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

FIFTH SECTION

DECISION

Application no. 22677/11
Mihails KONDAKOVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 12 January 2016 as a Committee composed of:
Erik Møse, *President,*
Yonko Grozev,
Mārtiņš Mits, *judges,*
and Milan Blaško, *Deputy Section Registrar,*
Having regard to the above application lodged on 24 March 2011,
Having regard to the comments submitted by the Latvian Government,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mihails Kondakovs, is a Latvian national, who was born in 1973 and lives in Riga.
2. The Latvian Government ("the Government") were represented by their Agent, Ms K. Līce.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.
4. The local municipality refused to grant the applicant a status of indigent person and social assistance. He then instituted proceedings before the administrative courts.

5. On 17 August 2009 the Administrative District Court (*Administratīvā rajona tiesa*) exempted him from the payment of court fee of 20 Latvian lati (LVL) (roughly corresponding to 29 euros (EUR)).

6. On 8 March 2010 the Administrative District Court dismissed the applicant's claim on the ground that he had not satisfied the criteria for indigent person. The Administrative District Court noted that the applicant owned an apartment and that there were no legal obstacles that prevented him from obtaining income from it.

7. The applicant lodged an appeal against the aforementioned judgment.

8. On 7 April 2010 the Administrative District Court refused to exempt him from the payment of court fee for lodging an appeal, which totalled LVL 10 (roughly corresponding to EUR 14).

9. The applicant lodged a so-called ancillary appeal against the aforementioned decision. He produced a certificate from the social service authority that he had been granted a status of an indigent person for the period from 1 April 2010 until 30 September 2010. He stated that his monthly income was social benefit of LVL 40 (roughly corresponding to EUR 57).

10. By the final decision of 9 July 2010 the Administrative Regional Court (*Administratīvā apgabaltiesa*) upheld the lower court's decision refusing the applicant's request for exemption from the court fee.

11. In particular, the Administrative Regional Court held that the fact that the applicant was indigent did not mean that he could not afford to pay the court fee. He was a young man and had not been declared to be incapable of work. He owned a property and was not, for any reason whatsoever, deprived of the possibility to obtain income by working. The Administrative Regional Court also noted that the purpose of a court fee was not to limit access to a court, but to prevent unmeritorious appeals and cover the costs of the proceedings.

12. The decision stated that no appeal lay against it. In his application to the Court the applicant submitted that he had received this decision on 23 July 2010.

13. The applicant was ordered to pay the court fee of LVL 10 by 30 July 2010.

14. In July 2010 the applicant lodged a request with the Legal Aid Administration (*Juridiskās palīdzības administrācija*) seeking legal assistance. He also lodged a request with the prosecution service asking to submit a protest against the aforementioned decision of the Administrative Regional Court. The applicant's requests were refused. The prosecution reasoned that no protest could be lodged under the Administrative Procedure Law (*Administratīvā procesa likums*).

15. In the meantime, the applicant had missed the time-limit for payment of the court fee. On 10 August 2010 he lodged a request with the Administrative District Court asking to renew it. He stated that he had

received the decision of 9 July 2010 on 23 July 2010 when he had come to the court.

16. On 20 August 2010 the Administrative District Court refused the applicant's request. Referring to section 46 (1) of the Administrative Procedure Law (see paragraph 20 below), it noted that the time-limit could be renewed exceptionally and that the court enjoyed discretion in assessing the reasons adduced by the applicant to justify his having missed it. In this regard, the Administrative District Court stated that on 21 April 2010 the applicant had been informed that his ancillary appeal would be examined on 9 July 2010. If he had acted with due diligence in following up the proceedings, he would have learnt of the decision in a timely manner. Also, the decision of 9 July 2010 had been posted to the applicant on that same day. The Administrative District Court therefore regarded the applicant's request as unjustified.

17. Upon the applicant's ancillary appeal, on 28 October 2010 the Administrative Regional Court finally refused to renew the time-limit for payment of the court fee. It endorsed the reasoning of the lower court and added that even if the applicant had received the decision of 9 July 2010 on 23 July 2010 he had had seven days in order to pay the court fee. If he had needed more time, he could have, within those seven days, requested the court to extend the time-limit under sections 47 (2) and 48 (1) of the Administrative Procedure Law.

18. As the applicant had failed to pay the court fee, his appeal against the decision of the Administrative District Court dismissing his claim at first instance (see paragraph 7 above) was left without examination.

19. On 6 December 2010 the applicant lodged a request with the Administrative Cases Division of the Senate of the Supreme Court (*Augstākās tiesas Senāta Administratīvo lietu departaments*) asking to annul the decisions of the Administrative Regional Court of 9 July 2010 and 28 October 2010. On 5 January 2011 the Supreme Court replied that they had become final and that there was no possibility of appeal against them at third instance.

B. Relevant domestic law

20. Section 46 (1) of the Administrative Procedure Law provides that an authority, a court or a judge may renew a time-limit which has been missed upon party's request, if they find the reason for missing the time-limit justified.

Under section 47 (1) of the Law a time-limit given by an authority, a court or a judge may be extended upon a party's request. Under section 47 (2) the request for extension of the time-limit may be submitted prior to the expiry of the time-limit given. Section 48 governs, *inter alia*, the procedure for extension of the time-limit.

COMPLAINT

21. Relying on Article 6 of the Convention, the applicant complained that he had been denied the right of access to appeal proceedings due to his poor financial condition. He also relied on Article 1 of Protocol No. 12 to the Convention in respect of the same complaint.

THE LAW

22. The applicant complained that he had been denied the right of access to appeal proceedings due to his poor financial condition. The complaint falls to be examined under Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

23. According to Article 35 § 1 of the Convention the Court "may only deal with [a] matter ... within a period of six months from the date on which the final decision was taken". Even if the Government have not raised the question of the six-month rule it does not prevent the Court from examining it of its own motion (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

24. The Court reiterates that the six month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of exhaustion of domestic remedies. This entitles only remedies which are normal and effective to be taken into account as an applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (see *Fernie v. the United Kingdom* (dec.), no. 14881/04, 5 January 2006). The Court refers, further, to the extensive case-law to the effect that an application for retrial or similar extraordinary remedies cannot, as a general rule, be taken into account for the purpose of applying Article 35 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II, with further references).

25. In his application to the Court the applicant submitted that the Administrative Regional Court's decision of 28 October 2010 was the final decision for the purposes of Article 35 § 1 of the Convention. The Court, however, notes that it was by the decision of 9 July 2010 that his request for exemption from the court fee for lodging an appeal was finally refused (see paragraph 10 above). The subsequent proceedings concerned solely the time-limit for its payment. These proceedings could not have afforded any

redress in respect of the applicant's complaint that he could not afford to pay the court fee.

26. Furthermore, it was for the domestic courts to renew or not to renew the time-limit under section 46 (1) of the Administrative Procedure Law depending on the reasons advanced by the applicant, which they found unjustified (see paragraphs 16 and 17 above). The request for extension of the time-limit under section 47 of the Law was bound to fail as it had to be made before the expiry of the time-limit and the applicant failed to do so even though he had had at least seven days for that purpose (see paragraphs 17 and 20 above).

27. As regards the applicant's requests to the Legal Aid Administration, the prosecution service, and the Supreme Court, they were not ordinary remedies for challenging the court fee and may not be taken into account for the purpose of applying Article 35 of the Convention. Furthermore, the applicant's requests did not lead to a reopening of the proceedings (see *Sapeyan v. Armenia*, no. 35738/03, §§ 23 and 24, 13 January 2009).

28. It follows that this application, lodged on 24 March 2011, was introduced more than six months after the final effective decision was notified, as indicated by the applicant, on 23 July 2010 (see *Fernie*, cited above). The application has therefore been introduced out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 4 February 2016.

Milan Blaško
Deputy Registrar

Erik Møse
President