



Case 2008-48-01

Case No. 2008-48-01, Latvia (2008)

Country: Latvia

Region: Europe

Year: 2009

Court: Constitutional Court

Health Topics: Mental health, Prisons

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to health

Facts

The plaintiff argued that the Sentence Execution Code of Latvia, Sec. 74 (2) (the "impugned regulation") which prohibited convicted persons in solitary confinement from having walks violated his constitutional right to health. In April 2009, the parliament had amended the impugned regulation, allowing for daily one-hour walks, but such amendment was not set to come into effect until January 2011. The government argued that such period of delay was necessary for transition as Latvian prisons were not equipped to securely allow such prisoners to take daily walks, and that additional funds and renovation were required to allow the new rule to safely take effect.

Certain persons and entities invited to intervene in the case confirmed inter alia, with reference to the Latvian constitution and various international treaties to which Latvia was a party, that the State was required to refrain from taking actions which might prevent persons from taking care of themselves and that staying in solitary confinement without natural light and air for long periods of time was seriously detrimental to a person's health.

The Committee for the Prevention of Torture had repeatedly drawn attention to this failing of Latvian prisons during the course of its visits over the past ten years.

Decision and Reasoning

Despite the government's argument that there was no longer a dispute as the impugned regulation had been amended, the Court held that given that as the amended regulation would not go into effect for an additional two-year period (despite the fact that the government had known about the failings of the impugned regulation for 10 years), a current dispute existed which it was competent to adjudicate.

The Constitutional Court reaffirmed that the Latvian Constitution did provide a "right to health [that] shall be regarded as a social right" [para 9] and that lengthy stays in solitary confinement without any walks could seriously damage a person's health. The Court then held that limitations on a convicted person's rights could only be imposed "in order to execute a sentence and ensure the sentence serving regime." [Para 11] As such, a restriction on a prisoner's right to take walks did not ensure an implementation of sentence execution and sentence serving regime it was therefore in violation of the Latvian Constitution.

The Court then turned to the question of whether the two year delay in rectifying such violation was acceptable, given the State's claim of lack of resources to rectify the problem immediately, and noted that the State had been aware of this failing for ten years given the reports of the Committee for the Prevention of Torture. The Court determined that "[a]s the current condition of the prisons does not prohibit walks to other convicted persons, there is no reason to not provide convicted persons placed in solitary confinement with daily walks" and that there was evidence to suggest that convicted persons could begin having daily walks prior to January 2011. [Para 12.2]

Thus the Court ruled that the impugned regulation was null and void, from May 2010.

Decision Excerpts

"[I]t can be concluded that long-term stay in [Latvian prisons] without having walks may seriously harm one's health. Hereby the impugned regulation which restricts convicted persons placed in solitary confinement from having outdoor walks, confines the guaranteed right to health as stated in Article 111 of the Constitution of

the Republic of Latvia.â€• Paragraph 9

â€œPlacing in solitary confinement is one of the disciplinary penalties. A person is placed in solitary confinement only in the event of a serious or systematic violation of a sentence serving regime. The Constitutional Court holds that a limitation of convicted personâ€™s rights, including rights of convicted persons placed in solitary confinements, shall only be limited in order to execute a sentence and ensure the sentence serving regimeâ€. Placing a person in solitary confinement has a legitimate cause, so a person would not repeatedly violate the sentence serving regime. However, restrictions of rights, which are established for convicted persons placed in solitary confinements, has to be set to achieve a legitimate causeâ€. The Constitutional Court holds that a restriction on walks, which means long-term stay in limited space, therefore, putting a personâ€™s health at risk, does not ensure an implementation of sentence execution and sentence serving regime. Also, the Saeima has not indicated to a legitimate cause for the restriction included in the impugned regulation.â€• Paragraph 11

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