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

FIFTH SECTION

DECISION

Application no. 20786/14
Igors IVANOVS
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 3 October 2024 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
María Elósegui,
Artūrs Kučs*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 20786/14) 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 7 March 2014 by a Latvian national, Mr Igors Ivanovs ("the applicant"), who was born in 1958, is detained in Riga and was represented by Mr O. Ovchinnykov, a lawyer practising in Strasbourg;

the decision to give notice of the complaint concerning the alleged breach of the right to silence and the privilege against self-incrimination to the Latvian Government ("the Government"), and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged unfairness of criminal proceedings against the applicant on account of the use of inadmissible evidence obtained through an undercover operation/covertly by a police officer (Article 6 § 1 of the Convention).

2. On the night of 7 January 2008, the applicant's wife, E.I., was shot dead outside the family home, shortly after having returned from holidays with their two daughters.

3. On 5 March 2008 the applicant was arrested and subsequently detained in connection with the murder of his wife.

4. On 7 April 2008 a police officer, G.N., met with the applicant in detention, upon the latter's request. He recorded their conversation and reported it to his superiors. A prosecutor then authorised an undercover operation. On 15 April, 8 May and 14 May 2008 G.N. visited the applicant again. They spoke about how G.N. could ensure that the criminal proceedings against the applicant were terminated if he paid him a bribe. The applicant also spoke to G.N. with regard to the murder in the same context.

5. On 14 May 2008 the applicant's defence reported that G.N. had attempted to extort a bribe from him to the amount of one million USD. On 26 May 2008 the applicant lodged a similar application stating that G.N. had threatened him and requested a bribe.

6. On 5 June 2008 the investigative authorities initiated criminal proceedings against the applicant on suspicion of filing a false crime report. On the same date, they refused to initiate criminal proceedings against G.N. concerning the alleged extortion of a bribe.

7. On 10 February 2009 the public prosecutor decided to merge the criminal proceedings concerning E.I.'s murder and the criminal proceedings concerning the filing of a false crime report.

8. Having been officially indicted on 9 March 2009, the applicant pleaded not guilty at the ensuing trial.

9. On 30 December 2009 the Riga Regional Court established that the applicant had incited V.M. to organise the murder and had aided in its commission. It also established that L.A. had shot E.I. It sentenced the applicant to thirteen years' imprisonment, followed by a three-year period of police supervision. The court acquitted the applicant of the criminal charge concerning the filing of a false crime report.

10. As regards the motive for the murder, the court established that the applicant had learnt that E.I. and O.G. had been having a relationship. The court relied on indirect evidence, mainly consisting of an extensive amount of witness statements, to establish the relevant circumstances of the case and to prove the applicant's guilt. He had known exactly when E.I. would arrive home on 6 January 2008; he had also known that, once home, E.I. would let their dogs out of the garage and into the yard. He had therefore locked the door leading from the house to the garage so that E.I. had had to exit the house in order to let the dogs out. L.A. had been able to shoot her there. He had also known the organiser of the murder, V.M. Furthermore, he had previously assaulted E.I. and had threatened O.G. by handing him a bullet. There was evidence that they had been afraid of the applicant.

11. The court also referred to a transcript of a conversation between the applicant and G.N. in May 2008 (see paragraph 4 above), containing the applicant's following statements:

> "Tell me, do you ... believe that I incited him to do something?"

> "Gypsy's an idiot ... straight away, on his own initiative, '[V.], I'll do anything you want'. I didn't ask him for anything ... the first time I saw him was on television. So, on his initiative ... in Moscow, they organised everything themselves there. Where I did something, bitten on the tail ... They found out, wanted to destroy me ... The information came from [O.G.]. She lost her mind ... It was not on my initiative..."

The court stated that the phrases used indicated the applicant's involvement in the murder. At the same time, it found that the applicant had not known that G.N. had been acting undercover.

12. The applicant appealed to the Criminal Chamber of the Supreme Court, arguing that the Regional Court, in the absence of any evidence proving his guilt, had based its findings on assumptions, and that it should not have used the transcript as evidence.

13. On 14 December 2012 the Criminal Chamber upheld the applicant's conviction relying, like the Regional Court, on the strength of indirect evidence, in particular an extensive amount of witness statements, to prove his guilt. It also confirmed the Regional Court's opinion that the content of the conversations between G.N. and the applicant proved the latter's involvement in the murder. At the same time, in the context of the applicant's acquittal of the charge concerning the filing of a false crime report, the Criminal Chamber declared that the transcript of the first conversation of 7 April 2008 should be considered as inadmissible evidence and that the subsequent undercover operation could not have been authorised because nothing in the first conversation indicated that the applicant had had any intention of bribing G.N. and that there was no evidence that he had wanted to see him again.

14. The applicant appealed on points of law. He argued that there was no evidence that he had incited V.M. to organise the murder and that the Criminal Chamber had upheld his conviction on the basis of indirect evidence. Furthermore, it should have declared the whole transcript to be inadmissible evidence, given its findings as regards the authorisation for the relevant undercover operation.

15. On 27 September 2013 the Senate of the Supreme Court upheld the applicant's conviction, reducing his sentence to twelve and a half years' imprisonment, followed by a three-year period of police supervision. With regard to the transcript, the Senate held as follows:

> "It follows from the appellate court's judgment that the court ... held that the information about the facts included in the expert's report was inadmissible and could not be used as evidence. The appellate court in its judgment presented the information – the content of the recorded conversation – but it was not used as evidence to prove the applicant's guilt."

16. The applicant complained under Article 6 of the Convention of the breach of his right to silence and privilege against self-incrimination in that the domestic courts used the evidence, obtained from him through the undercover operation and subsequently recognised as inadmissible evidence.

THE COURT'S ASSESSMENT

17. The Government objected, at the outset, that the applicant: (i) had abused the right of individual application, and (ii) could not claim to be a victim of a violation of Article 6 § 1 of the Convention concerning the aspects of the privilege against self-incrimination and the right to silence. They further submitted that his complaints under Article 6 § 1 of the Convention are manifestly ill-founded.

18. The applicant disagreed and maintained his complaints.

19. The Court reiterates that while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. In this respect, regard must also be had to whether the rights of the defence were respected. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy.

20. The Court also attaches weight to whether the evidence in question was or was not decisive for the outcome of the criminal proceedings. Where the reliability of evidence is in dispute, the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Dursun Aliyev v. Azerbaijan*, no. 20216/14, §§ 115-18 with further references, 27 April 2023).

21. The Court further recalls that the privilege against self-incrimination does not protect against the making of an incriminating statement *per se* but against the obtaining of evidence by coercion or oppression. It is the existence of compulsion that gives rise to concerns as to whether the privilege against self-incrimination has been respected (see *Ibrahim and Others v. the United Kingdom* [GC], no. 50541/08 and 3 others, §§ 266-69, 13 September 2016).

22. Turning to the circumstances of the present case, the Court notes that indeed, the Regional Court relied on the transcript of the applicant's conversations with G.N., carried out, except for the first conversation, as an undercover operation during the period when the applicant was held in pre-trial detention (see paragraph 11 above). Admittedly, the Criminal Chamber, upon the applicant's appeal, declared the transcript of the first conversation to be inadmissible evidence and held that the subsequent undercover operation was not justified. However, it confirmed the Regional

Court's opinion that the content of the conversations between G.N. and the applicant showed the latter's involvement in the murder (see paragraph 13 above).

23. Therefore, the applicant's allegation that the domestic courts used the evidence obtained from him through the undercover operation and subsequently recognised it as inadmissible evidence appears to be substantiated. The Court observes, however, that irrespective of the fact whether it served as evidence to prove the applicant's guilt or not (see paragraph 15 above), it played only a subsidiary role in the reasoning of both the Regional Court and the Criminal Chamber. Both courts established the relevant circumstances of the criminal case on the strength of a number of other incriminating elements on which the applicant's conviction was based, namely the detailed statements and testimony of a high number of witnesses (see paragraphs 10 and 13 above). In this connection, the Court places emphasis on the fact that the applicant, who was legally represented throughout the whole court proceedings, availed himself of the opportunity to challenge the authenticity and use of all the evidence including these witness statements.

24. The Court further observes that the first conversation with G.N., whom the applicant did know beforehand, took place at the applicant's initiative and that even if the subsequent conversations were carried out in the context of an undercover operation, there is no indication that any method of coercion or oppression in defiance of the will of the applicant was used against him which would impair the privilege of against self-incrimination and the right to silence, as interpreted in the Court's well-established case-law.

25. Against this background, the Court finds that the overall fairness of the applicant's trial was not irretrievably prejudiced and that the present case does not disclose any appearance of any manifest deficiencies in the protection of the applicant's Convention rights by the domestic courts. It follows that the present application is manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4 of the Convention.

26. In view of this conclusion, the Court does not find it necessary to examine the Government's preliminary objections relating to the abuse of the right of individual application and the lack of victim status within the meaning of Article 34 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 October 2024.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President