THIRD SECTION

DECISION

Application no. 18605/03
Agris BUKS
against Latvia

The European Court of Human Rights (Third Section), sitting on 4 September 2012 as a Chamber composed of:

 Egbert Myjer, *President,* Corneliu Bîrsan, Alvina Gyulumyan, Ján Šikuta, Ineta Ziemele, Luis López Guerra, Nona Tsotsoria, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 29 May 2003,

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 Agris Buks, is a Latvian national, who was born in 1967 and lives in Vārve Parish, Latvia.

2.  The Latvian Government (“the Government”) was represented by their Agent, Mrs I. Reine.

A.  The circumstances of the case

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

1.  The criminal proceedings against the applicant

4.  In 2000 the applicant was diagnosed with diabetes, type II. From February 2001 the applicant needed to receive regular injections of insulin.

5.  On 31 October 2001 he was arrested on suspicion of involvement in the organising of human trafficking. On the same day he was admitted to Rīga Hospital No 1. Two days later the applicant was transferred to the hospital wing of Rīga Central Prison, where he remained until 20 December 2001 when he was transferred to the medical unit of Matīsa Prison.

6.  On 4 September 2002 the lower court found the applicant guilty, sentenced him to three years’ imprisonment and ordered the confiscation of his property. The appellate court on 26 November 2002 took the applicant’s poor health into consideration as well as the fact that the applicant could not be provided with proper medical treatment in prison. As a result the court reduced his sentence by one year.

7.  In March 2003 the applicant was transferred to Jelgava Prison, from which he was released on 31 October 2003 after having served his sentence.

2.  The applicant’s account of the living conditions and medical care he received in Matīsa Prison and Kuldīga Police Department short-term detention unit

8.  According to the applicant, on his admission to the medical unit of Matīsa Prison he was informed that owing to insufficient funds the prison was not in a position to provide him with insulin, and that he had to rely on his relatives to obtain it for him.

9.  From 13 to 28 March 2002 the applicant was held in a disciplinary cell in Matīsa Prison for having committed a disciplinary offence. According to the applicant’s submission, he had had to inject himself with insulin there despite conditions being insanitary.

10.  Meanwhile, from 29 May to 19 June 2002 and from 19 August to 9 September 2002 the applicant was held in the Kuldīga Police Department short-term detention unit in order to ensure his attendance at the court hearing in Kuldīga. According to the applicant, the conditions there amounted to torture in that he had been denied a consultation with a doctor and food was provided only once per day.

3.  Investigation into the applicant’s complaints concerning the quality of medical care he received

11.  At the applicant’s request the Inspectorate for Quality Control of Medical Care and Working Capability (“the MADEKKI”) assessed the adequacy of the medical care received by the applicant in Matīsa Prison in 2002 and 2003.

12.  In its report of 10 May 2002 the MADEKKI found no infringement of the applicant’s right to medical treatment over the period from October 2001 to May 2002. In the course of preparing the report a representative of the MADEKKI met with the applicant, who did not raise any complaints regarding the quality of medical care he had received. The inspectorate observed that, before the arrest, the applicant’s doctor had repeatedly recommended that he visit an endocrinologist but the applicant had not done so, blaming his busy schedule. The inspectorate concluded that the applicant had been injecting insulin himself following the doctor’s recommendations, and monitoring his sugar levels with the use of a glucometer. The applicant’s overall state of health was considered to be stable.

13.  In several letters dated 26 February, 1 July and 17 September 2003 the Prisons Administration dismissed the complaints which the applicant had brought regarding the medical care he had received and the fact that he had not been provided with insulin in Matīsa Prison. The Prisons Administration noted, in particular, that under the State medical system the applicant’s relatives were allowed to obtain insulin and syringes free of charge on his behalf.

14.  On 10 and 13 October 2003 the applicant addressed a similar complaint to the MADEKKI and the Office of the Prosecutor. The applicant also drew the MADEKKI’s attention to the poor conditions in the Kuldīga Police Department.

15.  On 24 November 2003 the MADEKKI drew up a second report concerning the medical care the applicant had received in Matīsa Prison. It observed that his entire stay in Matīsa Prison had been spent in the medical unit, where he had been regularly examined by doctors. It noted that the applicant’s sugar level was 14-18 mmol/l and he had been injecting himself with insulin and testing his sugar levels.

16.  With regard to the supply of insulin to the applicant, the MADEKKI concluded that during his stay in Matīsa Prison the administration had failed to furnish him with insulin; that the laboratory testing of his sugar levels had not been carried out regularly, and that he had not had a consultation with an endocrinologist.

17.  With regard to the complaint of a lack of medical care in Kuldīga Police Department unit from 29 May to 19 June 2002 and from 19 August to 9 September 2002, the MADEKKI noted that the medical unit of Matīsa Prison had informed the Kuldīga Police Department that the applicant was permitted to use insulin, certain medications and a glucometer. The MADEKKI observed that the applicant had not raised any health-related complaints while in the Kuldīga short-term detention unit, where he had been provided with the standard diet for detainees.

18.  The Office of the Prosecutor in its letter of 4 November 2003 reminded the applicant that according to his agreement with the medical unit of Matīsa Prison, from 20 December 2001 to 5 March 2003 he had agreed to supply the insulin himself. In the same letter the Office of the Prosecutor stated that on 16 October 2002 the Prisons Administration had purchased insulin especially for the applicant which he had used until his transfer to Jelgava Prison on 5 March 2003. The applicant did not complain in this respect to a higher prosecutor.

4.  Information concerning the applicant’s state of health

19.  The applicant’s medical file, as summarised by the MADEKKI’s reports mentioned above, show that he was diagnosed with diabetes type II in February 2000. From February 2001 he was recommended insulin treatment because his sugar levels occasionally reached 16-17 mmol/l. Every two months, on average, the applicant’s doctor would issue repeat prescriptions for about twenty doses of insulin (*Monotard*). In response to the applicant’s complaints that his sugar levels occasionally reached 18 mmol/l the doctor had recommended, on at least two occasions, that the applicant attend self-care and awareness clinics for diabetic patients. The report reveals that the applicant had not done so.

20.  From 2 November to 20 December 2001 the applicant received medical treatment in the prison hospital where he was seen by various specialists. The sugar level in his blood and urine was monitored twice a week on average. By 28 November 2001, according to prison hospital records, the applicant’s health had improved; he declined to increase his dose of insulin and agreed on a particular course of treatment with the doctor at the prison hospital.

21.  On 10 and 15 January 2002, the applicant underwent medical examinations and was then admitted to the prison hospital on 19 January 2002, where he remained until 24 January 2002, because he was suffering from hyperglycaemia.

22.  On the applicant’s discharge from the hospital in November 2001 and again in January 2002 it was recommended that he have his blood and urine sugar levels monitored and be given a tailored diet and medication, including insulin. In the medical unit of Matīsa Prison he was prescribed insulin and two kinds of medication as recommended.

23.  On 21 February 2002 the applicant’s health was assessed by a medical consultative commission at Matīsa Prison, which prescribed a particular treatment including an injection of insulin twice per day. The follow-up of the treatment was carried out on average once a week until June 2002. After he had been transferred to the disciplinary cell he was authorised to use two other kinds of medication brought from home.

24.  On 19 and 24 July and 1 and 5 August the applicant’s sugar levels had increased so he was repeatedly admitted to the prison hospital in the period from 8 August to 15 August 2002, when he was discharged from the hospital at his own request.

25.  The applicant was visited by a doctor before and after his transfer to the Kuldīga Police Department on 27 May, 20 June, 15 August and 11 September 2002. He had not raised any complaints and his health was considered to be satisfactory.

26.  According to a medical report from Ventspils hospital, the applicant’s former doctor gave the applicant’s wife prescriptions for insulin and the other medicine, at her request, on separate occasions in December 2001, February and April 2002.

5.  Other relevant information concerning the health care of diabetic patients

27.  At the Government Agent’s request on 9 July 2009 the Prisons Administration explained that under the State – financed health programme, as in force at the material time, all diabetic patients in Latvia received insulin and syringes free of charge, while detention facilities were obliged to purchase insulin for detainees suffering from diabetes from their budgets. Owing to insufficient funds available for medication, the administration of the prison authorised diabetic detainees to receive insulin from outside the prison. Usually family members received prescriptions for insulin from the detainee’s former doctor and brought the insulin to the detainee in prison.

28.  In response to the Government Agent’s questions, the Health Inspectorate (*Veselības Inspekcija*) explained that the minimum healthcare requirements of diabetic patients comprised the regular administering of medication, monitoring of sugar levels and treatment for hypoglycaemia. Blood tests should be carried out as required. There was no vital need for an endocrinologist if the sugar levels were satisfactory.

29.  The Inspectorate also noted that it was of crucial importance that diabetic patients had an understanding of their illness. Since there was no special “diabetic diet”, by monitoring the sugar levels of the patient the amount of insulin was to be adjusted according to the quantity of food taken.

B.  Relevant domestic law

30.  Regulations no. 358 of the Cabinet of Ministers of 19 October 1999 concern the provision of medical assistance to convicted and detained persons in their place of custody (see *Leitendorfs v. Latvia* (dec.), no. 35161/03, § 27, 3 July 2012).

COMPLAINTS

31.  The applicant complained that his imprisonment, considering his state of health and the current situation in Latvian prisons as regards medical care, had been contrary to the requirements of Article 2 of the Convention. He complained, in particular, of the prison authorities’ failure to provide him with insulin during his stay in Matīsa Prison. He also complained that his sugar levels were not monitored and he was not granted a consultation with an endocrinologist.

32.  The applicant complained under Article 3 about the conditions of his detention in Matīsa Prison disciplinary cell and in Kuldīga Police Department short-term detention unit as well as the unavailability of medical care there.

33.  He further complained under Article 6 that he had not been able to ask for conditional release from imprisonment and under Article 3 of Protocol No. 1 that during his pre-trial detention he had not been able to vote in the parliamentary elections.

THE LAW

A.  Complaints under Article 3 of the Convention

34.  The applicant’s complaints about the conditions of his detention and the quality of medical care in the Kuldīga Police Department short-term detention unit and Matīsa Prison fall to be examined under Article 3, which provides:

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

1.  Adequacy of medical assistance in Matīsa Prison

35.  The Court will first examine the applicant’s complaints that from November 2001 until March 2003 he had not been provided with free insulin or blood tests and had not consulted an endocrinologist in Matīsa Prison.

36.  The Government argued that the applicant failed to exhaust all domestic remedies by appealing against the MADEKKI’s conclusions concerning the medical treatment he received in Matīsa Prison. In the alternative the Government argued that the complaint was manifestly ill-founded in that on his arrival at Matīsa Prison the applicant had continued to use his own insulin supplies and that throughout his stay there he had had access to insulin and other medication which was possible due to the diligent and timely intervention of the prison officials, who had allowed the applicant’s relatives to provide the necessary medication without any restrictions. Besides, when the applicant had run out of his own supplies the prison authorities had purchased the insulin specially for him. They contrasted the applicant’s circumstances with those complained of in *Farbtuhs v. Latvia*, (no. 4672/02, 2 December 2004), noting that in the present case the applicant’s health had neither deteriorated nor been aggravated by other conditions.

37.  The applicant contended that the Government had not proved the effectiveness of the existing domestic remedies. He pointed out that in Matīsa Prison he had been explicitly asked to procure insulin himself. He complained that slow-acting insulin had been purchased for him although he required fast-acting insulin. He alleged that his health had deteriorated in that during his detention he had also suffered from other illnesses, such as hepatitis C and shortly after his release he had been diagnosed with pancreatitis.

38.  The Court finds it unnecessary to assess separately the Government’s objections regarding the non-exhaustion of domestic remedies because it concludes that the complaint at issue is, in any case, inadmissible on the following grounds.

39.  The Court will first reiterate the principles applicable in assessing complaints under Article 3 in connection with the adequacy of medical care in prison. In addition to the principles listed in a recent decision (see *Van Deilena v. Latvia* (dec.), no. 50950/06, §§ 61-62; 15 May 2012), the Court has further noted that promptness and accuracy are two elements which must be taken into account when measuring to what extent the State authorities had fulfilled their positive obligations in providing adequate medical care in prison (see *Demian v. Romania,* no. 5614/05, § 41, 27 September 2011), namely ensuring such treatment as is recommended by medical professionals (ibid., § 44). The above elements are not evaluated in absolute terms but taking into account the particular state of health of the applicant (see, for instance, *Serifis v. Greece*, no. 27695/03, § 35, 2 November 2006). In general, the worsening of the detainee’s health as such is not a decisive element in the light of Article 3, since the Court examines whether the deterioration of health was imputable to the quality of the medical care given (*Demian,* cited above, § 41, and more recently, *Krivošejs v. Latvia*, no. 45517/04, § 73, 17 January 2012). Similarly, the unavailability of certain medical equipment in prison raises an issue under Article 3 if it has negative effects on the applicant’s state of health or causes suffering of certain intensity (see *Mirilashvili v. Russia* (dec.), no. 6293/04, 10 July 2007).

40.  As to the necessary level of severity, the Court has held that a failure to provide the requisite medical assistance to a detainee does not necessarily have to lead to a medical emergency or other severe or prolonged pain in order to be incompatible with the guarantees of Article 3. The fact that a detainee needed and requested assistance which was unavailable may, in certain circumstances, lead to a breach of Article 3 (see *Sarban v. Moldova*, no. 3456/05, §§ 86-87 and 90, 4 October 2005)*.* For instance, in *Ashot Harutyunyan v. Armenia*, (no. 34334/04, §§ 111-115, 15 June 2010), the Court found that the applicant’s suffering went beyond the unavoidable level of suffering inherent in detention because the applicant had asked in vain over a prolonged period of time for medical check-ups which had been explicitly demanded by medical specialists and therefore did not depend on the applicant’s own opinion. In *Sarban*, cited above, the Court concluded that the applicant was exposed to considerable anxiety due to the risk of suffering a serious medical emergency at any time without medical assistance being at hand.

41.  The Court notes at the outset that the applicant had been suffering from diabetes and had been self-administering insulin long before his arrest. Following his arrest and hospital treatment he was discharged from the prison hospital with recommendations as to a further course of treatment (see paragraph 22 above) which included regular insulin injections and blood tests.

42.  With regard to the applicant’s principal complaint of being denied insulin, it is not disputed that owing to insufficient funds this medication was not provided by Matīsa Prison and that the applicant had to depend on his relatives to supply it. In this connection the Court reiterates that a situation where a detainee has to depend on the family’s financial means to procure the necessary medication for curing serious diseases may render the quality of medical assistance inadequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 117, 29 November 2007), especially if, as a result of such treatment, the detainees fail to receive the medical care which the authorities have undertaken to provide to the general public (see *V.D. v. Romania*, no. 7078/02, § 93, 16 February 2010). The Court notes that the circumstances of the present case are different from those referred to above. The medical reports show that even after the applicant’s arrest his family members continued to receive prescriptions from his former doctor in order to obtain insulin free of charge (see paragraph 26 above). The family members then brought the insulin to the prison for the applicant’s unrestricted use (see, conversely, *Grishin v. Russia*, no. 30983/02, § 77, 15 November 2007). The Court also notes that even though the applicant was provided with insulin from outside prison, the medical unit of Matīsa Prison did, at a later date, procure additional insulin (see paragraph 18 above), so the applicant had no fear of running out of supplies. The Court, while concerned about the quality of the domestic law in force at the material time and the absence of coordination in the procurement of medication between the prisons and the regional health insurance offices, does not find that in this particular case this prevented the applicant from receiving an uninterrupted course of treatment as recommended by his doctors, and there is no indication that it caused the applicant suffering which reached the necessary level for Article 3 of the Convention to apply.

43.  Turning to the applicant’s other complaints about the medical care he was provided with in Matīsa Prison, in particular, that he was not given blood tests and a consultation with an endocrinologist, the Court observes that the MADEKKI pointed out the irregularity of the laboratory blood tests but noted that the applicant did have his own glucometer with him at all times, which permitted him to monitor his sugar levels. As appears from the opinion of medical specialists, the frequency of tests generally depends on the circumstances and needs of the patient (see paragraph 28 above). In this connection the Court notes the promptness with which the applicant was twice transferred to hospital when his sugar levels had increased (see paragraphs 21-24 above). The Court also observes that the applicant’s sugar levels before his arrest were higher than in prison (see paragraphs 15 and 19 above); nevertheless, as is apparent from the MADEKKI report, prior to his arrest the applicant had not visited a diabetes specialist, as advised by his practitioner (see paragraph 12 above).

44.  In the light of the above, and observing, in particular, that there is no indication in the medical files and the two reports drawn up by the MADEKKI that the applicant’s health deteriorated during his stay in Matīsa Prison, the Court concludes that the applicant was not subjected to treatment reaching the level of severity necessary for Article 3 of the Convention to be applied.

2.  Medical treatment in Kuldīga Police Department short-term detention unit

45.  The applicant further complained that he had been denied medical care and a specially modified diet during his stay in the Kuldīga Police Department short-term detention unit from 29 May to 19 June 2002 and from 19 August to 9 September 2002.

46.  The Government contended that the applicant had failed to challenge the MADEKKI report and, in the alternative, that the complaint was submitted outside the six-month time-limit. The Government further argued that the complaint was in any event manifestly ill-founded because during his stay in the Kuldīga Police Department unit the applicant had neither requested medical care nor complained that he had been denied it. The Government also stressed that according to the MADEKKI’s conclusions the applicant’s health was in a stable condition and he had no need of a special diet.

47.  The applicant contended that during his stay in the Kuldīga Police Department unit his wife had asked the head of the police department to ensure that the applicant was medically supervised but her requests had been ignored.

48.  In response to the Government’s argument that the applicant had not requested medical care in the Kuldīga Police Department unit, the Court reiterates that the treatment prescribed to the applicant required medical supervision and therefore it did not depend on a request by the applicant. Nevertheless, the Court does not find that the authorities failed here to exercise their positive obligation in providing the applicant with the minimum necessary level of health care. In the same way as during his stay in Matīsa Prison, the applicant was allowed unrestricted use of medication and a glucometer and besides, his state of health, which was checked immediately before and after his transfer between units, was stable, (see paragraph 25 above). Observing the applicant’s state of health and noting the conclusion of the MADEKKI and the Health Inspectorate as to his diet (see paragraphs 17 and 29 above), the Court finds that throughout the two periods of three weeks he spent in the Kuldīga Police Department unit the applicant was not subjected to a level of anxiety and stress severe enough for Article 3 of the Convention to apply.

3.  Conditions of detention in the Matīsa Prison disciplinary cell and the Kuldīga Police Department short-term detention unit

49.  The applicant also complained that, pending the trial, he had been held in poor living conditions from 13 to 28 March 2002 in Matīsa Prison disciplinary cell and from 29 May to 19 June 2002 and 19 August to 9 September 2002 in the Kuldīga Police Department short-term detention unit.

50.  The Government argued, inter alia, that the applicant had submitted his complaint in this regard outside the six-month time-limit.

51.  The applicant contended that he had had no opportunity to complain.

52.  The Court has already concluded that in Latvia at the material time there were no effective domestic remedies in respect of complaints about conditions of detention (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, §§ 60‑63, 4 May 2006, and *Ņikitenko v. Latvia* (dec.), no. 62609/00, 11 May 2006), and that the six-month period should therefore be assumed to run from the act, decision or event which is itself alleged to be in violation of the Convention (see, among many other authorities, *Jordan v. the United Kingdom* (dec.), no. 30280/96, 14 January 1998).

53.  In the present case the six-month period concerning the complaint about the conditions of detention in Matīsa Prison disciplinary cell started to run on 29 March 2002, and that concerning the Kuldīga Police Department unit on 10 September 2002, whereas the applicant first lodged a complaint in this connection more than six months later on 29 May 2003.

54.  In the absence of any circumstances interrupting the running of the six-month period the Court concludes that this complaint has been submitted out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B.  Other complaints

55.  The applicant further alleged other violations of Article 6 § 1 and Article 3 of Protocol No. 1 to the Convention.

56.  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 and must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

 Marialena Tsirli Egbert Myjer
 Deputy Registrar President