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

THIRD SECTION

DECISION

Application no. 41042/19
Andrei KOROLJOV
against Estonia

The European Court of Human Rights (Third Section), sitting on 14 September 2021 as a Committee composed of:

Dmitry Dedov, *President,*
Peeter Roosma,
Andreas Zünd, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 July 2019,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Andrei Koroljov, was an Estonian national, who was born in 1981 and lived in Tallinn. He was represented before the Court by Mr D. Lipatov, a lawyer practising in Tallinn.

2. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of Ministry of Foreign Affairs.

3. The applicant complained under Article 3 of the Convention about the inadequate conditions of detention.

4. On 25 June 2020 notice of the applicant's complaint under Article 3 was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 52A § 1 of the Rules of Court.

The circumstances of the case

5. The applicant was detained in Tallinn prison between 2012 and 2016 (first as a remand prisoner and then as a convicted prisoner). During that

time he spent 42 consecutive days in conditions where he was afforded less than $3m^2$ of personal space in a prison cell.

6. As a result of the domestic proceedings he was awarded 80 euros for non-pecuniary damage. The applicant, considering the domestic compensation being insufficient, lodged an application with the Court, claiming a violation of Article 3 of the Convention.

7. It appears that both the applicant and his representative signed the "authority" section of the application form on 1 July 2019. The applicant's representative signed the "declaration and signature" section of the application form on 26 July 2019. The application form was posted on the same day. The applicant died on 23 July 2019.

8. The applicant's heir Mr L. Koroljov informed the Court that he wished to pursue the application of his late father.

COMPLAINT

9. The applicant complained under Article 3 of the Convention about inadequate conditions of the detention.

THE LAW

Alleged violation of Article 3

10. The applicant complained of a violation of Article 3 of the Convention which reads:

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

1. The parties' submissions

11. The Government argued that the case should be declared inadmissible.

12. The Government claimed that the applicant had died before the application in his name had been signed by the applicant's representative and sent to the Court. The applicant's representative had thus misused the right of the application from the very beginning. As the initial application submitted on 26 July 2019 was not allowed under Article 34 of the Convention, there were no grounds for the applicant's son to replace his father in the proceedings.

13. The applicant's representative disagreed. The application had been prepared and signed during the applicant's lifetime. At the time of signing the application, the representative had not known about the death of his client. The applicant's son wished to pursue the application of his late father.

2. The Court's assessment

14. The Court observes that the "authority" section of the application form naming Mr D. Lipatov as the applicant's representative appears to have been signed on 1 July 2019.

15. According to the death certificate provided by the applicant's representative, the applicant died on 23 July 2019.

16. The application in the applicant's name was lodged by his representative on 26 July 2019.

17. While it is unclear what caused the delay of approximately three weeks in lodging the application, the Court has no evidence in its possession to suggest that it was not the applicant who signed the "authority" section of the application form and authorised Mr Lipatov to be his representative.

18. Nevertheless, the application was lodged after the applicant's death.

19. The Court notes that an application cannot be brought in the name of a deceased person, since a deceased person is unable, even through a representative, to lodge an application with the Court (see *PREOBRAZOVATEL-SERVIS and Others v. Ukraine*, nos. 510/07 and 331 others, § 47, 7 June 2018; and *Sterjov and Others v. The Former Yugoslav Republic of Macedonia*, no. 40160/04, § 14, 16 October 2014). It follows that neither the applicant nor his heir have the requisite standing under Article 34 of the Convention.

20. Therefore, the application is incompatible *ratione personae* with the Convention within the meaning of Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 October 2021.

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Olga Chernishova
Deputy Registrar

Dmitry Dedov
President