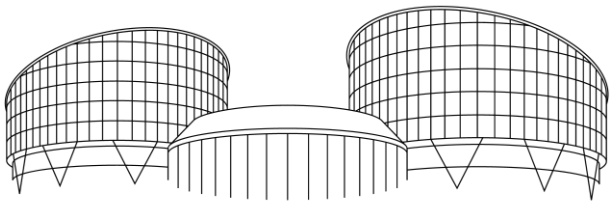

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PETRIKS v. LATVIA

(Application no. 19619/03)

JUDGMENT

STRASBOURG

4 December 2012

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Petriks v. Latvia,

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

David Thór Björgvinsson, *President,*
Ineta Ziemele,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 13 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 19619/03) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Kaspars Petriks ("the applicant"), on 17 June 2003.

2. The applicant, who had been granted legal aid, was represented by Ms A. Dāce, a lawyer practising in Babīte. The Latvian Government ("the Government") were represented by their Agent at the time, Mrs I. Reine.

3. The applicant complained, among other things, under Article 3 of the Convention about the conditions of his detention in the short-term detention facility in Saldus.

4. On 21 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicant was born in 1979 and is currently being held in Šķirotava Prison in Rīga.

6. On 13 November 2000 the applicant was arrested and detained. His detention was subsequently extended by different judges.

7. On 9 June 2003 the Kurzeme Regional Court (Kurzemes apgabaltiesa) convicted the applicant of aggravated murder and sentenced him to thirteen years' imprisonment.

8. On 3 November 2003 the Criminal Chamber of the Supreme Court (Augstākās Tiesas Krimināllietu tiesu palāta) upheld the judgment of the first-instance court upon the applicant's appeal.

9. On 13 January 2004 the Criminal Department of the Senate of the Supreme Court (Augstākās Tiesas Senāta Krimināllietu departaments) dismissed the applicant's appeal on points of law.

B. Conditions of detention

10. The applicant was held at the short-term detention facility in Saldus, which was located in a police station, for the following eight periods:

- 5 June to 5 July 2002;
- 5 September to 22 November 2002;
- 13 to 22 December 2002;
- 5 to 13 January 2003;
- 22 to 29 January 2003;
- 5 to 13 March 2003;
- 22 March to 13 April 2003; and
- 13 to 23 May 2003.

According to the applicant, the conditions therein had not been appropriate for prolonged periods of detention – they had been unsanitary and had not met basic hygiene standards. He had lacked a mattress and had been required to sleep on a hard surface. He had not received a sufficient amount of food. Moreover, no toothpaste had been provided to him.

11. Before and after his detention in the short-term detention facility in Saldus, the applicant was held in Liepāja Prison, save for a period between 13 and 22 February 2003, when he underwent treatment in the Prison Hospital located in the grounds of Central Prison in Rīga.

12. On 23 May 2003, upon the applicant's complaint to the Ministry of the Interior, the State Police replied that "indeed we have to agree that the conditions in the short-term detention facility need to be improved". It was noted that the facility had been opened in 1964 and that "it is currently necessary to reconstruct certain parts of it and to improve it". They asserted that work had already been started and that sanitary conditions would soon improve.

13. The applicant's cellmates in Liepāja Prison have written to the Court, stating that following the applicant's return from the short-term detention facility in Saldus his back and one side had had blue marks on

them, which he explained had been caused by his sleeping on a hard surface; fleas and lice had been found on him; and he had told them that the overall sanitary conditions had been terrible.

14. The Government provided no comments in this regard.

II. RELEVANT INTERNATIONAL MATERIAL

15. Following its second visit to Latvia from 25 September to 4 October 2002, the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT") published a report on 10 May 2005, in which it was stated that:

> "21. In paragraph 23 of the report on the 1999 visit, the CPT made a number of specific recommendations with a view to improving the extremely poor material conditions of detention in Latvian police establishments. However, the Committee noted with great concern that the facts found during the 2002 visit clearly show that the situation has not improved.
>
> Conditions of detention were particularly bad at Daugavpils, Liepāja and Ventspils Police Headquarters, where persons were being held 24 hours per day in overcrowded cells, which were very humid, dirty and poorly ventilated. Hardly any of the cells had access to natural light, and artificial lighting was extremely poor. In all three establishments visited, detainees were obliged to sleep on a wooden platform without mattresses and blankets. They were not given the possibility to wash themselves, had access to toilets only once or twice per day, and for the rest of the time were obliged to use a bucket in their cells to satisfy the needs of nature. No personal hygiene products (e.g. toilet paper) were provided...
>
> 22. The CPT's delegation made an immediate observation in respect of the conditions of detention in these establishments. In their letter of 29 January 2003, the Latvian authorities informed the Committee that ... "[T]he issue about ensuring that the detention centres are provided with mattresses and blankets is currently being resolved". Further, the Committee would like to receive the Latvian authorities' confirmation that all persons detained at Daugavpils, Liepāja and Ventspils Police Headquarters (as well as in other police establishments) are now provided with a clean mattress/blankets at night as well as with personal hygiene products and are given the possibility to wash themselves and to have ready access to toilets."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS CONCERNS CONDITIONS OF DETENTION IN SALDUS

16. The applicant complained that the conditions of his detention in the short-term detention facility in Saldus had been contrary to Article 3 of the Convention. In particular, the applicant complained of a lack of mattresses,

sufficient amount of food, and adequate hygiene and of poor sanitary conditions. Article 3 reads as follows:

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

17. The Government contested that argument.

A. Admissibility

18. The Government made a preliminary objection that the applicant had failed to submit "any documents demonstrating that he had ever complained to the competent national authorities of the alleged violations of his rights and what [had been] their reply". They considered that he had thereby failed to comply with Article 34 of the Convention and had not properly lodged an application in the sense of Rule 47 of the Rules of Court. In this regard, the Government referred to Lord Woolf who in the *Review of the Working Methods of the European Court of Human Rights* recommended the Court to deal only with properly completed application forms which contained all the information required for the Court to process them. The Government pointed out that the complaint under Article 3 of the Convention had been communicated only in 2009 and that the relevant documents had been destroyed after the expiry of the statutory storage period for archival documents.

19. The applicant, in reply to the Government's argument, insisted that he did not have an obligation to exhaust domestic remedies, implying that his application had therefore been complete.

20. The Court reiterates that it examines the applications lodged before it within the meaning of Article 34 of the Convention and Rule 47 of the Rules of Court according to their content and their meaning. It further notes that together with his application form the applicant provided some evidence that he had approached the domestic authorities and that he had received the letter of 23 May 2003 in reply from the State Police. In this respect, nevertheless, the Court notes that at the material time there were no effective domestic remedies in relation to complaints about conditions of detention in short-term detention facilities (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 Government have not suggested otherwise in the present case. In such circumstances the Court considers that the application form and the evidence submitted by the applicant contained sufficient information for those documents to be considered "an application" within the meaning of Article 34 of the Convention and Rule 47 of the Rules of Court. As regards the expiry of the statutory storage period for the relevant documents, the Court has already expressed serious concerns in a different context (see *Leja v. Latvia*, no. 71072/01, § 86,

14 June 2011). However, in view of the above finding the Court does not consider it necessary to rule further on this question in the present case. Accordingly, the Government's objection has to be dismissed.

21. The Government further maintained that the applicant's complaint concerning his detention between 5 June 2002 and 13 January 2003 had been lodged outside the six-month time-limit.

22. The applicant insisted that, in view of the pending criminal proceedings, his detention in the short-term detention facility in Saldus had not been made up of specific instances of detention – for instance, for the purposes of interrogation or court hearings – but rather had constituted a continuing situation.

23. The Court's approach to the application of the six-month rule to complaints concerning the conditions of an applicant's detention may be summarised in the following manner: a period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months from the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012, and also *I.D. v. Moldova*, no. 47203/06, §§ 28-31, 30 November 2010).

24. Examining the applicant's case in the light of the above principles, the Court notes that he was held in the short-term detention facility in Saldus on eight occasions, for periods ranging from seven days to two months and twenty-two days at a time. Even though the conditions in Saldus remained substantially the same during each detention period, after each of those periods the applicant was transferred back to Liepāja Prison, where the detention conditions were substantially different and appear not to raise any issues under the Convention, at least in so far as the present applicant is concerned. The Court therefore considers that the periods of the applicant's detention in the short-term detention facility in Saldus cannot be regarded as a continuing situation. The Court considers that in the present case the six-month period referred to in Article 35 § 1 of the Convention is to be calculated separately for each detention period; on each occasion starting to run on the date that followed the applicant's transfer from the short-term detention facility in Saldus to Liepāja Prison and expiring six calendar months later, regardless of the actual duration of those calendar months (see *Katajevs v. Latvia* (dec.), no. 1710/06, § 27, 11 September 2012). The Court

notes that the applicant lodged his complaint with the Court on 17 June 2003. It follows that the complaint about the first two detention periods, that is, between 5 June and 5 July 2002 and between 5 September and 22 November 2002, has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

25. As concerns the remainder of the applicant's complaint, namely, the conditions of his detention in the short-term detention facility in Saldus for the remaining six detention periods (between 13 and 22 December 2002, 5 and 13 January 2003, 22 and 29 January 2003, 5 and 13 March 2003, 22 March and 13 April 2003, 13 and 23 May 2003), the Court considers that it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The applicant submitted that his cell in the short-term detention facility in Saldus had been cold and damp. There had been no natural light. Artificial light had been provided by an opaque light bulb, which had been on for twenty-four hours a day. The artificial light had been insufficient for reading. There had been no ventilation in the cell. Furthermore, access to water and toilet facilities had been limited. There had been no sink or tap water in the cell; he had only been able to obtain water by asking the duty officer for some. The applicant had not been able to take a shower; in the morning and evening he had only been able to wash his face over a sink. There had been no appropriate toilet facilities in the cell; a bucket in the corner of the cell had served this purpose and it had not been separated from the rest of the cell. A foul smell had emanated from it. The sleeping facilities had consisted of a wooden platform, which had taken up two-thirds of the cell and which the applicant had had to share with other detainees. No mattresses or blankets had been provided. There had been no other means of rest, such as a chair, stool or table. The applicant had not been able to take daily outdoor exercise. There had been very little space in which to move around the cell. Finally, the food had been insufficient. For breakfast and dinner he had only received tea with bread, and for lunch some cold leftovers from the food served in a canteen in the city.

27. The Government did not comment on the material conditions of the applicant's detention in the short-term detention facility in Saldus.

28. The Court recalls its well-established case-law that the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that,

given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the applicant's specific allegations (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II; *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI; and *Ostrovar v. Moldova*, no. 35207/03, § 80, 13 September 2005).

29. The Court observes that the Government do not deny that the detention conditions were as described by the applicant. It furthermore notes that the conditions of detention in Saldus, as described by the applicant, have been corroborated with other evidence. The applicant's allegation of having to sleep on a wooden platform with no mattress in Saldus is corroborated by written statements from his cellmates in Liepāja Prison (see paragraph 13 above); moreover, it coincides with the findings of the CPT as concerns other short-term detention facilities in Latvia at the material time (see paragraph 15 above). In addition, the Court has already found that in other short-term detention facilities in Latvia the conditions of detention largely resemble those depicted by the applicant in the present case (see *Kadiķis*, cited above, §§ 52-56, where the applicant was held in a short-term detention facility in Liepāja for fifteen days in an overpopulated cell that had a stifling atmosphere, with no access to natural light and often no fresh air, without the ability to leave the cell other than for use of a washbasin or the toilet, without a bed and forced to sleep with other detainees on a wooden platform with no mattress or blankets, with an insufficient amount of food and often thirsty, and *Ņikitenko v. Latvia*, no. 62609/00, § 25, 16 July 2009, where the applicant was held in a short-term detention facility in Jelgava for one month and five days in similar, in some respects even worse, conditions than those in the *Kadiķis* case). As regards the duration of the applicant's detention in the present case, the Court notes that it was at regular intervals (every month) and lasted from seven to twenty-two days in the period under consideration.

30. It is true that in the present case the applicant did not allege that his cell in Saldus had been overpopulated. However, the conditions of detention in Saldus as described by the applicant, confirmed by the CPT and established by the Court, having regard to their cumulative effects, clearly reach the threshold of severity proscribed under Article 3 of the Convention.

31. The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS CONCERNS MEDICAL ASSISTANCE

32. The applicant complained of a lack of adequate medical assistance in Liepāja Prison under Article 3 of the Convention. In particular, he complained that he had not been able to see a dentist free of charge.

33. The Government contested that argument and claimed that the applicant had not exhausted domestic remedies. He had failed to complain to the Inspectorate for Quality Control of Medical Care and Working Capability.

34. The applicant agreed and did not maintain his complaint in that regard.

35. The Court considers that in these circumstances the applicant may be regarded as no longer wishing to pursue this part of his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of this part of the application.

36. Accordingly, the part of the application relating to the complaint under Article 3 of the Convention as concerns medical assistance in Liepāja Prison should be struck out of the list.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. Lastly, the applicant complained under Article 3 of the Convention about the conditions of detention in the short-term detention facility in Kuldīga, where he had been placed for several periods until 29 September 2001. He alleged, citing the same Article, that the prosecutor had instructed the short-term detention facility staff not to accept packages for the applicant or allow him to receive visits and had subjected him to mental distress by placing him in a single cell.

38. The applicant also complained, relying on Article 5 of the Convention, that he had been unlawfully detained after 1 March 2002. He submitted that his detention had been prolonged without him or his counsel being present, contrary to national law, and that judicial review had thus not been available.

39. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention had been excessive.

40. In his further correspondence with the Court, the applicant complained about the outcome of the domestic proceedings and the assessment of evidence by the national courts. He also considered that he had not had enough time to acquaint himself with the case file.

41. However, 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.

42. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

44. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

45. The Government considered that the applicant had not sufficiently demonstrated that he had incurred non-pecuniary damage as a result of the possible violation of his fundamental rights guaranteed by the Convention, or at least not to the extent claimed. They submitted that a finding of a violation would constitute adequate compensation in the present case. Alternatively, they considered that the applicant's claim was exorbitant. The Government pointed out that in the case of *Ostrovar v. Moldova* (no. 35207/03, § 118, 13 September 2005), the non-pecuniary damage award had been EUR 3,000, and that in case of *Jeronovičs v. Latvia* (no. 547/02, § 44, 1 December 2009) the non-pecuniary damage award had been EUR 5,000.

46. Taking into account all the relevant factors, including the period of time spent by the applicant in conditions of detention contrary to Article 3 of the Convention, the Court, deciding on equitable basis, awards the applicant EUR 6,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

47. The applicant did not lodge any claim under this head.

C. Default interest

48. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in so far as it relates to the complaint under Article 3 of the Convention concerning medical assistance in Liepāja Prison, in accordance with Article 37 § 1 (a) of the Convention;

2. *Declares* the complaint under Article 3 of the Convention concerning the conditions of the applicant's detention in Saldus for six detention periods between 13 December 2002 and 23 May 2003 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President