

EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT FARBTUHS v. LATVIA

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Farbtuhs v. Latvia* (application no. 4672/02). The Court held by six votes to one that there had been a **violation of Article 3** (prohibition of degrading treatment) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 5,000 euros (EUR) for non-pecuniary damage and EUR 1,000 for costs and expenses.

(The judgment is available only in French.)

1. Principal facts

The applicant, Mihails Farbtuhs, is a Latvian national who was born in 1916 and lives in Riga.

On 27 September 1999 the Riga Regional Court found him guilty of crimes against humanity and genocide for his role in the deportation and deaths of tens of Latvian citizens during the period of Stalinist repression in 1940 and 1941, when the applicant was deputy head of police in a department under the authority of the Soviet Ministry of Foreign Affairs in Latvia following the annexation of the Republic of Latvia by the Soviet Union. Although the Regional Court sentenced him to seven years' imprisonment, it decided not to order his immediate arrest and he was not sent to prison. On 12 January 2000 the convictions were upheld on appeal by the Criminal Division of the Supreme Court. However, his sentence was reduced to five years. The applicant appealed on points of law.

In the interim, the Criminal Division ordered a medical report to enable it to determine whether the applicant was fit to serve his sentence. In a report of 20 December 1999 a panel of experts from the National Centre of Forensic Medicine stated that he was severely disabled, suffering from among other things spondylosis with deformation of the spine, osteoarthritis, high blood pressure and chronic cardiac insufficiency, and required constant care and regular treatment.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

From 17 May to 1 June 2000 the applicant attended a prison hospital for medical tests. The hospital was under the authority of the director of prisons. On 1 June 2000 he surrendered to custody and began to serve his sentence at Matīsa Prison in Riga. As his condition was critical, he was immediately admitted to the prison infirmary, where he remained until his release. He made a number of unsuccessful applications for release on health grounds.

In January 2001 the applicant returned to the prison hospital for two weeks for examination by a panel of experts. In its report of 13 February 2001, the panel recommended his release on licence on account of his age and ill-health, the fact that he was suffering from many incurable diseases and was unable to look after himself.

On 16 February 2001 the Governor of Matīsa Prison sought an order from Latgale District Court in Riga for the applicant's release on licence on health grounds. That application was refused and an appeal to the Court of Appeal dismissed. However, on 12 March 2002 the Riga Regional Court excused the applicant from serving the remainder of his sentence after finding *inter alia* that he had contracted two further illnesses while in prison, namely diabetes mellitus and irregular blood supply to the brain, and that his condition generally had deteriorated. The applicant was released the next day.

2. Procedure and composition of the Court

The application was lodged on 6 December 2001 and declared partly admissible on 9 January 2003.

Judgment was given by a Chamber of 7 judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Françoise **Tulkens** (Belgian),
Nina **Vajić** (Croatian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebelky** (Italian),
Elizabeth **Steiner** (Austrian), *judges*,
Jautrite **Briede** (Latvian), *ad hoc judge*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment

Complaint

The applicant complained that, in view of his age and infirmity, and the Latvian prisons' incapacity to meet his specific needs, his prolonged imprisonment had constituted treatment contrary to Article 3 of the Convention (prohibition of inhuman or degrading treatment).

Decision of the Court

The Court noted at the outset that the applicant had spent one year, nine months and 13 days in prison. The file showed that his condition was a cause for grave concern. He was 84 years old when he was sent to prison, paraplegic and disabled to the point of being unable to attend

to most daily tasks unaided. In particular, he was unable to get up, sit down, move, get dressed or washed without assistance. Moreover, when taken into custody he was already suffering from a number of serious illnesses, the majority of which were chronic and incurable.

The Court considered that when national authorities decided to imprison such a person, they had to be particularly careful to ensure that the conditions of detention were consistent with the specific needs arising out of the prisoner's infirmity. In the case before it, the Latvian authorities could not be said to have failed to weigh up the consequences of imprisoning the applicant, as they had sought expert medical advice in order to determine whether he was fit to serve a prison sentence before handing down a custodial sentence.

Nevertheless, the Court noted that the applicant had contracted other diseases while in custody. Although in its 2002 decision the Regional Court had noted only two illnesses, the applicant had maintained that he was suffering from five, namely general arteriosclerosis, vascular sclerosis associated with Parkinson's disease and dynamic circulatory disorders, prolonged amnesia with blackouts, glaucoma and diabetes. None of these illnesses had been mentioned in the initial medical report of 1999. Although none of the medical reports established a direct causal link between the conditions in which the applicant was detained and the deterioration in his health, the Court found that the new illnesses constituted an additional indication that a prolonged spell in prison was inappropriate.

The Court further noted that although the prison governor had made an application for the applicant's release on licence on health grounds in February 2001, it was not until March 2002 that an order for release had been made. The applicant had remained in prison throughout that period of more than one year. The Court could not but express grave concern about such a delay when the expert medical reports strongly recommended that the applicant be released.

With regard to supervision and medical attention, the Court noted that the applicant was looked after and assisted either by members of staff from the infirmary or, outside working hours, by fellow prisoners, sometimes on a voluntary basis. The Court considered it unlikely that such a solution was adequate, as, for at least part of the time, it left most of the responsibility for the severely disabled applicant to unqualified prisoners. The anxiety and discomfort which such an infirm person, conscious that he would not receive any qualified help in the event of an emergency, could be expected to experience in such circumstances themselves posed a serious problem under Article 3.

Having regard to the circumstances of the case, the Court found that, in view of his age, infirmity and condition, the applicant's continued detention was not appropriate. The situation in which he had been put was bound to cause him permanent anxiety and a sense of inferiority and humiliation so acute as to amount to degrading treatment within the meaning of Article 3. By delaying his release from prison for more than a year in spite of the fact that the prison governor had made a formal application for his release supported by medical evidence, the Latvian authorities had failed to treat the applicant in a manner that was consistent with the provisions of Article 3.

Mr Briede, the ad hoc judge, expressed a dissenting opinion, which is appended to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.