above; for detailed factual information on the substance of the domestic courts' decisions, see *Vikulov and Others* (dec.), cited above, section A 2 of the "Facts" part). On 3 September 2003 the applicants were detained and the records of their detention referred to their failure to comply with the order of 23 May 2000, which had led to an infringement of the rules regulating residence in the Republic of Latvia. Section 51(1)(1) of the Immigration Law served as a legal basis for detention for a maximum period of ten days, the constitutionality of which had not been challenged by the applicants. The Court notes that in the present case the applicants were given ample opportunities to comply voluntarily with the order to leave and that the authorities extended the time-limit within which the applicants had to leave the country (see paragraph 18 above). Following persistent non-compliance with the orders, they were detained on the legal grounds set out in the Immigration Law which, as the Court has previously recognised, was sufficiently precise in this respect (see paragraph 102 above).

105. The Court notes that the national court had already established that the applicants had failed to cooperate with the authorities by providing the necessary identification documents (see paragraph 22 above), a fact which was likely to cause certain delays in the deportation proceedings. In the absence of any arbitrariness in the domestic court's reasoning, the Court reiterates its subsidiary role in the reassessment of factual circumstances already established by national courts.

106. In the light of the above, it follows that there has been no violation of Article 5 § 1 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been no violation of Article 3 of the Convention;
3. *Holds* that that there has been no violation of Article 5 § 1 of the Convention.

Done in English, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Maridalena Tsirli
Deputy Registrar

Egbert Myjer
President