

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 19826/04
by Māris KOSTJUČENKOVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 8 March 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Registrar,*

Having regard to the above application lodged on 6 May 2004,

Having regard to the observations submitted by the respondent Government,

Having regard to the fact that the applicant has failed to submit observations in reply,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Māris Kostjučenkovs, is a Latvian national who was born in 1979. At the time of submitting his complaint he was serving a prison sentence in Daugavpils prison. The Latvian Government ("the Government") were represented by their Agent, Mrs Inga Reine.

A. The circumstances of the case

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

3. On 1 October 2003 the Saldus District Court found the applicant guilty of burglary and sentenced him to six years and six months' imprisonment. On 6 February 2004 the judgment came into force.

1. Alleged ill-treatment while being detained in Liepāja prison from 22 April 2003 to 22 February 2004

4. According to the applicant, immediately after his arrival at Liepāja prison he met "enemies" who threatened to subject him to ill-treatment throughout his stay at the prison. Without providing further details in his letter sent on 20 August 2004 and received by the Court on 24 August 2004, the applicant alleged that the threats had been carried out on 11 October 2003 when, *inter alia*, he had refused to cooperate with police investigators.

5. It appears that on 29 December 2003 he complained to the Specialized Public Prosecutor's Office ("the prosecutor's office") and asked to be transferred to special detention facilities in Matīsa prison.

6. The prosecutor's office forwarded the aforementioned complaint to the Prison Administration, which on 21 January 2004 and 4 February 2004 informed the applicant that his transfer to another prison would be examined after the entry into force of a final judgment in his criminal case. It appears that on 9 February 2004 the applicant received this decision.

7. At a later date the applicant asked the Prison Administration to transfer him to Jelgava prison, and on 22 February 2004 the applicant was transferred there.

8. In response to the Court's request to specify his complaint concerning ill-treatment in Liepāja prison, on 3 December 2004 the applicant informed the Court, without providing any further details, that in Liepāja prison he had been ill-treated in June 2003, but that he had not retained any documents relating to the matter. He asked the Court to examine only his complaints under Article 6 of the Convention. In a letter received by the Court on 7 March 2005 the applicant alleged, without substantiating his allegations, that he had been ill-treated in Liepāja temporary detention centre, and that on 14 February 2004 his complaint in that regard had been dismissed by the prosecutor's office.

2. Alleged ill-treatment while serving his sentence in Jelgava prison from 22 February 2004 to 21 April 2005

(a) Facts as submitted by the applicant

9. On an unspecified date in cell no. 103 of Jelgava prison the inmates had threatened to sexually assault the applicant because he had cooperated in the past with law-enforcement authorities. He had accordingly been moved to another cell.

10. On 31 August 2004 he had been transferred to a cell which his fellow inmates had refused to share with him. They had asked him to leave. Accordingly, the applicant had refused to stay in the cell, for which he had received a warning from the prison staff, and had been moved to another cell.

11. At a later stage, he had been put into yet another cell, where he had had a dispute with a prison guard. For that incident, he had been punished on 10 February 2005 with fifteen days of solitary confinement.

12. After being punished, the applicant had been moved to another cell which the inmates had refused to share with him. He had then been moved to another cell.

13. In March 2005 he had been transferred to a cell in another part of the prison (division 5). In that cell, another inmate, S., had beaten up the applicant. On 30 March 2005 S. had been punished for that with solitary confinement. The applicant alleged that after having finished his time in solitary confinement, S. had again been put in the same cell as him.

14. On 5 April 2005 the applicant had been on duty in the cell. Other inmates had refused to comply with legitimate requests made by the applicant and had made him leave the cell. The prison officers had refused to transfer him to another cell, even in the event that they had accepted that the other inmates had "attempted to subject him to psychological and physical ill-treatment". On the same day, the applicant had been punished with solitary confinement for bullying a cellmate.

15. After having been punished in the manner noted above, the applicant had been transferred to cell no. 211 in division 7, where the inmates had allegedly humiliated him and had taken his jacket and shoes.

(b) Investigation of the applicant's complaints and measures adopted by the prison administration

16. On 10 February 2005 in a complaint to the Office of the Prosecutor the applicant alleged that he had refused to cooperate with investigators, and that one of the officers, K., in Jelgava prison had placed him in cells where the other inmates had physically ill-treated and bullied him.

17. On an unspecified date the applicant complained to the Prison Administration of the fact that he had never been transferred to cells with a

peaceful environment. He also complained that he had been continuously transferred from one cell to another without any explanation or justification.

18. In February 2005 a prosecutor visited the applicant and asked the director of the Jelgava Prison to comment on the matter. The director had stated that he had never threatened the applicant, who had himself created problems by attempting to sexually assault fellow inmates. On 17 February 2005 the prosecutor dismissed the applicant's complaint, noting that the allegations had not been proved and that there had not been any threats to the applicant's life and health. The decision was subject to appeal. The letter also informed the applicant that the Office of the Prosecutor was not empowered to decide on issues concerning the transfer of prisoners from one prison to another, and that that issue was within the competence of the Prison Administration.

19. On 11 April 2005, after having examined the applicant's personal file, the director of the Jelgava prison established that the applicant had had conflicts with other inmates "due to illegal activities", for which it had not been possible to place the applicant either in a cell or in common premises. Accordingly, he proposed that the Prison Administration to transfer the applicant to another prison for safety reasons.

20. On 21 April 2005 the applicant was transferred to Daugavpils prison to serve his prison sentence there.

21. On 27 June 2005, while serving his prison sentence in Daugavpils prison, the applicant complained to the Prison Administration about the warning he had been given by way of administrative punishment on 31 August 2004 in Jelgava prison (see paragraph 10 above).

22. On 5 July and 17 August 2005 the Prison Administration informed the applicant that the administration of Jelgava prison had not violated either any provisions of domestic law or the internal rules of the prison. As to the applicant's complaint of stolen belongings, the Prison Administration had obtained information from Jelgava prison to the effect that in April 2005, after the applicant's release from solitary confinement, his belongings had been returned to him, that this had been certified by his signature, and that the applicant had not raised any complaints in that regard.

23. During the applicant's stay in Jelgava prison, he had violated prison rules five times and he had been punished for having damaged prison property, insulting a prison officer and bullying other prisoners. The applicant had been transferred to another cell seven times.

3. Period spent in Daugavpils prison

24. While in Daugavpils prison, the applicant had been transferred several times at the request of his cellmates from one cell to another, as he had been constantly creating conflicts by trying to dominate his cellmates.

25. In September and October 2006 the applicant asked the Prison Administration to transfer him to serve his prison sentence in either of Liepāja or Pārlielupe prisons, arguing that that would allow him to receive visits from his underage daughter more easily and to avoid physical and verbal ill-treatment from other inmates.

26. On 24 October 2006 the request was granted by the Prison Administration and the applicant was transferred to Pārlielupe prison. The decision to transfer referred to the applicant's conflicts with other inmates and to the fact that he had not been able to receive visits from his relatives.

4. Medical records

27. Since 1987 the applicant had been regularly assessed by a psychiatrist owing to minor learning difficulties (*viegla garīga atpalicība*). In 1995 a forensic medical expert determined that the applicant was legally responsible. He was also excluded from the register of persons suffering from mental diseases. It appears that in prison the applicant was assessed by a psychiatrist and, when necessary, received psychiatric treatment.

28. Per a medical report from Jelgava prison, it appears that on 10 February 2005, before being placed in solitary confinement, the applicant was examined by a doctor at the request of prison officers. The doctor did not observe any injuries to the applicant. The applicant did not require medical assistance whilst in Jelgava prison on any other occasions.

29. On 25 April 2005, after having arrived at Daugavpils prison, the applicant was examined by a prison doctor, who observed that the applicant presented no health complaints or bodily injuries.

30. On 23 September 2006 the applicant asked for medical assistance as he had sustained bodily injuries – namely, two hematomas, which did not in the end require medical treatment. The applicant did not request medical assistance whilst in Daugavpils prison on any other occasions.

31. In October and November 2006 the applicant requested medical assistance whilst in the Central and Pārlielupe prisons, as he had been beaten by other inmates and as a result had sustained facial bruises.

B. Relevant international and domestic law

1. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

32. The report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment ("the CPT") from 5 to 12 May 2004 notes the following:

> "42. ... As was the case in 2002, a number of allegations were heard in both establishments [Daugavpils Prison and Rīga Central Prison] that prisoners had been threatened by members of the establishments' Security Departments that they would be placed in cells with inmates prone to violence, if they refused to co-operate with the Security Department (i.e. to act as an informant or to confess to a criminal offence). In the CPT's view, such practices can easily be described as psychological ill-treatment (see also paragraphs 48 to 50).
>
> No allegations of physical/psychological ill-treatment or verbal abuse by staff were heard at Jelgava Prison."

2. Domestic law

33. The relevant provisions of the Code of Criminal Procedure (*Latvijas Kriminālprocesa Kodekss*), applicable at the material time (in force until 1 October 2005), Criminal Law (*Krimināllikums*) and Law on the Prosecutor's Office (*Prokuratūras likums*) are found in *Bazjaks v. Latvia* (no. 71572/01, §§ 40-42, 19 October 2010).

COMPLAINTS

34. The applicant complained under Article 3 and 13 of the Convention that in Liepāja prison and Jelgava prison other inmates had physically and psychologically ill-treated him. He complained that the administration of Jelgava prison had threatened to transfer him to a cell where he might have been subject to various "accidents" and that the prison officers had not taken any measures other than transferring him from one cell to another where he had been degraded by other inmates.

35. He further brought numerous complaints under various other Articles of the Convention.

THE LAW

A. Complaints under Article 3 of the Convention

36. The applicant complained under Article 3 of the Convention that in Liepāja and Jelgava prisons other inmates had subjected him to physical and verbal abuse, besides, that the prison officers in Jelgava prison had supported this situation, and that in all prisons the administrations had failed to take any measures in this respect. Article 3 of the Convention provides:

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

1. Alleged ill-treatment in Liepāja prison

37. The Government invited the Court to dismiss this part of the application due to the applicant's non-observance of the six-month time-limit. In the alternative, the Government contended that the applicant had not exhausted domestic remedies, as he had failed to complain to the Office of the Prosecutor or the Prison Administration of the alleged ill-treatment. They argued that the applicant's request of 29 December 2003 to be transferred to Matīsa prison could not be viewed as a complaint, as it had had a different purpose (see paragraph 4-5 above).

38. The Court notes that neither the applicant nor the Government furnished it with a copy of the applicant's complaint of 29 December 2003. Therefore, it has not been possible to establish with certainty whether the applicant availed himself of the right to complain to the Office of the Prosecutor of ill-treatment in Liepāja prison or Liepāja temporary detention centre.

39. Even assuming that in the aforementioned letter the applicant complained to the Office of the Prosecutor of the ill-treatment which he allegedly suffered in June and/or October 2003 (paragraphs 4 and 8 above), and noting that the last decision by the Office of the Prosecutor in relation to the matter was adopted on 4 February 2004 (paragraph 6 above), the applicant first lodged a complaint in this regard with the Court on 20 August 2004 (see paragraph 4 above), which is more than six months from the date on which the final decision was taken. It follows that this part of the complaint should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

2. Alleged ill-treatment in Jelgava prison

40. The applicant alleged that in Jelgava prison he had been harassed by his cellmates, but that the administration of Jelgava prison had threatened to place him in cells where he might have been subject to various 'accidents', and that the prison officers had not taken any measures other than moving him from one cell to another where he had been degraded by other inmates.

41. The Government argued that as far as this part of the complaint concerned alleged violence by fellow inmates, the applicant had failed to exhaust domestic remedies by appealing against the decision of the Office of the Prosecutor (see paragraph 18 above). They contended that both the Office of the Prosecutor and the Prison Administration had had sufficient powers to examine the complaints in substance and to provide protection to the applicant, as well as punish the perpetrators. They also dismissed the applicant's allegations that he had been threatened for having cooperated with law-enforcement authorities, in that from 2004 to 2006 the applicant had not addressed any complaints to the Office of the Prosecutor in this respect. In the alternative, the Government observed that the applicant's

complaint of ill-treatment was unsubstantiated. Moreover, they submitted that the standard of proof 'beyond reasonable doubt' had not been satisfied, and that the applicant himself had provoked conflicts with other inmates, but that the national authorities had nonetheless done everything possible to prevent such conflicts.

42. The Court notes that the applicant complains on the one hand of his vulnerability to alleged physical violence from other inmates and bullying from prison officers and inmates, and of the allegedly unreasonable movement of him from one cell to another on the other hand. It shall leave aside the question of exhaustion of domestic remedies, as it considers that the complaint is inadmissible for the reasons set out below.

43. According to the Court's well-established case-law, ill-treatment must attain a minimum level of severity in order to fall within the scope of Article 3 of the Convention, and that the assessment of this minimum level depends on all the circumstances of the case, such as the stringency of the measure complained of, its duration, the objective pursued and its effects on the person concerned (*Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

44. It is not disputed that throughout his stay in various prisons the applicant had conflicts with other inmates. This is supported by medical records from various prisons (see paragraphs 28-31 above), and also by the fact that the applicant was transferred to various cells on seven occasions within the thirteen months that he was imprisoned in Jelgava prison. Although the Government contends that the problems were caused by the applicant himself, the prohibition of ill-treatment under the Article 3 of the Convention is absolute and irrespective of the victim's conduct. The Court shall, thus, examine whether the alleged ill-treatment meets the threshold required by Article 3.

45. The Court notes that the applicant has not specified, either in his complaints to the domestic authorities or to the Court, the alleged 'physical ill-treatment' that he was subjected to. However, the medical reports provided (see paragraphs 28-31 above) suggest that he had sustained at least light bodily injuries as a result of fights with other inmates, and, therefore, that he had been transferred to various prison cells and prisons to avoid such conflicts. The aforementioned circumstances do not prove beyond reasonable doubt that the applicant was subjected to ill-treatment of an intensity amounting to fall within the scope of Article 3 of the Convention. Accordingly, his allegations in this respect are manifestly ill-founded.

46. As concerns the allegations that prison staff bullied the applicant and did not take sufficient measures to prevent bullying by fellow inmates, the materials submitted by the parties contain no evidence that the applicant's transfer to other cells and to another prison was organised for reasons other than the security of the applicant and that of other inmates. Observing that on various occasions fellow inmates refused to share a cell with the

applicant, the prison staff were obliged to take appropriate security measures, which as such do not amount to inhuman treatment (see *Messina v. Italy* (dec.), no. 25498/94, ECHR 1999-V). There were also other measures taken, such as punishing the prisoner who had beaten up the applicant (see paragraph 13 above).

47. The applicant's allegation that he had been placed together with an inmate who had previously ill-treated him does not correspond to the applicant's later submissions and to the other facts of the case, in that shortly after the incident the applicant was moved to solitary confinement as a punishment, and after having been punished he was transferred to another cell (see paragraphs 14 -15 above).

48. It must be noted that the CPT's visit to Jelgava prison coincided with the period that the applicant served his sentence there, and that, in particular, the CPT's report highlighted that although problems with violence among prisoners and abusive behaviour on the part of prison staff were observed in Daugavpils prison, no such complaints were heard in respect of Jelgava prison (see paragraph 32 above).

49. There are also no particular circumstances which would render the applicant especially vulnerable. The applicant's earlier allegations that conflicts with other inmates had emerged owing to his earlier cooperation with law-enforcement authorities contradicts his earlier allegation that he had refused to cooperate with the police investigators (see paragraph 4 above). Although the applicant suffered from certain problems which might have made the establishment of social contacts with fellow inmates more difficult, this would not make the applicant more vulnerable than other inmates, particularly given that his mental health situation has been stable for the last ten years (contrast, *mutatis mutandis*, *Renolde v. France*, no. 5608/05, § 98, 16 October 2008).

50. Even if the various transfers of the applicant may have caused him feelings of anguish and mental suffering, the Court considers that in the light of the above they were taken in the interests of the applicant and did not reach the level of severity necessary for Article 3 of the Convention to be applied.

51. It follows that the above complaint is inadmissible under Article 35 § 3 as manifestly ill-founded.

B. Complaint under Article 13 of the Convention

52. Having regard to the aforementioned conclusion that the applicant does not have an arguable claim of a breach of Article 3 of the Convention, his complaint under Article 13 is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention

C. Other Complaints

53. The applicant also alleged violations under various other articles of the Convention.

54. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the remainder of the application does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President