

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

THIRD SECTION

DECISION

Application no. 9278/06
Valters CĒSNIEKS
against Latvia

The European Court of Human Rights (Third Section), sitting on 6 March 2012 as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 January 2006,

Having regard to the declaration submitted by the respondent Government on 20 October 2011 and the applicant's acceptance of its terms,

Having deliberated, decides as follows:

PROCEDURE

1. The applicant, Mr Valters Cēsnieks, is a Latvian national who was born in 1975 and lives in Rīga. He was represented before the Court by Ms J. Kvjatkovska, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Alleged ill-treatment of the applicant and medical examination

(a) Ill-treatment on police premises on 21 March 2002

3. On 21 March 2002, by telephone, the applicant was asked to go for an informal conversation to the State Police Department, where he arrived at 11 a.m. The applicant alleged that on the premises of the State Police, prior to any formal charges being laid against him, he was accused of the murder of Ģ.Č, and that the police officers used physical force in order to get him to confess to the murder. In particular, one of the police officers hit him on the nose, which started to bleed. Afterwards another policeman punched the applicant in the side. At around 1 p.m. the applicant was handcuffed and without notice taken to the Rīga District Police Department (*Rīgas rajona policijas pārvalde*) where he was placed in a cell. After 3 p.m., in the office of an investigator, he was subjected to physical force by three police officers in order to obtain his confession to the murder, that is to say he was repeatedly punched on the head, sides and nose, which started to bleed, and he was continuously requested to stand up and sit down. He was also threatened with confinement in a common cell of a Central Prison, where as a former member of the police he would face particular problems. As a result of the duress the applicant wrote a statement of confession. After several punches on the head, back and sides, he agreed to the audio-typing of the confession, after which he was warned not to change his testimony and not to talk about the physical force used against him. On the same day at 8 p.m. the applicant was formally arrested.

4. On 22 March 2002 the Rīga District Court (*Rīgas rajona tiesa*) applied a preventive measure, detention, to the applicant.

5. On 25 March 2002 the applicant addressed a complaint about the above ill-treatment to his lawyer and a senior prosecutor of the Public Prosecutor's Office of Rīga Court Region (*Rīgas tiesas apgabala prokuratūra*).

(b) Medical examination

6. On 23 March 2002 the applicant was transferred to a short-term detention cell of the State Police, prior to which he gave additional testimony and explicitly refused the presence of a lawyer.

7. On 25 March 2002, following a medical examination, the doctor of the short-term detention unit recorded that the applicant had the following injuries, caused at the time of his arrest: a swollen nose, a bruise on the forehead and a haemorrhage at least two days old.

8. On 27 March 2002 an expert forensic medical report was requested by the applicant's lawyer. The doctor, D.B., concluded that the applicant had incurred slight bodily injuries – bruising with haemorrhaging and a broken nose.

9. On 17 December 2002, following an investigator's request, an additional medical examination was conducted by the same doctor. The report also noted that it was not possible to estimate how many traumatic blows could have caused the injuries to the applicant. In answer to the investigator's question whether the applicant could have inflicted the injuries himself, the doctor took the view that (theoretically) it would be possible to self-inflict any injuries on the parts of the body which the person could reach.

10. On 7 May 2003 the same doctor conducted an additional examination and added that the injuries might have been inflicted on 21-22 March 2002.

2. Investigation into the alleged ill-treatment

11. On 23 May 2002 the police instituted criminal proceedings and opened an investigation into the alleged misconduct of police officers at the time of the applicant's interrogation. During the investigation, the doctor of the short-term detention unit and a cellmate of the applicant testified that on 23-25 March 2002 the applicant had evident bodily injuries. One of the guards of the detention unit testified that on 22-23 March 2002 the applicant had told him of a broken nose, but the guard had misunderstood the applicant and had therefore failed to record the complaint. The police officials of the third division of the Bureau for Prevention of Organised Crime and Corruption *(Organizētās noziedzības un korupcijas apkarošanas birojs* – hereinafter the "ONKAB"), denied any form of ill-treatment of the applicant. Following a forensic examination the investigator disclosed that the records of the applicant's arrest had been changed by correcting the time of his arrest from "14" to "19".

12. On 20 November 2002 the investigator referred the case to the prosecutor for a decision concerning the initiation of criminal prosecution proceedings (*krimināl*vajāšanas uzsākšanai) against the police officers of the ONKAB (R.D., S.R. and A.Ž.).

13. On 28 November 2002, by a decision of the prosecutor concerned, the case was remitted for additional investigation. The investigation authority submitted an appeal, which was dismissed by a higher ranking prosecutor.

14. On 22 January 2003 the investigator requested a graphological expert to establish whether the statement of confession had been written by the applicant and whether the author of the confession had been in any particular condition, such as being anxious, terrified or beaten. The conclusion dated 30 January 2003 provided a detailed analysis concerning

the first question, to which the answer was affirmative. In response to the second question the expert report noted:

> "It has not been established that the author of the voluntary confession from 22 March 2002 was in a condition of anxiety, fear or physical duress, i.e. in a state of agitation or mental disturbance".

15. On 25 February 2003 the case was referred back to the prosecutor.

16. On 7 March 2003 the prosecutor of the Public Prosecutor's Office of Rīga Ziemeļu District (*Rīgas pilsētas Ziemeļu rajona prokuratūra*) indicated inconsistencies in the applicant's testimony and again remitted the criminal case for additional investigation, in particular for the purpose of organising a confrontation between the applicant and the alleged perpetrators. The prosecutor also asked for it to be established whether the applicant could have caused the above injuries himself as part of his defence strategy. He also requested an assessment of the graphologist's report, which stated that the applicant's handwriting was normal at the time of writing the voluntary confession.

17. On 22 December 2003 the case was again referred back to the prosecutor.

18. On 5 January 2004 the prosecutor of the Public Prosecutor's Office of Rīga Ziemeļu District again remitted the criminal case for additional investigation. He indicated that the investigation had failed to clear up the doubt concerning the manner and time of the infliction of the injuries. The Bureau of Internal Security of the State Police (*Valsts policijas Iekšējas drošības birojs*) lodged an appeal, which was dismissed.

19. On 30 March 2004 by a decision of the investigator of the Bureau of Internal Security of the State Police, the criminal proceedings were terminated on the ground that it was impossible to reach the conclusion that the bodily injuries had been caused by the police officers. It stated that the applicant had constantly added new details to his testimony and on at least two accounts that testimony had been inconsistent with the other evidence. It also noted the result of the graphologist's report. Referring to the medical examination, the decision reiterated the assumption that the applicant's injuries could have been self-inflicted.

20. On 7 April 2004 the applicant's lawyer submitted a complaint concerning the decision to terminate the criminal proceedings.

21. On 10 May 2004 the complaint was dismissed. Neither the applicant nor his lawyer submitted an appeal against that decision to a higher ranking prosecutor.

22. On 12 July 2005 the applicant's lawyer submitted another appeal against the decision to terminate the criminal proceedings.

23. On 25 June 2005 a prosecutor of the Public Prosecutor's Office of the Rīga Court Region referred to the judgment of the Supreme Court of 26 April 2005 (see below), by which the allegations of ill-treatment had

already been dismissed by the court, and concluded that the complaint was no longer subject to the prosecutor's review.

24. On 1 August 2005 the decision was appealed against to a higher ranking prosecutor, who on 16 September 2005 dismissed the complaint.

25. On 13 October 2005, following the lawyer's complaint, a prosecutor of the Criminal Law Department of the Prosecutor General's Office informed the applicant that in accordance with provisions of the new Criminal Procedure Act, which had come into force on 1 October 2005, the decision adopted on 16 September 2005 should be considered final.

3. Criminal proceedings against the applicant

26. On 11 October 2004 the Rīga Regional Court, as a court of first instance, acquitted the applicant by establishing that, although the criminal proceedings concerning the alleged ill-treatment had been terminated, it was nevertheless without doubt that the applicant had been ill-treated. The court rejected the admissibility of the voluntary confession on the grounds that the graphological report lacked reasoning.

27. On 26 April 2005, following the prosecutor's objection, the Supreme Court, as the appellate court, set aside the judgment of the first instance court concerning the applicant's acquittal and found him guilty of murder, sentencing him to 11 years' imprisonment. Relying on the results of the graphological expert's examination of the applicant's voluntary confession and on the fact that the criminal proceedings concerning the alleged ill-treatment had been terminated, the appellate court rejected the applicant's argument that the voluntary confession and the testimony given during the pre-trial investigation had been obtained by ill-treatment.

28. In an appeal on points of law, the applicant's lawyer referred, *inter alia*, to the case-law of the European Court of Human Rights concerning violations of Articles 3 and 6 of the Convention, arguing that the applicant's guilt had been established on the basis of illegally obtained and inadmissible evidence.

29. On 26 August 2005 the Senate of the Supreme Court in the Preparatory Meeting (*rīcības sēdē)* refused to grant the applicant leave to appeal on points of law. It noted that the allegations of infringements of certain provisions of domestic laws and the Convention during the trial was not based on materials of the criminal proceedings at issue and therefore the Court regarded the allegations as formal.

COMPLAINTS

30. The applicant complained under Article 3 of the Convention, that while he was in police custody he sustained injuries as a result of inhuman

and degrading treatment committed by police officers. He also complained under Article 13 of the Convention, that the deficiencies in the prosecution rendered the investigation into the ill-treatment ineffective.

31. The applicant further complained under Article 6 § 1 of the Convention that he was denied a fair trial. In particular, that his guilt was established on the basis of inadmissible evidence, namely a confession obtained in breach of Article 3 of the Convention; that the overall assessment of the evidence was arbitrary; and the appeal on points of law lodged by his lawyer was not reviewed on the merits.

THE LAW

A. Complaints under Articles 3 and 13 of the Convention

32. By a letter dated 20 October 2011 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They acknowledged that the ill-treatment of the applicant and the lack of effective investigation of the applicant's complaint and supervision thereof, as well as the absence of effective remedies in that respect did not meet the standards enshrined in Articles 3 and 13 of the Convention. They offered to pay to the applicant the compensation in the amount of 10,000 EUR (7,029 LVL), considering this payment as a final resolution of the above complaints.

33. On 22 November 2011 the applicant informed the Court that he had agreed to the terms of the Government's declaration and invited the Court to strike out the complaints under Articles 3 and 13 of the Convention. He also expressed his wish to pursue his complaint under Article 6 of the Convention.

34. The Court considers that the applicant's express agreement to the terms of the declaration made by the Government can be considered as a friendly settlement between the parties.

35. It therefore takes note of the friendly settlement reached between the parties. It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its protocols, and finds no reasons to justify a continued examination of the application in this respect (Article 37 § 1 *in fine* of the Convention).

36. The Court underlines that its decision to strike the case out of the list concerns only part of the application regarding the acknowledged violations of Articles 3 and 13 of the Convention and does not prejudice in any way the examination of the remainder of the application.

37. The Court further notes that this decision constitutes a final resolution of this part of the application only in so far as the proceedings before the Court are concerned.

38. In view of the above, it is appropriate to strike the complaints under Articles 3 and 13 of the Convention out of the list.

B. Complaint under Article 6 of the Convention

39. The applicant complained under Article 6 of the Convention that he was denied a fair trial.

40. The Government argued that the complaint under Article 6 should be declared manifestly ill-founded or, alternatively, that there had been no violation of this provision.

41. The Court decides to adjourn the examination of the complaint under Article 6 of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases in so far as it relates to the complaints under Articles 3 and 13 of the Convention;

Decides to adjourn the examination of the remainder of the application.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President