

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

FIFTH SECTION

CASE OF TIMOFEJEVS v. LATVIA

(Application no. 15062/21)

JUDGMENT

STRASBOURG

24 October 2024

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



In the case of Timofejevs v. Latvia,

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

Stéphanie Mourou-Vikström*, President*,
María Elósegui,
Artūrs Kučs*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 15062/21) 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 12 March 2021 by a Latvian national, Mr Vadims Timofejevs ("the applicant"), who was born in 1973, lives in Jūrmala and was represented by Mr J. Davidovičs, a lawyer practising in Garkalne Municipality;

the decision to give notice of the complaint concerning Article 5 § 1 to the Latvian Government ("the Government"), represented by their Agent, Ms K. Līce, and to declare the remainder of the application inadmissible;

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 3 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 5 § 1 of the Convention that his detention for approximately two hours in a municipal police car was unlawful.

2. On 26 March 2020 at 11.59 p.m. the applicant was pulled over by two officers of the Jūrmala Municipal Police on suspicion of driving a car under the influence of alcohol. In order to carry out a breath test, the officers called the State police to the scene. According to the Government, the applicant attempted to flee from the scene and, on 27 March at 12.26 a.m., he was detained in a municipal police car. The applicant disagreed and stated that there was no evidence of him attempting to flee. It is undisputed that no reports were drawn up in that regard.

3. Approximately two hours later, officers of the State police arrived at the scene, took a statement from the applicant and carried out a breath test, which indicated a high level of alcohol (1.69‰). At 3 a.m. officers of the State police drew up an administrative-offence report (no. PC414910) stating that the applicant had committed an offence under Article 149^{15} (4) of the Code of Administrative Offences ("the Code"). The applicant disagreed and stated that he had consumed alcohol after his car had been pulled over.

4. By a final decision of 25 September 2020, the Riga Regional Court found that the applicant had committed an offence under Article 149^{15} (4) of the Code. It also held that the applicant could lodge a complaint with "the competent domestic authorities" about the police officers' actions and request that the situation be examined. The applicant was fined 1,300 euros (EUR) and his driving licence was suspended for four years.

RELEVANT DOMESTIC LAW

5. The relevant provisions of the domestic law, as in force at the relevant time, have been summarised in *Zelčs v. Latvia* (no. 65367/16, §§ 26-29, 20 February 2020). In particular, in accordance with Article 253 (1) of the Code of Administrative Offences, in the event of administrative detention, a report must be drawn up indicating the date and place, and the position, name and surname and of the person who has drawn up the report.

6. Article 149^{15} (4) of the Code of Administrative Offences, as in force at the relevant time, provided as follows:

> "In the case of [a person] driving or instructing a driver of a vehicle, if alcohol concentration found in an exhaled air or blood test exceeds 1.5 per mille –
>
> administrative custody (*administratīvais arests*) of ten to fifteen days, a fine of EUR 1,200 to EUR 1,400 and a suspension of the driving licence for four years shall be imposed on the driver of any ... vehicle [bar a bicycle or moped]."

7. Section 19(4) of the Law on the Police provides as follows:

> "If information is received that an offence (*likumpārkāpums*) is being prepared or has been committed and if its investigation lies within the responsibility of the State Police, the municipal police shall take the necessary measures to prevent [that offence], to detain the perpetrator, and to guard the scene of the offence. The municipal police shall immediately inform the relevant State Police institution (or official) thereof and shall also hand over the perpetrator and the relevant documents to that institution (or person). In such matters, the instructions of the State Police official shall be binding on officers of the municipal police."

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

8. The applicant complained that his detention in the municipal police car had been unlawful. He relied on Article 5 § 1 of the Convention.

A. Admissibility

9. The Government argued that the applicant had failed to exhaust domestic remedies and referred to two avenues by which he could have

sought redress. The applicant disagreed and submitted that the proposed remedies were not effective.

10. As to the first remedy – recourse to the administrative courts to challenge an action of a public authority (*faktiskā rīcība*) under the Administrative Procedure Law (the Government referred, *inter alia*, to *Ignats v. Latvia* (dec.), no. 38494/05, §§ 113 and 120, 24 September 2013) – the Court has to date not accepted that this may constitute an effective remedy as regards allegations of unlawful detention. The Government submitted three examples of domestic case-law in different contexts (nos. SKA-517/2017, SKA-13/2009 and A420356816); however, in contrast to the present case, municipal police officers in those cases had acted manifestly outside the context of any proceedings. In addition, the Government relied on a special law (*Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums*), but there is no indication of how this remedy would be effective in theory or in practice in a situation where no breach of domestic law had been found at the domestic level (see, by contrast, *Antoms v. Latvia* [Committee] (dec.), no. 58262/09, §§ 35-37, 31 January 2017).

11. As to the second remedy proposed by the Government – recourse to the Constitutional Court given that section 19(4) of the Law on the Police, unlike the Code, did not require an administrative-detention report to be drawn up – the Court notes that the matter brought before it concerns the interpretation and application of domestic law and the remedy in question is not effective in such circumstances (see *Elberte v. Latvia*, no. 61243/08, §§ 79-80, ECHR 2015).

12. Accordingly, the Court dismisses the Government's objections. The applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

13. The Court observes that the applicability of Article 5 § 1 has not been contested in the present case. The Court considers it established that the applicant was deprived of his liberty on 27 March 2020 while being held in the municipal police car (see *Zelčs*, cited above, §§ 40-41).

14. The general principles concerning deprivation of liberty have been summarised in *Zelčs* (ibid., §§ 51-52). In particular, any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, be "lawful". Where the "lawfulness" of detention is at issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers first to national law and lays down the obligation to conform to the substantive and procedural rules of national law.

15. The Government submitted that the applicant had not been subject to administrative detention but rather had been detained in accordance with section 19(4) of the Law on the Police, which did not require a report to be drawn up (see paragraphs 5 and 7 above). The applicant disagreed and submitted that any detention by the police had to be recorded, otherwise it would be wholly arbitrary.

16. The Court dismisses the Government's contention that no detention record was required. It has been the Court's consistent view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of the detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and the very purpose of Article 5 of the Convention (see *Kurt v. Turkey*, 25 May 1998, § 125, *Reports of Judgments and Decisions* 1998-III; *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV; and *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006-III).

17. Irrespective of the legal grounds for the applicant's detention under the domestic law, it is undisputed that no reports were drawn up by the municipal police officers or by the State police officers after they had arrived at the scene in the present case (contrast *Zelčs*, cited above, § 7). The Court takes note of the Government's submission that the municipal police officers were not authorised to institute administrative-offence proceedings themselves. However, the fact remains that the applicant's detention was not recorded in any manner or form. Such a state of affairs is incompatible with the requirement of lawfulness and the very purpose of Article 5 of the Convention irrespective of the short duration of the applicant's deprivation of liberty.

18. The lack of a proper record of the applicant's detention on 27 March 2020 is therefore sufficient for the Court to find that there has been a violation of Article 5 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage.

20. The Government submitted that his claim was unfounded, unsupported by evidence and exorbitant.

21. Ruling on an equitable basis, the Court awards the applicant EUR 650 in respect of non-pecuniary damage.

22. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President