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

FOURTH SECTION

DECISION

Application no. 15028/04
Jānis BRŪZĪTIS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 26 August 2014 as a Chamber composed of:

Päivi Hirvelä, *President,*
Ineta Ziemele,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 5 April 2004,

Having regard to the partial decision of 12 April 2011,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Jānis Brūzītis, was a Latvian national born in 1960 ("the applicant"). After lodging his application with the Court, on 8 October 2007, the applicant designated his niece, Ms D. Brūzīte "to fully pursue proceedings, to supplement the application and to make use of the rights of inheritance in the event of his death". On 4 September 2008 the applicant died and Ms D. Brūzīte informed the Court accordingly. Ms D. Brūzīte was represented before the Court by Ms D. Rone, a lawyer practising in Riga.

2. The Latvian Government ("the Government") were represented by their Agent at the time, Mrs I. Reine and subsequently by Mrs K. Līce.

A. The circumstances of the case

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

1. The applicant's conviction, imprisonment and release

4. On 25 July 2003 the applicant was arrested.

5. By a final decision of 6 May 2004, the applicant was convicted of attempted rape and sentenced to five years' imprisonment with a further three years' of police control.

6. The applicant was subsequently transferred to serve his sentence in Valmiera, Jelgava and Pārlielupe Prisons.

7. On 16 January 2008, following the events of 3 January 2008 (see paragraphs 14 et seq. below), the applicant was transferred to the prison hospital in Olaine.

8. On 22 February 2008 the applicant was transferred to Liepāja Prison.

9. On 25 July 2008 the applicant was released, having served his sentence. He moved in with his niece, Ms D. Brūzīte, and he lived there until his death on 4 September 2008.

2. Events of 25 July 2005 in Valmiera Prison and its investigation

10. On 25 July 2005 a special unit of the Prisons Administration ("*Vairogs*") was called upon to ensure security by the execution of a planned search of all the cells in Valmiera Prison, where the applicant was serving his sentence at the time.

11. The special unit entered the applicant's cell at about 4.30 p.m. The inmates were ordered to run down a staircase to the exercise yard, some 200 meters away, through a line of men. The applicant claimed that he received three truncheon blows to his body during this run. In the exercise yard the inmates were ordered to sit on the ground with their legs pulled close to their body, leaning backwards with their hands behind their backs. Upon the applicant's return to his cell, he noticed that his watch, an electric current transformer, a ruler and darning needles had been removed.

12. On 27 July 2005 the applicant complained about the events of 25 July 2005 to the Valmiera District Court and asked that criminal proceedings be instituted; his complaint was forwarded to the prosecutor's office.

13. On 4 September 2005 the prosecutor refused to open criminal proceedings concerning the use of force and special measures on the applicant and his lost effects. The prosecutor noted that it was not possible to establish if the applicant's effects had been confiscated since there had been no mention of those effects in his personal file. As regards the use of force, the applicant had not approached the medical personnel in that prison with any complaints either on the day of the search or on the following day.

The prosecutor assessed the applicant's allegations of blows with truncheons on his body "with [some] criticism". A reference was also made to the results of the Prisons Administration's internal investigation, which had established that the special unit had not used any physical force or special measures (e.g. truncheons) on the prisoners. In view of the above, it was concluded that there was no evidence of the use of force on the applicant or of any abuse of an official position on the part of any of the prison personnel regarding the confiscation. The applicant did not lodge an appeal against this decision with a superior prosecutor.

3. Violence against the applicant in Pārlielupe Prison and its investigation

14. On 3 January 2008, at 1.40 a.m., men in masks entered the living quarters where the applicant was sleeping in Pārlielupe Prison and inflicted numerous blows on his body with steel bars. According to the applicant, he suffered the following bodily injuries: a broken right ankle, bruises on his left ankle, bruises on both thighs and knees, bruises on the toes of his left foot, bruises on his left elbow, wrist and fingers, a broken jaw and bruises on his right hand. According to the Government, the applicant was punched on the right side of his face by his fellow prisoners; they further subjected him to ill-treatment by hitting him with a steel bar and a chair.

15. On 7 January 2008 criminal proceedings concerning the injuries inflicted on the applicant were instituted and the next day he was declared a victim in those proceedings.

16. On 11 January 2008 the applicant gave evidence and, on the same day, a forensic medical examination was ordered.

17. On 14 January 2008 an expert examined the applicant's medical documentation and drew up report no. 20. On the basis of the applicant's medical records the expert established that the applicant had the following injuries: minor injuries to his head, the upper and lower part of his legs, and to both knees. These were classified as minor injuries. It was also established that the applicant had a broken left ankle and that injury was classified as moderately severe.

18. Subsequently, statements were taken from several witnesses, including at least four inmates and two prison guards.

19. On 12 February 2008 the Prisons Administration wrote to the applicant, stating – among other things – that the criminal investigation was still ongoing, that he had been declared a victim, that he had given evidence and that a forensic examination had been ordered.

20. On 30 March 2008 the applicant lodged a complaint with the prosecutor's office. He asked the prosecutor's office to take charge of the criminal proceedings since the investigators in Pārlielupe Prison had not proceeded with the investigation; the deputy prison governor had allegedly

informed those responsible for the attack that they would remain unpunished.

21. On 7 April 2008 the prosecutor forwarded his complaint to the Prisons Administration. According to the Government, the applicant could have complained about that to a superior prosecutor. There is no information that he did so.

22. On 7 May 2008 the Prisons Administration replied to the applicant's request and stated, among other things, that the criminal investigation was still ongoing, that the applicant had been declared a victim, that he had given evidence and that a forensic examination had been ordered. The Prisons Administration undertook to inform the applicant about the results of the investigation.

23. On 17 July 2008 the Prisons Administration wrote again, to the effect that the criminal investigation was still pending and that the applicant would be informed of its results. The applicant was also informed that he could submit a civil claim in those criminal proceedings. There is no information that he did so.

24. According to the Government, the criminal investigation was still pending in 2011.

4. Medical assistance in Pārlielupe Prison and subsequent complaints

25. Following the events of 3 January 2008, the applicant was given first aid and was examined by the prison doctor on the same day. He was subsequently taken to an outpatient clinic in Jelgava, where he was examined by a surgeon and an X-ray examination was carried out. He was taken back to Pārlielupe Prison and placed in the medical care unit.

26. From 3 to 16 January 2008 the applicant received medication, was examined at least three times per day by a nurse, and received a total of 13 medical consultations by various doctors. According to the applicant, while staying in the medical care unit he had to visit the toilet on crutches; the toilet itself was merely a hole in the ground and there was no support. The nurses had a negative attitude towards him. Lastly, the premises were very cold and he fell ill with pneumonia. According to the Government, the medical care unit was certified by the Ministry of Health, a normal average temperature (18-19 degrees Celsius) was ensured and toilets complied with the applicable norms on hygiene.

27. On 11 January 2008 the applicant complained about pains in his chest, following which an examination was carried out and it was decided that he should be sent to a prison hospital for treatment of a possible lung infection.

28. According to the applicant, he complained to the Inspectorate for Quality Control of Medical Care and Working Capability ("MADEKKI") about his medical care in Pārlielupe Prison. According to the Government, the applicant did not lodge any complaint with the MADEKKI.

29. On 16 January 2008 the applicant was transferred to the prison hospital in Olaine.

30. On 12 February 2008, following a complaint from the applicant, the Prisons Administration informed him, among other things, that the medical care provided to him in Pārlielupe Prison had been in accordance with the applicable domestic regulations.

31. On 26 February 2008, following a complaint from the applicant, the Jelgava Court refused to open criminal proceedings against doctors at Pārlielupe Prison for lack of jurisdiction. The court explained that the applicant should approach the Prisons Administration with complaints concerning the prison authority in charge of Pārlielupe Prison or the prosecutor's office if a crime had been committed.

32. On 26 March 2008 the Prisons Administration responded to the applicant's request to be transferred to another prison (Valmiera or Brasa Prison) so as to be closer to his family. It was noted that the applicant had been transferred to Liepāja Prison because of considerations of security following the events of 3 January 2008. The applicant was informed that he would continue to serve his sentence in Liepāja Prison.

33. On 7 May 2008, the Prisons Administration replied to the applicant's complaint, stating – among other things – that medical care provided to him in Pārlielupe Prison had been in accordance with the applicable domestic regulations.

B. Relevant domestic law

34. The relevant domestic provisions pertaining to the investigation of criminal offences committed by detainees, prisoners and prison staff as well as those relating to the use of physical force, restraint techniques and measures by prison officers have been summarised in *Sapožkovs v. Latvia* (no. 8550/03, §§ 46-48, 11 February 2014).

35. The relevant domestic provisions pertaining to medical care in prisons have been summarised in *Antonovs v. Latvia* ((dec.), no. 19437/05, §§ 63-65, 67, 69-70, 11 February 2014).

36. The relevant domestic provisions pertaining to the review of conditions of detention in the administrative courts have been summarised in *Melnītis v. Latvia* (no. 30779/05, §§ 24-26, 28 February 2012).

COMPLAINTS

37. The applicant submitted four complaints under Article 3 of the Convention. First of all, he complained that excessive force had been used during the search of 25 July 2005 in Valmiera Prison. Secondly, he alleged

that he had been ill-treated on 3 January 2008 in Pārlielupe Prison. Thirdly, he complained about the investigation carried out into these events. He also complained about the medical treatment and the conditions of detention in the medical unit of Pārlielupe Prison from 3 January 2008 to 16 January 2008.

THE LAW

38. The Court must first address the question of Ms Brūzīte's right to pursue the application originally lodged by the applicant, who died on 4 September 2008.

A. The parties' submissions

39. The Government contended that Ms Brūzīte, who was the applicant's niece, had no standing to continue the proceedings and to pursue the applicant's complaints under Article 3 of the Convention. In this regard they referred to *Buckley v. the United Kingdom* (25 September 1996, §§ 56-59, *Reports of Judgments and Decisions* 1996-IV), *Nölkenbockhoff and Bergemann v. Germany* (no. 10300/83, Commission decision of 12 December 1984, Decisions and Reports (DR) 40, p. 180) and *Yaşa v. Turkey* (2 September 1998, § 63, *Reports* 1998-VI). They also relied on the Court's decision in *Sanles Sanles v. Spain* ((dec.), no. 48335/99, ECHR 2000-XI) and submitted that the rights guaranteed under Article 3 of the Convention belonged to the category of non-transferable rights.

40. According to the Government, Ms Brūzīte had not demonstrated that she had been affected by the alleged violations of her uncle's rights under the Convention, nor had she demonstrated that there was sufficient legal interest to justify examination of the application on her uncle's behalf. They argued that the rights guaranteed under Article 3 of the Convention could not be automatically transferred to another person. The Government concluded that Ms Brūzīte appeared to be the applicant's representative, with no personal right or interest in the present proceedings.

41. In the alternative, the Government considered that the application should be struck out of the list of cases, in application of Article 37 § 1 (c) of the Convention. In this connection, they referred to the Court's conclusions in *Léger v. France* ((striking out) [GC], no. 19324/02, §§ 43-51, 30 March 2009) and pointed out that there was nothing in the case-file to show that Ms Brūzīte had expressed a clear wish to pursue the application. Her status as the applicant's representative was in itself insufficient to claim any legitimate interest in pursuing the application. There was no evidence that she had accepted the applicant's estate. Lastly,

she did not have sufficient interest of her own in the present proceedings. She had never visited the applicant in prison or contributed in any other manner to his wellbeing while he was deprived of his liberty.

42. In her submissions, Ms Brūzīte disagreed. She pointed out that the application had been lodged by the applicant himself and concerned the suffering inflicted on him. She, as his closest relative, had helped to prepare his application and had continued this work after his death. It was a matter of the honour of the applicant's family which was at stake; proceedings ought therefore to be continued and the applicant's human rights defended. She argued that the Government must bear responsibility for the applicant's suffering and that it was not permissible to simply close the case due to the applicant's death without the Government acknowledging its mistakes and issuing apologies to the victim and his relatives. Ms Brūzīte admitted that she had not suffered personally, but as his closest relative and family member was merely pursuing proceedings in respect of the suffering caused directly and personally to the applicant.

43. In response to the Government's argument that she had not accepted the applicant's estate, Ms Brūzīte argued that pursuant to Latvian law she had become the applicant's sole heir by implicit action. She did not need to take any steps or to register her status as an heir with a public notary since the applicant had no real property, held no assets in banks and possessed no other valuables. The fact that she had not visited the applicant in prison had no impact on her status as his heir.

B. Court's assessment

44. At the outset the Court notes that while under Article 34 of the Convention the existence of a "victim of a violation", that is to say, an individual who is personally affected by an alleged violation of a Convention right, is indispensable for setting the protection mechanism of the Convention in motion, this criterion cannot be applied in a rigid, mechanical and inflexible way throughout the whole proceedings (see *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX).

45. It is recalled that the Court normally permits the next-of-kin or heir to pursue an application, provided that he or she has sufficient interest, where the original applicant has died after the introduction of the application before the Court. The Court has accepted that the following persons may continue the applicant's case after the latter's death: a wife (*Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX), a sibling (*Horváthová v. Slovakia*, no. 74456/01, §§ 25-27, 17 May 2005), a mother (*Yakovenko v. Ukraine*, no. 15825/06, § 65, 25 October 2007), a life partner (*Pisarkiewicz v. Poland*, no. 18967/02, §§ 30-33, 22 January 2008), a child (*Ashot Harutyunyan v. Armenia*, no. 34334/04, §§ 86-87, 15 June 2010) and a nephew (*Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96,

ECHR 2000-XII, and *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, §§ 3, 189-192, 189, 3 October 2008).

46. Furthermore, in various contexts the Court has accepted that the applicant's heirs or close family members may have legitimate interest in pursuing the application (see, for example, *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI; *Horváthová*, cited above, § 27; and *Novinskiy v. Russia*, no. 11982/02, § 92, 10 February 2009). The Court has held that a universal legatee, who was neither a close relative nor an heir, could not pursue the application (*Thévenon v. France* (dec.), no. 2476/02, ECHR 2006-III). A similar conclusion was reached in relation to a person presented as the niece and sole heir of the original, deceased applicant, given that the evidence produced established neither her status as heir or close relative nor any legitimate interest on her part (*Léger*, cited above, § 50).

47. The Court notes that, unlike the applicants in the cases relied on by the Government (*Buckley*, *Nölkenbockhoff and Bergemann*, *Yaşa* and *Sanles Sanles*, all cited above), the applicant in the present case died in the course of the proceedings before the Court. The Court reiterates the need to distinguish cases in which the applicant has died in the course of the proceedings from cases where the application was lodged with the Court by the applicant's heirs after the victim's death (see *Fairfield v. the United Kingdom* (dec.), no. 24790/04, ECHR 2005-VI; *Biç and Others v. Turkey*, no. 55955/00, § 20, 2 February 2006; and, more recently, *Ergezen v. Turkey*, no. 73359/10, § 28, 8 April 2014, *Vogt v. Switzerland* (dec.), no. 45553/06, § 28, 3 June 2014).

48. The Court observes that it is not disputed that Ms Brūzīte is the applicant's niece. The parties disagree, however, as to whether she is a close family member or heir of the applicant (contrast with *Novinskiy*, cited above). The Court can discern only one fact that testifies to the personal link between the applicant and Ms Brūzīte, namely that he moved in with her following his release and that he lived there for approximately one month and ten days until his death. The Court has not been provided with any evidence (for example, from a public register) to indicate their actual family relationship or, more generally, the applicant's family situation and whether there was any next-of-kin.

49. Moreover, as concerns Ms Brūzīte's legitimate interest in pursuing the case, the Court notes that she expressly confirmed that she was not affected by the violations alleged by the applicant and that she did not suffer in this regard. The Court observes that the parties disagree as to Ms Brūzīte's status as the applicant's heir. The Court notes that her status as the applicant's heir cannot, in any event, be considered decisive in circumstances where no estate has been left behind and where no domestic proceedings are pending as to its distribution (contrast with *Malhous*, cited above). Lastly, the Court notes that the applicant appointed Ms Brūzīte as

his representative before his death. However, in the absence of any other indications as to legitimate interest to pursue the applicant's complaints under Article 3 of the Convention, Ms Brūzīte lacks the necessary *locus standi* to pursue the application.

50. The Court must now consider whether any question of general interest affecting the observance of the obligations undertaken by the Contracting States would justify a further examination of the application. Such a situation could arise in particular where an application in fact concerns – through the applicant's individual case – the legislation or legal system or practice of the respondent State (see *Kofler v. Italy*, no. 8261/78, Commission's report of 9 October 1982, DR 30, § 18).

51. The Court notes that similar issues to those arising in the present case have been already resolved in other cases against the respondent State (see, among many others, *Sapožkovs* and *Antonovs*, both cited above; *Fedosejevs v. Latvia* (dec.), no. 37545/06, 19 November 2013; *Iļjins v. Latvia* (dec.), no. 1179/10, 5 November 2013; *Ignats v. Latvia* (dec.), no. 38494/05, 24 September 2013; and *Holodenko v. Latvia*, no. 17215/07, 2 July 2013). Therefore, the Court considers that respect for human rights does not require it to continue the examination of the present case.

52. In the light of the specific circumstances of the present case, the Court concludes that Ms Brūzīte lacks the necessary *locus standi* to pursue the application and that no general interest can be detected to continue the examination of the present applicant case. Consequently, in accordance with Article 37 § 1 (c) of the Convention, the Court considers that it is no longer justified to continue examination of the application.

For these reasons, the Court, by a majority,

Decides to strike the remainder of the application off the list of cases.

Françoise Elens-Passos
Registrar

Päivi Hirvelä
President