FOURTH SECTION

DECISION

Application no. 48435/07
Jānis MAĻINOVSKIS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 4 March 2014 as a Chamber composed of:

 Päivi Hirvelä, *President,* Ineta Ziemele, Ledi Bianku, Nona Tsotsoria, Zdravka Kalaydjieva, Paul Mahoney, Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy* *Section Registrar,*

Having regard to the above application lodged on 7 January 2008,

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 Jānis Maļinovskis, is a Latvian national, who was born in 1969 and is currently detained in a prison in Daugavpils. He was represented before the Court by Ms A. Kalēja, a lawyer practising in Riga.

2.  The Latvian Government (“the Government”) were represented by their Agent at the time, Ms I. Reine, and subsequently by Ms K. Līce.

A.  The circumstances of the case

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

1.  Search of the applicant’s prison cell

4.  According to the Government, on 25 May 2007, at around 8.45 p.m. (around 8.40 p.m. according to the documents provided by the Government) the duty prison officer B.Z. noticed a rope stretched between the window of the applicant’s cell (no. 265) in Central Prison and Matīsa Prison (on 1 November 2008 these prisons were merged into a single prison: Riga Central Prison (*Rīgas centrālcietums*)). The rope was being used to pass a certain item between the buildings. B.Z. immediately ordered a search of cell no. 265.

5.  The parties agreed that the search was carried out between 8.45 p.m. and 9 p.m.

6.  According to the Government, prison wardens D.B. and I.R. commenced the search and B.Z. joined them shortly afterwards. The search was carried out in the presence of the applicant, who was the only inmate in the cell.

7.  According to information received from the Ministry of Justice, the Central Prison’s log recording special measures (*speciālo līdzekļu pielietošanas protokolu reģistrācijas žurnāls*) did not indicate that any force or special measures had been applied to the applicant during the search.

8.  The applicant alleged that the search had been brutal and that prison staff had inflicted injuries on him. Replying to the Government’s observations, the applicant specified that his nose had been broken and had not healed properly, and that he had sustained bruises in the thorax and chest area and on the neck and face.

9.  According to the record of the search, ten CDs, a slingshot and a rope had been confiscated. The applicant denied that the last two items had been found in his cell.

2.  The applicant’s medical examination

10.   The applicant complained to B.Z., after the latter had joined prison wardens D.B. and I.R., that he had been beaten. Immediately after the search B.Z. therefore ordered the applicant’s medical examination by a doctor of the Central Prison.

11.  The same day, at 9 p.m., a doctor, P., noted that the applicant’s health condition was satisfactory. The doctor did not record any injuries to the applicant.

3.  Internal investigation

12.  On 28 May 2007 the applicant complained to a governor of the Central Prison. According to the applicant’s written submission, on 25 May 2007 his property had been stolen and he had been physically maltreated by being kicked and punched in the kidney area and still had pain in his kidneys. The applicant said that he would inform the media and commit suicide if the unlawful conduct continued.

13.  The applicant’s complaint was forwarded to the Central Prison’s investigation division.

14.  On 30 May 2007 the applicant completed a complaints form, addressed to the Central Prison’s investigation division. He provided the following description of the events of 25 May 2007:

“... approximately seven to eight ... employees broke in. That may have been between 6 p.m. and 8 p.m. [The applicant] does not know their names and it is difficult to give a physical description of them because, first, they were in uniforms [and] looked alike and, second, [the applicant] was in a state of shock. At first one of the fattest started to hit [the applicant] ... after [the applicant] started shouting, started to strangle ... one of the broad-shouldered [ones] hit [the applicant] on the torso, more on the sides ... [the applicant] would be able to identify them ... [The applicant’s] beating could be heard in several cells: no. 226 [V.], no. 249 [S.] and all the cell [not visible on the copy] ...

...

... at the doctor ... the doctor was writing something and without carefully looking at [the applicant] answered: ‘But I do not see anything.’ Even though [the applicant] could see a swelling and a bruise on [his] left arm ... [the applicant] suspects that [his] nose was broken while [he] was being strangled between the beds because [he] heard the sound of a crack and started bleeding ...”

The applicant also complained that some of his property had been unlawfully removed and damaged.

15.  According to doctors’ notes from the Central Prison, on 31 May 2007 the applicant was re-examined by the prison doctor’s assistant, V. The applicant stated that he had sustained injuries on 25 May 2007 during the search in cell no. 265 and had pain in his ribs and nose. V. recorded that no visible injuries could be seen on the applicant. An X-ray was performed on the left side of the applicant’s thorax and the bridge of his nose. On 7 June 2007 a doctor, S., recorded that the X-ray examination had not revealed any pathology.

16.  The applicant, however, indicated that during the X-ray a doctor had asked him: “When was your nose broken?” In his submissions to the Court, the applicant said that, according to the X-ray, there had been a fracture “that had been there a while ago”. Yet, the applicant did not specify on what evidence he was relying in support of that contention.

17.  In the beginning of June 2007, the Central Prison employees B.Z., D.B. and I.R. gave their explanations (*paskaidrojumi*). They submitted that no physical force had been applied to the applicant.

18.  In the beginning of June 2007 other prisoners provided their explanations.

19.  In particular, on 25 May 2007 V.K. had heard the applicant shouting through the window that prison guards had been beating and strangling him. However, V.K. had neither heard nor seen the applicant being beaten. V.K. stated that he would not have been able to hear or see him because his cell was located far away from the applicant’s cell. V.K. was in cell no. 226, which was on the second floor, and the applicant’s cell was on the fourth floor.

20.  Another inmate, S.B. declared that his cell, no. 249, was located beneath the applicant’s cell. On 25 May 2007 S.B. had been listening to music. He had just heard some noise in the cell above. He could not affirm that the applicant had been beaten or had been screaming. In the evening S.B. had heard the applicant shouting through the window that prison guards had beaten him.

21.  According to the written submissions of two other inmates from the neighbouring cell, no. 264, they had not heard anything on 25 May 2007. With regard to the individuals detained in cell no. 264, however, the applicant submitted to the Court that they had said that they had heard a noise and the applicant’s shouts about being beaten. However, the applicant did not specify on what evidence he was relying to that effect.

22.  On 11 June 2007 the head of the Central Prison’s investigation division, I.P., refused to institute criminal proceedings. Reference was made to section 373(1) of the Criminal Procedure Law (no grounds on which to institute criminal proceedings) and section 377(1) (no crime committed).

23.  I.P.’s conclusions of 11 June 2007 on the internal investigation referred to the applicant’s allegations and noted that the following had been established:

“On 25 May 2007 at around 8.40 p.m. ... [B.Z.] saw a rope between the Central Prison cell no. 265 and Matīsa Prison ... a certain item was being transmitted ... [B.Z.] ordered that ... [D.B.] immediately carry out a search of cell no. 265, where [the applicant] was being held ...

The search of cell no. 265 was carried out on 25 May 2007 at 8.45 p.m. by [D.B.] and [I.R.] in [the applicant’s] presence. After the search in cell no. 265 had commenced [B.Z.] arrived and the search was continued in his presence ...

...

As [the applicant] complained to [B.Z.] that he had been beaten, immediately after the search he was taken to a duty doctor, who examined [the applicant] and did not establish any bodily injuries.

...

On 31 May 2007 [the applicant] ... was referred for a further examination by a doctor, who carried out an X-ray; however no bodily injuries were recorded (doctors’ notes of 31 May 2007 [and] 7 June 2007).

...

In the course of the internal investigation explanations were collected from the detainees in cells nos. 226 and 249, [V.K.] and [S.B.], who explained that they could not confirm that in the evening of 25 May 2007 prison employees had beaten up the detainee in cell no. 265 [the applicant] ...

Accordingly, the materials gathered during the internal investigation have not confirmed the [allegation] that ... [the applicant] had been beaten during the search ... ... [the applicant’s] allegations in his submissions of 28 and 30 May 2007 are false ...”

4.  Review by prosecution

24.  On 20 June 2007, the applicant appealed to the prosecution against the aforementioned decision of 11 June 2007 refusing to institute criminal proceedings. The applicant argued, *inter alia*, as follows:

“[The applicant] has grounds to believe that in the course of the inquiry persons favourable to the administration, who protect the interests of the administrative employees (secret employees), were called from the adjacent cells and [the applicant] has grounds to believe that detainees who could testify truthfully were not questioned. [Furthermore], as there were no physical traces by the time of the inquiry, independent doctors were not invited to conduct an examination...”

The applicant also complained that his ten CDs had been stolen.

25.  On 24 July 2007 a prosecutor, R.K., upheld the refusal to institute criminal proceedings. The prosecutor noted that statements had been collected in the course of the internal investigation from persons named by the applicant. They had not confirmed that the applicant had been beaten. Nor did the medical documentation establish any injuries. Accordingly, R.K. concluded that the internal investigation had been thorough and impartial and that there had been no violations.

26.  On 3 August 2007 the applicant challenged that decision before a higher-ranking prosecutor. The applicant complained with respect to his ten CDs. He noted, without providing further details, that injuries had been inflicted on him.

27.  A higher-ranking prosecutor, S.D., replied on 28 August 2007. She noted that all the material had been analysed again and found that the previous prosecutor had drawn a lawful conclusion.

28.  On 3 September 2007 the applicant contested S.D.’s finding. He alleged that the prosecutor had covered up the unlawful acts of the prison administration. He stated, further, that it was practically impossible to prove violence against an inmate in a place of detention. The applicant further alleged that the taking of his CDs had constituted theft.

29.  On 9 October 2007 another prosecutor, D.U. found that prosecutor S.D. had examined the material collected by the Central Prison’s investigation division and had duly investigated the applicant’s allegations of ill-treatment. D.U. therefore upheld the refusal to institute criminal proceedings. That decision was final.

5.  Forensic examination

30.  In a separate set of criminal proceedings, on an unspecified date, the applicant was ordered to undergo a forensic medical examination to assess his injuries.

B.  Relevant domestic law

31.  Section 10 of the Medical Treatment Law (*Ārstniecības likums*), as in force at the material time, provided that the Inspectorate of Quality Control for Medical Care and Working Capability (“the MADEKKI”) was responsible for controlling the professional quality of health care in medical establishments.

32.  The provisions of the Regulation of the Cabinet of Ministers no. 218 (2005) (*Medicīniskās aprūpes un darbspējas ekspertīzes kvalitātes kontroles inspekcijas nolikums*), in force from 6 April 2005 until 8 February 2008, read with respect to the MADEKKI as follows:

“3. The Inspectorate has the following functions:

3.1. to control the professional quality of medical care ... in medical institutions...

...

4. The Inspectorate, in order to fulfill its functions, has the following tasks:

4.1. to conduct assessments (*ekspertīzes*) and give reports (*atzinumus*) on the quality of medical care ... in a medical institution...

...

4.4. to control compliance with legislation binding upon medical institutions in the area of medical care...

...

4.6. to issue, where provided for by legislation, administrative acts (*administratīvais akts*) in the area of medical care...

4.7. to examine submissions (*iesniegumus*) by persons in the area of medical care...

...”

COMPLAINT

33.  The applicant complained that during the search of his prison cell, no. 265, in the Central Prison in Riga on 25 May 2007 he was physically maltreated by the prison staff. The applicant did not give details in his application to the Court of the circumstances of the alleged ill-treatment or the injuries caused. The applicant complained that when he had been taken to the prison doctor the same day to have the injuries recorded, the prison doctor had stated that he “[did] not see anything”. The applicant considered that the domestic authorities had not protected his rights as a prisoner.

THE LAW

34.  The applicant submitted that during the search of his cell, no. 265, in the Central Prison in Riga on 25 May 2007 the prison staff had maltreated him. When he had been taken to the prison doctor the same day to have the injuries recorded, the prison doctor had stated that he could not see anything. The applicant considered that the domestic authorities had not protected his rights as a prisoner.

35.  The Government contested those allegations.

36.  The Court considers that this complaint falls to 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.”

A.  Alleged violation of Article 3 of the Convention

1.  Submissions of the parties

37.  The Government first submitted that the applicant’s complaints under Article 3 of the Convention were manifestly ill-founded and inadmissible on account of non-exhaustion of domestic remedies.

38.  They argued that neither the statements of the prison employees nor the applicant’s medical examination had revealed the use of force against or injuries to the applicant. No such evidence had been given by the two detainees named by the applicant himself – V., in cell no. 226, and S., in cell no. 249 – or by the detainees held in the neighbouring cell, no. 264. The Government drew attention to the fact that, according to the log recording special measures, no force or special measures had been applied to the applicant during the search.

39.  They submitted that the applicant had not described the circumstances of the alleged ill-treatment or the injuries inflicted on him in his appeals to the prosecution. The Government also noted that in his submission of 28 May 2007 the applicant had not specified the number of prison officers involved, who exactly had kicked him and on which side of the body.

40.  Referring to the functions of the MADEKKI (see paragraph 32 above), the Government further maintained that had the applicant had any objections concerning the actions or diagnosis of the respective prison doctors, he could and should have lodged a complaint before that body. The Government pointed to the information provided by the Health Inspectorate (*Veselības Inspekcija*), according to which, in 2007, the applicant had made representations to the MADEKKI. Therefore, he had, at the time, known of the existence of that mechanism. According to the Government, the MADEKKI’s assessment of the doctors’ conduct had been a precondition to making the allegations. They drew attention to the circumstances of the case, namely that, according to two doctors and the X-ray results, no injuries to the applicant had been established following the search on 25 May 2007.

41.  The applicant maintained that he had outlined the circumstances of the search in his complaints. He had complained of omissions on the part of the medical staff and of an inadequate investigation. The applicant insisted that his arguments had not been examined because the prison medical staff had failed to record his injuries. The prison doctor had said, on 25 May 2007, that the applicant did not have any injuries.

42.  With regard to the MADEKKI, the applicant submitted that under section 10 of the Medical Treatment Law it could only assess the quality of health care. However, injuries could be determined through a forensic medical examination upon a decision of an investigator, a prosecutor or a judge. He further indicated that he had not known whether the prison doctor had noted the events of 25 May 2007 or his injuries. The applicant submitted that he had not had access to the medical records.

2.  The Court’s assessment

43.  As the Court has previously held, where an individual raises an arguable claim (see *El Masri v. “the former Yugoslav Republic of Macedonia”* [GC], no. 39630/09, § 182, ECHR 2012, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998‑VIII) or makes a credible assertion (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000‑IV) that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation.

44.  In the present case the applicant was seen by the prison medical staff twice: shortly after the search and six days after that. On neither occasion were any injuries recorded. Moreover, the X-ray did not reveal any pathology (see paragraphs 11 and 15 above) (contrast *Samartsev v. Russia*, no. 44283/06, § 86, 2 May 2013; *El Masri*, cited above, § 186; *Gisayev v. Russia*, no. 14811/04, § 108, 20 January 2011; and *Polonskiy v. Russia*, no. 30033/05, § 110, 19 March 2009). Further, as noted by the Government, the witnesses, named by the applicant himself, had not seen or heard the applicant being subjected to maltreatment. They had only heard the applicant shouting about it himself through the window (see paragraphs 19 and 20 above).

45.  Indeed, it was precisely the applicant’s contention that a prison doctor had failed to record his injuries immediately after the search on 25 May 2007. In his submission of 30 May 2007 the applicant had raised the matter and had specified that following the search he had had visible injuries on his left arm and a suspected broken nose (see paragraph 14 above). The Court, however, does not find the applicant’s allegation persuasive in the circumstances of the case.

46.  In particular, in his first written complaint after the incident, on 28 May 2007, the applicant did not, even in summary fashion, mention the alleged omission by the prison doctor to record his injuries (see paragraph 12 above). The Court is unable to accept the applicant’s argument that at the time he had no knowledge of the entries made by the prison doctor (see paragraph 42 above). In fact, quite the opposite transpires from the applicant’s submission of 30 May 2007. The applicant stated that on 25 May 2007 the prison doctor had said that he had not seen any injuries (see paragraph 14 above). The same submission was made by the applicant in his application to the Court (see paragraph 33 above).

47.  The Government pointed out that the applicant had not exercised his right to complain to the MADEKKI of the doctor’s inadequate medical care. It is true, as the applicant argued, that in circumstances where swift medical action may be required the role of the MADEKKI is far from clear (see, *mutatis mutandis*, *Čuprakovs v. Latvia*, no. 8543/04, §§ 52-54, 18 December 2012). At the same time the MADEKKI’s primary role is to oversee the quality of medical treatment provided (see *Antonovs v. Latvia* (dec.), no. 19437/05, §§ 109, 112 and 114, 11 February 2014). As the applicant complained of the lack of a thorough examination by the prison doctor and the lack of a proper medical record, he could have raised that complaint in administrative proceedings available, including a complaint to the MADEKKI (see, *mutatis mutandis*, *Daģis v. Latvia* ((dec.), no. [7843/02](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"appno":["7843/02"]}), § 50, 20 June 2009).

48.  Besides, as noted above, the day after the applicant’s second written submission of 30 May 2007 he was re-examined by the prison medical staff. No injuries were recorded and the X-ray did not confirm the applicant’s allegation of a broken nose (see paragraph 15 above).

49.  Even if it were accepted that the applicant’s allegations of ill-treatment in the present case were not corroborated by evidence, the Court has also held in a previous case that “the applicant’s statement to [the] investigator ... and his lawyer’s complaint to the district prosecutor’s office, including her detailed description of the injuries allegedly noticed on her client ... amounted to an ‘arguable claim’ of ill-treatment at the hands of the police and warranted an investigation by the domestic authorities in conformity with the requirements of Article 3 of the Convention” (see *Lopata v. Russia*, no. 72250/01, § 111, 13 July 2010). Further, in *J.L. v. Latvia* (no. 23893/06, §§ 73, 75, 17 April 2012) the Court noted that “the consistency with which the applicant had on various occasions asserted to the authorities that he had been subjected to ill-treatment ... lead to [the] conclusion that the applicant [had] an arguable claim in the light of Article 3”.

50. In this respect, the applicant had brought his allegation of ill-treatment during the search on 25 May 2007 to the attention of the domestic authorities (see paragraphs 10, 12 and 14 above). However, the Court is unable to discern consistency in the applicant’s account. In particular, on 28 May 2007 the applicant stated that he had been physically maltreated by being kicked and thumped in the kidney area and had pain in his kidneys (see paragraph 12 above). Whereas on 30 May 2007 he had given a somewhat different description saying that he had been hit more on the sides of his body and strangled, and that he had had a swelling and a bruise on his left arm and a suspected broken nose (see paragraph 14 above). Moreover, the applicant gave no description of the alleged ill-treatment in any of his three appeals to the prosecution (see paragraphs 24, 26 and 28 above).

51.  In that connection, the Court cannot overlook the fact that the applicant, when replying to the Government’s observations, specified additional injuries, namely, bruises in the thorax and chest area and on the neck and face (see paragraph 8 above). By contrast, on 30 May 2007 he had stated that he had had a swelling and a bruise on his left arm (see paragraph 14 above).

52.  In the circumstances of the case, it cannot be said that the applicant raised an arguable claim or made a credible assertion. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see *Igars v. Latvia* (dec.), no. 11682/03, § 72, 5 February 2013).

53.  In view of that conclusion, the Court need not examine the parties’ further arguments in respect of the investigation itself. In such circumstances it cannot be said that the Latvian authorities were under a positive obligation to conduct an effective investigation into the applicant’s allegations (see *Igars*, cited above, ibid., and *Bazjaks v. Latvia*, no. 71572/01, § 79, 19 October 2010). Accordingly, also this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B.  Other alleged violations of the Convention

54.  The Court notes at the outset that, after communication of the application to the Government, the applicant complained, under Article 3 of the Convention, of poor conditions in the Liepāja Prison and of damage to his health and inappropriate medical treatment during his detention.

55.  As it has decided in previous cases, the Court need not rule on complaints raised after communication of an application to the Government. However, the applicant has the opportunity to lodge a new application in respect of those complaints (see *Ruža v. Latvia* (dec.), no. 33798/05, §§ 30 and 31, 11 May 2010 and the case-law cited therein).

56.  Lastly, the applicant complained, in substance under Article 1 and Article 2 of Protocol No. 1 to the Convention and Article 3 and Article 6, about confiscation in the prison on 25 May 2007 and 25 February 2008 of his certain property and a disciplinary punishment imposed on him on 27 February 2008, and his placement in a disciplinary cell.

57.  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 finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

 Fatoş Aracı Päivi Hirvelä
 Deputy Registrar President