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

FOURTH SECTION

DECISION

Application no. 55047/12
Jevgēnijs SIMANOVIČS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 18 November 2014 as a Chamber composed of:

Päivi Hirvelä, *President,*
Ineta Ziemele,
George Nicolaou,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 4 July 2012,

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 Jevgēnijs Simanovičs, is a "permanently resident non-citizen" of the Republic of Latvia who was born in 1966 and is currently serving a prison sentence Riga. He was represented before the Court by Ms A. Mazapša, a lawyer practising in Babīte. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

A. The circumstances of the case

2. The relevant facts of the case as submitted by the parties may be summarised as follows.

1. The applicant's detention

3. As of 31 August 2004 the applicant was detained in Daugavgrīva Prison (*Daugavgrīvas cietums*). Prior to 1 November 2008 it had been named Daugavpils Prison (*Daugavpils cietums*). In the course of his detention the applicant also spent certain periods of time in other prisons. It appears that he stayed in Daugavgrīva Prison until 21 July 2011.

2. The applicant's complaints to domestic authorities about conditions of detention

(a) Before the Prisons Administration (*Ieslodzījuma vietu pārvalde*)

(i) The applicant's complaint

4. On 21 January 2009 the applicant complained to the Prisons Administration about the conditions in Daugavgrīva Prison. He asked to be released until prison conditions had been improved and requested a monetary compensation of 100,000 Latvian lati (LVL).

5. First of all, he submitted that the prison was overcrowded. He was housed in cell no. 208, which was occupied by ten persons, even though it had been designed for five. The situation was similar in other prison cells. On 9 September 2008 he had been transported to a hospital owing to heart problems. Upon his release from the hospital he had been returned to the same cell no. 208.

6. Furthermore, the applicant, a non-smoker, was exposed to cigarette smoke on a daily basis.

7. Also, two sets of bunk beds had been placed next to each other. The applicant had to sleep next to another man, and another inmate was sleeping above the applicant. His sleep suffered as a result, and his nervous system was also negatively affected.

8. Lastly, the applicant submitted that the cells were not equipped with emergency buttons in order to call for help. He generally stated that he was unable to purchase the necessary products in the prison shop.

(ii) Decision of the Prisons Administration

9. On 27 February 2009 the Prisons Administration dismissed the applicant's aforementioned complaint.

10. With regard to the issue of living space, the Prisons Administration found that the applicant had been provided with living space as required by statute, namely a minimum of 2.5 m² (see paragraph 47 below). In reaching that conclusion the Prisons Administration provided information on the floor area and intended number of inmates for each of the applicant's cells between 18 October 2008 and 6 February 2009, including cell no. 208.

11. As to the applicant's complaint of exposure to cigarette smoke, according to the applicant's submissions of 10 November 2008 he had

refused his transfer to a non-smoking cell. Also, on 8 January 2009 he had requested that two packs of cigarettes, a lighter and matches be purchased for him in the prison shop.

12. The Prisons Administration did not react to the complaint concerning bunk beds.

13. Lastly, it provided general information on the products available at the prison shop.

14. That decision could be challenged before the Administrative District Court (*Administratīvā rajona tiesa*).

(b) First instance proceedings

(i) The applicant's complaint

15. On 9 March 2009 the Administrative District Court received the applicant's complaint, as supplemented on 31 August 2009, regarding poor conditions in Daugavgrīva Prison over "a long period of time". The applicant requested financial compensation.

16. He submitted that his health had deteriorated as a result of the conditions in the prison. He raised most of the same issues as previously before the Prisons Administration, namely overcrowding, his exposure to cigarette smoke, the bunk beds, and the absence of an emergency button.

17. He further criticised the first aid in response to his heart attack on 9 September 2008, and submitted that prior to his arrest in 2004 he had not suffered from heart problems. Following the heart attack, the applicant had refused his transfer to a single-occupancy cell because it already held two inmates and thus would not remedy his situation. He argued that he had purchased the cigarettes in order to use them to repel rodents.

18. In addition, owing to the large number of inmates, the applicant had difficulty in accessing sanitary facilities, including a non-partitioned toilet, and a table to have a meal. There was also a bad smell and a lack of ventilation in the prison cells. He was locked up in those conditions for twenty-three hours a day.

(ii) First-instance decision

19. On 28 April 2010 the Administrative District Court dismissed the applicant's complaint.

20. Concerning the issue of overcrowding, the District Court concluded that the information provided by Daugavgrīva Prison showed that between 18 October 2008 and 6 February 2009 the applicant had been held in prison cells with a surface area of at least 2.6 m² per person, which complied with statutory requirements.

21. As to the applicant's confinement with smokers, the District Court held that the statutes did not require smokers and non-smokers to be held separately. However, such an obligation was incumbent on the prison once a

convicted person had made a request to be transferred to a non-smoking cell.

22. In that regard, there was no evidence that the applicant had made such a request prior to his heart attack on 9 September 2008. He had made the request on 1 November 2008. Yet he had refused to be placed in non-smoking cell no. 223 because of certain conditions in that cell. However, there was no indication in the case file that the applicant had informed the prison of these issues and had requested that they be addressed or that he be moved to a different cell. That being the case, it could not be said that the prison had ignored the applicant's requests in relation to non-smoking conditions and that he had been forced to share a cell with smokers.

23. As regards the bunk beds, the District Court did not accept that beds had led to the applicant's being subjected to inhuman treatment. His sleep problem had nothing to do with the beds. It was a medical issue, concerning which the applicant ought to have consulted a prison doctor.

24. An appeal lay to a higher court against that decision of the Administrative District Court.

(c) Appeal proceedings

(i) The applicant's appeal

25. In his appeal of 30 April 2010, as supplemented on 22 August 2010, the applicant requested that the above-mentioned decision of District Court be quashed and that he be awarded compensation of LVL 100,000.

26. The applicant argued that the lower court had been mistaken in finding that he had been provided with a minimum of 2.5 m² of living space as required by the statutes. The floor space had been taken up by furniture and the toilet, thus reducing the available floor space.

27. He further complained that the statutes should also require, with regard to prisons, that separate, isolated and well-ventilated rooms be provided for smoking. The applicant had no complaints about other inmates smoking, since they were his friends. It was therefore illegitimate to require him to move to a different prison cell. Furthermore, a fine metal mesh had been installed on the windows hampering air circulation. As a result, the applicant had experienced renewed heart problems.

(ii) Appeal decision

28. On 27 September 2011 the Administrative Regional Court (*Administratīvā apgabaltiesa*) examined the applicant's appeal and partly granted his claim.

29. The Regional Court noted that during the court hearing the applicant had stated that he had been subjected to inhuman conditions for more than four years. It further stated that the scope of the case was limited to the

matters in relation to which the administrative proceedings had been initiated.

30. As regards the applicant's confinement with smokers, the Regional Court endorsed the lower court's findings.

31. As to the applicant's complaint of overcrowding, the Regional Court noted the recommendation of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) that at least 4 m² be provided per prisoner in multiple-occupancy cells, as mentioned by the Court in *Bazjaks v. Latvia* (no. 71572/01, § 37, 19 October 2010).

32. In the applicant's case, that standard had not been complied with for a period of 104 days, namely between 18 October 2008 and 30 January 2009. Also, as a result of overcrowding, the ventilation during that time had been inadequate. Consequently, the applicant had suffered treatment in breach of the prohibition of torture.

33. In determining the amount of compensation to be paid, the Regional Court took into consideration the degree and duration of the violation of the applicant's rights. It referred to the case-law of the administrative courts. It also observed that in *Bazjaks* the Court had awarded 11,700 euros (EUR) where a person had been held for a year in conditions of overcrowding and also of limited out-of-cell activities, lack of personal hygiene products (soap, toothbrush, toilet paper), insufficient ventilation and natural light; in addition, there had been a suspicion that the person had contracted tuberculosis while in detention (ibid., §§ 112-116).

34. That being the case, the Regional Court deemed that compensation of LVL 700 (roughly corresponding to EUR 1,000) was appropriate in the applicant's situation.

35. That judgment was open to appeal before the Administrative Cases Division of the Senate of the Supreme Court (*Augstākās tiesas Senāta Administratīvo lietu departaments*).

(d) Cassation proceedings

(i) The applicant's appeal on points of law

36. On 9 September 2011 the applicant lodged an appeal on points of law against the above judgment of the Regional Court. He requested that the Senate of the Supreme Court re-calculate the compensation awarded.

37. He submitted that the appeal court had not taken all the circumstances into account. He further specified that he had been detained in Daugavgrīva Prison in inhuman conditions for a long period of time, namely four years and two months, and that owing to those conditions he had had a heart attack.

38. For each day spent in Daugavgrīva Prison the applicant claimed EUR 100 in compensation, in total EUR 152,000, which he had rounded to LVL 100,000.

(ii) Cassation decision

39. On 22 June 2012 the Senate of the Supreme Court upheld the impugned judgment and dismissed the applicant's appeal on points of law.

40. It affirmed that Article 3 of the Convention had been violated in the applicant's case on account of the small living space and insufficient ventilation, which had been switched on for only one or two hours every day.

41. With regard to the applicant's complaint regarding the period of time considered by the Regional Court, the Senate held that the circumstances of which the applicant had complained to the Prisons Administration had been scrutinised in the present case. First, his complaint in relation to a non-smoking cell had been dismissed, and in that part the Regional Court's judgment had become final. Further, he had complained about the size of the prison cells. The Senate ruled that none of the facts of the case had been disregarded by the Regional Court.

42. That judgment was final.

(e) Further complaints

43. On 9 July 2012 the applicant lodged a complaint with the Prisons Administration about conditions of detention in Daugavgrīva Prison between 31 August 2004 and October 2008.

44. On 8 August 2012 the Prisons Administration dismissed that complaint as out-of-time.

45. Furthermore, in the final decision of the Administrative Regional Court of 11 January 2013 the court proceedings were also rejected in view of the belated nature of the applicant's complaint.

B. Relevant domestic law

46. In regard to Article 95 of the Constitution (*Satversme*) prohibiting the torture and cruel or degrading treatment of a person, see *Cēsnieks v. Latvia* (no. 9278/06, § 48, 11 February 2014). Moreover, Article 92 enshrines everyone's right to adequate compensation in the event of an unlawful interference with his or her rights.

47. Article 77 of the Sentence Enforcement Code (*Sodu izpildes kodekss*), which provides for living space in dormitory-type prison cells of no less than 2.5 m² per person for men, was cited in *Jegorovs v. Latvia* ((dec.), no. 53281/08, § 71, 1 July 2014).

48. The Administrative Procedure Law (*Administratīvā procesa likums*) came into force on 1 February 2004. It provides, among other things, for the

right to challenge the actions of public authorities (*faktiskā rīcība*) before the administrative courts (see *D.F. v. Latvia*, no. 11160/07, § 40, 29 October 2013, and *Melnītis v. Latvia*, no. 30779/05, § 24, 28 February 2012).

COMPLAINTS

49. The applicant complained under Article 3 of the Convention of the conditions of detention in Daugavgrīva Prison: overcrowding; lack of adequate access to toilet facilities and physical exercise; a fine metal mesh on windows preventing natural light; lack of adequate ventilation; a one-hour walk in the open air per day; lack of adequate sleep in bunk beds; and a twenty-minute shower once every ten days.

50. Referring to Article 6 § 1 he further complained that the administrative courts had failed to address the conditions of his detention between 31 August 2004 and 31 January 2009, that they had not taken account of all the violations of his rights and that they had awarded him unfairly low compensation.

THE LAW

A. In relation to Article 3 of the Convention

51. The applicant complained about the conditions of detention in Daugavgrīva Prison: overcrowding; lack of adequate access to toilet facilities and physical exercise; a fine metal mesh on windows preventing natural light; lack of adequate ventilation; a one-hour walk in the open air per day; lack of adequate sleep in bunk beds; and a twenty-minute shower once every ten days. 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."

1. The parties' submissions

(a) The Government

52. At the outset the Government argued that the applicant had failed to exhaust the domestic remedies in respect of most of the issues which he raised before the Court.

53. In his complaint to the Prisons Administration of 21 January 2009 he had complained about two of those matters, namely overcrowding and exposure to cigarette smoke. Admittedly, he had also raised the problem of bunk beds. While the Administrative District Court had not considered that the latter issue attained the requisite level of severity, the Administrative Regional Court had examined it in relation to overcrowding. There was no evidence that the applicant had pursued that matter further.

54. As to the timeframe for the impugned conditions of detention, the Government pointed out that in his aforementioned complaint to the Prisons Administration the applicant had not indicated the period of time to which his complaint related. Instead, his complaint had focused on the matters specified.

55. Since the administrative courts were bound by the principle of *non ultra petita*, they had been unable to extend the applicant's complaint to a longer period of time, dating from 31 August 2004. In the view of the applicant's complaint, it was reasonable that the administrative courts had taken 18 October 2008 as a starting date. Besides, the applicant had failed to explain the reasons for having waited almost five years before lodging a complaint in 2009, if he had wished to complain about the conditions as of 2004. Moreover, the present case did not cover the period after 30 January 2009.

56. In regard to the period from 18 October 2008 to 30 January 2009 as examined by the administrative courts, the Government argued that the applicant could not claim to be a victim of violation of Article 3 in relation to overcrowding and the lack of fresh air.

57. As affirmed by the Senate of the Supreme Court, the Administrative Regional Court had explicitly acknowledged that violation. Further, the compensation awarded by the Regional Administrative Court had constituted appropriate redress for that breach. The Regional Court had duly substantiated the amount of compensation, notably by comparing the circumstances in *Bazjaks* (cited above).

(b) The applicant

58. As to the timeframe for the applicant's detention as assessed by the administrative courts, he argued that under section 188(4) of the Administrative Procedure Law he had been entitled to dispute an action of a public authority within a year from the time of having learnt of it. As his complaint to the Prisons Administration had been dated 21 January 2009, the relevant period of time had at least started on 21 January 2008.

59. In assessing the amount of compensation payable, the Administrative Regional Court and the Senate of the Supreme Court had not taken account of all the circumstances of the applicant's detention. Apart from overcrowding and inadequate ventilation, they had not considered the fact that he had been forced to stay with smokers and to share a bed with

another inmate, that there had been a lack of out-of-cell activities, private space and emergency button, or that his sleep had been disturbed. The compensation had therefore been insufficient.

60. Further, the applicant had been compelled to live in the conditions complained of since 31 August 2004, which period of time should have been taken into account. The compensation ought to have been awarded for the period at least from 21 January 2008 until 29 January 2009.

2. The Court's assessment

61. The Court first of all reiterates that it is primordial that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. The Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It cannot, and must not, usurp the role of Contracting States whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected at the domestic level (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04, ECHR 2010, § 69).

62. The rule of exhaustion of domestic remedies is therefore an indispensable part of the functioning of this system of protection. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (ibid.).

63. With regard to complaints of conditions of detention the Court accepted, in *Ignats v. Latvia* ((dec.), no. 38494/05, § 113, 24 September 2013), *Iļjins v. Latvia* ((dec.), no. 1179/10, § 37, 5 November 2013), and, more recently, in *Jegorovs* (cited above, § 119) that it is incumbent on an applicant, prior to applying to this Court, to take up his grievances, having complied with the extrajudicial procedure, before the administrative courts.

64. In the present case the applicant did pursue his compensation claim in relation to conditions of detention in Daugavgrīva Prison in the administrative proceedings (see paragraphs 15, 25 and 36 above).

65. However, the Court notes that in his complaint to the Prisons Administration the applicant, as also argued by the Government, did not specify to which period of time his complaint related (see paragraphs 4-8 above). That being the case the Prisons Administration having been unable to respond on a specific period of time, it could not be introduced in the subsequent proceedings before the administrative courts (with regard to compliance with the extrajudicial procedure see *Jegorovs*, cited above, § 119).

66. Under those circumstances the Court cannot criticise the domestic courts for not having examined a particular delimited period of time, that is to say starting on either 21 January 2008 or August 2004, as submitted to the Court by the applicant (see paragraphs 58 and 60 above).

67. The Court notes that the complaint about conditions of detention specifically between 31 August 2004 and October 2008 was not properly raised at the domestic level (see paragraphs 4-8 above). It was submitted to the administrative courts subsequently in a separate set of proceedings, after the applicant had lodged the application before the Court in Strasbourg (see paragraphs 43-45 above).

68. The applicant had also failed to put before the Prisons Administration many of the matters which he subsequently claimed before the Court. No mention was made of the lack of adequate access to toilet facilities and physical exercise, the fine metal mesh on windows preventing natural light the one-hour open-air walk per day or the twenty-minute shower once every ten days (see paragraphs 4-8 above). It is therefore reasonable that the Administrative Regional Court considered as part of the case only those matters in relation to which the administrative proceedings had been initiated.

69. Furthermore, while the Regional Court dismissed the applicant's claim regarding a non-smoking cell, the applicant did not challenge this issue in his appeal on points of law. Consequently, the Senate of the Supreme Court noted that in this part the Regional Court's judgment had already become final (see paragraph 41 above).

70. Likewise, the Court observes that the applicant's criticism in his appeal on points of law regarding the facts which the Regional Court had failed to consider was rather general (see paragraph 37 above). On the other hand, the Senate of the Supreme Court did respond to his concrete criticism of the timeframe considered, indicating that the circumstances which had been submitted to the Prisons Administration had been decided on in that case only (see paragraph 41 above).

71. Under those circumstances, the Court considers that the above-mentioned parts of the complaint are inadmissible on the ground of non-exhaustion of domestic remedies.

72. It therefore remains for the Court to examine whether the applicant can claim to have been a victim of Article 3 violation insofar as the period of time spent in Daugavgrīva Prison and examined by the administrative courts is concerned (see paragraphs 65 and 66 above). In that regard, the Court reiterates that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress for such breach (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-180, ECHR 2006-V). Only when these conditions are

satisfied does the subsidiary nature of the protective mechanism of the Convention preclude the examination of a complaint.

73. In the instant case, by the final decision of 22 June 2012 the administrative courts expressly acknowledged that the conditions of the applicant's detention in Daugavgrīva Prison, namely inadequate living space and insufficient ventilation for a period of 104 days, had breached Article 3 of the Convention (see paragraph 40 above).

74. The applicant's status as a victim then depends on whether the redress afforded at domestic level on the basis of the facts of which he complains before the Court was appropriate and sufficient having regard to the just satisfaction as provided for under Article 41 of the Convention (see *Scordino*, cited above, § 202).

75. Whether the amount awarded may be regarded as reasonable, however, falls to be assessed in the light of all the circumstances of the case. These also include the value of the award judged in the light of the standard of living in the State concerned and the fact that under the national system compensation will in general be awarded and paid more promptly than would be the case if the matter fell to be decided by the Court (see *Scordino*, cited above, §§ 206 and 268, and *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

76. As more recently held by the Court in *Firstov v. Russia* (no. 42119/04, 20 February 2014), the duration of the applicant's detention and the reasons given by the domestic courts in making an award in respect of that detention are also among the factors to be taken into account in assessing whether the domestic award can be considered as adequate and sufficient redress (§ 33).

77. The Court observes that in order to determine the amount of compensation the administrative courts assessed the duration of the applicant's detention and its particular circumstances.

78. They pointed out that the applicant had been held in a small living space with insufficient ventilation. Their line of reasoning shows that the administrative courts endeavoured also to determine the amount of compensation in the light of the gravity of those circumstances, *inter alia* by comparing them to the circumstances in *Bazjaks* (cited above) with due regard to the compensation awarded by the Court in that case (see paragraphs 32-34 and 39 above). Unlike in *Bazjaks*, no further aggravating factors, falling within the scope of the case emerged.

79. However, while it is possible that the Court would have awarded a higher sum of compensation for the violation of Article 3 than was awarded by the domestic courts, their comparison of the circumstances in the present case and those in *Bazjaks* (see paragraph 33 above) in determining the amount of compensation was not unreasonable.

80. In view of the foregoing, and in so far as domestic remedies were exhausted, the Court considers that the sum awarded to the applicant by the

administrative courts can be considered as providing him an adequate redress.

81. Accordingly, the applicant can no longer claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of Article 3 of the Convention. It follows that the complaint of conditions of detention must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. In relation to Article 6 of the Convention

82. Inasmuch as the applicant, with reference to Article 6 § 1 of the Convention, complained that the administrative courts had not addressed the conditions of his detention during a specified period of time and had not considered all the violations of his rights, the Court refers to its above-mentioned findings on the applicant's failure to pursue these matters in accordance with the applicable domestic procedural requirements, and therefore his failure to exhaust the domestic remedies in that respect.

83. Consequently, to the extent that the applicant exhausted the domestic remedies and in view of the foregoing considerations, the Court cannot accept that the applicant was awarded an unfairly low level of compensation.

84. Accordingly, the applicant's complaint under Article 6 § 1 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.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President