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La Corte EDU sulle "gerarchie informali" tra detenuti
(CEDU, sez. V, sent. 11 gennaio 2024, ric. n. 76680/17)

La Corte EDU si è pronunciata sul ricorso presentato da un cittadino lettone, il quale ha lamentato di aver subito trattamenti inumani e degradanti ai sensi dell'articolo 3 della Convenzione a causa di una "gerarchia informale" tra carcerati esistente nel penitenziario ove è stato detenuto. Dagli atti della causa è emerso che nell'ambiente carcerario, una gerarchia informale divideva i detenuti in tre gruppi distinti, o caste: i "*blatnie*" (la casta più alta), i "*mužiki*" (la casta media) e la "*kreisie*" (la casta più bassa). Il ricorrente era stato collocato nella casta più bassa per via della natura sessuale del reato commesso ed in virtù di questa sua collocazione egli aveva subito alcune restrizioni riguardanti l'uso delle strutture comuni, così come l'obbligo di svolgere alcuni lavori umili per conto di altri reclusi.

La Corte EDU ha voluto ricordare preliminarmente che l'articolo 3 della Convenzione sancisce uno dei valori fondamentali di una società democratica. Vieta in termini assoluti la tortura, trattamenti o pene inumani o degradanti, indipendentemente dalle circostanze e dal comportamento della vittima. Essa ha altresì ribadito che nel contesto della privazione della libertà, gli Stati devono garantire che la persona sia detenuta in condizioni compatibili con il rispetto della dignità umana e che le modalità di esecuzione della misura non la sottoponga ad un disagio di intensità superiore al livello inevitabile di sofferenza già insita nella detenzione stessa. In ragione di ciò, essa ha osservato come, nella specie, tali "gerarchie informali" siano sfociate in abusi e trattamenti degradanti e che la segregazione fisica e sociale del ricorrente, unita alla negazione del contatto umano, lo hanno portato a sopportare un'ansia mentale che ha superato l'inevitabile livello di sofferenza. Di qui, i Giudici di Strasburgo hanno constatato che le autorità nazionali non hanno adottato misure adeguate per proteggere il ricorrente dai trattamenti ricevuti per l'appartenenza al gruppo dei prigionieri "*kreisie*" e, di là dal caso di specie, ha ritenuto che per prevenire simili future violazioni, le autorità nazionali competenti, conformemente agli obblighi spettanti allo Stato ai sensi dell'articolo 46 della Convenzione, debbano adottare misure generali adeguate per risolvere il problema che il caso in esame ha sollevato.

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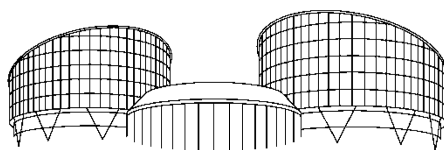

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Dirittifondamentali.it (ISSN 2240-9823)

FIFTH SECTION

CASE OF XXX v. LATVIA

(Application no. 76680/17)

JUDGMENT
STRASBOURG
11 January 2024

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 XXX v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Georges Ravarani*, President*,
Lado Chanturia,
Carlo Ranzoni,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Kateřina Šimáčková,
Mykola Gnatovskyy*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 76680/17) 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 XXX ("the applicant"), on 25 October 2017;

the decision to give notice of the application to the Latvian Government ("the Government");

the decision not to have the applicant's name disclosed;

the parties' observations;

Having deliberated in private on 5 December 2023,

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

INTRODUCTION

1. The case concerns the applicant's allegation that he experienced inhuman and degrading treatment primarily under Article 3 of the Convention owing to the prevalent informal prisoner hierarchy in the prisons where he was incarcerated.

THE FACTS

2. The applicant lives in XXX. He had been granted legal aid and was represented by Mr Juris Daukuls, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

4. The facts of the case may be summarised as follows.

5. Between 2008 and 2017 the applicant served a sentence of imprisonment, initially in Valmiera Prison and Rīga Central Prison and, after 16 July 2013, also in Šķirotava Prison.

6. It transpires from the applicant's submissions to the domestic authorities and the Court that, within the prison environment, an informal hierarchy divided the inmates into three distinct groups, or castes: the "*blatnie*" (the highest caste), the "*mužiki*" (the middle caste), and the "*kreisie*" (the lowest caste). The applicant found himself in the lowest caste because of the sexual nature of the offence he was convicted of.

7. Prisoners in the lowest caste faced a range of restrictions regarding their use of communal facilities. They were not permitted to sit on the same benches, nor to walk or stand in the same areas as other prisoners. Specific toilets, sinks, and dining areas were designated solely for their use. Moreover, they were prohibited from mingling with other inmates in the queue to the prison shop or the medical department. Participation in communal sporting activities or sharing shower facilities was also forbidden. They had to sleep on the least comfortable beds, located towards the edges of the living areas, and could not go into areas reserved for the other two castes. In addition to these restrictions, inmates of the lowest caste were tasked with performing undesirable or menial labour on behalf of other prisoners, which included standing guard, cleaning rooms, and laundering clothes.

8. On 27 January 2014 the applicant lodged a formal complaint with the Prison Administration, alleging that the informal inmate hierarchy existing in Šķirotava Prison in particular was infringing on his human rights. He detailed experiences of discrimination, such as being verbally abused and pushed out of queues at the medical unit by inmates belonging to "higher castes". In response, the Prison Administration conducted an inspection and reported, on 27 February 2014, that, when questioned, the applicant failed to name specific persons, dates, or corroborating facts to support his allegations. They advised him to submit another, more detailed complaint if he maintained that his rights were violated.

9. On 11 March 2014 the applicant lodged another complaint with the Prison Administration about the informal hierarchy existing at the Šķirotava Prison. In its reply of 17 April 2014, the Prison Administration explained that its representative had met with the applicant to ascertain the complaints and conditions but the applicant denied any wrongdoings on the part of the prison staff. Considering that the applicant had failed to provide facts and concrete information about any alleged threats of violence and did not express his complaints in a detailed manner during the visit, there were no grounds for an investigation.

10. On 14 May 2014 the applicant lodged a third complaint with the Prison Administration about the issue of informal hierarchy. In its reply of 13 June 2014, the Prison Administration stated that it did not support the caste system and strongly condemned it. Section 4 of the Sentence Enforcement Code prohibited any discrimination against prisoners. Where allegations of inter-prisoner violence are made, inmates have an obligation to inform the prison management, in detail, about any threat or incident, indicating persons, circumstances and other relevant information. Only then could the administration take actions. The Prison Administration concluded that the applicant had not substantiated the alleged violation of his rights by other inmates or prison staff.

11. On 8 September 2014, following the applicant's complaint, the Administrative District Court of Rēzekne initiated administrative proceedings against the management of Rīga Central Prison, Valmiera Prison, and Šķirotava Prison, and the Prison Administration, for the alleged failure to dismantle the informal hierarchy within the prisons and mitigate its effects. The applicant asserted that lodging complaints with the Prison Administration or prison staff yielded no results, as the officials routinely denied any involvement in, support for, or knowledge of the caste system. He contended that the prison staff could have effectively prevented the enforcement of this informal hierarchy by implementing adequate measures, such as the installation of surveillance cameras, control stations, and the deployment of sufficient prison guards. The applicant further claimed to have suffered inhuman treatment and discrimination as a result of the existing caste system in Latvian prisons and sought compensation.

12. In their response dated 8 October 2014, the Prison Administration argued that the applicant's submissions to the national authorities were vague and lacking in detail. Beyond claims of belonging to the lowest caste, the applicant had neither named an alleged perpetrator nor clearly described which specific actions or failure by the prison staff had led to the outcomes he was complaining about. The Prison Administration further stated that their primary obligation was to prevent any concrete threats to the well-being of inmates but it was not possible for them to fulfil this duty if the applicant did not provide detailed information about specific incidents.

13. In further observations, the applicant contested the Prison Administration's claim that he had not provided specific details about the alleged infringements of his human rights due to his low-caste status. As a member of that caste, he was restricted from participating in gym activities and playing football with other inmates. He could not stand in the same queue as other prisoners at the local shop or the medical department. He was also barred from using the same showers and toilets as other inmates, moving freely in communal spaces, or using the other prisoners' dining tables.

14. The Administrative District Court obtained *proprio motu* materials concerning the informal hierarchy from the Ombudsman's Office and conducted an oral hearing that included the applicant and two other prisoners. During this hearing, in reply to the court's questions, the applicant clarified that he had not been physically harmed due to his position in the lowest caste. Nevertheless, he believed that if he were to violate any informal rules, the threats against him would become immediate and tangible. The applicant stated that the mere existence of the caste system resulted in moral anxiety and emotional violence.

15. On 20 May 2015 the Administrative District Court dismissed the applicant's claim. The court examined the reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visits to Latvian prisons, the Ombudsman's Office findings based on visits to detention facilities from 2008 to 2013, investigations by independent journalists into the conditions in Latvian prisons from the perspective of inmates, and domestic case law (see paragraph 26 below) which indicated that informal hierarchy within prisons was a serious and systemic issue that could lead to human rights violations. Upon reviewing these elements, the court determined that the applicant's claim of encountering informal hierarchies in prisons was credible. It also deemed credible the applicant's assertion that he belonged to the lowest caste, reasoning that it would be illogical for him to make such a claim if it were not true.

16. However, in the light of the Court's case-law under Article 3 of the Convention, the court ruled that the applicant had not established that there was a violation of his rights of the requisite level of severity or that his placement in the lowest caste had led to adverse outcomes. The court's reasoning rested on the applicant's own statements that he had never been subjected to actual violence. The court also took note of the applicant's declarations during the hearing that he was not easily intimidated and would not relinquish his rights or possessions without resistance.
17. In evaluating claims of emotional distress, the court held that it should focus solely on arguments directly associated with the alleged violation of the applicant's rights, rather than the broader systemic issues. Specifically, the court found that the applicant's having to give up his place in a queue did not suffice to attract the protection of Article 3 of the Convention and that the applicant had not furnished any other information about the frequency or nature of his conflicts with other inmates due to his low-caste affiliation. The court concluded that general claims that such situations occurred daily, without providing specifics or examples, were too abstract to be actionable.
18. On 25 June 2015 the applicant appealed against the Administrative District Court's decision. He stated that the court upheld most of his claims but drew paradoxical conclusions from them. He disagreed with the finding that the situation he described lacked a minimal level of severity.
19. On 5 July 2016 the Administrative Regional Court rejected the appeal. It conceded that the Prison Administration had means to mitigate the influence of informal hierarchies, such as penalising those who enforced the caste system. However, the court stressed that it must focus solely on the case presented by the applicant. It clarified that the applicant was required to substantiate the violation of his own rights rather than raising broader issues related to conditions in such facilities. Based on the evidence and statements from both parties, the court determined that the applicant had not sufficiently demonstrated how his rights had been infringed due to his association with the lowest caste. It also pointed out that the applicant had not lodged a complaint with the Prison Administration, identifying specific instances when his rights had been violated.
20. On 16 May 2017 the Administrative Cases Department of the Supreme Court declined to initiate cassation proceedings. It cited the applicant's failure to provide sufficient evidence to support his claims of being a victim of an informal hierarchy. Consequently, the Prison Administration had not failed in its duty to protect the applicant's rights.
RELEVANT LEGAL FRAMEWORK AND PRACTICE
21. The Constitution of the Republic of Latvia establishes that everyone shall be equal before the law (Article 91). The State shall protect human honour and dignity; inhuman and degrading treatment and punishment are prohibited (Article 95).
22. Freedom from inhuman and degrading treatment and the prohibition on discrimination of any kind are set out as fundamental principles of execution of criminal sentences (section 4 of the Sentence Enforcement Code).
23. The Regulations on the Prison Administration (Cabinet Regulations no. 827) establish that the primary function of the Prison Administration is to guarantee the enforcement of deprivation of liberty as a criminal sentence (paragraph 3). To that end, the Prison Administration ensures a proper guard and security at places of deprivation of liberty, and ensures that all persons at places

of deprivation of liberty follow the rules set for them and monitors the observation of their right (paragraph 4 §§ 1 and 2).

24. Section 89 of the Administrative Procedure Law defines a *de facto* action as an action of an institution in the sphere of public law carried out in any way other than by issuing an administrative act provided that a private person has a right to such an action or that such an action results or may result in infringement of the rights or legal interests of the private person. A *de facto* action is also an institution's failure to act, if the institution, in accordance with the law, had or has an obligation to perform some action.

25. In case no. SKA-406/2010, the Administrative Cases Department of the Supreme Court, applying section 89 of the Administrative Procedure Law, stated that, for an individual to claim infringement of rights or legal interests, such an infringement either must "have occurred" or may "occur [in the future]". This provision explicitly rules out claims based on potential infringements that "could have" happened. In addition, for a claim about the unsatisfactory action of an institution to be legally actionable, there must be a direct causality between the actions of the institution in question and the alleged violation of the individual's rights.

26. In judgment no. SKA-681/2012 of 9 July 2012, the Supreme Court reiterated that the State has an obligation to take all reasonably expected steps to prevent real and immediate risks to prisoners' physical integrity, of which the authorities had or ought to have had knowledge. That obligation included a duty to prevent an unofficial hierarchy of prisoners which was one of the causes of violence in prisons. The Supreme Court took account of the CPT's reports about inter-prisoner violence in several prisons, including Daugavpils prison where the complainant had been held. Additionally, the Supreme Court noted that the persons who might be more vulnerable than others must be specially protected. When examining cases of inter-prisoner violence and authorities' response to such allegations, the courts are under a special duty to carry out independent investigation, because in such situations it may be difficult or even impossible for the prisoners to fully prove their allegations. The Supreme Court noted that before taking a decision on the merits of such complaints all the relevant direct and indirect facts, including reports of Ombudsman and relevant international organisations must be taken into account.

27. The Administrative Regional Court found a violation of the complainant's rights in a case where the complainant had provided specific examples and detailed information regarding the Prison Administration's alleged failure to protect his rights (no. A420223015, 18 October 2019). He indicated that he had been sexually assaulted by a fellow inmate with whom he shared a cell. The court concluded that the complainant belonged to a protected group, having been convicted for sex crimes, yet was placed in the same cell as the perpetrator for four days. Although initially prevented from reporting the threat, his subsequent complaints—coupled with similar complaints from other inmates about the same perpetrator—led to his transfer to another cell. Given that the Prison Administration had permitted such a placement, despite the known risks, the court found a violation of the complainant's rights and awarded compensation.

28. The relevant parts of the Ombudsman's annual reports read as follows:

2012 Report

"Similar to previous years, a significant number of submissions from detainees were received in 2012 ... One notable issue was the problem of internal hierarchy within the prison system. It was

observed from inspection visits that this internal hierarchy remains an issue, leading to mutual moral and physical violence. The Ombudsman has continuously directed attention to this problem, but complaints of inter-prisoner violence continue to be received." (pp. 49 and 56)
2013 Report
"Submissions received by the Ombudsman's Office and information gathered during inspection visits indicate that a strong internal hierarchy exists among detainees. Detainees who find themselves at the lower levels of this self-imposed 'hierarchy' are constantly humiliated. For their refusal to follow orders from others, they are physically abused. Such submissions have been received from Jēkabpils, Šķirotava, and Brasas prisons. Detainees during interviews have also confirmed the existence of such an order, noting that sometimes prison staff even encourage or provoke this 'prisoner self-governance'.
The hierarchy among detainees is a factor that encourages inter-prisoner violence, and it is important for prison officials to be aware of this. The Committee [CPT] has also drawn attention to this issue following its visit to Latvian detention facilities, indicating that the delegation of authority to inmates must be immediately terminated.
The Ombudsman has also repeatedly drawn attention to the distinctly hierarchical system in various detention facilities and the resulting violence ...
In 2013 the Ombudsman again sent a letter to the Prison Administration and the Ministry of Justice urging them to address this issue seriously. In response, the Prison Administration emphasised that placing inmates in smaller cells and constant monitoring are the main factors to prevent inter-prisoner violence. According to the Prison Administration, the problem could be solved through the appropriate construction of detention places. However, a lack of supervisory staff was also highlighted.
Nevertheless, the Ombudsman believes that even with limited resources, an attitude change among prison staff can achieve noteworthy results and create a microclimate in the prison that respects human rights" (section 3.7).
2015 Report
"Submissions continue to be received at the Ombudsman's Office about the existence of a hierarchical system ('[prisoner] self-governance') and inter-prisoner violence. Although the Ombudsman has previously pointed out this issue to both the Prison Administration and the Ministry of Justice, requesting appropriate measures to eradicate it, there are still indications in the prisoners' submissions that prison staff support the existence of the hierarchical system, allowing prisoners to settle scores physically and morally among themselves. Moreover, information about a prisoner hierarchy has been confirmed multiple times during monitoring visits.
Taking into account that competence and responsibility for these matters lie with the Prison Administration, the Ombudsman forwards the submissions for substantive examination to this authority, asking to be informed of the results of the investigation. Special attention is also given to detention centres from which most such submissions have been received. In the future, it is planned to intensify the study of this issue and promote discussion with Prison Administration officials on ways and measures to eradicate the existing hierarchical system and inter-prisoner violence, emphasising the role and responsibility of the staff in this process" (section 2.2.2).
2016 Report

"Submissions continue to show hierarchical relations among detainees and the suppression of those at the lower echelons. In total, fourteen complaints were received about moral and physical inter-prisoner violence in 2016" (section 3.2.2).

2018 Report

"For several years now, the Ombudsman has been receiving letters from prisoners, complaining of various manifestations of self-governance ('hierarchy') in Latvian prisons and related issues. One specific aspect that has been highlighted is the order of food distribution among inmates, with those at the 'lowest' level of the internal hierarchy receiving their food last ...

The Prison Administration in this situation does not see this as constituting an actual action of a public authority (*faktiskā rīcība*) and intentional violation of rights, asserting that this hierarchical structure among inmates is not fostered or created by the prison management but is a form of the prisoners' self-governance and a cornerstone of their interpersonal relations. The most important task of prison management is to ensure that no legal rights of the prisoners, set out in the appropriate legal documents, are violated, including ensuring that no one goes without their portion of food.

In the Ombudsman's view, this situation should be evaluated both in terms of engendering discrimination and unequal conditions, and from the perspective of infringing upon honour and dignity ... The Supreme Court ... agrees that the state has a general obligation to tackle the informal hierarchy among inmates which is one of the causes of violence. The state is obliged to do everything reasonably possible to prevent inter-prisoner violence, and therefore to dismantle any established informal hierarchy. By not taking appropriate actions, the state acts unlawfully" (section 11.6).

29. The relevant parts of two Reports to the Latvian Government on the visits to Latvia carried out by the CPT from 12 to 22 April 2016 (CPT/Inf (2017) 16) and from 10 to 20 May 2022 (CPT/Inf (2023) 17) read as follows:

2016 Report

"42. The CPT is pleased to note that its delegation received no allegations of recent physical ill-treatment by staff of inmates in any of the prison establishments visited.

43. That said, at Daugavgrīva, Jelgava and Rīga Central Prisons, information gathered through interviews with staff and inmates and an examination of registers of body injuries indicated that inter-prisoner violence remained a problem. As in the past, this state of affairs appeared to be the result of a combination of factors, including insufficient staff presence in prisoner accommodation areas, the existence of informal prisoner hierarchies and the lack of purposeful activities for most inmates."

2022 Report

"77. The CPT's findings during this and previous visits to Latvian prisons show that, year after year, the caste system has continued to prevail with the knowledge of prison management and custodial staff. However, it must be underlined that, when asked, prison management did not deny the existence of the problem (as had been the case in the past); on the contrary, they acknowledged it and assured the delegation that they were trying to tackle it. This is, of course, a welcome development. In the Committee's view, the situation of 'untouchable' prisoners in Latvia could be considered to constitute a continuing violation of Article 3 of the European Convention

on Human Rights, which prohibits, *inter alia*, all forms of degrading treatment and obliges state authorities to take appropriate measures to prevent such treatment, including when meted out by fellow prisoners."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION, TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14

30. The applicant complained under Article 3 of the Convention, taken alone and in conjunction with Article 14, that he had endured inhuman and degrading treatment and discrimination on account of his association with the lowest caste in an informal prisoner hierarchy and the domestic authorities' failure to eradicate such hierarchies. The applicant also invoked Article 1 of Protocol No. 12 in respect of the same facts, however, since Latvia has not ratified this Protocol, the Court will continue examination solely from the standpoint of Articles 3 and 14 of the Convention which read as follows:

Article 3

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

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race ... or other status."

A. Admissibility

31. The Government presented three grounds for inadmissibility. Firstly, they argued that the applicant had not adequately used domestic remedies, as he failed to provide the courts with sufficient evidence capable of showing an infringement of his rights by domestic authorities. The applicant made only vague assertions about informal hierarchies in prison but did not provide details of how this hierarchy actually affected him, indicate places and dates of any incidents or establish a causal link between the hierarchy and the alleged violation of his rights (the Government referred to domestic case-law in paragraphs 25-27 above). Secondly, the application ought to be dismissed on the grounds of *actio popularis*. In domestic courts, the applicant conceded that he had not faced violence due to his affiliation with the lowest caste; his aim was instead to protect the rights of other individuals within that caste. Thirdly, the application should be dismissed as manifestly ill-founded. The Prison Administration and the competent administrative courts thoroughly considered the applicant's complaints, ensuring his effective participation and a fair assessment of evidence. Any re-evaluation of their findings of fact by the Court would run counter to the principle of subsidiarity.

32. The applicant responded that he had exhausted all available domestic remedies. He received the final court ruling from the Supreme Court of the Republic of Latvia on 16 May 2017, which declined to initiate cassation proceedings. No other effective remedies remained at his disposal.

33. In cases concerning conditions of detention in Latvian prisons, the Court has consistently held the view that an applicant must exhaust domestic remedies by pursuing complaints before the administrative courts (see *Jegorovs v. Latvia* (dec.), no. 53281/08, §§ 110-11, 1 July 2014, and *Kočegarovs and Others v. Latvia* (dec.), nos. 14516/10 and 2 others, § 110, 18 November 2014). In

the present case, there is no dispute that the administrative courts were competent to examine the applicant's grievances, and that the applicant properly exercised his right to appeal against the decision of the Prison Administration before the administrative courts. In the ensuing proceedings, not only did he have the opportunity to present his observations and evidence before domestic courts, but the courts themselves obtained evidence from domestic authorities of their own motion (see paragraph 14 above). Both the Prison Administration and the administrative courts examined the applicant's complaints on the merits, addressing the substance of his grievances (see, by contrast, *Colak and Others v. Germany* (dec.), nos. 77144/01 and 35493/05, 11 December 2007, in which the applicant's complaint was not admitted for an examination of its merits for failure to submit all relevant information). As the Government did not point to any other effective remedy that the applicant ought to have used but did not, the Court rejects their objection concerning the non-exhaustion of domestic remedies.

34. The Court considers that the complaint is not inadmissible on any other grounds and that the issues of whether the applicant's grievance was too abstract to amount to *actio popularis* or whether it was adequately substantiated require an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. *Submissions by the parties*

35. The applicant submitted that an informal hierarchy in prisons presented a serious and systemic issue, potentially leading to human rights violations. Both the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Supreme Court of the Republic of Latvia acknowledged the existence of prison hierarchies in Latvian prisons. The applicant endured a nine-year-long term of imprisonment during a time when the existence of such an informal hierarchy was recognised. Despite his efforts to assert his rights, he found himself obliged to accommodate the dictates of the informal hierarchy in his daily prison life. On account of his belonging to the lowest caste, he suffered from systemic discrimination, such as the inability to use the same sports facilities, furniture, toilets and showers as other prisoners. He had no choice but to follow the rules set forth by this informal hierarchy. Although he managed to avoid physical violence by steering clear of perilous situations, he still contended with discrimination over several years, resulting in enduring mental anguish.

36. The Government acknowledged that the applicant fell into a group of prisoners vulnerable to violence from fellow inmates. However, they argued that the responsibility lay with the applicant to inform the staff of any specific incidents or threats. Since the applicant did not provide such information, relying merely on vague claims about an informal hierarchy, the domestic authorities were neither aware nor could have been aware of any immediate risk of ill-treatment he faced. Furthermore, there was no evidence of physical abuse towards the applicant due to his low-caste affiliation warranting his protection. The applicant himself had refuted any claims of physical abuse related to his prison status. In his complaints to prison authorities, he repeatedly asserted his resilience and demonstrated an arrogant demeanour towards his cellmates. The domestic authorities had for their part met their responsibilities, including the establishment of a proper inmate classification system, provision of meaningful activities for prisoners, examination of

prisoners' complaints, and adequate staff training on the prevention of ill-treatment. Lastly, concerning the allegations of discrimination, the Government stated that the applicant had not sufficiently demonstrated any difference in treatment. The domestic legal framework, outlining the principles, rights, and obligations of incarcerated individuals, explicitly forbids any form of inmate discrimination, and no evidence suggested actual differential treatment of the applicant on the part of prison staff or inmates.

2. *The Court's assessment*

(a) General principles

37. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

38. In the context of deprivation of liberty, the Court has consistently stressed that Article 3 imposes an obligation on the Contracting States not only to refrain from provoking ill-treatment but also to take the necessary preventive measures to ensure the physical and psychological integrity and well-being of persons deprived of their liberty (see *Premininy v. Russia*, no. 44973/04, § 83, 10 February 2011). The State must ensure that a person is detained in conditions which are compatible with respect for 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 *Muršić v. Croatia* [GC], no. 7334/13, § 99, 20 October 2016, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 141, 10 January 2012).

39. Another important factor in the Court's assessment of the State's compliance with its obligations under Article 3 is whether the prisoner was part of a particularly vulnerable group, for instance because he belongs to a category at a heightened risk of abuse (see *Stasi v. France*, no. 25001/07, § 91, 20 October 2011, concerning homosexuals; *J.L. v. Latvia*, no. 23893/06, § 68, 17 April 2012, concerning police collaborators; *D.F. v. Latvia*, no. 11160/07, §§ 81-84, 29 October 2013, and *M.C. v. Poland*, no. 23692/09, § 90, 3 March 2015, concerning sexual offenders; *Sizarev v. Ukraine*, no. 17116/04, §§ 114-15, 17 January 2013, and *Totolici v. Romania*, no. 26576/10, §§ 48-49, 14 January 2014, concerning former police officers).

(b) Establishment of the facts

40. The Court notes that the case concerns essentially the applicant's allegation that he was subjected to inhuman and degrading treatment due to his position at the lowest level of an informal prisoner hierarchy. In a recent case concerning a similar grievance, the Court noted the inherent complexities involved in scrutinising such informal hierarchies. These complexities arise from entrenched patterns of behaviour that include abuse and ritualistic and symbolically degrading treatment meted out to "outcast" prisoners by their fellow inmates (see *S.P. and Others v. Russia*, nos. 36463/11 and 10 others, § 82, 2 May 2023). In that case, owing to the respondent State's failure to engage with the proceedings, the Court relied extensively on third-party materials – ranging from prison monitoring reports to academic research into prison conditions and inmates' behaviour – to corroborate the applicants' accounts of events (ibid., §§ 84-89).

41. In contrast, in the present case the main facts are not in dispute between the parties. The Court establishes them as follows.

42. First, an informal prisoner hierarchy, also known as a caste system, existed in the Latvian prisons during the time period when the applicant was held there. Its existence has been documented in at least two prisons where the applicant was held, in the Ombudsman's annual reports (see paragraph 28 above), a CPT report on, in particular, its visit to Latvian prisons in 2016 (see paragraph 29 above), research by independent journalists, and domestic judgments (see, in particular, paragraph 15 above).

43. Second, the applicant belonged to the lowest caste of prisoners within that hierarchy, the "*kreisie*", which faced a range of restrictions regarding their use of communal facilities, access to services, and interaction with the other prisoners (see paragraphs 6-7 and the court's findings in paragraph 15 above).

44. Third, the applicant was not subjected to any actual violence or threat of violence, whether on the part of prison staff or other prisoners. This fact was repeatedly emphasised by the domestic authorities and the respondent Government, and the applicant did not claim otherwise (see, in particular, paragraphs 14 and 19 above).

45. The core disagreement between the parties centres on whether the existence of an informal prisoner hierarchy, and the ensuing restrictions for prisoners in the applicant's position, amounted in itself to inhuman or degrading treatment within the meaning of Article 3 and, if so, whether the authorities failed to protect the applicant against such treatment. The Court will address these issues forthwith.

(c) Whether the applicant was subjected to a treatment prohibited by Article 3

46. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, Article 3 cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering. Where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see *Ananyev and Others*, cited above, § 140, and *Begheluri v. Georgia*, no. 28490/02, § 100, 7 October 2014). The Court further reiterates that acts of abuse other than physical violence may also constitute ill-treatment because of the psychological harm they cause to human dignity. In particular, a threat of ill-treatment can also amount to a form of ill-treatment because of the fear of violence it instils in the victim and the mental suffering it entails (see *Gäfgen v. Germany* [GC], no. 22978/05, § 108, ECHR 2010).

47. With regard to what constitutes that minimum level of severity, the Court's approach has evolved. Initially, the Court held that "the mere feeling of stress of a detained person" (see *I.T. v. Romania* (dec.), no. 40155/02, 24 November 2005) or "the mere fear of reprisals from the [applicant's] cellmates" (see *Golubev v. Russia* (dec.), no. 26260/02, 9 November 2006) were not of themselves sufficient to bring the situation within the ambit of Article 3. However, when this fear of reprisals was accompanied by other factors, the Court has found that "the cumulative effect of overcrowding and the intentional placement of a person in a cell with persons who may present a

danger to him may in principle raise an issue under Article 3 of the Convention" (see *Gorea v. Moldova*, no. 21984/05, § 47, 17 July 2007). In two subsequent cases, *Rodić and Others v. Bosnia and Herzegovina* (no. 22893/05, § 73, 27 May 2008), and *Alexandru Marius Radu v. Romania* (no. 34022/05, § 48, 21 July 2009), the Court found a violation of Article 3 on the grounds that "the hardship the applicants endured, in particular the constant mental anxiety caused by the threat of physical violence and the anticipation of such ... must have exceeded the unavoidable level [of suffering] inherent in detention". Finally, in the cases of vulnerable prisoners in Latvian prisons, the Court held that a year-long exposure to "the protracted fear and anguish of the imminent risk of ill-treatment", coupled with the absence of an effective domestic remedy, amounted to a violation of Article 3 (see *D.F. v. Latvia*, cited above, § 95, and compare *J.L. v. Latvia*, cited above, §§ 74-75 and 87-88).

48. In a recent case addressing the issue of an informal hierarchy among prisoners, the Court made significant findings regarding the threshold of severity triggering the application of Article 3 of the Convention. Although not all applicants in that case categorised as "outcast" prisoners experienced physical violence, they nonetheless lived under a constant threat of such violence for breaching the informal regulations. The resulting mental anguish and fear of ill-treatment were considered to undermine their human dignity and instil a sense of inferiority in them, thereby constituting a form of degrading treatment in violation of Article 3 (see *S.P. and Others*, cited above, § 92). The Court elaborated that the restrictions endured by the "outcast" applicants served as additional evidence of degrading treatment. Their separation from other inmates occurred on both physical and symbolic levels; they were allocated less comfortable spaces in the dormitory and canteen and had restricted access to essential prison resources like showers and medical care. Furthermore, they were not allowed to come into proximity with, much less touch, other inmates. This denial of human contact led to their social isolation and likely caused significant psychological repercussions (ibid., § 93). In addition, "outcast" applicants were forced to perform work considered to be inherently degrading and unacceptable for the other prisoners. This further debased them and perpetuated the feelings of inferiority (ibid., § 94).

49. In the present case, the applicant's account bears relevant similarity to the above case, specifically as regards the physical and symbolic separation faced by prisoners in the "*kreisie*" category to which he belonged. He indicated that prisoners in that lowest group faced many arbitrary restrictions on using shared resources. They had separate benches, toilets, and dining areas and were not allowed to queue with other prisoners for the shop or medical care. They were also banned from joining in sports or using common showers. Their beds were less comfortable and located towards the periphery of shared spaces. In addition, they were tasked with performing menial jobs, such as cleaning and doing laundry for the other inmates (see paragraph 7 above). The Court concludes that such physical and symbolic separation has had the effect of sending a potent message of inferiority, thereby undermining the human dignity of prisoners in the applicant's situation, and thus constitutes degrading treatment within the meaning of Article 3.

50. The fact that the applicant chose to comply with the demands and limitations set by the informal hierarchy, rather than opposing or challenging them, does not undermine the Court's conclusion regarding the degrading nature of these dehumanising practices. The applicant's emphasis on his own resilience, rather than on the tangible effects of the hierarchical norms

imposed, provides the Court with insight into the coping mechanisms that prisoners in his situation may employ. While such mechanisms could potentially mask the full extent of emotional distress, it is imperative to recognise that the lack of overt confrontation and violent incidents does not lessen the reality of the underlying suffering. Life in such a hostile environment often results in a continuous accumulation of stress, particularly for individuals subjected to inequity, and not solely from immediate or chronic threats. The mere anticipation of such threats can also cause enduring mental harm and anxiety of an intensity exceeding the level of stress caused by detention under normal conditions.

51. In the light of the above, the Court finds that the applicant's physical and social segregation, coupled with restricted access to basic prison resources and denial of human contact, has led him to endure mental anxiety that must have exceeded the unavoidable level of suffering inherent in detention, even though he has not been subjected to physical violence (compare *S.P. and Others*, cited above, § 96). That situation which he endured for years on account of his position in the lowest caste of prisoners in an informal hierarchy amounted to a treatment prohibited under Article 3 of the Convention. Since the applicant was personally affected by that situation, his claim cannot be said to amount to *actio popularis*.

52. It remains to be determined whether the domestic authorities have adequately addressed the problem.

(d) State's obligation to protect the applicant from ill-treatment

53. The Court established above that the applicant did not experience any ill-treatment from prison staff. Nevertheless, the absence of any direct State involvement in acts of ill-treatment that meet the condition of severity such as to engage Article 3 of the Convention does not absolve the State from its obligations under this provision (see *Gjini v. Serbia*, no. 1128/16, § 77, 15 January 2019). In this connection, the Court refers to the relevant principles concerning State responsibility, supervision and control in relation to detention, as well as the obligation to protect an individual from inter-prisoner violence, which are set out in the case of *Premininy* (cited above, §§ 82-88). In particular, the national authorities have an obligation to take measures to ensure that individuals within their jurisdiction are not subjected to torture or to inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals (ibid., § 84, and *D.F. v. Latvia*, cited above, §§ 83-84). The extent of this obligation of protection depends on the particular circumstances of each case (see *Stasi*, cited above, § 79).

54. Turning to the present case, the Court observes that the issue of informal prisoner hierarchies is well-documented within Latvian penal institutions. The applicant indicated, and the Government did not dispute, that this problem has been prevalent in the prisons where he was held (see paragraphs 5-7 above). In this situation, both the prison staff and the broader authorities should reasonably have been aware not only of the existence of the hierarchy but also of the applicant's subordinate position within it. Even in the absence of explicit incidents of violence or confrontation, the inherent risk of ill-treatment faced by the applicant during his term of imprisonment could not be overlooked. Since the authorities were apparently aware of the risk confronting the applicant in this vulnerable situation, it falls to the Government to explain the measures the domestic authorities have implemented to mitigate the applicant's vulnerability and

to address the broader issue of prisoner hierarchies (see *D.F. v. Latvia*, cited above, § 87, and *S.P. and Others*, cited above, § 99).

55. The Court reiterates that the complaints concerning the degrading effects of an informal prisoner hierarchy are similar to other complaints that arise from structural problems in a prison environment. Such problems indicate a systemic failure rather than issues isolated to the specific circumstances of an individual applicant (see *S.P. and Others*, cited above, § 103). Given the systemic nature of these issues, individual interventions – such as initiating an inquiry or transferring the applicant to a different cell or facility – would not have addressed the core issue at the heart of the applicant's grievances. Even if specific incidents of violence or ill-treatment were to be investigated and those responsible held to account, such measures would not alter the underlying power dynamics of the informal prisoner hierarchy, nor would they change the applicant's subordinate position within it (ibid., § 104).

56. Limiting interventions to addressing specific incidents, as and when they arise, does not constitute the comprehensive approach that prison management authorities should adopt when grappling with a systemic issue such as an informal prisoner hierarchy. Since 2012 the Latvian Ombudsman has consistently criticised the lack of such an overarching approach, underlining the shortcomings of the traditional, incident-focused strategy (see paragraph 28 above). In the 2018 Report, the Ombudsman went further by asserting that the domestic authorities are acting unlawfully in their failure to dismantle the established informal hierarchies within prisons. This perspective was echoed by the Supreme Court of Latvia, which opined that State authorities bear a general obligation to address the issue of informal hierarchies, which is one contributing factor to inter-prisoner violence (see paragraph 26 above).

57. The Court accordingly finds that the domestic authorities have not taken adequate steps to protect the applicant from the treatment associated with his belonging to the group of "*kreisie*" prisoners. The domestic authorities did not have in place effective mechanisms to improve the applicant's individual situation or to deal with the issue in a comprehensive manner.

58. There has accordingly been a violation of Article 3 of the Convention on account of the State authorities' failure to protect the applicant from the treatment prohibited under that provision. Having reached this finding, the Court deems it unnecessary to examine the same set of facts from the perspective of Article 14 of the Convention.

II. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

59. 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."

60. The applicant did not submit a claim for just satisfaction. Accordingly, the Court does not need to make an award.

61. Article 46 of the Convention provides:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

62. The Court considers that to prevent future similar violations, the domestic authorities must address the issue of informal prison hierarchies highlighted in this judgment in a manner that goes beyond the circumstances of the present case. It falls to the competent authorities, in accordance with the respondent State's obligations under Article 46 of the Convention, to draw the necessary conclusions from the present judgment and to take appropriate general measures in order to address the problem that has led to the finding of a violation here. More specifically, the domestic courts are required to take due account of the Convention standards as applied in this judgment (compare, for a similar approach, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 418, 26 September 2023).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that it is not necessary to examine the same set of facts from the perspective of Article 14 of the Convention, taken in conjunction with Article 3.

Done in English, and notified in writing on 11 January 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar
Georges Ravarani President