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

FOURTH SECTION

DECISION

Application no. 1179/10
Juris IĻJINS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 5 November 2013 as a Chamber composed of:

Päivi Hirvelä, *President,*
Ineta Ziemele,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney,
Faris Vehabović,
Robert Spano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 30 September 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Juris Iļjins, is a Latvian national born in 1978 currently being detained in a prison in Olaine. He was represented before the Court by Ms B. Didrihsone, a lawyer practising in Riga.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Conditions of detention

3. It appears that the applicant was held in pre-trial detention in Valmiera Prison from 21 December 2007 to 1 April 2008 and from 13 May 2008 to 20 January 2009.

4. During these periods the applicant was placed in various disciplinary cells on fourteen occasions, for a total of 135 days. The first time he was detained in a disciplinary cell was on 9 January 2008, as punishment for a disciplinary offence (not complying with a warden's instructions to stay in the cell allocated to him).

5. The applicant submitted that the conditions in the disciplinary cells in Valmiera Prison had been as follows. There had been no natural light, as the window in each cell had been covered by a metal plate; the artificial lighting provided had not been sufficient. The cells had been damp and stuffy, as there had been no ventilation. Paint had chipped off every surface. The walls and ceiling had been mouldy. The toilets had not been partitioned, had been visible from corridor and there had been no toilet seats. There had been no sinks either; the water supply had been mounted above the toilets. The cells had been infested with insects and bugs.

2. Review of the applicant's complaints

(a) Ombudsman's Office

6. On 24 July 2008 the applicant lodged a complaint with the Ombudsman's Office (*Tiesībsarga birojs*), among other things, about the conditions of detention in the disciplinary cells in Valmiera Prison.

7. On 1 September 2008 the applicant was informed that the Ombudsman had opened an inquiry.

8. On 24 September 2008 the Ombudsman delivered his opinion. He mentioned that on 13 February 2008 his employees had visited the disciplinary cells in Valmiera Prison, and had described the conditions there as follows. The cells had measured approximately 7 sq. m. The toilets had not been partitioned, had been visible through a window in the door and there had been no toilet seats. There had been no sinks either; the water supply had been mounted above the toilets. There had been one foldable plank bed and a small table, but no other furniture. Paint had chipped off part of the walls. The ceiling had been cracked and mouldy. The cells had been damp, as ventilation (natural and artificial) had not been sufficient. The cells had not been well-lit (only one light bulb above each door). There had been a window in each cell but it had been covered with a metal plate, meaning there had been no natural light.

9. The Ombudsman concluded that the conditions in the cells did not comply with either domestic law or international standards. He advised the applicant to institute administrative proceedings under section 91 of the Administrative Procedure Law (an "action of a public authority") by lodging a complaint with the head of the Prisons Administration (*Ieslodzījuma vietu pārvalde*) and subsequently with the administrative courts.

(b) Administrative proceedings

10. On 6 October 2008 the applicant lodged a complaint with the Prisons Administration about the conditions of detention in Valmiera Prison. He indicated that his complaint related to an "action of a public authority" (*faktiskā rīcība*) and claimed compensation in the amount of 10,000 Latvian lati (LVL) (approximately 14,245 euros (EUR)).

11. On 10 November 2008 the Prisons Administration dismissed the applicant's complaint and considered that the conditions in the disciplinary cells complied with domestic law. The applicant was informed that he had one month to appeal against this decision to the Administrative District Court (*Administratīvā rajona tiesa*).

12. The applicant had lodged an application with the Administrative District Court prior to submitting his complaint to the Prisons Administration. He subsequently amended his application on two occasions and asked to be exempted from the payment of State duty (court fees).

13. On 20 January 2009 the Administrative District Court stayed the proceedings and requested that the relevant authorities submit information.

14. On 15 April 2009 the Administrative District Court decided to exempt the applicant from the payment of State duty, accepted his application and commenced the administrative proceedings (under case no. A42746109). His application was deemed to have been submitted on 14 August 2008, the date of his initial application.

15. It appears that hearings were scheduled for 15 September 2010 and 20 October 2010. It is not clear why these did not take place. The case was eventually heard on 23 March 2011.

16. On 13 April 2011 the Administrative District Court delivered a judgment upholding the applicant's claim. The court largely relied on the Ombudsman's conclusions and found that the applicant's account of the conditions largely coincided with the conditions as established by the Ombudsman's inquiry. The court awarded compensation for non-pecuniary damage in the amount of LVL 2,000 (approximately EUR 2,849).

17. The applicant and his representative, a State-appointed lawyer, did not lodge an appeal against this judgment, but the Prisons Administration did. It appears that an appeal hearing was scheduled for 25 October 2012, but did not take place. The case was eventually heard on 10 January 2013.

18. On 22 February 2013 the Administrative Regional Court (*Administratīvā apgabaltiesa* – "the Regional Court") delivered a judgment quashing the lower court's ruling and upholding the applicant's claim in part. It specified that the claim concerned an action of a public authority (Valmiera Prison), and examined its lawfulness. The Regional Court took into account the lack of toilet partitioning and the fact that the toilets did not have seats, that the water supply had been mounted above the toilets, and that there had been inadequate lighting and ventilation. These conditions were considered to be degrading, and their cumulative effects contrary to

Article 95 of the Constitution (*Satversme*) and Article 3 of the Convention. Therefore, the action of a public authority (Valmiera Prison) in placing the applicant in those conditions was found to be unlawful.

19. As concerns compensation for non-pecuniary damage, the Regional Court noted that an adequate award of compensation would be LVL 3,000 (approximately EUR 4,273). However, given that the applicant had been placed in disciplinary cells for his own actions and had waited for several months after his initial placement there before lodging his first complaint, the amount had to be reduced in accordance with domestic law. The Regional Court awarded the applicant LVL 600 (approximately EUR 855) and dismissed the remainder of his non-pecuniary damage claim (LVL 1,400, approximately EUR 1,994). An appeal on points of law could be lodged against this judgment within one month of its delivery.

20. The applicant's lawyer lodged an appeal on points of law, indicating that the applicant considered the Regional Court's ruling to be unlawful. No further reasons were provided.

21. By a final decision on 12 April 2013, three senators of the Senate of the Supreme Court refused to open cassation proceedings on the basis of section 328(1)(5) and section 338.[1] of the Administrative Procedure Law. The proceedings did continue, however, as regards the applicant's (other) claim examined within the same proceedings about an action of a public authority (Valmiera Prison) as regards its refusal to transfer him to another cell or to another prison for security reasons. The applicant eventually withdrew that claim, and on 9 May 2013 the Senate of the Supreme Court adopted a final decision relating to it.

22. On 22 April 2013 the applicant's lawyer attempted to lodge an ancillary complaint (*blakus sūdzība*) against the Senate's decision. She explained that she had not been made aware of the Regional Court's judgment until 20 March 2013. She could not submit a fully reasoned appeal on points of law within the necessary time-limit, so in accordance with the applicant's instructions, she had lodged the appeal on points of law without specifying its scope. In doing so, she had relied on section 333 of the Administrative Procedure Law. She requested that the Senate's ruling be quashed.

23. On 24 April 2013 these submissions were returned back to the applicant's lawyer with a handwritten note by a judge stating: "in accordance with section 324(4) of the Administrative Procedure Law [the complaint] is to be considered as not submitted and to be returned".

24. It appears that the applicant attempted to lodge another appeal on points of law, which was received at the Supreme Court on 25 April 2013. No further information has been submitted to the Court in this regard.

B. Relevant domestic law

1. Review of conditions of detention in the administrative courts

25. The relevant parts of the Administrative Procedure Law (*Administratīvā procesa likums*), which took effect on 1 February 2004, have been summarised in the case of *Melnītis v. Latvia* (no. 30779/05, §§ 24-26, 28 February 2012).

2. Procedure before the administrative courts

26. In accordance with sections 307(5) and 267 of the Administrative Procedure Law, an appellate court judgment is to be sent to parties within three days of its delivery, unless it has been served on them in person.

27. Section 324(4) provides, *inter alia*, that an ancillary complaint lodged against a final decision must be considered as not submitted and returned.

28. Section 328(1)(4) provides that an appeal on points of law must contain the extent to which a judgment is appealed.

29. Section 328(1)(5) provides that an appeal on points of law must indicate what provisions of substantive or procedural law a court has breached and how this breach is manifested.

30. Section 333(1) provides that where an appeal on points of law does not comply with the criteria laid down in paragraphs 1, 2, 3, 4 or 6 of section 328(1) a senator must take a decision not to proceed with it (*atstāt bez virzības*). In the decision a time-limit for rectifying the deficiencies shall be set.

31. Section 338.[1] provides that three senators shall refuse to open cassation proceedings (*atteikties ierosināt kasācijas tiesvedību*) if an appeal on points of law does not comply with the criteria laid down in sections 325, 326, 327, 328 and 329.

COMPLAINTS

32. The applicant complained under Article 3 of the Convention about the conditions of detention in the disciplinary cells in Valmiera Prison, where he had been placed on various occasions between 21 December 2007 and 30 August 2008.

33. On 20 June 2013 the applicant further alleged a violation of Article 6 of the Convention. He submitted that the domestic court had not fully understood his case and that the State-appointed lawyer had not carried out her duties properly.

THE LAW

A. In relation to Article 3 of the Convention

34. The applicant complained about the conditions of detention in the disciplinary cells in Valmiera Prison, where he had been placed on various occasions between 21 December 2007 and 30 August 2008. He relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

35. The Court reiterates that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. Whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge decisions already given. It normally also requires that complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 142, ECHR 2010).

36. The Court has already considered that it may be required for the applicants, who complain about detention conditions after their release from a particular facility, to make use of a compensatory remedy at national level in order to meet the requirement of the exhaustion of the domestic remedies (see *Ignats v. Latvia* (dec.), no. 38494/05, 24 September 2013, § 112 and the case-law cited therein). In principle, such a remedy could be considered capable of providing redress in respect of the applicant's complaint.

37. The Court notes that recourse to the administrative courts as a compensatory remedy was accessible to the present applicant and that he used it. The Court observes that since its judgment in *Melnītis*, it has received more examples in which the administrative courts have dealt with detainees' complaints about conditions of their detention (see also, in relation to improved clarity of the applicable legislation as of 23 December 2008 and the subsequent practice of administrative courts, *Savičs v. Latvia*, no. 17892/03, §§ 111-12, 27 November 2012). To cite a further example, the Court refers to the Government's submissions in *Timofejevi* and their specific reference to domestic case-law (case no. A42583206) (see *Timofejevi v. Latvia*, no. 45393/04, § 69, 11 December 2012). Although at the time of the adoption of the *Timofejevi* judgment the domestic proceedings in that case had not yet been terminated, they were concluded

soon thereafter. In view of the evolution of the administrative court's case-law, the Court considers that this development must have been sufficient for the present applicant to explore the effectiveness of this remedy. Indeed, the Court has already held that where there are doubts about the effectiveness of a remedy, the issue should be tested before the national courts (see *Roseiro Bento v. Portugal* (dec.), no. 29288/02, ECHR 2004-XII, and more recently, in the context of Article 3 complaints concerning detention conditions, *Lienhardt v. France* (dec.), no.12139/10, 13 September 2011 and *Rhazali and Others v. France* (dec.), no. 37568/09, 10 April 2012). The present applicant did so by lodging an application with the administrative courts.

38. It remains to be established whether this remedy was adequate, that is, whether it offered reasonable prospects of success. The Court notes in this connection that the applicant's claim was accepted for review by the administrative courts, examined and eventually granted in part. Admittedly, the Regional Court's compensation award was significantly lower than awards made by the Court in similar cases. The Court emphasises that the right not to be subjected to inhuman or degrading treatment is so fundamental and central to the system of the protection of human rights that the domestic authority or court dealing with the matter must provide compelling and serious reasons to justify their decision to award significantly lower compensation or no compensation at all in respect of non-pecuniary damage (see *Iacov Stanciu v. Romania*, no. 35972/05, § 199, 24 July 2012). Nevertheless, the Court considers that only consistent refusals by the domestic courts to take into account the nature of the complaint and to award adequate compensation, could serve as a valid ground to relieve the applicant from the duty to exhaust domestic remedies before seizing the Court on this matter (see the inadmissibility decision in *Lienhardt*, cited above, with further references).

39. It was therefore incumbent on the applicant to pursue his claim as regards the amount of compensation before the Senate of the Supreme Court within the time-limit laid down in domestic law. The Court observes that the Senate has the competence to examine whether or not lower courts have taken into consideration the Court's case-law and, if necessary, may quash their rulings and remit such cases back for new adjudication as regards compensation (see the Statement of facts in the case of *Kuzmans and Jankauska v. Latvia*, no. 39676/05, communicated on 10 April 2013).

40. The applicant, however, failed to comply with the formal requirements pertaining to appeals on points of law. He himself did not lodge an appeal on points of law within the requisite time-limit, and his lawyer's appeal on points of law did not contain the necessary information. The applicant did not argue before the Court that he had not received the Regional Court's judgment in time. Even assuming that the applicant's lawyer did not receive the judgment in time, the applicant had one month to

inform his lawyer of it and of his intention to lodge an appeal on points of law. This was not done, which led to a formal refusal.

41. In view of the foregoing considerations, the Court finds that the applicant's complaint under Article 3 of the Convention should be dismissed pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. In relation to Article 6 of the Convention

42. Relying on Article 6 § 1 of the Convention the applicant further complained, in essence, about the legal assistance he had received during the administrative proceedings.

43. The Court notes, however, that the applicant did not raise this issue at any point during the domestic proceedings.

44. Accordingly, the Court finds that the applicant's complaint under Article 6 § 1 of the Convention should likewise be dismissed pursuant to Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President