

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

FIFTH SECTION

CASE OF TUČS v. LATVIA

(Application no. 31876/15)

JUDGMENT

STRASBOURG

20 October 2022

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



In the case of Tučs v. Latvia,

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

Lado Chanturia*, President,*
Mārtiņš Mits*,*
Ivana Jelić*, judges,*
and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 31876/15) 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") on 20 June 2015 by a Latvian national, Mr Renārs Tučs ("the applicant"), born in 1978 and living in Riga, who had been granted legal aid and was represented by Ms G. Oškāja, a lawyer practising in Riga;

the decision to give notice of the application to the Latvian Government ("the Government"), represented by their Agent, Ms K. Līce;

the parties' observations;

Having deliberated in private on 29 September 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns a complaint that in domestic proceedings concerning the applicant's dismissal from his job the domestic courts had failed to address his claim that he had been discriminated against on the basis of his trade union membership and that his dismissal had circumvented procedures designed to protect trade union members. The applicant relied on Articles 6, 11 and 14 of the Convention.

2. Since 2006 the applicant had been working as a graphic designer for SIA iEvolution (initially registered under a different name), which was owned by SIA AdEvolution. Both companies provided similar services in the publishing, advertising and IT sectors. In January 2012 SIA iEvolution transferred its employees and assets to SIA AdEvolution, except for the applicant and L.P. – the only two employees belonging to a trade union.

3. In practice, the applicant and L.P. continued working on the same premises alongside their former colleagues and performing the same tasks. They were registered in SIA AdEvolution's time-tracking system and were assigned projects from the SIA AdEvolution server on a rotating basis together with SIA AdEvolution employees. They were also indicated as SIA AdEvolution employees in its intranet and assignment documents, and their salaries were paid by SIA iEvolution from funds that were transferred to it by SIA AdEvolution.

4. In December 2012 SIA AdEvolution decided to liquidate SIA iEvolution, and the latter dismissed the applicant and L.P. without seeking approval from their trade union – an exception permitted in the case of liquidation.

5. The applicant and L.P. brought civil proceedings against both companies challenging their dismissal. They argued that in reality they had been employed by SIA AdEvolution and had been treated differently from the other employees on the basis of their trade union membership. The court requested them to submit their claims separately. The applicant and L.P. then brought separate civil proceedings as requested by the court.

6. By a final decision of 23 December 2014, the Supreme Court upheld the applicant's dismissal on the grounds that he had been employed by SIA iEvolution and that the company was being liquidated.

7. In L.P.'s case, on 15 April 2015 the Supreme Court sitting in a composition of seven judges overturned the similar judgment against her, on the grounds of a failure by the lower court to analyse all relevant aspects and arguments of the case. It considered that the conclusions that the employee transfer had not concerned L.P. and that she had not been employed by SIA AdEvolution had been drawn prematurely and without assessing all pertinent circumstances (such as, whether there had been an enterprise transfer, indications that L.P. had performed work for a SIA AdEvolution client, the source of the funds from which SIA iEvolution had paid salaries, etc.). With respect to the discrimination claim, the Supreme Court considered that it was the two respondent companies which should have provided evidence substantiating the argument that SIA AdEvolution's failure to enter into an employment contract with the claimant was not based on her trade union membership but was objectively justified. After the adoption of this judgment, L.P.'s case was settled.

THE COURT'S ASSESSMENT

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

8. The Government argued that the complaint was incompatible *ratione materiae* with the Convention as the applicant was seeking confirmation that he had a right to a favourable outcome in the domestic proceedings. Firstly, the Court observes that the crux of the applicant's complaint was the domestic courts' alleged failure to address the decisive arguments of the case – namely, that he had been discriminated against on the basis of his trade union membership and that his dismissal had circumvented procedures set down for the protection of trade union members. Accordingly, this complaint concerns the fair hearing guarantee, requiring the courts to give sufficient reasons for their decisions (see, for example, *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Secondly, it has not been contested

that the civil proceedings concerned a genuine and serious dispute over a civil right which, at least on arguable grounds, was recognised under domestic law (see, for example, *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022). Accordingly, the applicant's complaint is clearly compatible *ratione materiae* with the Convention.

9. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

10. The general principles concerning the duty for a court to give reasons have been summarised in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, § 84, 11 July 2017).

11. The Court observes that the applicant's claim before the domestic courts was based on the argument that an enterprise transfer had taken place, that SIA iEvolution had ceased to perform any economic activity and that in practice he and L.P. had worked for SIA AdEvolution. He argued that by being excluded from the enterprise transfer he had been discriminated against on the basis of his trade union membership and that his dismissal on the ground of the company's liquidation had allowed procedures set down for the protection of trade union members to be circumvented.

12. In dismissing the applicant's complaint, the domestic courts relied on the finding that the applicant had been employed by SIA iEvolution and, as that company was being liquidated, the dismissal was lawful. This finding was primarily based on the fact that there had been a written employment agreement between the applicant and SIA iEvolution, which was not contested and had been complied with, the applicant having received his pay in full. As the applicant had been employed by SIA iEvolution, he could not have been also employed by SIA AdEvolution and accordingly could not have been subjected to discrimination.

13. In view of this analysis, the Court considers that the domestic courts did not properly address the applicant's main arguments. Despite expressly concluding that the two companies were run by the same persons, operated in the same sector, were based in the same location, cooperated in the execution of customer orders, assigned projects to their employees from the same server, and registered its employees' work in the same time-registration system, the courts did not analyse the applicant's argument that the distinction between the two enterprises had been created artificially and had separated the employees based on their trade union membership, which later allowed procedures set down for the protection of trade union members to be circumvented. In respect of the discrimination claim, the domestic courts' reasoning was limited to the conclusion that SIA AdEvolution had not been the applicant's employer. They did not take into account the fact that SIA iEvolution had been owned by SIA AdEvolution and did not analyse whether the failure to transfer the only two trade-union members and to keep them employed by a separate legal entity while performing the same tasks for the

same purpose had had a reasonable justification and had not been based on discrimination.

14. The Court observes that the Government did not claim that those arguments made by the applicant had been addressed by the domestic courts or that they had not been decisive for the outcome of the case. Instead, they submitted that the applicant had not substantiated his claim with evidence and that the differences between the Supreme Court's findings in his case and that of L.P. had been due to the differences in the evidence furnished in each of those cases. In particular, in L.P.'s case additional evidence had been submitted showing that SIA iEvolution had sold its equipment to SIA AdEvolution, that L.P. had performed work for a SIA AdEvolution client, and that SIA AdEvolution had loaned money to SIA iEvolution. The applicant countered that none of that evidence had been material to the proceedings.

15. Firstly, the Court notes that the complaint before it concerns the domestic courts' failure to address the applicant's main arguments, and not their potential failure to examine decisive evidence or their potentially arbitrary or manifestly unreasonable findings when assessing that evidence. Accordingly, the Court is not called upon to verify whether the applicant had submitted sufficient evidence for the domestic courts to conclude that his *de facto* employer had been SIA AdEvolution and that he had been discriminated against on the basis of his trade union membership. Instead, it is the domestic courts' failure to properly address this claim that is at stake. Secondly, the Government conceded that the applicant's and L.P.'s claims and appeals were nearly identical and also that the respective judgments delivered by the courts at the first two levels of jurisdiction were very similar. According to the Government, the only difference stemmed from the additional evidence submitted in L.P.'s case. Nonetheless, the Court observes that the Supreme Court's judgment overturning the lower court's judgement in L.P.'s case was not based on a failure to properly examine that evidence. Instead, the Supreme Court criticised the manner in which her arguments had been addressed, the fact that the conclusions had been reached without considering all pertinent aspects of the case, the failure to respond to specific claims made in the appeal, and the failure to reverse the burden of proof with respect to the discrimination claim. In the Court's view, all this criticism is equally applicable to the applicant's case where identical arguments were dismissed with similar omissions.

16. Accordingly, the Court considers that the domestic courts failed to properly engage with or provide a specific and explicit reply to the applicant's main arguments, and that, if they had done so, this would have been decisive for the outcome of the proceedings (compare *Ruiz Torija v. Spain*, 9 December 1994, § 30, Series A no. 303-A, and *Buzescu v. Romania*, no. 61302/00, § 67, 24 May 2005). Furthermore, those arguments concerned potential breaches of the rights guaranteed by the Convention, which the

national courts were required to examine with particular rigour and care (see *Fabris v. France* [GC], no. 16574/08, § 72, ECHR 2013 (extracts)).

17. In view of the foregoing, the Court concludes that there has been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS

18. Having regard to the facts of the case, the parties' submissions, and its findings under Article 6 § 1 of the Convention, the Court considers that there is no need to give a separate ruling on the admissibility and merits of the complaints under Articles 11 and 14 of the Convention in the present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. The applicant claimed 18,293.52 euros (EUR) in respect of pecuniary damage (the difference between his previous and actual income from the date of his dismissal until 30 May 2013), EUR 15,000 in respect of non-pecuniary damage, and EUR 3,000 in respect of costs and expenses incurred before the Court.

20. The Government objected to those claims.

21. The Court notes that the finding of a violation concerns the domestic courts' failure to address the applicant's main arguments in his case and the Court cannot speculate about the outcome of that case, had those arguments been properly examined. Accordingly, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

22. With respect to the legal costs incurred before the Court, the Court observes that the invoice submitted by the applicant demonstrates his obligation to pay the legal fees. However, the documents submitted do not provide a breakdown of the sum invoiced and include no time sheets. Having regard to the nature and complexity of the case and the sum that the applicant had already received by way of legal aid, the Court awards him EUR 1,000, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

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

3. *Holds* that it is not necessary to examine the admissibility and merits of the complaints under Articles 11 and 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 20 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Lado Chanturia President