

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

FIFTH SECTION

DECISION

Application no. 42516/18
Boriss KLOPCOVS against Latvia
and 2 other applications
(see appended table)

The European Court of Human Rights (Fifth Section), sitting on 17 October 2024 as a Committee composed of:

Kateřina Šimáčková, *President*,
Mykola Gnatovskyy,
Artūrs Kučs, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant in application no. 42516/18,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The list of applicants is set out in the appended table.

2. The applicants' complaints under Article 6 § 1 of the Convention concerning the excessive length of administrative proceedings were communicated to the Latvian Government ("the Government").

THE LAW

A. Joinder of the applications

3. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Complaints under Article 6 § 1 of the Convention (excessive length of administrative proceedings)

4. Having examined all the material before it, the Court considers that the applicants' complaints about the length of administrative proceedings are inadmissible for the following reasons.

5. The Government argued that the applicants had failed to exhaust domestic remedies. In particular, the applicants should have lodged a claim with the courts of general jurisdiction on the basis of Article 92 of the Constitution and section 1635 of the Civil Law, seeking compensation for damage sustained as a result of the allegedly lengthy administrative proceedings.

6. In that connection, the Government referred to a judgment of the Constitutional Court of 6 June 2012 in case no. 2011-21-01, in which the Constitutional Court had noted that Article 92 of the Constitution protected a general right to a fair trial – if a person's rights or interests protected by the law were violated, that person had the right to receive compensation. The legal provision contained in the third sentence of Article 92 of the Constitution was directly and immediately applicable.

7. The Government further referred to the Court's decision in the case of *Guravska v. Latvia* ((dec.) no. 41553/18, 7 July 2020), where the Court found that the compensatory remedy provided for in Article 92 of the Constitution was applicable to claims concerning the length of civil proceedings. While the conclusion about the effectiveness of the compensatory remedy in that case related to claims concerning the length of civil proceedings, it should likewise be extended to claims concerning the length of administrative proceedings. The nature of the claims concerning the length of administrative proceedings did not in any way differ from that of the claims concerning the length of civil proceedings. The Government noted that the procedure for lodging such claims with a court of general jurisdiction was the same; the domestic courts use the same methodology for assessing the length of both civil and administrative proceedings.

8. The Government provided two examples in support of their argument that the compensatory remedy provided for in Article 92 of the Constitution extended to claims concerning the length of administrative proceedings.

9. As the first example, the Government submitted a judgment of 14 December 2016 of the Riga Regional Court which concerned a compensation claim, brought against the Ministry of Justice, in relation to alleged breach of the "reasonable time" requirement in administrative proceedings (case no. C27182814). In that case the claimant, relying on Article 92 of the Constitution, section 1635 of the Civil Law, Articles 6 and 13 of the Convention and the Court's case-law, requested compensation for non-pecuniary damage sustained as a result of allegedly excessive length of administrative proceedings. The Riga Regional Court established that the

administrative proceedings that had lasted for three years and eighteen days at three levels of jurisdiction had not been excessive in length and therefore rejected the claim.

10. As the second example, the Government submitted a judgment of 4 June 2015 of the Riga City Vidzeme District Court (case no. 27197214) in which, relying on, *inter alia*, Article 92 of the Constitution and Articles 6 and 13 of the Convention, the claimant had brought a compensation claim against the Ministry of Justice in relation to the length of administrative proceedings. In that case, the Riga City Vidzeme District Court found that the claimant had failed to submit any evidence in support of his compensation claim, and, by referring to the criteria developed in the Court's case-law for the assessment of the length of proceedings, found that the claimant's right to a trial within reasonable time had not been violated.

11. In the Government's view, even though the domestic courts did not rule in favour of the claimants in the two examples provided, they demonstrated that the courts of general jurisdiction had accepted and examined the claims concerning the length of administrative proceedings lodged against the State and that their assessment of the length of administrative proceedings was in line with the principles established by the Court.

12. The applicant in application no. 42516/18 contested the Government's objections regarding non-exhaustion of the domestic remedies, arguing that the examples provided by the Government did not prove the existence of an effective remedy for the length of the administrative proceedings. The other applicants did not make any comment.

13. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted. The purpose of the rule on exhaustion of domestic remedies is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 68, 17 September 2009, and the case-law cited therein).

14. The rule in Article 35 § 1 of the Convention is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 141, ECHR 2006-V).

15. Nevertheless, the only remedies Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and which are, at the same time, available and sufficient. The existence of such remedies must be sufficiently certain, not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *Scordino*, cited above, § 142, with further references).

16. The Court notes that in the case of *Klopcovs v. Latvia* (no. 26902/13, 13 February 2020) it did not accept an example of case-law submitted by the Government to demonstrate the existence of an effective compensatory remedy under Article 92 of the Constitution for complaints about the length of administrative proceedings, since it had been adopted almost five months after the adoption of the final judgment in the administrative proceedings complained about. Therefore, it could not be used to conclude that the existence of that particular remedy was sufficiently certain not only in theory but also in practice at the time the relevant proceedings were concluded (see *Klopcovs*, cited above, § 24). In that case, the Court rejected the Government's objection concerning the non-exhaustion of the domestic remedies without further assessing the effectiveness of the domestic remedy invoked.

17. The Court further notes that in *Guravska* it has already found that the Government had proved the effectiveness and availability in theory and practice of a compensatory remedy for the length of civil proceedings, based on Article 92 of the Constitution, and established that it constituted an effective remedy for length of civil proceedings complaints (see *Guravska*, cited above, § 31). In that case the Court agreed with the applicant that section 1635 of the Civil Law was not applicable in public-law disputes against the State, however, that did not change the fact that a remedy based directly on the Constitution was available (ibid.).

18. The Court finds that the two examples provided by the Government in this case (see paragraphs 9 and 10 above), in particular, the judgment of 14 December 2016 of the Riga Regional Court sufficiently demonstrate that the compensatory remedy provided for in Article 92 of the Constitution was also applicable to claims concerning the length of administrative proceedings. In that case the claim about the length of the administrative proceedings was allowed and examined by the domestic courts. Moreover, the assessment of the length of the administrative proceedings was in line with principles established by this Court.

19. Therefore, the Court finds that the Government have sufficiently established the effectiveness and availability, in theory and in practice, of a compensatory remedy under Article 92 of the Convention for the complaints about excessive length of administrative proceedings. The Court accepts the Government's argument that Article 92 of the Constitution serves as the basis for both length of civil proceedings and length of administrative proceedings complaints.

20. The Court observes that, at the time when the final judgments were adopted in the applicants' cases (see the appended table), there already existed an effective domestic remedy whose scope and application were clearly laid down and confirmed by the Riga Regional Court's case-law (see paragraph 9 above).

21. With regard to the applicant's (application no. 42516/18) objection as to the effectiveness of the compensatory remedy, the Court reiterates that to be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Sejdovic v Italy* [GC], no. 56581/00, §§ 45-46, ECHR 2006-II). Nevertheless, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to use that avenue of redress (see *Scoppola*, cited above, § 70). In so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be used (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 75, 25 March 2014).

22. The Court considers that the applicants were required to avail themselves of this legal avenue. None of the applicants have established that that remedy was in fact used, or that it was for some reason inadequate and ineffective in their particular circumstances, or that there existed special circumstances exempting them from this requirement (see *Vučković and Others*, cited above, § 77, and *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 89, 9 July 2015).

23. Against this background, and bearing in mind its subsidiary role, the Court considers that the complaints under Article 6 § 1 should be dismissed for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 14 November 2024.

Viktoriya Maradudina Acting Deputy Registrar	Kateřina Šimáčková President

APPENDIX

List of applications raising complaints under Article 6 § 1 of the Convention (excessive length of administrative proceedings)

No.	Application no. Date of introduction	Applicant's name Year of birth	Start of proceedings	End of proceedings	Total length Levels of jurisdiction Domestic court file number
1.	42516/18 03/09/2018	**Boriss KLOPCOVS** 1951	17/12/2012	16/03/2018	5 year(s) and 3 month(s) 2 level(s) of jurisdiction A420398013
2.	18623/20 14/04/2020	**Arvo ŽAGARS** 1974	23/01/2012	20/11/2019	7 year(s) and 9 month(s) and 29 day(s) 3 level(s) of jurisdiction A420472612
3.	31088/20 13/07/2020	**Māris CIŠEIKO** 1962	20/09/2013	16/01/2020	6 year(s) and 3 month(s) and 28 day(s) 3 level(s) of jurisdiction A420527513