



Prison sentence law which prevented male inmate from attending father's funeral led to sexual discrimination

In today's **Chamber judgment**¹ in the case of **Ēcis v. Latvia** (application no. 12879/09) the European Court of Human Rights held, **by five votes to two**, that there had been:

a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a male prison inmate who complained that he had not been allowed to attend his father's funeral under a law regulating prison regimes which discriminated in favour of women.

The Court found that men and women who had committed a serious crime and had received the same sentence were treated differently. Men were automatically placed in the highest security category and held in closed prisons, while women went to less restrictive partly closed prisons.

The law meant that the applicant had been automatically banned from attending the funeral, while a woman would have had such a possibility. There had been no individual assessment of the proportionality of such a prohibition and he had suffered discrimination which was in violation of the Convention.

Principal facts

The applicant, Mārtiņš Ēcis, is a Latvian national who was born in 1981 and lives in the Ventspils district (Latvia).

Mr Ēcis was sentenced to 20 years' imprisonment for kidnapping, and aggravated murder and extortion in 2001. Under the applicable legislation, he began his sentence in 2002 as a maximum security inmate in a closed prison. He later progressed to the medium security category in the same facility.

In 2008 Mr Ēcis complained to the authorities that male and female prisoners who had been convicted of the same crimes and given the same term of imprisonment were treated differently when serving their sentences. In particular, women were initially placed in partly closed prisons rather than closed prisons, allowing them to more rapidly obtain certain privileges, such as leave.

The Justice Ministry dismissed his complaint, referring to the Sentence Enforcement Code and the fact that the legislature had decided that men and women should be treated differently when it came to the execution of prison sentences. There was no discrimination as both sexes' rights were restricted and both were deprived of their liberty.

Mr Ēcis lodged three complaints with the Constitutional Court in 2008 about alleged discrimination against male prison inmates as under the law women who had committed the same type of crime and were serving the same sentence had more lenient conditions.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The Constitutional Court declined to institute proceedings for any of the complaints on the grounds of **insufficient** legal reasoning. Among other things, it found that Mr Ēcis had failed to specify why the difference in the legal treatment of men and women should not be allowed and why male and female prisoners convicted of the same crimes were in comparable situations.

His third Constitutional Court complaint, in October 2008, included the fact he had not been allowed to attend his father's funeral, whereas a woman prisoner in the same situation would have been.

Complaints, procedure and composition of the Court

The applicant complained that men and women convicted of the same crime were treated differently when it came to the prison regime applied to them, in particular with regard to the right to prison leave, which meant he had not been able to attend his father's funeral. He relied on Article 14 (prohibition of discrimination), in conjunction with Article 8 (right to respect for private and family life), Article 5 (right to liberty and security) and Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 12 December 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lado **Chanturia** (Georgia),

and also Milan Blaško, *Deputy Section Registrar*

Decision of the Court

The Court decided to deal with the case under Article 14 in conjunction with Article 8. It also dismissed a preliminary objection by the Government that the applicant had failed to exhaust domestic remedies. In particular, when rejecting Mr Ēcis's third case, the Constitutional Court had, at least in part, expressed its position on the substance of his complaint.

On the merits, the Court observed that it had consistently held that Article 14 could apply if people in an analogous or relevantly similar situation had been treated differently. Such was Mr Ēcis's case, which concerned men and women who had been convicted of serious or especially serious crimes, the application of prison regimes and their impact on prisoners' family life.

Not all differences in treatment violated Article 14, but there had to be a legitimate aim, and the means employed had to be in proportion to the aim.

The Government had argued that treating men and women differently in prison was justified by the fact that female prisoners had distinctive needs. The Court accepted that argument in part, particularly when it came to maternity. Nevertheless, any measures still had to be proportional.

The Court noted that under the Sentence Enforcement Code Mr Ēcis had not been allowed to attend his father's funeral because he was a medium-security prisoner in a closed prison. No other considerations had been taken into account when the authorities had refused him leave. However, a woman convicted of the same crimes would automatically be placed in a partly closed prison and, having served the same amount of sentence and progressed to the same security level, would be eligible for leave.

The Government had argued that women inmates were less violent, but had not backed up that argument with specific data. In any case, the Court could not accept that all male prisoners were so much more dangerous that individual risk assessments were not needed.

Furthermore, the Committee for the Prevention of Torture (CPT) had criticised Latvia's system of setting pre-determined minimum periods under various prison security regimes, stating that it was up to prison authorities to decide on such arrangements, based on agreed criteria and individual assessments of inmates.

The Court shared the Government's view that women prisoners should not face prison conditions that were harsher than necessary, but the same was also true of men. While Article 8 did not guarantee leave from prison to attend a funeral, the domestic authorities still had to assess such requests on their merits. In addition, European prison policy increasingly emphasised rehabilitation, with family ties being important in aiding the reintegration of both sexes.

The Court concluded that while some differences in treatment could be justified, a blanket ban on males leaving prison, even to attend a funeral, did not help the goal of meeting the particular needs of female detainees. The refusal to assess Mr Ēcis's request to attend the funeral owing to a prison regime which was based on his sex had had no objective and reasonable justification and he had therefore suffered discrimination and a violation of his Convention rights.

Just satisfaction (Article 41)

The Court held by five votes to two that Latvia was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judges Grozev and O'Leary expressed a joint dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.