THIRD SECTION

DECISION

Application no. 35161/03
Ervins LEITENDORFS
against Latvia

The European Court of Human Rights (Third Section), sitting on 3 July 2012 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 regard to the above application lodged on 29 October 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 Ervins Leitendorfs, is a Latvian national who was born in 1976 and lives in Jelgava. He is represented before the Court by Mrs B. Didrihsone, a lawyer practising in Rīga.

2.  The Latvian Government (“the Government”) were 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.

4.  In 2002 the applicant was arrested on suspicion of having committed an offence. On 4 September 2002 the Limbaži District Court found the applicant guilty of robbery with aggravating circumstances and sentenced him to six years and one month’s imprisonment. The judgment became final in November 2003.

1.  The applicant’s account of the conditions of detention and medical assistance and the alleged ineffectiveness of remedies

5.  From 18 March to 2 April 2004 the applicant was in Jēkabpils Prison, and from 2 April to 20 August 2004 and 10 September 2004 to 19 March 2006 he served his sentence in Grīva Prison. He brought numerous complaints before various State authorities. In particular, he complained that from 19 to 23 March 2004 and from 1 to 4 April 2004 his anti-tuberculosis treatment had been interrupted.

6.  In the same letter he also complained that he had been denied a referral for three particular medical tests, including a head computed tomography (CT) an electroencephalograph (EEG), which he had requested in June 2004 and an oscillography, which he had requested in September 2004. The applicant alleged that the tests were indispensable in order to establish his mental-health problems.

7.  On 8 July 2005 the Ministry of Justice replied that the state of the applicant’s mental health had been regularly examined by a psychiatrist in prison, and that the Inspectorate for Quality Control of Medical Care and Working Capability (“the MADEKKI”) had examined the quality of the medical assistance at the place of the applicant’s detention three times without establishing any violation in this respect. The applicant was also informed that, according to information provided by the Prisons Administration and the MADEKKI, he did not have medical symptoms which would necessitate the tests he had requested.

8.  In October 2004 the applicant complained to the Prosecutor’s Office about the quality of food and water and the size of bed linen in Grīva Prison. On 1 November 2004 the Prisons Administration dismissed the complaints.

9.  In that letter the applicant also mentioned that in Grīva Prison prisoners suffering from tuberculosis had been subjected to solitary confinement where they could not receive bed linen or adequate clothes. The Prisons Administration informed the applicant that, in accordance with section 74(2) of the Sentence Enforcement Code, detainees were not provided with bed linen in the isolation wards and could not take exercise.

2.  The Government’s account of the conditions of detention and medical assistance

10.  The Government relied on the report of 12 November 2002 which the head of Valmiera Prison had sent to the Vidzeme Regional Court stating that from July to November 2002 the applicant had had eleven consultations with the prison psychiatrist and five consultations with the prison doctor. The applicant was diagnosed as suffering from neurosis.

11.  According to a report (without a date) drawn up by the head of the tuberculosis unit of the Central Prison Hospital, the applicant had begun serving his sentence in Jēkabpils Prison on 18 November 2003. On 29 November 2003 he fell ill and on 2 December 2003 he had an X-ray examination following which, on 12 December 2003, he was transferred to the tuberculosis unit of the Central Prison Hospital in Rīga for further tests and treatment. On 17 December 2003 the final diagnosis confirmed that the applicant had contracted tuberculosis, and from 18 December 2003 to 18 March 2004 he received anti-tuberculosis treatment, in accordance with the guidelines set by the World Health Organisation (“the WHO”). Afterwards he was transferred to the tuberculosis unit in Grīva Prison where he continued receiving adequate treatment until 23 June 2004. According to the results of the medical examinations of 30 June and 6 July 2004, the applicant showed no signs of tuberculosis; he nevertheless remained under the supervision of TB specialists until 24 February 2005.

12.  The above report mentioned that, according to the guidelines set by the WHO, only an interruption of two months could be considered as a suspension of treatment for tuberculosis.

13.  In a letter of 26 May 2006 the Ministry of Justice, at the Government Agent’s request, supplied the information that in Grīva Prison TB patients were detained separately from the others in a unit which had been refurbished in 2002 and had all the necessary facilities including showers, a gym and an area for outdoor activities, and that the applicant was provided with bed linen. The number of inmates per cell did not exceed 4 to 6.

14.  The letter also stated that, on account of insufficient funds, the prison had been unable to provide detainees with the statutory hygienic products until November 2005.

15.  At the Government Agent’s request, on 14 May 2007 the MADEKKI sent its conclusions on the medical assistance provided to the applicant in prisons in Latvia. It stated that during the inspections carried out in March 2005 the inspectors had discovered that the medical unit of Gīva Prison and the Central Prison Hospital had not obtained the certification envisaged by the Regulations of the Cabinet of Ministers No. 77 of 19 February 2002. It further stated that the medical unit of Grīva Prison had received the certificate in November 2005 and that in September 2005 the Inspection had noted various improvements in the functioning of the Prison hospital.

16.  The MADEKKI further explained that the three head examinations requested by the applicant were not normally carried out in diagnosing mental illness or behaviour or neurotic disorders.

3.  Extracts from the applicant’s medical records

17.  According to the extracts from the applicant’s medical history, the applicant sustained head injuries in 1982 and 1983. In 1982 and 1985 he was diagnosed as suffering from neurosis. In 1988/89 it was recommended that he study from home on account of his nervous disposition.

18.  On 4 March 2003 the applicant underwent a forensic medical examination. It concluded that the applicant did not suffer from mental illness. The experts found that the applicant had organic personality and behaviour disorder and an addiction to alcohol, and that he would be able to receive adequate medical treatment in prison.

19.  According to a medical report of 31 May 2004, issued by a practitioner from the applicant’s former place of residence, the applicant was diagnosed as suffering from encephalopathy of a post-traumatic or toxic kind. No recommendation as to further medical treatment had been noted.

20.  On 20 August 2004, at the applicant’s request, he was transferred to the Psychiatry Unit of the Central Prison Hospital. According to the medical report of 4 July 2005, drawn up by the head of the hospital, the applicant was diagnosed as suffering from mixed-type encephalopathy; he did not have medical symptoms which would necessitate carrying out the particular examinations he had requested.

21.  On 10 April 2006 an official from the State Probation Service informed the applicant that in order to determine his fitness for work he should have a consultation with a neurologist.

22.  In response to a request from the applicant of 28 June 2006, in a letter of 17 July 2006 a private company offered to pay the cost of the examinations prescribed by his neurologist in the sum of LVL 90 (EUR 130).

23.  On 13 November 2006 the applicant had a consultation with a neurologist in a civil hospital. He was diagnosed as suffering from post-traumatic and toxic encephalopathy. He was advised to undergo an EEG, a dopplerography and an echocardiogram and to have a consultation with a psychiatrist. The medical records show that on 8 December 2006 the applicant underwent an EEG and a dopplerography in a civil hospital. There is no information as to the results of the tests.

4.  Other information concerning the medical assistance given to the applicant in prison

24.  In response to the applicant’s enquiries, on 30 August 2004 the MADEKKI concluded that the quality of the anti-tuberculosis treatment which the applicant had received from 12 December 2003 until 18 March 2004 in the Central Prison Hospital had been adequate. It also stated that the applicant had received vitamins and specially enriched nutrition during the treatment and that the latest examinations showed that the applicant’s health condition had significantly improved. It also established that in April 2004 the applicant had been repeatedly examined by a prison doctor in Grīva Prison and had received appropriate medication.

25.  In response to the applicant’s complaint that he had been denied specific head examinations, on 6 September 2004 the MADEKKI informed him that the medical examinations he had requested would be carried out if additional financial resources were allocated to the Central Prison Hospital and if the doctor recommended that he undergo the examinations. He was informed that, according to the Regulations of the Cabinet of Ministers (see paragraph 27 below), he could have the examinations at his own expense.

26.  In response to a letter from the applicant of 27 September 2007, in which he complained about the interruption of his anti-tuberculosis treatment, the State Agency of Tuberculosis and Lung Diseases explained on 22 October 2007 that the anti-tuberculosis treatment had to be supplied regularly and that frequent interruptions might have an impact on the effects of the treatment, especially if the patient received less than 80% of the prescribed treatment. It also noted that in the applicant’s case the interruption of four days would not imperil his health.

1. Domestic law

 Relevant parts of Regulations no. 358 of the Cabinet of Ministers of 19 October 1999 on the Provision of Medical Assistance to Convicted and Detained Persons in their Place of Custody

27.  Pursuant to section 2, convicted persons shall receive the minimum free State-granted health care in the amount established by the Cabinet of Ministers. In addition, the Prison Authority, within its budgetary means, shall provide convicts with the following health-care services: primary, secondary and (partial) tertiary medical assistance; urgent dental care; examinations of their health condition; preventive care; medical treatment and injections prescribed by a doctor; and medical equipment.

28.  Pursuant to section 11, the medical examinations which are necessary for the Commission on Health and Working Capability to adopt an initial decision shall be financed from the State budget.

29.  Section 12 provides that, upon the request of a detainee, the administration of the penitentiary institution may agree with the administration of a civil medical institution on consultation and treatment at the detainee’s expense.

COMPLAINTS

30.  The applicant complained, under Article 2 of the Convention, that his life had been endangered at his place of detention because he had not been provided with appropriate medical treatment and his anti-tuberculosis treatment had been interrupted twice.

31.  The applicant complained under Articles 3 and 5 § 1 of the Convention, that he had been subjected to psychological torture causing depression and neurosis on the ground that his complaints to, *inter alia,* the Public Prosecutor, the Inspectorate for Quality Control of Medical Care and Working Capability and the prison administration had been ignored. He also complained of the poor conditions of his detention and that his health condition had worsened while in detention and that he had not been provided with adequate treatment, in particular concerning specific head examinations.

32.  The applicant complained, under Article 5 §§ 1 (a), (b), (c), (e) and (f), 2 and 3 of the Convention, that his detention had been unlawful and that the authorities responsible for his unlawful detention had not been prosecuted.

33.  The applicant complained, under Article 6 § 1 of the Convention, that the rule on presumption of innocence had been breached in his regard in that information about his conviction by the first-instance court had been published by a newspaper.

34.  The applicant complained in substance under Article 6 § 1 of the Convention that he had been denied a fair hearing in the appeal court proceedings because the presiding judge had previously already found him guilty of other offences.

35.  The applicant complained, under Article 6 § 2 of the Convention, that he had not been proved guilty according to the law.

36.  The applicant complained, under Article 6 § 3 (b) of the Convention, that he had not been informed before the first-instance court proceedings commenced that he could prepare his defence and had not been informed that the witness X, whom the applicant would have liked to question, would be present.

37.  The applicant complained, under Article 6 § 3 (d) of the Convention, that he had not been informed before the first-instance court proceedings commenced that he could examine witnesses against him.

38.  The applicant complained, under Articles 6 §§ 1 and 2 and 7 §§ 1 and 2 of the Convention, that the Public Prosecutor’s Office had failed to institute criminal proceedings, upon his complaints, against the prison administration and the authorities and medical personnel of the Grīva Prison and that his rights guaranteed by Article 6 § 3 (a), (b), (c), (d) and (e) of the Convention had not been respected in that connection.

39.  The applicant complained, under Article 9 §§ 1 and 2 of the Convention, that the Public Prosecutor, the Inspection of the Quality Control of Medical Treatment and the prison administration, including its medical personnel, had intentionally misunderstood his complaints and reacted inadequately, X-raying him ten times between March and September 2004 and thus damaging his health.

40.  The applicant complained, under Article 10 §§ 1 and 2 of the Convention, that the Public Prosecutor, the Inspection of the Quality Control of Medical Treatment and the prison administration had failed to comply with the law.

41.  The applicant complained, under Article 13 of the Convention, that he did not have an effective remedy in respect of his complaints about inadequate treatment at the place of his detention and that his letters sent to the Minister of Justice had been delayed for five days.

42.  The applicant complained, under Article 14 of the Convention, that he had been discriminated against in respect of all his Convention rights.

43.  The applicant complained, under Article 18 of the Convention, that all the domestic authorities, including the Public Prosecutor, the Inspectorate for Quality Control of Medical Care and Working Capability and the prison administration, had infringed all his constitutional rights.

44.  The applicant complained, lastly, under Articles 53 and 57 of the Convention that the domestic authorities had failed to secure his constitutional rights.

THE LAW

A.  Complaints under Article 3 of the Convention

45.  The applicant complained in essence about the conditions of detention in Grīva Prison and the quality of the medical treatment. He complained, in particular, of the interruptions of the anti-tuberculosis treatment and the refusal to allow him to have three particular head examinations. The complaint will be examined under Article 3, which provides:

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

1.  The quality of medical assistance

(a) Parties’ arguments

46.  The Government contended that the applicant’s treatment for tuberculosis had been sufficient and that there had been no serious interruptions. As concerns the applicant’s mental health, the Government pointed to the conclusions of the forensic medical experts and the regular medical care in prison and to the fact that there had been no medical symptoms requiring that the examinations requested by the applicant be prescribed.

47.  The applicant argued that there had been no explanation as to why his anti-tuberculosis treatment had been interrupted twice during his transfers between prisons. He also contended that the particular examinations had been prescribed by various specialists.

48.  The Government commented that in 2006 the three particular examinations had not been prescribed by a medical professional and were intended to establish only his working capability, and that the neurologist had merely recommended them. They pointed out that the applicant could have had the examinations at his own expense beforehand (see paragraph 25 above).

(b) The Court’s assessment

49.  The Court reiterates that, according to its case-law, the State must ensure that given the practical demands of imprisonment the health and well-being of imprisoned persons are adequately secured by, among other things, providing the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000‑XI). The adequacy of the medical assistance is examined by taking into account various elements, such as, *inter alia*, timely diagnostics and treatment (see *Melnik v. Ukraine*, no. 72286/01, §§ 104-06, 28 March 2006); and, where necessary, regular and systematic supervision aimed at preventing the aggravation of the prisoner’s health condition (see *Popov v. Russia*, no. 26853/04, § 211, 13 July 2006, and, more recently, *Krivošejs v. Latvia*, no. 45517/04, § 71, 17 January 2012).

50.  As to the treatment for tuberculosis in this particular case, the Court observes that the interruptions in the administration of anti-tuberculosis treatment occurred as a result of the applicant’s transfers between prisons. The Government did not comment on which circumstances had led to this situation that could in principle raise an issue under Article 3 of the Convention. In this connection the Court reiterates that in *Jeronovičs v. Latvia* (application no. 547/02, §§ 35-40, 1 December 2009) the Court found that transfers between a prison and a courtroom, as a result of which the detainee had been deprived of food and sleep for twenty-seven hours, had reached the minimum level of severity necessary for the purposes of Article 3 of the Convention.

51.  The Court notes that in the particular circumstances of the case no issue arises as to the timely diagnosis, administration and supervision of the treatment for tuberculosis (see paragraph 11 above). It also observes that the four and five-day interruptions in providing the applicant with his anti-tuberculosis medication did not have an adverse effect on the applicant’s treatment (ibid.). In the light of the above and having regard to the conclusions of the medical professionals that the interruptions in providing the medication were not considered as a suspension of the applicant’s anti-tuberculosis treatment (see paragraph 26 above), the Court concludes that the absence of medication during the applicant’s transfers does not reach the necessary level of severity under Article 3 of the Convention. Accordingly, the applicant’s complaint regarding inadequacy of the medical assistance in relation to his treatment for tuberculosis is manifestly ill-founded.

52.  As concerns the other complaints related to the alleged unavailability of effective medical care in prison, the Court notes that the applicant essentially complained that in 2004 he had been denied a referral for three particular medical tests, which were allegedly indispensable to his health condition (see paragraph 6 above).

53.  The Court observes in this respect that from the beginning of his imprisonment in 2004 the applicant was examined by various specialists both in a civil hospital (see paragraphs 10 and 19 above) and in the psychiatric unit of the Central Prison Hospital (see paragraph 20, above). Contrary to the submissions of the applicant, none of the doctors who examined the applicant at the material time prescribed those particular examinations. Having regard to the MADEKKI’s conclusion (see paragraph 16 above), it cannot be established that when the applicant requested the examinations there existed a medical necessity to prescribe or carry them out (see, conversely, *V.D. v. Romania*, no. 7078/02, § 94, 16 February 2010). The applicant was also informed that he could have the examinations at his own expense (see paragraph 25 above).

54.  In 2006 the applicant commenced consultations in order to establish his working capability and a neurologist advised him to have certain specific medical examinations (see paragraphs 21 and 23 above). According to the provisions of the relevant domestic law in force at the material time, the medical examinations which were necessary for determining the detainee’s working capabilities were payable from the State budget (see paragraph 28 above). Even assuming that the neurologist’s recommendation also indicated the existence of a medical necessity, the applicant decided to have the examinations at his own expense and did not avail himself of the right provided for in domestic law.

55.  In the light of the above and in the absence of any indications that the applicant’s state of health deteriorated, the Court concludes that this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2.  Conditions in Grīva Prison

56.  The Government contended that the conditions in Grīva Prison were adequate, including the quality of food, water, opportunities for exercise and bed linen. They emphasised that there was no issue of overcrowding in the Grīva Prison and asked the Court to conclude that the applicant had failed to provide credible evidence in support of his allegations.

57.  The applicant referred to the letter of the Ministry of Justice (see paragraph 14 above) which referred to the fact that, owing to insufficient funds, the detainees in Grīva Prison had not been provided with adequate hygienic items for a certain period.

58.  The Court reiterates that, according to its well-established case-law, ill-treatment must attain a minimum level of severity in order to fall within the scope of Article 3 of the Convention, and that the assessment of this minimum level depends on all the circumstances of the case, such as the stringency of the measure complained of, its duration, the objective pursued and its effects on the person concerned (see *Kudła,* cited above,§ 91). Besides, notwithstanding the practical difficulties applicants might face in furnishing evidence to support their claims before the Court, they must provide a credible and reasonably detailed account of the conditions of the detention which serves as a basis for giving notice of the complaint to the respondent Government (see *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, § 90, 17 January 2012 ), unless there are exceptional circumstances authorising the Court to depart from this principle .

59.  The Court notes that with regard to the conditions of detention in Grīva Prison the applicant complained in a general manner about the quality of food, water and size of bed linen there (see paragraph 8 above). These allegations were dismissed by the Prisons Administration, which stressed the fact that the applicant was being held in the medical unit of Grīva Prison where the conditions were adequate (see paragraph 13 above). The Court notes that the above facts are in part corroborated by an earlier report of the MADEKKI in so far as it concerns the quality of food (see paragraph 24 above). Observing that the applicant has not substantiated his complaints or contested the conclusions of the above reports, the Court cannot establish the existence of the alleged conditions beyond reasonable doubt. The complaints are therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

60.  Furthermore, observing that the complaint of an alleged lack of hygienic products in Grīva Prison in 2005 was raised for the first time in a general manner by the applicant only in 2009 in the submissions in response to the Government’s observations, the Court finds that the applicant has failed to submit this part of the complaint in time.

61.  As concerns the conditions in detention in the isolation ward of Grīva Prison, the Court observes that the applicant has failed to provide any information as to whether he was indeed subjected to solitary confinement while serving his sentence in Grīva Prison (see also *Leja v. Latvia*, no. 71072/01, § 70, 14 June 2011). The Court, while concerned about the domestic regulation in force at the material time (see paragraph 9, above) cannot rule *in abstracto* on its compatibility with the Convention (see *Olsson v. Sweden (no. 1)*, 24 March 1988, § 54, Series A no. 130*)* and in the circumstances, where the applicant has not provided any evidence in this respect, the Court is not prepared to make any inferences as to the existence of an arguable claim under Article 3.

62.  In the light of the above, this part of the application is therefore manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

B.  Complaint under Article 13 of the Convention

63.  Having regard to the aforementioned conclusion that the applicant does not have an arguable claim that there has been a breach of Article 3 of the Convention, his complaint under Article 13 is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

C.  Other complaints

64.  The applicant also alleged violations under various other Articles of the Convention.

65.  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 Josep Casadevall
 Deputy Registrar President