THIRD SECTION

DECISION

Application no. 1710/06
Sergejs KATAJEVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 11 September 2012 as a Chamber composed of:

 Josep Casadevall, *President,* Egbert Myjer, Corneliu Bîrsan, Ján Šikuta, Ineta Ziemele, Nona Tsotsoria, Kristina Pardalos, *judges,*and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 30 November 2005,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Mr Sergejs Katajevs, is a Latvian national who was born in 1984 and is currently serving his sentence in Jelgava Prison. 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.

3.  On 12 April 2004 the applicant was arrested and placed in a short-term detention facility in the Ventspils Police Department.

4.  The applicant remained in that facility for the following periods:

-  from 12 April to 29 May 2004;

-  from 14 to 29 October 2004;

-  from 14 to 22 December 2004; and

-  from 22 January to 14 February 2005.

5.  According to the applicant, the conditions in that detention facility were inhuman and degrading on several accounts. There was no daylight, no toilet, no access to water and no ventilation. He had to sleep on the concrete floor without a mattress or blanket. The cell was damp, and was infested with insects.

6.  According to the applicant, he was not able to correspond with his relatives while in that detention facility.

7.  On 2 December 2005 the applicant complained about the conditions of his detention to the Ventspils Police Department. On 8 December 2005 they replied that they were not in a position to ensure better conditions for detainees.

8.  On 3 February 2006 the applicant complained to the Ventspils Police Department that he was not allowed to correspond with his relatives. On 20 February 2006 they replied that private correspondence was not allowed.

B.  Relevant domestic law

9.  The relevant laws have been summarised in *Ņikitenko v. Latvia* (dec.), (no. 62609/00, 11 May 2006, and *Melnītis v. Latvia* (no. 30779/05, §§ 24‑26, 28 February 2012).

10.  Since the entry into force of the new Law of Criminal Procedure (*Kriminālprocesa likums*) on 1 October 2005 several normative acts concerning detention have been adopted. Initially, the Parliament passed a law on procedure for keeping detainees in short-term detention facilities in police departments (*Aizturēto personu turēšanas kārtības likums*); it does not specify if detainees held in those facilities have the right of correspondence. After that the Government issued a regulation that was later replaced by another law (*Apcietinājumā turēšanas kārtības likums*) applicable to detainees held in investigative wings of prisons and to detainees held in the short-term detention facilities in police departments. The law expressly provides for the right of correspondence.

11.  In addition, section 1635 of the Civil Law provides that every wrongful actas a result of which damage has been suffered shall give the victim the right to claim compensation from the perpetrator, in so far as he or she may be held culpable for that act. The later amendments to that law, which took effect on 1 March 2006, expressly specify that it includes non-pecuniary damage.

COMPLAINTS

12.  The applicant complained under Article 3 of the Convention about the conditions of his detention in the short-term detention facility in Ventspils.

13.  The applicant complained under Article 8 of the Convention that he was not allowed to correspond with his relatives during his stay in that facility.

THE LAW

A.  Alleged violation of Article 3 of the Convention

14.  The applicant complained about the conditions of his detention in the short-term detention facility in Ventspils. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

15.  The Government disputed the admissibility of this complaint on two grounds. They argued, first of all, that the applicant had failed to comply with the six-month time-limit set out in Article 35 § 1 of the Convention. They contended, secondly, that the applicant had failed to exhaust domestic remedies.

16.  Article 35 § 1 of the Convention and the Court’s case-law (see, among many others, *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001) determine the starting point of the running of the six-month time-limit as follows: (a) when there are effective remedies available, it runs from the date of the final decision in the process of their exhaustion; (b) where it is clear from the outset that no effective remedies are available, it runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see, for a recent authority, *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 54, 29 June 2012). Accordingly, the Court shall establish if there were any effective remedies for the applicant’s complaint, and in view of that finding it shall establish the starting date of the running of the six-month period.

1.  Exhaustion of domestic remedies

17.  The Government argued that the applicant had not exhausted remedies under the Law of Administrative Procedure and under the Civil Law.

18.  The applicant did not comment.

19.  As concerns the first remedy proposed, namely, a complaint with the administrative courts, the Court notes that it has had an opportunity to examine the effectiveness of that remedy and found it not to be accessible in practice to detainees, at least before 15 June 2006 (see *Melnītis*, cited above, §§ 46-53). The Court sees no reason to hold otherwise in the present case and finds that the proposed remedy cannot be considered effective for the purposes of the applicant’s complaint. Therefore, he did not need to exhaust it (see, for the relevant principle that only effective remedies need to be exhausted, *Paksas v. Lithuania* [GC], no. 34932/04, § 75, 6 January 2011).

20.  As concerns the second remedy proposed, namely, a claim for damages under section 1635 of the Civil Law, the Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy they rely on was both effective and available (see *Melnītis*, cited above, § 46). A mere reference to a general provision concerning the right to claim damage, in the absence of any specific examples of the domestic court’s case-law to evidence the scope and application of that provision, is not sufficient for that purpose (see *Melnītis*, cited above, § 50, and *Mikolajová v. Slovakia*, no. 4479/03, § 34, 18 January 2011). Thus the Court concludes that the Government have not discharged the burden of proof on them to convince the Court that a claim for damages under section 1635 of the Civil Law was an effective remedy for a complaint about the conditions of detention, available in theory and practice at the material time to the present applicant.

21.  Finally, the Court notes that the Government does not argue non-exhaustion on any other grounds (contrast with the above-mentioned *Ņikitenko* case and also with *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 62, 4 May 2006).

22.  The Court therefore rejects the Government’s preliminary objection concerning the exhaustion of domestic remedies.

2.  The six-month rule

23.  The Government maintained that the applicant had not complied with the six-month time-limit in view of the fact that he had been released from the short-term detention facility on 14 February 2005 and lodged his complaint with the Court in that regard more than six months later.

24.  They argued that the applicant’s domestic complaint of 2 December 2005 was irrelevant for the purposes of calculating of the six-month time-limit, as the applicant could neither have prevented nor remedied the situation complained of by a complaint that was submitted more than nine months after the events, and even after he had lodged his application with the Court.

25.  The applicant did not comment.

26.  The Court has already found that a complaint to the police department alone cannot be considered an effective remedy in circumstances such as those in the present case (see the admissibility decision in the above-cited *Ņikitenko* case and the case-law cited therein). There is no reason to depart from that finding in the present case. The Court therefore holds that the applicant has had recourse to a remedy which cannot be considered effective and thus it should not be taken into consideration when determining the starting point of the six-month time-limit for the purposes of Article 35 § 1 of the Convention.

27.  The Court reiterates that in situations, when it is clear from the outset that no effective remedies are available, the date of the acts or measures complained of is not counted in the six-month period referred to in Article 35 § 1 of the Convention (see *mutatis mutandis* *Otto v. Germany* (dec.), no. 21425/06, 10 November 2009 and *Benet Praha, spol. s r.o.* *v. the Czech Republic* (dec.), no. 38354/06, 28 September 2010). Time starts to run on the date that follows the date of the acts or measures complained of and expires six calendar months later, regardless of the actual duration of those calendar months. In the present case, the six-month period started to run on the date that followed the applicant’s release, on 15 February 2005, and it expired on 14 August 2005. The Court notes that the applicant lodged his complaint with the Court only on 30 November 2005. It therefore accepts the Government’s preliminary objection that this complaint has been submitted out of time and rejects it in accordance with Article 35 §§ 1 and 4 of the Convention.

B.  Alleged violation of Article 8 of the Convention

28.  The applicant complained that he was not allowed to correspond with his relatives during his stay in the short-term detention facility in Ventspils. He relied on Article 8 of the Convention, which reads in its relevant part:

“Everyone has the right to respect for his private and family life, his home and his correspondence”

29.  The Government argued that the applicant had failed to comply with the six-month time-limit as set out in Article 35 § 1 of the Convention. They further argued that the applicant’s domestic complaint of 3 February 2006 was irrelevant for the purposes of calculating the six-month time-limit as it had at that point been a purely theoretical question. During his stay in the short-term detention facility he had neither requested that his letters be sent nor complained of any ban on correspondence.

30.  The applicant did not comment.

31.  The Court takes note of the factual information submitted by the Government that during his detention the applicant did not attempt to make use of his right of correspondence. The facts that the applicant waited for almost one full year after his detention in the short-term detention facility to raise this question before the domestic authorities and that he did so only after he had lodged his application with the Court evidence that the applicant was not the victim of a violation. In any event, the Court observes that in the meantime the right of correspondence has been clearly provided in the relevant domestic law.

32.  In such circumstances the Court cannot but conclude that the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention in that regard. It follows that this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and it shall be rejected as such under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

 Santiago Quesada Josep Casadevall
 Registrar President