

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

SECOND SECTION

DECISION

Application no. 44898/10
Viktors JERONOVIČS
against Latvia

The European Court of Human Rights (Second Section), sitting on 9 October 2012 as a Chamber composed of:

Danutė Jočienė, *President,*
Ineta Ziemele,
Dragoljub Popović,
Işıl Karakaş,
Guido Raimondi,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 26 July 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Viktors Jeronovičs, is a Latvian national who was born in 1962 and lives in Rīga.

A. The circumstances of the case

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

1. Facts underlying the application no. 547/02 Jeronovičs v. Latvia

3. On 25 April 1998 the applicant was apprehended by the police as a suspect of having committed various criminal offences. Soon afterwards criminal proceedings in this respect were initiated.

4. Following the interrogation at the police office, the applicant complained to the Prosecutor's Office that he had been ill-treated by police officers with an aim of extorting a confession, therefore the Prosecutor's Office opened criminal proceedings concerning the alleged ill-treatment. In 2001 the applicant's complaints concerning the ill-treatment were dismissed, and the criminal proceedings in this respect were discontinued.

5. In 2000 the applicant was convicted and sentenced to nine years' imprisonment. He submitted an appeal on points of law and asked the authorities to grant his attendance at the hearing before the court of cassation; however, the request was not granted.

2. Proceedings before the Court

6. In 2001 the applicant submitted an application to the Court. He complained under the substantive and procedural limbs of Article 3 of the Convention concerning the ill-treatment during the pre-trial investigation.

7. The applicant further complained under Article 3 (detention conditions after his conviction); Article 5 § 3 (duration of the pre-trial detention); Article 5 § 5 (lack of compensation); Article 6 § 1 (failure to be granted attendance at the hearing of the court of cassation; overall duration of criminal proceedings and lack of legal assistance; the latter complaint was invoked in conjunction with Articles 13 and 14 of the Convention).

8. He also invoked Article 6 § 1 complaining about the unfairness of the criminal proceedings in that his confession had allegedly been extorted from him.

9. On 22 February 2007 the complaints mentioned in paragraphs 6 and 7 were communicated to the Government. On 30 April 2008 the Government submitted the following unilateral declaration:

> "The Government of the Republic of Latvia (hereinafter – the Government) represented by [their] Agent Inga Reine admit that the physical treatment of Viktors Jeronovičs (hereinafter – the applicant) by the police officers, as well as the effectiveness of the investigation of the respective applicant's complaints, the access to legal aid and effective remedies to apply for the compensation of damages, the length of criminal proceedings [against the applicant], as well as the lack of effective remedy did not meet the standards enshrined in Article 3, Article [5 § 5], Article [6 § 1], Article 13 and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention). Being aware of that, the Government undertake to adopt all necessary measures in order to avoid similar infringements in future, as well as to provide an effective remedy.
>
> Taking into account that the parties have failed to reach a friendly settlement in this case, the Government declare that they offer to pay *ex gratia* to the applicant

> compensation in the amount of 4,500 EUR ([approximately] 3,163 LVL]), this amount being the global sum and covering any pecuniary and non-pecuniary damage together with any costs and expenses incurred, free of any taxes that may be applicable, with a view to terminate the proceedings pending before the European Court of Human Rights (hereinafter – the Court) in the case [of] *Jeronovičs v. Latvia* (application no. 547/02).
>
> ...
>
> This payment will constitute the final resolution of the case."

10. On 10 February 2009 the Court adopted a decision in which it took note of the terms of the Government's declaration and by virtue of Article 37 § 1 of the Convention struck out the complaints mentioned in the unilateral declaration.

11. The Court further declared admissible the complaints under Article 3 (conditions of detention) and Article 6 (failure to grant the applicant's attendance before the court of cassation) and dismissed all the other complaints, including the complaint invoked under Article 6 about the fairness of the criminal proceedings owing to admission of evidence which had allegedly been acquired unlawfully.

12. On 1 December 2009 the Court adopted a judgment in the case *Jeronovičs v. Latvia*, no. 547/02, finding a violation under Articles 3 and 6 § 1 of the Convention. With respect to the complaint under Article 6 § 1, the Court established that although the applicant, who was imprisoned at the material time, had explicitly expressed his intention to appear in person before the court of cassation, the request was not granted and the Government had not provided any explanation on this omission. Therefore the Court found that the applicant had been deprived of a fair trial.

3. Proceedings before the domestic authorities with the aim of reopening both sets of criminal proceedings

13. On 11 October 2010 the applicant asked the Prosecutor's Office to reopen the criminal proceedings in which he had been convicted. He also asked for the reopening of the criminal proceedings concerning the alleged ill-treatment by police officers. He relied on the terms expressed in the Government's unilateral declaration as well as sections 655 paragraph 3, 656 paragraph 3 and 657 of the Law of Criminal Procedure.

14. On 17 November 2010 the Prosecutor's Office attached to Rīga Court Region dismissed the applicant's request. The decision noted that the request did not contain any of the circumstances set out in section 655 paragraph 2 of the Law of Criminal Procedure which could lead to the reopening of the criminal proceedings. It argued that the European Court of Human Rights had not adopted a judgment with respect to the second set of criminal proceedings. The decision stated:

> "...In the case Jeronovičs v Latvia (No. 547/02), the conclusion of the Government's unilateral declaration is applicable solely to the circumstances and the events which were examined within the scope of the given case. It can not be concluded from the judgment of 1 December 2009 adopted by the European Court of Human Rights that the Court had examined and assessed any activities of the officers of law-enforcement authorities carried out during the pre-trial investigation in the criminal proceedings [in which the applicant had been convicted], therefore the conclusions reached in [the Court's] judgment of 1 December 2009 and the Government's unilateral declaration of 30 April 2008 can not be applied and related with [both] criminal proceedings".

15. In his appeal of 9 December 2010 the applicant reiterated that there was a legal basis to reopen the criminal proceedings concerning his ill-treatment in that the Government's unilateral declaration expressly recognised the violations of Article 3 of the Convention, and that for this reason the Court had decided to strike this complaint out of the list of cases. He also argued that at the time his criminal case was examined by the domestic courts, the judicial authorities had been unaware that the investigation of the criminal case had been in breach of Article 3 of the Convention.

16. With a final decision of 20 December 2010 a higher-ranking prosecutor upheld the earlier decision. The decision noted that section 655 paragraph 2 provided an exhaustive list of legal grounds for reopening already finished criminal proceedings. Therefore the Government's unilateral declaration could not be considered as newly disclosed evidence in the light of the aforementioned provision.

B. Relevant sections of the Law of Criminal Procedure

17. Section 655 provides that the criminal proceedings may be reopened on the basis of newly disclosed circumstances, such as, *inter alia*, facts that were not known to a court in rendering a judgment and which indicate that a convicted person is not guilty or has committed a lesser or more serious criminal offence, or indicates the guilt of a person in relation to whom criminal proceedings have been terminated. The findings of an international judicial authority that a binding Latvian court's decision or judgment does not comply with Latvia's international obligations also are considered as newly disclosed circumstances.

18. By virtue of section 657, a public prosecutor has the right to reopen criminal proceedings in connection with newly disclosed circumstances.

COMPLAINTS

19. The applicant complains under Articles 6 and 13 of the Convention that despite the fact that on 10 February 2009 in the case *Jeronovičs*

v. Latvia (no. 547/02) the Court had accepted the Government's unilateral declaration where they admitted various violations of his rights protected under the Convention, including his ill-treatment by police officers, the Prosecutor's Office had refused to reopen the two sets of criminal proceedings in this respect.

THE LAW

A. Complaints under Articles 3 and 13 of the Convention

20. The applicant complains in substance that despite the acknowledgment by the Government of the breach of his rights under Article 3 of the Convention, the State authorities have failed to properly investigate his ill-treatment by the police officers. He also complains that he has been deprived of remedies thereof. The Court will address these issues under Articles 3 and 13 of the Convention (see *Rehbock v. Slovenia*, no. 29462/95, § 63, ECHR 2000-XII), which insofar as relevant provide as follows:

Article 3

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

21. The Court considers that it cannot determine the admissibility of these complaints on the basis of the case file and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

B. Other complaints

22. The applicant also alleges violations under Article 6 of the Convention. In particular, that he had been convicted on the basis of unlawfully obtained evidence and that after the Court's finding of a violation under Article 6 in the case *Jeronovičs v. Latvia*, cited above, he had been unable to reopen the criminal proceedings instituted against him.

23. However, 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 this part of the application does not disclose any appearance of a violation of any of the Articles of the Convention and the Protocols to it.

24. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 2 (b), 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Decides to adjourn the examination of the applicant's complaints under Articles 3 and 13 of the Convention;

Declares the remainder of the application inadmissible.

Stanley Naismith
Registrar

Danutė Jočienė
President