[Ēcis v. Latvia (no. 12879/09)](http://www.prisonlitigation.org/?email_id=99&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTg4OTkx&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank)

The case concerned a male prison inmate who complained that he had not been allowed to attend his father’s funeral under a law regulating prison regimes which discriminated in favour of women.

Facts

Under the Latvian penitentiary system, all male prisoners convicted of serious and particularly serious crimes had to be placed in closed prisons at the maximum-security level and were not entitled to prison leave until they were moved to a partly-closed prison – a transfer they might become eligible for only after serving half of the imposed sentence. In contrast, female prisoners who had been convicted of the same crimes were placed in partly-closed prisons from the very beginning of their sentence.

The applicant was convicted of murder and sentenced to twenty years’ imprisonment. While he was placed at the medium-security level in a closed prison, his father died and he requested permission to attend the funeral. His request was denied, as only prisoners serving their sentence at the medium, or minimum, security level in partly-closed prisons were eligible for such leave. The applicant complained that he had been discriminated against on the grounds of his sex with respect to the applicable prison regime that had led to the refusal.

Law

(a) Whether the applicant was in an analogous or relevantly similar position to female convicts – The difference in treatment concerned men and women who had committed the same or comparable offences and had all been sentenced to prison terms. The complaint related to the manner in which the applicable prison regime affected the restrictions on prisoners’ family life, in particular, with regard to their right to prison leave on compassionate grounds. Accordingly, the complaint concerned an issue that was of equal relevance to all prisoners. In the light of the nature of the particular complaint, the applicant could claim to be in an analogous position to that of female prisoners convicted of the same or comparable offences.

(b) Whether the difference in treatment was objectively justified – The Government argued that the difference in treatment pursued the aim of protecting female prisoners from being adversely affected by identically tailored approaches that would not sufficiently take their specific needs into account.

Providing for the distinctive needs of female prisoners, particularly in relation to maternity, in order to accomplish substantial gender equality should not be regarded as discriminatory. Accordingly, certain differences in the prison regimes that were applicable to men and women were acceptable and might even be necessary in order for substantive gender equality to be ensured. Nonetheless, within the context of the penitentiary system and prison regimes, a difference in treatment that was based on sex had to have a reasonable relationship of proportionality between the means employed and the aim sought.

At the time of the applicant’s request for prison leave, he had already been moved to the medium-security level of the closed prison. His request was not entertained precisely on the grounds of being placed at the medium-security level of the closed prison. Neither the domestic authorities, nor the Government had suggested that there was any other consideration that had informed this decision. Meanwhile, female prisoners in analogous circumstances, that was to say, convicted of the same crimes, given the same sentence, having served the same proportion of the sentence, and having progressed to the medium-security level, would have been eligible for such prison leave, as they would have been placed in partly-closed prisons from the outset.

In justifying that distinction the Government argued that women prisoners, in general, were less violent and less prone to aggression, whereas male prisoners were more predisposed to inter-prisoner violence and attempted prison-breaks, and they posed higher threats to prison security and staff. Even if that claim had been supported by data, it would not have been sufficient to justify such difference in treatment. Finding otherwise would be tantamount to concluding that all male prisoners, when compared to women who had committed exactly the same offences, were so much more dangerous that no individualised assessment was even purposeful. Such an approach would be incompatible with the case-law of the Court emphasising the need for an individualised risk assessment of all detainees with regard to prison leave.

Although there might be several legitimate penological grounds for a person’s deprivation of liberty, the emphasis in European penal policy was on the rehabilitative aim of imprisonment. While that principle applied regardless of the crime committed or the duration of the sentence imposed, it also applied irrespective of the prisoner’s sex. The maintenance of family ties was an essential means of aiding social reintegration and rehabilitation of all prisoners, regardless of their sex. Furthermore, prison leave was one of the means of facilitating social reintegration of all prisoners.

A blanket ban for men to leave the prison, even for attending a funeral of a family member, was not conducive to the goal of ensuring that the distinctive needs of female prisoners were taken into account. The refusal to entertain the applicant’s request to attend his father’s funeral on the basis of the prison regime to which he was subjected owing to his sex had no objective and reasonable justification.

Conclusion: violation.

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