

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

THIRD SECTION

DECISION

Application no. 47590/06
Felikss RUDEVITS
against Latvia

The European Court of Human Rights (Third Section), sitting on 26 June 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 26 October 2006,

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 Felikss Rudevits, is a Latvian national, who was born in 1957 and who died on 30 November 2006. His long-term partner, Ms Diāna Kleine, expressed her wish to pursue the application. The applicant and Ms Kleine are represented before the Court by Ms I. Eglīte, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

A. The circumstances of the case

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

1. The applicant's state of health

3. The applicant was suffering from a terminal illness – polycystic kidney and liver disease. It appears that it was first diagnosed in 1985. Up to 1997 he underwent treatment every year in Rīga, Latvia. From then until 2001 he received treatment in St. Petersburg, Russia. Upon his return to Latvia in 2002 the applicant was admitted to the *Gaiļezers* civil hospital in Rīga on at least two occasions for a total duration of 27 days in 2002 and on at least seven occasions for a total duration of 31 days in 2003. It appears that he also visited that hospital three times a week for haemodialysis (artificial kidney) sessions.

4. At least since 17 January 2003 the applicant had been recognised as being Category 1 disabled (the most severe degree of disability).

2. Criminal proceedings against the applicant

5. According to the Government, on 4 June 2004 the applicant was convicted of acquisition of narcotics and sentenced to five years' imprisonment, which was suspended due to his state of health.

6. On 25 November 2004 the applicant was arrested on the street on suspicion of possessing drugs. A preventive measure – police supervision – was imposed on him. Following forensic examinations, it was established that the applicant had been in possession of thirty packages of cannabis, in total approximately ten grams. Criminal proceedings were opened, charges were brought against the applicant and the case was sent to the Rīga Regional Court (*Rīgas apgabaltiesa*).

7. On 11 March 2005 the Rīga Regional Court requested the Prisons Administration (*Ieslodzījuma vietu pārvalde*) to state whether it could ensure appropriate medical treatment for the applicant in custody. On 14 March 2005 the Prisons Administration replied that the applicant was suffering from a severe and terminal illness and that his prospects were poor. They contended that they could not provide the necessary medical care to the applicant, or ensure his regular attendance (three times per week) at a specialised hospital.

8. On 14 March 2005 the Rīga Regional Court requested the State Centre for Forensic Medical Expertise (*Valsts tiesu medicīnas ekspertīzes centrs*) to evaluate the applicant's state of health and determine if he was fit to serve a custodial sentence.

9. On 15 April 2005 forensic experts drew up report no. 17-K, which concluded that the applicant was suffering from a severe and terminal illness – polycystic kidney and liver disease, as well as from chronic kidney

failure, secondary hypertension, secondary anaemia, coronary heart disease, a form of stenocardia, and an old myocardial infarction. It stated that in order to survive he needed three five-hour haemodialysis sessions per week in a hospital, but that permanent inpatient treatment was not necessary. The forensic experts reached the conclusion that the applicant was fit to serve a custodial sentence upon the condition that his transfers to a specialised centre for haemodialysis were ensured and that he received medicine prescribed by a nephrologist and a cardiologist.

10. On 2 June 2005 the Rīga Regional Court convicted the applicant of the repeated acquisition of narcotics. The applicant pleaded guilty. The court took into consideration forensic report no. 17-K and stated its agreement with it; it had "critically evaluated" the Prisons Administration's contention that they could not provide the necessary medical care. It made no further comments in this regard. The court sentenced the applicant to five years' imprisonment. Taking into account that the applicant had breached a previous suspended five-year custodial sentence, the court joined both sentences and determined a total custodial sentence of six years. The custodial sentence was suspended until his conviction took effect; a preventive measure of police supervision was imposed until then.

11. The applicant appealed against the judgment. He requested that his sentence be changed to a more lenient one. He argued that, taking into account his state of health and the fact that it was not possible to provide him with the necessary medical care in prison, a custodial sentence would amount to a death penalty. He noted that the first-instance court had rejected the Prisons Administration's contention without any reasoning. He also pointed out that the outcome of the case would affect his partner and their minor son. On 4 July 2005 the Criminal Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*) allowed the applicant's appeal and scheduled a hearing for 14 February 2006.

12. On 29 September 2005, while the applicant was still at liberty, the appellate court, upon an application from the police department, decided to change the preventive measure of police supervision to a less restrictive one. It was noted that supervision of the applicant had become difficult because of his state of health. The applicant was instead required not to change his place of residence and he was thus no longer subject to police supervision.

13. On 14 February 2006 the Criminal Chamber of the Supreme Court upheld the judgment of the first-instance court. The court considered that, regardless of the Prisons Administration's contention, the applicant had to receive a custodial sentence under the penal law. It was noted that the Prisons Administration had an obligation to organise the execution of custodial sentences.

14. On 2 May 2006 the Criminal Department of the Senate of the Supreme Court (*Augstākās tiesas Senāta Krimināllietu departaments*) dismissed the applicant's appeal on points of law; the applicant's conviction

took effect. The Senate established that the sentence imposed on the applicant was the minimum sentence provided for in law for the type of offence; a more lenient sentence (than that provided for in law) was impossible since the applicant had reoffended. The Senate noted that a court could release a prisoner under section 59, paragraph 6 of the Criminal Law if he or she had fallen ill with a severe and incurable illness after the pronouncement of the judgment. The applicant, however, had been suffering from an incurable illness since long before his conviction. Moreover, his illness had not prevented him from committing an especially serious offence. The Senate pointed out that under section 78 of the Sentence Enforcement Code emergency medical care was available to detainees, if necessary in a civil setting. The Prisons Administration was under an obligation to organise the execution of custodial sentences; if such execution became impossible, section 640 of the Law of Criminal Procedure provided for the possibility of release on health grounds. This could only be decided by a judge overseeing matters of execution of custodial sentences, after the conviction had taken effect.

15. After the applicant's conviction took effect, on 14 June 2006 he was detained and placed in a temporary investigative unit. On the next day he was transferred to a prison.

3. The applicant's medical care in custody

16. On 15 June 2006 the applicant was transferred to Central Prison in Rīga and was placed in the hospital located therein; he remained there for nineteen days.

17. According to the Government, the applicant received particular attention from the prison hospital's personnel. In all, he was taken for seven haemodialysis sessions in the *Gaiļezers* hospital.

18. On 4 July 2006 the applicant was transferred to Valmiera Prison, where he was detained for almost one month. According to the Government, the applicant was placed in the inpatient treatment unit and prison doctors attended to and examined him almost every day, on some days more than once, because of high arterial blood pressure. For the same reason, an emergency ambulance was often called. The applicant received fourteen haemodialysis sessions in a civil hospital in Valmiera.

19. It appears that on 31 July 2006 it was recorded that his health had deteriorated and he was placed in a civil hospital in Valmiera, where he remained until 4 August 2006.

20. On 4 August 2006 he was transferred to the prison hospital in Rīga for medical treatment; he remained there for twenty-five days. The applicant was taken for nine haemodialysis sessions in the *Gaiļezers* hospital during that period.

21. On 28 August 2006 a medical commission (consisting of doctors from the Prisons Administration, the prison hospital and Valmiera Prison)

examined the applicant. They established that the applicant was suffering from the same illnesses as mentioned in forensic report no. 17-K, but that his state of health had deteriorated. The applicant's body had reacted badly to haemodialysis: his arterial blood pressure had been extremely high after the sessions and it had remained high on the days when he was not on haemodialysis; this had caused complications for the applicant's heart (stenocardia seizures), for which qualified medical assistance could not be provided in prison.

22. On the basis of the medical commission's report, the administration of Valmiera Prison applied to the Valmiera District Court (*Valmieras rajona tiesa*) for permission to release the applicant on account of his state of health.

23. On 29 August 2006 the National Human Rights Office (*Valsts cilvēktiesību birojs*), following a complaint by the applicant, issued an opinion, which was not binding on the domestic authorities, inviting the Valmiera District Court to release the applicant on health grounds. It was noted that the prison authorities were not in a position to provide the requisite medical assistance to detainees because of a lack of financial resources. Only 6 % of the necessary financial resources had been allocated in 2005 for medical assistance in prisons. They noted that these budget cuts had meant in practice that the scope of primary and secondary medical care was significantly reduced and that preventive care (screening for TB, STD and HIV/AIDS) was largely limited. Therefore, the Prisons Administration's contention that they could not provide the necessary medical care to the applicant held true. It also had to be taken into account that approximately seven thousand prisoners were being held in penal institutions and that every one of them was entitled to an equal amount of medical care. Finally, in support of their argument that the prison authorities were not in a position to ensure adequate medical assistance, they referred to the Court's ruling in the case of *Farbtuhs v. Latvia* (no. 4672/02, 2 December 2004).

24. On 6 September 2006 the Valmiera District Court examined the application for release. It also had before it the opinion of the National Human Rights Office. Following a hearing in the presence of the applicant's representative, the court released the applicant from the further serving of his custodial sentence on the grounds of section 59, paragraph 6 of the Criminal Law and section 640, paragraph 4 of the Law of Criminal Procedure. The applicant was released on the same date.

4. The applicant's state of health after his release

25. Following his release, the applicant's state of health deteriorated.

26. In September 2006 an ambulance was called to the applicant's aid on thirty-one occasions, on some days up to three times.

27. In October 2006 an ambulance was called to his aid on nine occasions. The applicant was admitted to hospital, where he remained from 4 to 11 October 2006; he underwent his ordinary haemodialysis sessions, as well as some additional ones.

28. The applicant was again hospitalised on 14 October 2006, and he underwent urgent haemodialysis. Afterwards the applicant left the hospital.

29. In November an ambulance was called to his aid on sixteen occasions until the last call was made on 29 November 2006. He had apparently fallen ill, collapsed and lost consciousness. The applicant was taken to hospital in a critical condition, in a deep coma (*koma II-III*). Doctors discovered that he had a brain haematoma (*smadzeņu hematoma*) and diffuse cerebral oedema (*difūza smadzeņu tūska*). The applicant died on 30 November 2006; haemorrhagic stroke (*hemorāģisks insults*) and high arterial blood pressure (*arteriāla hipertensija*) were registered as the cause of death.

B. Relevant domestic law

30. According to section 59, paragraph 6 of the Criminal Law (*Krimināllikums*), in force since 1 April 1999, if a convicted person has fallen ill with a severe and incurable illness after the pronouncement of a judgment, a court may release that person from serving the remainder of the sentence.

31. According to section 116 of the Sentence Enforcement Code (*Sodu izpildes kodekss*), if a convicted person has fallen ill with a severe and incurable illness owing to which he or she is unable to serve the remainder of his or her sentence, the relevant penal institution has to order a medical examination and, on the basis of the results, make an application for release to the appropriate court.

32. The relevant part of section 640, paragraph 4 of the Law of Criminal Procedure (*Kriminālprocesa likums*), in force since 1 October 2005, provides that a judge may release a convicted person from serving the remainder of his or her sentence if that person has fallen ill while serving the sentence, taking into account the personality of the convicted person, the nature of the crime, and other circumstances. Before the entry into force of the Law of Criminal Procedure, the relevant provision was contained in section 364 of the Code of Criminal Procedure (*Kriminālprocesa kodekss*).

COMPLAINT

33. The applicant complained under Articles 2 and 6 of the Convention about the decisions of the domestic courts to sentence him to imprisonment.

He contended that the courts had ignored the actual circumstances of the case, in particular as regards the medical treatment in prisons. Relying on Article 3 of the Convention he complained that he had been imprisoned in spite of his state of health, which deteriorated sharply after the imprisonment.

THE LAW

34. The applicant complained, in essence, that the respondent State had failed to protect his health, physical well-being and life. Since the Court is master of the characterisation to be given in law to the facts of the case, it considers that the applicant's complaint falls to be examined under Article 2 of the Convention, which reads in its relevant part as follows:

Article 2

"1.Everyone's right to life shall be protected by law."

35. The Government contested this claim. In addition, they argued that Ms Kleine had no standing to continue the proceedings on the applicant's behalf.

36. The Court finds that it does not need to rule on the issue of Ms Kleine's *locus standi* as the applicant's complaint is inadmissible in any event for the following reasons.

A. Parties' submissions

1. The Government

37. The Government argued that neither the Convention nor the Court's case-law required that terminally ill persons be released from prison. They relied on the Court's judgment in the case of *L.C.B. v. the United Kingdom* (9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III), arguing that the Court's task under Article 2 of the Convention was to examine whether the State had taken all steps necessary to protect the applicant's life. They did not consider that there was a legal lacuna in domestic law. The applicant had been given a custodial sentence because he had reoffended. Had he not reoffended, the domestic courts could have suspended the applicant's custodial sentence, a possibility that had been applied in the first set of criminal proceedings against him.

38. In the Government's view, they had complied with their positive obligation to protect the applicant's life. Following his conviction and imprisonment, the applicant had been regularly transferred to civil hospitals

to receive haemodialysis sessions to maintain and safeguard his life. He had undergone thirty sessions during his imprisonment, which was the necessary treatment to secure his life. Emergency ambulances had been called to the prison when necessary. His health had been closely monitored by medics on a daily basis, and as often as two or three times a day by the competent medics in the prison in Valmiera. Finally, the Government argued that there was no direct link between the deterioration of the applicant's state of health after his release and the medical care in prison or the imprisonment as such; his diagnosis as recorded by the civil hospital had remained substantially the same after release.

39. As concerns the applicant's medical care, the Government referred to their submissions summarised in the above paragraph, stating that they had taken all possible steps to protect the applicant's wellbeing, and concluded that the medical care had been adequate. They noted that an emergency ambulance had been available and that there was no evidence regarding lack of a special diet or inadequate nutrition in prison. Similarly, the applicant's statements that he had been placed with patients infected with HIV were not supported by any evidence.

40. As concerns the compatibility of the applicant's health with his detention, the Government pointed out that he had spent two and a half months in prison. They described his state of health as unstable, with periods of deterioration followed by periods of improvement. They contended that the only necessary treatment had been the haemodialysis sessions, on which the applicant's life had been directly dependant. Moreover, the applicant had spent significant time outside prison – in civil hospitals in Rīga and Valmiera. They alleged that the quality of the medical care provided to the applicant in prison was in no way worse than he would have received if at liberty; it might even be said that it had, in fact, been better, as he had been transported to and from the civil hospital and he had not been subject to queues. Finally, the Government drew a distinction between the applicant's case and the case of *Farbtuhs v. Latvia* (no. 4672/02, 2 December 2004).

2. The applicant

41. The applicant, for his part, submitted that by imposing a custodial sentence on him the domestic courts had ignored the prevailing circumstances in Latvian prisons and the medical care available at that time. The Prisons Administration had contented that they could neither ensure the necessary medical treatment for the applicant nor ensure his regular transfer to a civil hospital for haemodialysis sessions; the courts disregarded this. The applicant argued that there was a lacuna in domestic law which made it impossible for the national courts not to impose a custodial sentence on an individual who had been suffering from a terminal illness long before the trial, even if adequate conditions of detention could not be ensured.

42. Secondly, the applicant argued that the medical assistance had been inadequate and that his state of health had deteriorated in prison. He alleged that he had not been able to receive emergency medical assistance either in the prison hospital in Rīga or in the prison in Valmiera, particularly at night when it had been necessary. Nor had he been able to receive the special diet that had been prescribed for him in either of these establishments. Finally, he alleged that in the prison hospital he had been placed together with fourteen other patients suffering from various illnesses, including patients infected with the HIV virus.

43. Thirdly, the applicant asserted that his state of health was not compatible with detention in prison. This had been noted first on 14 March 2005 by the Prisons Administration, and then on 29 August 2006 by the National Human Rights Office. Subsequently, the domestic courts had acted in accordance with this view and released him on 6 September 2006 in view of his deteriorating state of health. The fact that he had died two and half months after his release, and that emergency medical assistance was called to him on fifty-six occasions in the period following his release, was further relied upon by the applicant's representative in support of his complaint.

B. The Court's assessment

1. General principles

44. The Court reiterates that the first sentence of Article 2 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. The Court's task in that regard is to determine whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk (see *L.C.B. v. the United Kingdom*, cited above, § 36).

45. The obligation to protect the life of individuals in custody also implies an obligation for the authorities to provide them with the medical care necessary to prevent a fatal outcome (see *Taïs v. France*, cited above, § 98). A failure to provide adequate medical care may constitute treatment in breach of the Convention (see *Huylu v. Turkey*, no. 52955/99, § 58, 16 November 2006).

46. Furthermore, the authorities must account for the treatment of persons deprived of their liberty. A sharp deterioration in a person's state of health in detention facilities inevitably raises serious doubts as to the adequacy of medical treatment there (see *Farbtuhs v. Latvia*, cited above, § 57).

47. In addition, the positive obligations under Article 2 of the Convention require States to make regulations compelling hospitals,

whether civil or prison, to adopt appropriate measures for the protection of patients' lives (see *Tarariyeva v. Russia*, no. 4353/03, § 74, ECHR 2006-XV (extracts), and *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, § 73, 22 November 2011).

2. Application of these principles to the present case

48. The Court notes that the applicant spent two months and twenty three days in detention until his release on health grounds on 6 September 2006. Two months and twenty four days after the applicant's release, he died from a haemorrhagic stroke and high arterial blood pressure. In order to establish whether or not the respondent State complied with its obligation to protect his life under Article 2 of the Convention, the Court must examine whether the relevant domestic authorities did everything that could have been required of them, in good faith and in a timely manner, to try to avert a fatal outcome (see *Makharadze and Sikharulidze v. Georgia*, cited above, § 74).

49. The Court notes, at the outset, that the applicant's medical conditions had developed long before his placement in custody. Indeed, the applicant's state of health was the reason why his five-year custodial sentence was suspended in the first set of criminal proceedings against him (see paragraph 5 above). Shortly thereafter, however, another set of criminal proceedings was begun in connection with a repeated criminal offence (see paragraph 6 above). It is against this background that the Court will examine if the State complied with its positive obligation to protect the applicant's life.

50. First of all, the Court reiterates that matters of appropriate sentencing largely fall outside the scope of the Convention and it is not its task to review the appropriateness of the original sentence (see *Léger v. France*, no. 19324/02, § 72, 11 April 2006). While the Court has noted, in the context of Article 3, that a grossly disproportionate sentence could, in principle, run counter to the Convention, "gross disproportionality" is a strict test that will only be met on rare and unique occasions (see *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, § 237, 10 April 2012, not yet final). This test is clearly not met in the present case. Even though during the present applicant's criminal trial doubts were raised as to his physical ability to survive in a prison setting, the relevant domestic authority concluded that the applicant was fit to serve a custodial sentence (see paragraph 9 above), and the Senate of the Supreme Court explained in detail the reasons for imposing a custodial sentence on the applicant (see paragraph 14 above).

51. Secondly, the Court considers that the Prisons Administration, despite their initial contention that they were not capable of ensuring the haemodialysis sessions necessary to maintain the applicant's health and life, did in fact arrange for these sessions in a civilian hospital on a regular basis.

The applicant did not contest this. Rather, he took issue with the adequacy of the medical assistance in Central Prison and in Valmiera Prison. Having regard to all the material in its possession, the Court finds that no causal link has been established between the alleged deficiencies and the deterioration of the applicant's health, and even less so between the alleged deficiencies and his subsequent death. Moreover, it appears that the medical staff in both prisons did everything in their power to safeguard and maintain the applicant's heath and life. When his state of health deteriorated to the point of stenocardia seizures, for which the necessary medical assistance could not be provided in a prison setting, the prison authorities set in motion the procedure for releasing the applicant on health grounds, which resulted with his release on 6 September 2006. More than two months passed between this and the applicant's death on 30 November 2006. On the whole, the Court is not convinced that that the deterioration of the applicant's state of health and his eventual death is imputable to the respondent State.

52. In view of the above, the Court concludes that the respondent State have complied with their positive obligations under Article 2 of the Convention to protect the applicant's life. It follows that the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President