



Detention conditions of deaf and mute prisoner amounted to inhuman and degrading treatment

In today's **Chamber judgment**¹ in the case of **Ābele v. Latvia** (applications nos. 60429/12 and 72760/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned the complaint by a deaf and mute prisoner who alleged that he had been held in overcrowded cells and that the authorities had failed to cater for his disability. That had led to his being isolated.

The Court found in particular that Mr Ābele had lacked the necessary amount of personal space in the cells where he had been held and had suffered anguish and feelings of inferiority due to his inability to communicate that had attained the threshold of inhuman and degrading treatment.

Principal facts

The applicant, Valters Ābele, is a Latvian national who was born in 1968. He is currently in jail in Jēkabpils. He has been deaf and mute since birth and has a poor knowledge of sign language. He has been categorised as having a medium level of disability (category 2 under the national standard).

In May 2008 Mr Ābele was convicted of aggravated murder and sentenced to 15 years and six months in prison. He started serving his sentence in 2009 under the most restrictive regime in Liepāja Prison before being transferred to Brasa Prison in December 2011, where he was subject to various levels of security.

According to Mr Ābele, while detained in Brasa Prison he was held in overcrowded dormitory-style, multi-occupancy cells. He had difficulty communicating with other prisoners because of his disability, which put him in a very vulnerable, isolated position and exposed him to harassment. He also had problems communicating with the prison authorities and the prison did not provide educational or recreational possibilities for people like him. He was not given a hearing aid until April 2016 and even then it did not work properly.

Mr Ābele lodged some 25 handwritten complaints to the authorities about his detention conditions, seeking to be transferred to single or dual-occupancy cells or other prisons. On one occasion, he even applied to be moved to a stricter prison regime in order to be held in a cell with fewer inmates.

The prison authorities and the courts rejected his complaints and refused to transfer him to another prison or cell. After rehabilitation work he was eventually transferred to Jēkabpils Prison in September 2016, where he was placed in a cell with two other inmates, one of whom had a similar hearing impairment.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying in substance on Article 3 (prohibition of inhuman or degrading treatment), Mr Ābele complained of his detention conditions. He also complained, relying in substance on Article 13 (right to an effective remedy), that his complaints about the conditions of his detention had not been examined.

The applications were lodged with the European Court of Human Rights on 12 September and 24 October 2012, respectively.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
Nona **Tsotsoria** (Georgia),
André **Potocki** (France),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court examined two separate periods of detention, the first when Mr Ābele had less than three square metres of personal space, from 1 January 2012 to 26 February 2013, and the second, between 26 February 2013 and 16 February 2015, when he had between three and four square metres of personal space.

Concerning the first period, the Court found that there was a strong presumption in its case-law of a violation of Article 3 when personal space went below three square metres and that there were no factors capable of rebutting that presumption. According to the Court’s case-law, one such factor can be if the period in question is “short, occasional and minor”. However, that had not been the case in Mr Ābele’s situation, as he had been held in space that was below the minimum for more than a year.

As regards the second period, the Court observed that the space available, ranging from 3.09 to 3.28 sq. m, had been only just above the minimum standard of three square metres Mr Ābele considered that the lack of space coupled with his disability had made him particularly vulnerable. He had even requested to be transferred to the strictest prison regime in order to be in a cell with fewer inmates. In addition, the authorities had not supplied him with a hearing aid until April 2016, by which time he had been in jail for more than four years. Even then, it had not worked properly. Although the Convention did not require all prisoners with a hearing impairment to have a hearing aid supplied to them, the availability of one at an earlier stage would have at least partly alleviated his suffering.

It was true that a range of activities and services had been provided in Brasa Prison. However, Mr Ābele had been subject to the same regime, the same treatment and the same range of activities and services which were available to the prison population in general. In the relevant period, no particular attempts had been made to overcome the obvious communication problems he had with the prison staff.

The Court concluded that the reduced personal space made available to Mr Ābele during this second period, which lasted almost for two years, together with the inevitable feeling of isolation and helplessness in the absence of adequate attempts to overcome his communication problems due to

his disability, had to have caused him to experience anguish and feelings of inferiority attaining the threshold of inhuman and degrading treatment.

There had therefore been a violation of Article 3 as regards the conditions of Mr Ābele's detention in Brasa Prison from 1 January 2012 to 16 February 2015.

Other articles

Given its finding under Article 3, the Court considered that there was no need to examine separately the complaint under Article 13.

Just satisfaction (Article 41)

The Court held that Latvia was to pay Mr Ābele 7,500 euros (EUR) in respect of non-pecuniary damage. The applicant did not submit a claim for costs and expenses and none were awarded.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Nina Salomon (tel: + 33 3 90 21 49 79)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.