

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

FOURTH SECTION

DECISION

Application no. 27343/05
Vadims STAROVOITOVS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 27 November 2012 as a Chamber composed of:

David Thór Björgvinsson, *President,*
Ineta Ziemele,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 18 July 2005,

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 Vadims Starovoitovs, is a Latvian national, who was born in 1968 and lives in Rīga. He was represented before the Court by Ms J. Kvjatkovska, a lawyer practising in Rīga.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine, who was succeeded by Agent Mrs. K. Līce.

A. The circumstances of the case

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

1. Pre-trial and trial

4. On 8 April 2004 the applicant was remanded in custody, suspected of having committed a number of robberies.

5. On 26 August 2004, before the Latgale District Court, the applicant pleaded guilty and, in a judgment of 30 August 2004, the court convicted the applicant and sentenced him to eight years' imprisonment. The applicant submitted an appeal, which he later withdrew. The judgment of the lower court came into force on 20 April 2005.

2. Alleged threats to the applicant's life and health in the Central Prison and Valmiera Prison

(a) The applicant

6. The applicant states that in April 2004, when his detention order was adopted, he informed the judge that prior to his arrest he had worked for three years as a security guard in a private company. He asked to be placed in special detention facilities for former members of law-enforcement institutions. The judge dismissed his request because he was not able to prove that he had been employed by the Ministry of the Interior.

7. After his arrival at the Central Prison, and later in Valmiera Prison, he informed the prison guards about his former employment.

8. On 5 April 2005 his cellmates in the Central Prison found out about his former employment and therefore, after a conflict in the cell, the applicant was transferred to another cell. After other cellmates had found out about the applicant's previous employment, and also the fact that, according to informal rules in the prison, he had the lowest "social status" *("левый"* as stated by the applicant*)* during the night of 20 April 2005 he was ill-treated by them and in the morning he was transferred to another cell. On 30 April 2005 he was again transferred because his cellmates had refused to share a cell with an inmate of the lowest social status.

9. On 7 June 2005 the applicant was transferred to Valmiera Prison and placed in a common cell with other inmates. He states that during June and July he wrote several letters to the Governor of Valmiera Prison raising doubts about his safety in the prison, but that no measures were taken. In September 2005 the Prisons Administration dismissed a request submitted by the applicant's mother for him to be transferred to another prison.

(b) The Government

10. At the Government Agent's request, the Ministry of Justice provided the following information, supported by copies of letters and decisions.

11. From 8 April 2004 to 7 June 2007 the applicant was held in detention in the Central Prison in Rīga. When the final judgment in the applicant's criminal case took effect he was transferred to Valmiera Prison.

12. On 26 and 29 April 2005 the applicant and his mother asked the Prisons Administration to transfer the applicant to a prison in Rīga. The requests were motivated by the family situation, namely the mother's poor health and the fact that the applicant had little opportunity to see his wife and child. In June 2005 the Prisons Administration dismissed the request.

13. On 29 July 2005 the applicant complained to the Prosecutor General about, *inter alia*, the potential threats he would face if other inmates found out about his former employment with a security company.

14. On 8 and 14 September 2005 the applicant and his mother repeatedly asked the Prisons Administration to transfer the applicant to Matīsa or Brasa Prison in Rīga. In addition to the reasons previously given, they cited the fact that the applicant had worked in a security company and therefore feared that other inmates might find out. The applicant stated, *inter alia*, that at the moment he was keeping the situation in his cell under control, but he feared that the situation might change after his transfer to a less lenient prison regime where he would have to share the common areas with other inmates.

15. On 16 September the Prisons Administration asked the security company to provide information about the applicant. On 20 September 2005 the Prisons Administration informed the applicant's mother that once the details of the applicant's previous employment with a security company had been established, the applicant ought to be transferred to specialised detention facilities intended for former members of law-enforcement establishments in Rīga.

16. On 10 October 2005 the head of the Security Department of the Prisons Administration, having analysed the information that from 1 March 2001 until 30 November 2003 the applicant had been employed by a security company, decided that for security reasons the applicant should be transferred to Matīsa Prison in Rīga. That decision was put into effect on 17 October 2005.

3. Search at Valmiera Prison on 25 July 2005 and subsequent investigation

17. On 25 July 2005, following the murder of an inmate at Valmiera Prison, members of the Prisons Administration special forces unit began a search of all the cells in Valmiera Prison. During the search, the inmates were ordered to leave their cells and gather in the prison yard.

(a) The applicant

18. According to the applicant, the inmates were ordered to wait in an uncomfortable position for three hours in direct sunlight. All attempts to move resulted in the officers kicking the inmates and beating them with batons. After the search, the applicant returned to his cell, where everything had been turned upside down and some of his belongings were missing.

19. On 26 July 2005 he asked Valmiera Prison administration to explain on what basis special measures were being used against him. He also asked for his missing belongings to be returned.

20. On 29 July 2005 the applicant complained about the search to the Office of the Prosecutor General, and asked it to investigate the lawfulness of the measures used by the Valmiera Prison Administration.

21. On 4 August 2005 the prosecutor informed the applicant that his complaint had been forwarded to the Prisons Administration and that he would be informed of the results of the investigation in due course.

22. According to the applicant the administration of Valmiera Prison offered to transfer the applicant to another prison in Rīga in exchange for the applicant withdrawing his previous complaints about Valmiera Prison. In a letter dated 23 August 2005 the applicant informed the Prisons Administration that he had settled the matter with Valmiera Prison administration, which had compensated him for his lost belongings.

23. On 12 February 2006 the applicant again complained to the Office of the Prosecutor General about the search on 25 July 2005.

24. On 12 April 2006 the Prisons Administration informed the applicant that the Specialised Public Prosecutor's Office had not found any violations by members of the special forces unit during the search on 25 July 2005.

(b) The Government

25. According to the information the Ministry of Justice and the prosecutor's office had provided to the Government Agent, after the search carried out by the special forces unit in Valmiera Prison, several inmates complained that the special forces had inflicted bodily injuries on them and that the medical unit had failed to provide prompt medical assistance. During the internal investigation launched by the Prisons Administration it was established that on the day of the search five inmates had asked for medical assistance and the next day eleven inmates had done so. The applicant was not among them.

26. In his letter of 29 July 2005 addressed to the prosecutor's office (a copy of which has been provided by the Government) the applicant described the situation in Valmiera Prison during the search. He stated that he had observed from the window of his cell intolerable behaviour by members of the special forces unit and officers of Valmiera Prison. He also stated that he and his cellmates had voluntarily obeyed the orders given by the special unit but those who had disobeyed had been beaten and kicked. In

general the applicant asked Valmiera Prison to investigate the activities of all those who had participated in the search.

27. On 5 August 2005 seven inmates (the applicant not being among them) submitted complaints to the prosecutor's office concerning the activities of the special forces unit, and asked for criminal proceedings to be instituted. In September 2005 the prosecutor's office dismissed the complaints but on 5 April 2006, at the Ombudsman's request, the latter decision was quashed and criminal proceedings were instituted. At the time the Government observations were submitted the investigation was still ongoing.

COMPLAINTS

28. The applicant complained under Article 2 that, for more than two years, the prison authorities had refused to transfer him to specialised detention facilities.

29. The applicant further complained under Article 3 of the Convention that he had been ill-treated and subjected to degrading treatment during a search at Valmiera Prison on 25 July 2005.

30. He also lodged numerous complaints under various other Articles of the Convention.

THE LAW

A. Complaints under Article 3 of the Convention

31. The applicant's complaints that he had been physically threatened and ill-treated in prison shall be examined under Article 3 of the Convention, which reads as follows:

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

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ..."

1. Alleged threats to the applicant's life and health in the Central Prison and Valmiera Prison

32. The Government contended that the applicant may no longer claim to be a victim, as the matter has been resolved. In the alternative, the

Government asked for the conclusion that the complaint was manifestly ill-founded, in that he had only in September 2005 brought to the authorities' attention his former employment with the security company and, most importantly, he had failed to provide any credible assertion or evidence that his safety had been jeopardised in the Central Prison or Valmiera Prison. In this connection the Government contended that the applicant had never asked for medical assistance in prison.

33. As regards ill-treatment in the Central Prison on 20 April 2005, the applicant confirmed that he had had no need to ask for medical assistance, but that that should not serve as a precondition for the finding of a violation under Article 3. He considered that the arguability of his ill-treatment claim was demonstrated by the very fact that in April 2005 he had changed cells in the Central Prison three times. The applicant stated that he had informed the Valmiera Prison administration about his employment as soon as he arrived there.

34. The Court reiterates that ill-treatment must attain a minimum level of severity 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

35. The Court notes at the outset that, contrary to the Government's submissions, it appears from the case file that the applicant had informed the authorities about his former employment with the security company in his letter of 29 July 2005 (see paragraph 13 above) in which he raised concerns that the inmates might find out about it. Leaving aside this factual dispute and other preliminary objections raised by the Government, the Court considers that the complaint is inadmissible on the following grounds.

36. The Court observes that the applicant has not described, either in his complaints to the domestic authorities or to the Court, the ill-treatment to which he alleged he had been subjected as a former employee of a security company by other inmates on 20 April 2005 in the Central Prison. Moreover, the allegations are not supported by other facts of the case, such as, among others, even minimal but sufficiently consistent complaints to the authorities or recourse to the medical unit (see, to the contrary, *J.L. v. Latvia*, no. 23893/06, § 86, 17 April 2012).

37. As to the applicant's argument that the ill-treatment may be proved by the fact that he was transferred to other cells, the Court notes that the Government have not commented on this argument. Even assuming that the applicant might have been in conflict with other inmates in prison, the information provided by the applicant about his transfers shows that the prison staff took appropriate security measures, and as such does not prove the existence of insufficient diligence in ensuring safety in prison (see, *mutatis mutandis*, *Kostjučenkovs v. Latvia* (dec.), no. 19826/04, 8 March 2011).

38. Concerning the potential threats to his physical safety in the Central Prison and Valmiera Prison, the Court reiterates that mere fear might not be sufficient to constitute the minimum level of severity required under Article 3 of the Convention (see *Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006). In this particular case, it derives from the applicant's communications to the prosecutor's office and the Prisons Administration that the applicant himself assessed his situation in Central Prison and Valmiera Prison as stable (see paragraph 14 above). The Court notes however that it took three months for the Valmiera Prison administration to make checks concerning the applicant's former employment, after which the applicant was transferred to serve the remainder of his sentence in Matīsa Prison; nevertheless, in these particular circumstances, there was no evidence of possible threats posed to the applicant's safety in Valmiera Prison during the above delay. Furthermore, the authorities acted as soon as they had sufficient information about his former employment.

39. In the light of the above, the Court concludes that the applicant was not subjected to treatment reaching the level of severity necessary for Article 3 of the Convention to apply. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. Search at Valmiera Prison on 25 July 2005 and subsequent investigation

40. The Government contended that the applicant had not exhausted domestic remedies, as he had failed to file a substantiated complaint with the prosecutor's office or the Prisons Administration of the alleged ill-treatment. In the alternative they asked for the conclusion that the necessary level of severity required under Article 3 had not been met.

41. The applicant's representative contested the argument, noting that in his complaint of 29 July 2005 (see paragraph 13 above) the applicant had asked for the lawfulness or otherwise of the measure to be investigated, given that, according to him, the measures taken by the special forces unit in general had been disproportionate.

42. The Court notes that the applicant does not contest the Government's argument that the applicant had not sustained any injuries during the search, and that he was not among the inmates who had addressed specific complaints to the Prisons Administration or the prosecutor's office of excessive use of force during the search. The applicant also does not contest the effectiveness of recourse to the Prisons Administration which, as recognised in *Jurijs Dmitrijevs v. Latvia*, no. 37467/04, §§ 68-69, 2 October 2012 (not yet final), in similar factual circumstances carried out an investigation at the appropriate level, and it could not therefore be considered ineffective in addressing this particular type of complaint.

43. In the light of the above, the Court concludes that the applicant has failed to exhaust domestic remedies and the complaint in this part should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Other complaints

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

45. 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 (a) 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.

Lawrence Early
Registrar

David Thór Björgvinsson
President