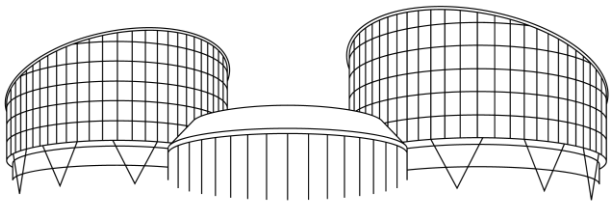

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF ALEKSEJEVA v. LATVIA**

*(Application no. 21780/07)*

JUDGMENT

STRASBOURG

3 July 2012

**FINAL**

*03/10/2012*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Aleksejeva v. Latvia,**

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

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

Having deliberated in private on 12 June 2012,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in an application (no. 21780/07) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms. Jeļena Aleksejeva ("the applicant"), on 13 April 2007. At the time of the lodging of the application the applicant's surname was Brehova, which she changed to her maiden name after her divorce (see paragraph 22 below).

2. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that the national authorities had failed to adequately protect her from potential attacks by other prisoners and that they had violated her right to respect for her private life and family life by not allowing her to receive visits from her partner and her mother. She relied on Articles 3 and 8 of the Convention.

4. On 21 June 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1984 and lives in Rīga.

## A. The conditions of the applicant's imprisonment

6. On 18 October 2006 the applicant was detained in Iļģuciema Prison, the only prison in Latvia for female detainees.

7. The applicant's mother had worked in Iļģuciema Prison for approximately twenty-five years prior to her daughter's detention there. In 2006 the applicant's mother was an assistant to the prison governor. Her last day of work at the prison was on 19 October 2006. On the following day, the director of the Latvian Prison Administration approved the applicant's mother's retirement from service at the Ministry of Internal Affairs as of 22 October 2006 due to her having reached the retirement age.

8. According to the applicant, on the day on which she was brought to Iļģuciema Prison she was told by the head of security that this was the first time a relative of a staff member of Iļģuciema Prison had been detained there. The applicant was advised to conceal this information from employees and other detainees at the prison, as it was considered that she might be in danger if that information were found out.

9. On 19 October 2006 a guard took away a photo of the applicant's mother from her cell, explaining that the photo could reveal their personal ties and endanger the applicant's safety.

10. On 26 October 2006 the applicant was moved from an intake cell to a two-person cell. She started serving her sentence in the lowest (the most restrictive) imprisonment regime. From 22 January 2007 the applicant shared the cell with a former bailiff. The applicant encountered other detainees during her daily walks, while attending cooking classes, and during weekly showers and visits to the laundry room.

11. According to the applicant, she lived in constant fear of her connection with her mother being found out, as the attitude of prisoners towards the relatives of people employed in prisons, the police or the courts was negative. According to the applicant, one of the inmates of Iļģuciema Prison knew who her mother was. That inmate was released from prison in 2007.

12. After the case was communicated to the respondent Government the applicant submitted more specific information about the attitude of other prisoners towards her. According to the applicant, one former inmate (V.M.) had known of the risks faced by the applicant but had been afraid to give any such information in writing because she had only recently been released from prison, was still on probation and was therefore afraid of possible repercussions from the State authorities. In particular, V.M. had allegedly witnessed an incident in which an inmate, L.A., had used derogatory language and veiled threats towards the applicant and had also implied that she had learned of the applicant's family relations from a prison staff member, T.J.

13. On 5 December 2006 the Rīga City Vidzeme District Court examined an application made by the applicant on 17 October 2006 to postpone the start of the execution of her prison sentence. The applicant was present at the hearing and brought her mother's previous employment at Iļģuciema Prison to the court's attention. The applicant's application to postpone the start of the execution of her sentence was refused.

14. On 5 February 2007 the applicant submitted a complaint to the Ombudsman's Office (*Tiesībsarga birojs*), requesting, *inter alia*, a transfer to an open prison where she could be isolated from other prisoners and where her mother's prior employment would not cause problems. The applicant stated that the situation in prison could become dangerous for her if other prisoners found out about her family ties.

15. In a subsequent meeting with the deputy governor of Iļģuciema Prison the applicant was told that it was not possible to ensure her separation from other prisoners unless she was kept in complete isolation. However, both the deputy governor and the applicant agreed that isolation would be comparable to an additional punishment and therefore that that option was not acceptable.

16. On 12 April 2007, prior to a meeting of an administrative commission of Iļģuciema Prison which was to decide the question of whether the applicant should be transferred to medium (less restrictive) imprisonment regime, the applicant was invited to sign a pre-typed form waiving her right to representation by a lawyer at the meeting of the commission. At the bottom of the form the applicant added, in her own hand, that in the event of her transfer to the medium imprisonment regime she did not object to having to share a cell with other prisoners.

17. On 8 May 2007 the meeting of the administrative commission took place. The applicant was transferred to the medium imprisonment regime and placed in a cell with other prisoners. According to the Government, because of safety considerations she was put in a cell together with first time prisoners.

18. On 14 August 2007 the Ombudsman, in response to the applicant's complaint of 5 February, informed her that a representative of the office had visited Iļģuciema Prison and had found that there were sufficient safeguards in place concerning the security of inmates in the prison, and that the applicant's life and health were not under threat.

### B. Visiting rights

19. On 26 February 2007 the governor of Iļģuciema Prison refused the applicant's request to allow a long-term visit by a man whom she described as her partner. The applicant was informed that by law she was only entitled to receive long-term visits from individuals other than close relatives if her

relatives did not visit her. The applicant was asked to submit proof of her divorce from her then husband.

20. On 28 February 2007 a prison official informed the applicant that she was not allowed to receive visits from her alleged partner, irrespective of a written statement from the Rīga City Kurzeme District Court that the applicant's divorce case was pending before it.

21. According to the applicant, she was informed by the staff of Iļģuciema Prison that receiving visits from her mother would be "problematic" because if such visits were to occur the prisoners would find out about their family relationship. As a result, the applicant's mother did not visit her. The applicant made full use of her four monthly phone calls to talk to her mother.

22. After the applicant was divorced from her husband on 16 April 2007, between 26 April 2007 and 22 September 2007 she was allowed to receive five long-term visits and six short-term visits from her alleged partner.

23. From 29 August to 5 September 2007 the applicant was granted leave from prison to visit her mother.

24. On 21 January 2008 the applicant was authorised to serve her sentence under the highest (the least restrictive) imprisonment regime and was transferred to Vecumnieki Open Prison. On an unspecified later date she was released from prison.

## II. RELEVANT EUROPEAN AND DOMESTIC LAW

25. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter "the CPT") has developed standards relating to the treatment of persons deprived of their liberty. The following is an extract from its 11th General Report (CPT/Inf (2001) 16, paragraph 27):

> "The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm. In fact, violent incidents among prisoners are a regular occurrence in all prison systems; they involve a wide range of phenomena, from subtle forms of harassment to unconcealed intimidation and serious physical attacks.
>
> Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority. Specific security measures adapted to the particular characteristics of the situation encountered (including effective search procedures) may well be required; however, such measures can never be more than an adjunct to the above-

> mentioned basic imperatives. In addition, the prison system needs to address the issue of the appropriate classification and distribution of prisoners."

26. Under Latvian legislation, section 11 (5) of the Law on the Detention Procedure (*Apcietinājumā turēšanas kārtības likums*) specifically provided at the relevant time that detained persons whose conviction had not become final and who belonged to certain specified groups (such as former employees of law-enforcement agencies, including the Prison Administration, and the judiciary, as well as their close relatives) were to be detained separately from other prisoners.

27. Paragraph 13 of Regulation No. 423 (2006) of the Cabinet of Ministers, entitled "The Internal Rules of Detention Institutions" (*Brīvības atņemšanas iestādes iekšējās kārtības noteikumi*), provides that prisoners ought to be placed in cells after taking into account the availability of free spaces, the psychological compatibility of the convicted persons, their level of education and state of health.

28. Article 45 of the Sentence Enforcement Code (*Sodu izpildes kodekss*), applicable to convicted prisoners and as in force at the material time, provided for two types of visits in prison – short-term (one to two hours) and long-term (six to forty-eight hours). Long-term visits were normally meant for spending time together with close relatives of the prisoners (parents, children, siblings, spouses and so on). Article 45 went on to say that "[i]f a convicted person does not have any close relatives or if his close relatives do not visit him, the detention institution's administration may authorise long-term visits with other relatives or other persons".

29. At the relevant time, the number of visits that prisoners in partly-closed (*daļēji slēgti*) prisons were allowed to receive depended on their imprisonment regime. According to article $50^5$ of the Sentence Enforcement Code, visiting rights progressed from four to six to eight long-term and short-term visits per year for prisoners in the lowest, medium and highest imprisonment regimes respectively. The length of the long-term visits allowed also increased progressively.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained of a lack of separation in Iļģuciema Prison of prisoners belonging to vulnerable categories, such as her. She argued that the resulting danger to her safety had been in violation of Article 3 of the Convention, which reads as follows:

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

**Admissibility**

31. The Government contested the applicant's argument and referred to the regulations applicable to the allocation of prison cells (see paragraph 27 above) and added that prison authorities strived to ensure the safety and confidentiality of convicted employees of law-enforcement institutions and the judiciary, as well as their close relatives. The Government submitted that the administration of Iļģuciema Prison had been perfectly aware of the applicant's special situation and had therefore placed her in a two-person cell together with a former bailiff. Subsequently, the applicant herself had confirmed in writing that she had no objection to being transferred to the medium imprisonment regime where she would have to share a cell with several other convicts. In order to guarantee the applicant's safety she had been placed in a cell holding first time prisoners.

32. The Government next referred to the Court's case-law, according to which the applicant had a duty to submit evidence capable of proving beyond reasonable doubt that she had been subjected to ill-treatment that had attained the minimum level of severity required for it to fall within the scope of Article 3 of the Convention. In this regard, the Government submitted that the applicant had not submitted any credible statements or evidence concerning her situation in Iļģuciema Prison and that in any case her complaints were purely hypothetical and abstract.

33. The applicant emphasised that the Latvian penal system was unable to ensure separation of female prisoners belonging to vulnerable categories due to a lack of adequate infrastructure (male prisoners in a comparable situation were held in a special wing of Matīsa Prison). The applicant argued that she had consented to her transfer to the medium imprisonment regime (see paragraph 16 above) under duress or due to fraud, as evidenced by the fact that her consent had been recorded on a pre-typed form.

34. At the outset, the Court observes that the parties appear to be in agreement that the applicant, being a close relative of a former prison guard, belonged to a category of prisoners at risk of violence from other prisoners. Indeed, the vulnerability of individuals in circumstances comparable to those of the applicant in the prison environment is specifically acknowledged by the special protective measures envisaged by section 11 (5) of the Law on the Detention Procedure (see paragraph 26 above), although it was not directly applicable to the applicant's situation. In its case-law, the Court has consistently held that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (see *Kovaļkovs v. Latvia*

(dec.), no. 35021/05, § 47, 31 January 2012). These measures should provide effective protection, in particular, of vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Đurđević v. Croatia*, no. 52442/09, § 102, 19 July 2011, with further references).

35. The extent of this obligation of protection depends on the particular circumstances of each case (*Stasi v. France*, no. 25001/07, § 79, 20 October 2011). The Court in its case-law with regard to the protection of vulnerable prisoners has clarified that the national authorities have an obligation to take all steps reasonably expected to prevent real and immediate risks to the respective prisoners' physical integrity, of which the authorities had or ought to have had knowledge (see, among many other examples, *Pantea v. Romania*, no. 33343/96, § 190, ECHR 2003-VI (extracts), and *Premininy v. Russia*, no. 44973/04, § 84, 10 February 2011).

36. With regard to the minimum severity of treatment required to trigger the authorities' responsibility to protect an individual, the Court's approach has evolved. Initially, the Court held that "the mere feeling of stress of a detained person" (*I.T. v. Romania* (dec.), no. 40155/02, 24 November 2005) and "the mere fear of reprisals from the [applicant's] cell-mates" (*Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006) were not, by themselves, sufficient to bring the situation within the scope of Article 3. Soon afterwards, the Court found that "the cumulative effect of overcrowding and the intentional placement of a person in a cell with persons who may present a danger to him may in principle raise an issue under Article 3 of the Convention" (*Gorea v. Moldova* no. 21984/05, § 47, 17 July 2007). In two more recent cases (*Rodić and Others v. Bosnia and Herzegovina*, no. 22893/05, 27 May 2008, and *Alexandru Marius Radu v. Romania*, no. 34022/05, 21 July 2009) the Court has gone one step further and held that "the hardship the applicants endured, in particular the constant mental anxiety caused by the threat of physical violence and the anticipation of such ..., must have exceeded the unavoidable level inherent in detention". Therefore, a breach of Article 3 of the Convention was found.

37. However, the Court has also noted that the obligation to protect vulnerable prisoners should not be interpreted in such a way as to impose an impossible or excessive burden on the authorities (*Pantea*, cited above, § 189, and *Stasi*, cited above, § 78).

38. Turning to the present case, the Court notes that the State authorities were aware that the applicant belonged to a category of prisoners at risk of inter-prisoner violence. As to the question of whether the authorities had or ought to have had more particular knowledge of any threats to the applicant's well-being, the Court underlines that it does not appear from any of the materials in the case file or from the submissions of the applicant to the Court that she ever informed the staff of Iļģuciema Prison about any

specific incidents, such as the alleged threats to her made by L.A. (see paragraph 12 above).

39. In these circumstances, where the State authorities did not have any specific and detailed information about any threats to the applicant (see, mutatis mutandis, Đurđević v. Croatia, cited above, § 118, and Kovaļkovs v. Latvia, cited above, § 53), what needs to be determined is whether the steps taken by the prison administration were an adequate response to her belonging to the general category of prisoners at risk. The Court notes that the applicant initially shared a cell with another prisoner in a situation similar to hers. Subsequently, she explicitly consented in writing to being moved to another cell that she had to share with other convicts. The Court does not share the applicant's opinion that the use of a pre-typed form automatically gives rise to a presumption that the person signing such a form has been tricked or forced to do so (see paragraph 34 above). In the absence of any other indications whatsoever that the applicant was forced to record her consent to her transfer to a larger cell, the Court finds that her transfer was voluntary.

40. The Court does not lose sight of the fact that for objective reasons – the applicant's family ties with her mother – the applicant might very well have felt some anxiety and discomfort. However, taking into account the considerations outlined above, the Court finds that in so far as the State authorities knew of any potential risks to the applicant, they took all measures that could reasonably have been expected of them to ensure her safety.

41. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant complained of restrictions on her entitlement to receive visits from her partner and her mother. She cited Article 8 of the Convention, which, in so far as is relevant, provides as follows:

> "1. Everyone has the right to respect for his private and family life ....
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

## A. Admissibility

### *1. Visits from the applicant's alleged partner*

43. The Government submitted that the applicant's complaint concerning visits from the man she had claimed was her partner was incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention. In support of this argument, the Government argued that the applicant's relationship with her alleged partner could not be qualified as "family life", as they had neither been a traditional family nor had they had any *de facto* family ties, such as a shared household, children together or similar bonds.

44. At the same time, the Government conceded that the applicant's relationships with her alleged partner could fall within the concept of "private life", which is also protected by the Convention.

45. The applicant submitted that after being transferred to Vecumnieki Open Prison she and her partner had set up a common household.

46. The Court agrees with the Government that at the relevant time the applicant cannot be said to have had formed family ties with her alleged partner. Their purported subsequent cohabitation does not change that conclusion. However, it has not been disputed that the applicant's private life was at stake. Therefore the Court dismisses the Government's argument about incompatibility *ratione materiae*.

47. The Court moreover considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

### *2. Visits from the applicant's mother*

48. The Government argued that the applicant had never requested authorisation for a visit from her mother. According to information furnished to the Government by the Ministry of Justice, it would have been possible to ensure that any visits that the applicant received in prison from her mother remained confidential.

49. The applicant explained that the layout of the prison was such that both long-term and short-term visitors to the prison would inevitably be seen by other prisoners and thus it would not have been possible to keep visits from her mother secret. In addition, she explained that she had been told by prison administration employees that it was not possible for her mother to visit her on so many occasions that she had eventually given up and had not submitted any further requests to that effect.

50. The Court considers that it derives logically from the structure of the Convention proceedings that it falls upon the applicant to submit at least prima facie evidence of the existence of an interference with her Convention

rights. In the light of the facts of the present case, such prima facie evidence could be a written refusal to allow the applicant's mother's visits or any reliable information about the alleged inadequacy of the layout of the visiting areas of Iļģuciema Prison.

51. Taking into account the fact that the applicant admitted that she had never submitted any written requests to allow her mother's visits and the fact that the information submitted by the parties concerning the layout of the visiting areas does not allow the Court to conclude with any certainty that the organisation of confidential visits therein would have been impossible, the Court considers that the applicant has failed to submit *prima facie* evidence of an interference with her right to respect for her family life. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### B. Merits

52. The Government emphasised that the applicant had been allowed to receive eleven visits from her alleged partner after her divorce had been finalised (see paragraph 20 above). Thus there had been no interference with the applicant's right to respect for her private life.

53. The Government submitted, in the alternative, that the applicant's complaint lacked merit because she had not been allowed to receive long-term visits from her alleged partner for only a limited time, while she had still been married to another man.

54. The applicant agreed that the situation concerning long-term visits from her partner had eventually been resolved. She nevertheless considered that the earlier lack of opportunity for her to receive long-term visits had been unacceptable. She pointed out that nowhere in national legislation was it said that married prisoners could not receive long-term visits from people who were not their relatives.

55. The Court has frequently held that a person's detention entails by its nature a limitation on his or her private and family life (see, for example, *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X). Even so, any restriction on a detained person's right to respect for their private and family life must be applied "in accordance with the law" within the meaning of Article 8 § 2 of the Convention (see *Kučera v. Slovakia*, no. 48666/99, § 127, 17 July 2007). The expression "in accordance with the law" not only necessitates compliance with domestic law, but also relates to the quality of that law (*Niedbała v. Poland*, no. 27915/95, § 79, 4 July 2000, and *Gradek v. Poland*, no. 39631/06, § 42, 8 June 2010). Law which confers discretion on public authorities is not in itself contrary to that requirement (*Lavents v. Latvia*, no. 58442/00, § 135, 28 November 2002, and *Wegera v. Poland*, no. 141/07, § 71, 19 January 2010). However, the law must be sufficiently clear in its terms to give individuals an adequate indication as to the

circumstances in which and the conditions on which public authorities are entitled to curtail those individuals' liberties.

56. Turning to the present case, the Court has some doubts as to whether Article 45 of the Sentence Enforcement Code (see paragraph 28, above) as in force at the relevant time provided an adequate indication of the conditions to be taken into account by the prison authorities when authorising (or not) a visit from a person not closely related to a prisoner. In the circumstances of the present case the Court, however, agrees with the Government and takes note of the short period of time during which the applicant had been denied the visits from her partner. The Court accepts that once the divorce proceedings had terminated, the applicant's request for visits were granted within a particularly short time (see paragraph 22, above).

57. In the light of the above, there has accordingly been no violation of Article 8 of the Convention.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's inability to receive long-term visits from her alleged partner admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 3 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Marialena Tsirli | Josep Casadevall |
| Deputy Registrar | President |