

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

FIFTH SECTION

CASE OF MAĻINOVSKIS v. LATVIA

(Application no. 46084/19)

JUDGMENT

STRASBOURG

6 June 2024

This judgment is final but it may be subject to editorial revision.



In the case of Maļinovskis v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

María Elósegui*, President*,
Mārtiņš Mits,
Kateřina Šimáčková*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 46084/19) 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") on 14 August 2019 by a Latvian national, Mr Jānis Maļinovskis ("the applicant"), who was born in 1969, is detained in Riga and, having been granted legal aid, was represented by Ms J. Dadukina, a lawyer practising in Riga;

the decision to give notice of the complaints concerning the applicant's allegations of ill-treatment and their investigation to the Latvian Government ("the Government"), represented by their Agent, Ms K. Līce, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 16 May 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns allegations of ill-treatment of the applicant by prison guards and the obligation of the State to conduct an effective investigation into such allegations under Article 3 of the Convention.

2. On 30 January 2013 three prison guards of the Riga Central Prison used physical force to subdue the applicant in the prison yard when he attempted to collect a packet thrown to him from a prison cell window by another prisoner. The parties hold different views as to the nature of force used against the applicant. After the incident an assistant of the prison doctor examined the applicant and noted that his forehead, head, left ear and nose were bruised and that he had superficial scratches. On the next day, after being transferred to Daugavgrīva Prison the applicant was examined by a doctor who noted that the applicant had scratches, a bruised face and chest, and a broken nose.

3. On 4 February 2013 criminal proceedings were instituted. There were six rounds of investigation, each ending in an investigator's decision to terminate the proceedings for a lack of *corpus delicti*. All these decisions, save for the last one, were quashed by a superior prosecutor. In the first four rounds, the prosecutors found that the investigation had not been thorough.

4. In the first round, a forensic examination was conducted and the applicant and several Riga Central Prison officials were interrogated. On 9 December 2013 a superior prosecutor instructed the investigator to identify potential witnesses among prisoners.

5. In the second round, the investigator interrogated one previous witness and several new witnesses, ordered another forensic examination, and obtained information on the applicant. On 25 March 2015 a superior prosecutor gave instructions to interrogate witnesses more thoroughly, to identify additional witnesses and to take other investigative measures as necessary.

6. In the third round, a prison guard was interrogated. No new witnesses were identified. On 29 June 2015 a superior prosecutor gave instructions to interrogate witnesses more thoroughly and to identify additional witnesses.

7. In the fourth round, a confrontation between the applicant and a witness was held. One new witness – a senior official of the Prisons Administration – and several previous witnesses were interrogated. On 27 November 2017 a superior prosecutor instructed the investigating authorities to identify additional witnesses, to interrogate the applicant more thoroughly and to take other investigative measures as necessary. The prosecutor also found that this round had been excessively lengthy and requested the head of the Prisons Administration to carry out an internal audit in this regard. The Prisons Administration and the investigator admitted the deficiencies noted by the prosecutor.

8. In the fifth round, the investigator obtained information on the applicant and several prison guards, and interrogated the applicant and several previous and new witnesses. The investigator terminated the proceedings both for a lack of *corpus delicti* and because the offence had become time-barred. On 8 February 2019 a superior prosecutor quashed this decision because the two grounds for the termination of the proceedings contradicted each other.

9. In the sixth round, no investigative measures were taken. By a final decision of 8 May 2019, a superior prosecutor upheld the investigator's decision to terminate the criminal proceedings.

10. Alongside with the criminal proceedings, on 8 March 2013 the applicant complained to the Prisons Administration against the use of force as an "action of a public authority" (*amatpersonas faktiskā rīcība*). After having his complaint dismissed, he applied to the Administrative District Court. Administrative proceedings were terminated on 16 January 2015 after the applicant withdrew his application.

11. In his application to the Court, the applicant complained that on 30 January 2013 prison guards used excessive force against him. He alleged that he had been forced to the ground, that his face had been smashed into the concrete floor approximately twenty times and that he had received approximately twenty kicks. As a result, his nose had been broken. He also

complained that the ensuing investigation had been ineffective and excessively lengthy. He relied on Article 3 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Admissibility

12. The Government argued that the applicant had failed to exhaust domestic remedies and referred to three avenues by which he could have sought redress. They also considered that he had lost victim status and had abused the right of application. The applicant disagreed and argued that where several potentially effective remedies exist, he is only required to have used one.

13. As to the first and second remedies referred to by the Government – a claim for compensation against the State for the alleged ill-treatment in civil or administrative proceedings – the Court has already noted that in the area of unlawful use of force by State agents – and not mere fault, omission or negligence – civil or administrative proceedings aimed solely at awarding damages, rather than ensuring the identification and punishment of those responsible, were not adequate and effective remedies capable of providing redress for complaints based on the substantive aspect of Article 3 of the Convention (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 76, 5 July 2016).

14. As to the third potential remedy – a claim for compensation against the State for a breach of the reasonable-time requirement under a special law (*Kriminālprocesā un administratīvo pārkāpumu lietvedībā nodarītā kaitējuma atlīdzināšanas likums*) which had taken effect on 1 March 2018 – the Court notes that the length of proceedings is only one aspect of the applicant's wider complaint under Article 3 of the Convention (see, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015). There is no indication that this proposed remedy would be effective in theory or in practice regarding the entirety of the applicant's complaint under Article 3.

15. As to the loss of the applicant's victim status, the Government argued that he withdrew his application in administrative proceedings and thus deprived the State of an opportunity to remedy the potential violation of his rights. This argument is, in essence, a non-exhaustion plea which the Court has already dismissed (see paragraph 13 above).

16. The Court further dismisses the Government's argument that the applicant abused the right of application by omitting information about the administrative proceedings. This information does not concern the core of the case because it pertains to a domestic remedy which cannot be considered effective (see *J.B. v. Poland*, no. 57675/10, § 44, 3 November 2015).

17. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

18. The Court refers to general principles in its well-established case-law regarding allegations of ill-treatment and their investigation (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 81-90 and 114-23, 28 September 2015; *Ostroveņecs v. Latvia*, no. 36043/13, §§ 71-74 and 88-90, 5 October 2017; *Balajevs v. Latvia*, no. 8347/07, §§ 84-86 and 98-101, 28 April 2016; and *Holodenko v. Latvia*, no. 17215/07, §§ 64 and 66, 2 July 2013). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim.

19. There is no dispute that on 30 January 2013 physical force was used against the applicant and that on the next day in addition to bruises and scratches he was diagnosed with a broken nose. Thus, the Court finds that the applicant raised before the domestic authorities an "arguable claim" of excessive force being used against him.

20. However, the Court finds it impossible to establish on the basis of the evidence before it whether the applicant was subjected to physical force which was not made strictly necessary by his own behaviour. For the reasons set out below, the Court considers that this difficulty stems from the failure of the domestic authorities to conduct an effective investigation (see *Timofejevi v. Latvia*, no. 45393/04, § 81, 11 December 2012; *Grimailovs v. Latvia*, no. 6087/03, § 109, 25 June 2013; and *Bērziņš v. Latvia*, no. 25147/07, § 97, 25 February 2014).

21. The Court has stated that investigation into allegations of ill-treatment must be prompt, thorough and sufficiently broad, and it must be conducted by institutions and persons who are independent from those targeted by it. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the required standard of effectiveness (see *Bouyid*, cited above, §§ 114-23).

22. The Court observes at the outset that a prosecutor found the fourth round of investigation to be excessively lengthy and that the prosecutors themselves repeatedly found that the investigation had been insufficiently thorough. These facts, in and of themselves, cast serious doubt on the

Government's assertion that the investigation was sufficiently prompt and effective.

23. The Court further observes that the applicant's allegations concern an isolated incident which does not appear to be particularly complex. Nevertheless, it took the investigating authorities more than six years and three months to complete the investigation. The Court finds, contrary to the Government's assertion, that the length of the investigation must be attributed not to the actions of the applicant but chiefly to a lack of proper diligence on the part of the investigating authorities.

24. In particular, the Court observes that two prisoners who had encountered the applicant on 30 January 2013 were interrogated in the second round of investigation approximately one year and nine months after the incident. The first attempt to identify prisoners who might have witnessed the use of force was made in the third round of investigation more than two years and three months after the incident. The prisoner who might have thrown the packet to the applicant was identified only in the fifth round of investigation more than five years and one month after the incident. Thus, the investigating authorities failed to promptly identify potential witnesses amongst prisoners.

25. The material in the Court's possession does not show that deficiencies of the investigation had been effectively offset by supervision. In the first four rounds, prosecutors examined the applicant's complaints, quashed the decisions to terminate criminal proceedings and gave instructions on investigative measures to be taken. However, the prosecutors repeatedly found that investigators had failed to follow their instructions, in particular, to properly question the witnesses and to identify additional witnesses. The Court also notes that the investigation failed to establish when and how the applicant's nose had been broken.

26. This leads the Court to conclude that the investigation in the present case was not prompt and thorough. In view of these findings, it is unnecessary to examine the parties' arguments regarding the independence of the investigating authorities.

27. There has accordingly been a violation of Article 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,200 in respect of costs and expenses incurred before the Court.

29. The Government contested the claim.

30. The Court awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

31. With respect to the legal costs incurred before the Court, the Court observes that the invoice submitted by the applicant demonstrates his

obligation to pay legal fees. Having regard to the documents in its possession and the sum that the applicant had already received by way of legal aid, the Court awards him EUR 650, plus any tax that may be chargeable to the applicant.

32. The Court further 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, the following amounts:
      (i) EUR 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	María Elósegui President