

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

FIFTH SECTION

CASE OF CUŠKO v. LATVIA

(Application no. 32163/09)

JUDGMENT

STRASBOURG

7 December 2017

This judgment is final but it may be subject to editorial revision.



In the case of Cuško v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

André Potocki, *President,*
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 14 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 32163/09) 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 Mr Aigars Cuško.

2. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine and subsequently by Mrs K. Līce.

3. On 8 January 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Riga.

5. On 23 April 2003 criminal proceedings were instituted.

6. On 29 April 2003 the applicant was arrested on suspicion of attempted bribery.

7. On 2 May 2003 the applicant was detained on remand. On 25 July 2003 he was released and police supervision was imposed instead, under which he was obliged not to leave his home district without the authorisation of the investigation authorities, and to report to the local police department twice a week.

8. On 27 November 2003 a bill of indictment was served on the applicant and his two co-accused (D.E. and V.M.). On 2 December 2003 a judge of the Riga Regional Court (*Rīgas apgabaltiesa*) accepted the criminal case for trial. The first hearing was scheduled to take place from 1 to 4 August 2005.

9. On 1 August 2005 the hearing was adjourned for an indefinite period owing to D.E.'s poor state of health and the fact that the applicant's defence lawyer was on vacation.

10. On 1 October 2005 the new Criminal Procedure Law entered into force; it introduced new rules concerning, *inter alia*, conflicts of interest faced by judges. In the light of the new rules, on 22 February 2006 the hearing was adjourned because one of the judges of the Riga Regional Court had had to recuse herself from the trial.

11. On 31 July 2006 the hearing was adjourned because the prosecutor and the applicant's defence lawyer were due to go away on holiday.

12. On 13 November 2006 the hearing was adjourned once again owing to D.E.'s poor state of health. On 15 November 2006 a judge from the Riga Regional Court requested the hospital in which D.E. was being treated to provide information about her state of health. On 20 November 2006 the court was informed that D.E. had been discharged from the hospital and placed under the care of her family doctor.

13. On 27 February 2007 the hearing was adjourned for unspecified reasons.

14. On 26 June 2007 the hearing was adjourned again owing to D.E.'s poor state of health. On the same day the Riga Regional Court ordered that D.E. undergo a medical examination in order for her capacity to participate in the proceedings to be determined. The findings of that examination were delivered less than one month later and indicated that D.E. was able to participate in the proceedings.

15. On 27 September 2007 the Riga Regional Court scheduled the next hearing for 27 December 2007. On 18 October 2007 D.E.'s lawyer requested that that hearing be rescheduled in order to accommodate his taking planned holidays. The court dismissed that request, noting that six hearings had already been adjourned and that further delays in the proceedings could not be allowed.

16. On 27 December 2007 the hearing was adjourned, as the prosecution needed to replace the charge against the applicant with a more lenient one.

17. On 11 January 2008 the Riga Regional Court started to hear the parties' arguments regarding the merits of the case. On 15 January 2008 it convicted the applicant of attempted bribery and sentenced him to three years' imprisonment.

18. On 4 February 2008 the applicant submitted an appeal. On 1 December 2008 the appellate court upheld the lower court's judgment.

19. On 30 December 2008 the applicant lodged an appeal on points of law, arguing, *inter alia*, that his right to a trial within a reasonable time had been breached. In this respect he referred to several provisions of national and international law, including Article 6 § 1 of the Convention.

20. By a final decision of 26 January 2009 the Senate of the Supreme Court (*Augstākās tiesas Senāts*) refused the applicant leave to appeal on

points of law, noting, *inter alia*, that the applicant's "reference to violations of certain laws and international legal provisions was formalistic."

II. RELEVANT DOMESTIC LAW

21. The relevant legal provisions and the domestic case-law in respect of to the right for criminal proceedings to be completed within a "reasonable time" have been summarised in the case of *Trūps v. Latvia* ((dec.), no. 58497/08, §§ 16-33, 20 November 2012).

On the review of judgments and decisions which have entered into force (chapter 63 of the Criminal Procedure Law)

22. Section 662 of the Criminal Procedure Law provides that a decision or judgment which has entered into force may be examined *de novo* if it has not been examined in proceedings on points of law. Under section 663 an application for a fresh examination of a judgment or decision must be submitted to the Senate of the Supreme Court by a defence lawyer especially authorised by the convicted person, whereas the Prosecutor General may submit an application for supervisory review on his or her own initiative or following a request from the accused person.

23. Section 665 provides that such an appeal may be submitted if: (1) a judgment or a decision has been adopted by an unlawfully composed court; (2) one of the judges was absent during the court deliberations; or (3) breaches of the procedural and material provisions of the criminal law have exacerbated the situation of the convicted person.

24. Under section 667, there is no time-limit for lodging the above-mentioned appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

25. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, as laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him everyone is entitled to a ... hearing within a reasonable time by a ... tribunal ..."

26. The Government contested that argument.

27. The period to be taken into consideration began on 29 April 2003 and ended on 26 January 2009. It thus lasted approximately five years and nine months in three levels of jurisdiction.

A. Admissibility

28. The Government submitted that the applicant had failed to exhaust domestic remedies, as he had raised the complaint about the length of the proceedings only in his appeal on points of law. While referring to several domestic-law provisions regulating the scope of the Senate of the Supreme Court's review and the nature of the proceedings on points of law, the Government claimed that a length-of-proceedings complaint raised solely in an appeal on points of law could be examined by the Senate of the Supreme Court only in very exceptional circumstances. Consequently, the Government maintained that since the applicant had not already raised his length-of-proceedings complaint before the first-instance court or the appellate court, the Senate of the Supreme Court could not examine the merits of that complaint.

29. Alternatively, the Government also claimed that since the applicant's appeal on points of law had not been examined on its merits, he could have requested a *de novo* examination of the decision of the Senate of the Supreme Court, in accordance with the relevant provisions contained in chapter 63 of the Criminal Procedure Law.

30. The applicant did not respond to the Government's objections in this regard.

31. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been lodged with the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

32. The Court has already acknowledged in *Trūps* (cited above, §§ 50-51) that since 1 October 2005, when the new Criminal Procedure Law entered into force, Latvia has had in place a compensatory remedy for complaints regarding unreasonably lengthy criminal proceedings which has to be exhausted. In that decision the Court was also satisfied that the aforementioned remedy was not limited in terms of temporal jurisdiction (ibid., § 53). However, the Court's decision in *Trūps* did not establish at

what stage in the criminal proceedings such complaints needed to be brought before the domestic courts.

33. In any event, the Court finds – without prejudging whether a complaint regarding the length of criminal proceedings raised only in an appeal on points of law could not be considered to constitute an effective remedy *per se* – that the Government's preliminary argument in this respect must be rejected for the following reasons.

34. The Court reiterates that non-exhaustion of domestic remedies cannot be held against an applicant if, in spite of the latter's failure to observe the necessary procedural rules prescribed by law, the relevant authority has nevertheless examined the substance of the claim (see, *mutatis mutandis, Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008, and *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, §§ 43, 45, 30 June 2009).

35. The Court observes that the Senate of the Supreme Court found the applicant's reference to the alleged violation of, *inter alia*, Article 6 § 1 of the Convention (which he raised in connection with the complaint about the length of criminal proceedings) to be formalistic (see paragraph 20 above). From this the Court can only infer that in the view of the Senate of the Supreme Court that complaint was unsubstantiated. The Court thus concludes, contrary to the Government's assertion, that the Senate of the Supreme Court, albeit in very few words, dismissed the applicant's complaint on its merits (see, *mutatis mutandis*, *Verein gegen Tierfabriken Schweiz (VgT)*, cited above, § 43, with further references).

36. As to the Government's argument concerning the applicant's failure to use the review procedure prescribed in chapter 63 of the Criminal Procedure Law, the Court has already deemed that that procedure constitutes an extraordinary remedy (see *Dāvidsons and Savins v. Latvia*, nos. 17574/07 and 25235/07, §§ 36-37, 7 January 2016), which cannot be taken into account for the purposes of Article 35 § 1 of the Convention.

37. Given the above-mentioned reasons, it follows that the applicant's complaint concerning the length of the criminal proceedings cannot be declared inadmissible for non-exhaustion of domestic remedies. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant (see, amongst many other authorities, *McFarlane v. Ireland* [GC], no. 31333/06, § 140, 10 September 2010). In addition, only

delays attributable to the State may justify the finding of a failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI, and *Idalov v. Russia* [GC], no. 5826/03, § 186, 22 May 2012).

39. The Court observes that the criminal case was not complex and that it was brought before a court without excessive delay. The Court also finds that the applicant has not contributed significantly to the length of the proceedings.

40. As to the conduct of the State authorities, the Court first notes that the pre-trial investigation was completed in approximately seven months. However, after accepting the criminal case for trial, the Riga Regional Court scheduled the first hearing to take place only after one year and eight months (see paragraph 8 above). It appears that no other procedural steps were taken by the first-instance court during this time, and the Government have not provided any explanation to justify such a long period of inactivity. The Court reiterates in this connection that Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their legal systems in such a way that their courts can meet each of the requirements of that provision, including the obligation to decide cases within a reasonable time (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 74, 25 March 1999).

41. The Court notes that there were several other delays during the proceedings before the first-instance court. Two hearings (which were scheduled to take place during the period usually taken off for summer holidays) were postponed either partly or entirely, owing to the planned vacations of one of the parties (see paragraphs 9 and 11 above). Two more hearings were adjourned entirely on account of D.E.'s poor state of health (see paragraphs 12 and 14 above). A hearing was also adjourned owing to the recusal of one of the judges of the Riga Regional Court, as under the new Criminal Procedure Law she was unable to further participate in the proceedings (see paragraph 10 above). Another hearing was adjourned in order for the prosecution to amend the bill of indictment (see paragraph 16 above). Lastly, one hearing was adjourned for unspecified reasons (see paragraph 13 above). The Court finds that part of the reasons for these delays is attributable to the State.

42. The Court further notes that, except for the significant delay caused by the scheduling of the first hearing, the Riga Regional Court scheduled all subsequent hearings at regular intervals of three or four months. It also exercised proper diligence in attempting to expedite the trial and mitigate the delays caused by D.E.'s poor state of health (see paragraphs 12, 14 and 15 above). However, given that the case was not complex and that the applicant had not contributed to any significant delays in the proceedings, it does not appear to the Court that these efforts were sufficient to remedy the

delays which had already arisen during the proceedings before the Riga Regional Court.

43. Moreover, the Court notes that after the applicant had submitted his appeal it took ten months for the appellate court to deliver its judgment, and no hearings were held during this period (see paragraph 18 above).

44. As to what was at stake for the applicant, the Court reiterates that an accused in criminal proceedings should be entitled to have his case conducted with special diligence and that Article 6 is, in respect of criminal matters, designed to avoid a situation in which a person charged should remain too long in a state of uncertainty about his fate (see, *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006). Thus, although the applicant was kept in pre-trial detention for only three months and was subsequently released, police supervision was nevertheless imposed on him afterwards, which restricted his freedom of movement. Furthermore, the Court is mindful of the serious nature of the charges brought against the applicant, which ultimately resulted in a sentence of three years' imprisonment. Accordingly, the Court finds that there was a substantial interest at stake for the applicant to have his trial conducted speedily (see, *mutatis mutandis*, *Ivanov v. Ukraine*, no. 15007/02, § 71, 7 December 2006, where the applicant risked imprisonment and was under an obligation not to leave his place of residence).

45. In conclusion, taking into account all the relevant factual and legal elements of the present case – in particular, (i) the delays caused by the first-instance court, and (ii) the lack of elements sufficiently remedying those delays in the further proceedings – as well as what was at stake for the applicant, the Court considers that the reasonable time requirement has been exceeded.

There has accordingly been a breach of Article 6 § 1.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. Without invoking any Article of the Convention, the applicant also complained of the length of the provisional measure (police supervision) imposed on him.

47. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the remainder of the application does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this complaint is inadmissible and must be rejected, pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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."

A. Damage

49. The applicant claimed 150,000 euros (EUR) in respect of non-pecuniary damage.

50. The Government contested the claim.

51. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 750 under that head.

B. Costs and expenses

52. The applicant did not submit a claim for the costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court will not award him any sum on that account.

C. Default interest

53. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 750 (seven hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	André Potocki
Acting Deputy Registrar	President