

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

FIRST SECTION

DECISION

Application no. 6905/09
Vladimir PARFJONOV
against Estonia

The European Court of Human Rights (First Section), sitting on 29 January 2013 as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 14 January 2009,

Having regard to the declaration submitted by the respondent Government on 6 July 2012 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Vladimir Parfjonov, is an Estonian national, who was born in 1952 and lives in Kohtla-Järve.

The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

The applicant complained under Article 6 § 1 and Article 13 of the Convention about the length of civil proceedings. He also complained, relying on Article 1 of Protocol No. 1 to the Convention, that he was deprived of his property and also cited Article 8 of the Convention.

The part of the application concerning the length of the civil proceedings and effective remedies in this respect had been communicated to the Government.

THE LAW

The applicant complained that the civil proceedings were unreasonably long. He relied on Article 6 § 1 and Article 13 of the Convention.

After the failure of attempts to reach a friendly settlement, by a letter of 6 July 2012, 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 further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "1. The Government notes that the efforts with a view to securing a friendly settlement of the case have been unsuccessful.
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> 2. In this situation, the Government would hereby like to express – by a way of unilateral declaration – its acknowledgment that in the special circumstances of the present case the length of the domestic proceedings did not fulfil the requirement of "reasonable time" referred to in Article 6 § 1 of the Convention, as well as the right to an effective remedy referred to in Article 13 of the Convention.
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> 3. Consequently, the Government is prepared to pay to the applicant Mr Vladimir Parfjonov the global sum of 2000 euros (two thousand euros). In its view, this amount would constitute adequate redress and sufficient compensation for the impugned length of the said proceedings and the lack of an effective remedy, and thus a reasonable sum as to quantum in the present case in the light of the Court's case law.
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> 4. This sum is to cover any pecuniary and non-pecuniary damage as well as the costs and expenses and will be free of any taxes that may be applicable. This sum will be payable to the personal account of the applicant within three months from the date of the notification of the Court decision pursuant to Article 37 § 1 (c) of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. This payment will constitute the final settlement of the case.
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> 5. The Government also state that regarding effective remedy, on 27 January 2011 the Estonian Parliament (*Riigikogu*) adopted an act whereby the Code of Criminal Procedure (*Kriminaalmenetluse seadustik)* and the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) were amended so as to provide for an opportunity for parties to the proceedings to request expedition of court proceedings. These provisions also apply to administrative court proceedings. The amendments entered into force on 1 September 2011 (see also *Raudsepp v. Estonia,* application no. 54191/07, judgment of 8 November 2011, § 34).

6. In addition, by judgment of 22 March 2011 (case no. 3-3-1-85-09) the Supreme Court, sitting in plenary session, dealt with a case concerning a claim for compensation for excessive length of a preliminary investigation in a criminal case. The Supreme Court found that the situation where the State Liability Act does not provide for compensation for non-pecuniary damage caused by excessive length of a preliminary investigation in criminal proceedings is unconstitutional. The Supreme Court declared the State Liability Act unconstitutional in so far as it does not provide for compensation in the circumstances in question, and awarded the complainant a sum of money (see also *Raudsepp v. Estonia,* application no. 54191/07, judgment of 8 November 2011, § 41). The relevant new draft law (State Liability Act, *riigivastutuse seadus)* is in the proceedings of the Estonian Parliament (*Riigikogu*). In the meantime all persons concerned may apply for non-pecuniary damage based on the Supreme Court judgment of 22 March 2011 (and the Supreme Court decision of 30 December 2008, case no. 3-4-1-12-08, see *Raudsepp v. Estonia,* application no. 54191/07, judgment of 8 November 2011, § 36) directly to the court. There are already examples of respective case-law (for example 8 May 2012 ruling of the Tallinn Administrative Court in administrative case No. 3-11-1146 whereby the applicant was awarded 2250 euros for the length of his criminal proceedings).

7. The Government recall that according to the case-law of the Court it may be appropriate, under certain circumstances, to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration filed by the respondent Government even if the applicant wishes the examination of the case to be continued (for instance *Õmblus v. Estonia,* application no 27669/08, decision of 2 March 2010 and *Treial v. Estonia* (striking out) application no 42496/05, decision of 18 March 2008).

8. It is also recalled that the Court has paid attention to the terms of the declaration made by the Government and in particular to a clear acknowledgment of breach of Article 6 § 1 and Article 13 of the Convention and that the Court has had occasion to address complaints related to the alleged breach of one's right to a hearing within a reasonable time in cases against the State in question (for instance *Õmblus v. Estonia,* application no 27669/08, decision of 2 March 2010; *Treial v. Estonia* (striking out) application no 42496/05, decision of 18 March 2008; see also *Anastasovska v. Former Yugoslav Republic of Macedonia* (657/05), decision of 28 June 2011 and *Marangos v. Cyprus* (20364/07), decision of 23 September 2010).

9. In the light of the above and in accordance with point D. 7. (a) (i) of the Interlaken Declaration Action Plan and Article 37 § 1 (c) of the Convention the Government would like to suggest that the circumstances of the present case allow the Court to reach the conclusion that for "any other reason" it is no longer justified to continue the examination of the application. The Government note that as there are new effective domestic remedies – both preventive and compensatory – in respect to the lengthy proceedings, there are no reasons of a general character as defined in Article 37 § 1 *in fine* which would require the further examination of the case by virtue of that provision.

10. Therefore, the Government invites the Court to strike the application out of its list of cases. "

It can be understood from the applicant's letter of 22 August 2012 that he was not satisfied with the terms of the unilateral declaration. He submitted that the Government had not responded to his just satisfaction claims.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

The Court has established in a number of cases, including those brought against Estonia, its practice concerning complaints about the violation of one's right to a hearing within a reasonable time (see, for example, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 69-98, ECHR 2006-V; *Treial v. Estonia*, no. 48129/99, 2 December 2003; *Shchiglitsov v. Estonia*, no. 35062/03, 18 January 2007; *Saarekallas OÜ v. Estonia*, no. 11548/04, 8 November 2007; *Missenjov v. Estonia*, no. 43276/06, 29 January 2009; and *Raudsepp v. Estonia*, no. 54191/07, 8 November 2011).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

Accordingly, the Court should strike the case out of the list in the part concerning the complaints about the length of the civil proceedings and effective remedies in this respect.

Relying on Article 1 of Protocol No. 1 to the Convention and Article 8 of the Convention the applicant party also complained that he was deprived of his property.

Having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 and Article 13 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President