

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

THIRD SECTION

DECISION

Application no. 32734/03
by Mihails POZŅAKOVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 22 February 2011 as a Committee composed of:

Ján Šikuta, President,
Ineta Ziemele,
Kristina Pardalos, judges,

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 25 September 2003,

Having regard to the unilateral declaration submitted by the respondent Government on 24 November 2010 with a view to terminating the proceedings, and the applicant's failure to submit any comments to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mihails Pozņakovs, is a Latvian national who was born in 1951 and lives in Daugavpils. The respondent Government are represented by their Agent, Mrs Inga Reine.

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

1. First set of criminal proceedings

3. On 22 September 1998 the applicant was detained on remand as a suspect for having committed a murder.

4. On 7 April 1999 the Daugavpils Court remitted the criminal case for additional pre-trial investigation.

5. In 2000 the applicant familiarised himself with the case file and on 26 October 2000 the Latgale Regional Court convicted him of murder and sentenced him to eight years' imprisonment.

6. On 1 March 2001 the Department of Criminal Cases of the Supreme Court as an appellate court partly revoked the judgment of the lower court and convicted the applicant of having committed a homicide as a result of exceeding necessary self-defence. The applicant was sentenced to two years' imprisonment and he was released in the court-room as he had already served the sentence.

7. On 7 June 2001 the Senate of the Supreme Court quashed the judgment of 1 March 2001.

8. On 1 November 2002 the applicant was detained on remand in other criminal proceedings. On 24 April 2003 the detention was prolonged and on 23 May 2003 it was discontinued.

9. On 20 June 2003 by a decision of the Department of Criminal Cases of the Supreme Court the applicant was convicted of murder and sentenced to 8 years' imprisonment. He was arrested in the court-room.

10. On 11 November 2003 the Senate of the Supreme Court again quashed the decision of the appellate court in that the minutes of the trial did not disclose what evidence the court had examined. It also noted that the court had exceeded the scope of the appeal on points of law brought by the applicant. The applicant remained in detention.

11. In May and June 2004 the applicant familiarised himself with the recent documents added to the criminal case. For that reason, from 14 May 2004 until 27 May 2004 he was transferred from Daugavpils prison to the Rēzekne District Police Office.

12. On 4 November 2004 the Department of Criminal Cases of the Supreme Court upheld the lower court's judgment of 26 October 2000.

13. On 22 February 2005 the Senate of the Supreme Court dismissed the applicant's appeal on points of law.

14. The applicant is serving his sentence in Daugavpils prison.

2. Second set of criminal proceedings

15. On 16 April 2004 the Latgale Regional Court as a lower court convicted the applicant of extortion and sentenced him to six years' imprisonment. On 26 January 2006 the Department of Criminal Cases of the Supreme Court as an appellate court upheld the judgment. Following the applicant's appeal on points of law on 4 October 2006 the Senate of the Supreme Court revoked the judgment as insufficiently reasoned and remitted the criminal case for a fresh examination before the appeal court, which on 13 April 2007 acquitted the applicant of the charges brought against him.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention of the excessive length of the first set of criminal proceedings instituted against him.

He further brings numerous complaints under various other Articles of the Convention.

THE LAW

A. Length of criminal proceedings

16. By a letter dated 24 November 2010 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 the application out in accordance with Article 37 of the Convention.

17. The declaration provided as follows

> "The Government of the Republic of Latvia (hereinafter – the Government) represented by their Agent Inga Reine admit that the total length of criminal proceedings initiated against Mihails Pozņakovs (hereinafter – the applicant) did not meet the standards enshrined in Article 6 paragraph 1 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.
>
> Taking into account that the parties have failed to reach a friendly settlement in the present case, the Government declare that they offer to pay to the applicant the compensation in the amount of 810 euros (LVL 570), 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 terminating the proceedings pending before the European Court of Human Rights (hereinafter – the Court) in the case of *Pozņakovs v. Latvia* (application no. 32734/03).
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> The Government undertake to pay the above compensation within three months from the date of notification of the decision (judgment) by the Court pursuant to Article 37 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 the amount, as established in the decision (judgment) by the Court. The above sum converted into Latvian lati at the rate established by the Bank of Latvia shall be transferred to the bank account indicated by the applicant.
>
> This payment will constitute the final resolution of the case."

18. The applicant was invited to submit any comments to the declaration by 6 January 2011. In a letter of 11 January 2011 the applicant expressed the view that the sum mentioned in the Government's declaration was

unacceptably low and invited the Court to examine his application on the merits.

19. The Court observes at the outset that the parties were unable to agree on the terms of a friendly settlement of the case. However, as it has stated in earlier cases (see, in particular, *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, § 74, ECHR 2003-VI, and *Venera-Nord-Vest Borta A.G. v. Moldova*, no. 31535/03, § 28, 13 February 2007), a distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly settlement proceedings (Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court) and, on the other hand, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court. In accordance with Article 38 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, the Court will proceed on the basis of the Government's unilateral declaration submitted outside the framework of friendly-settlement negotiations, and will disregard the parties' statements made in the context of exploring the possibilities for a friendly settlement of the case and the reasons why the parties were unable to agree on the terms of a friendly settlement (see *Estate of Nitschke v. Sweden*, no. 6301/05, § 36, 27 September 2007).

20. The Court 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.

21. As to whether it would be appropriate to strike out the present application on the basis of the unilateral declaration made by the Government, the Court points out that there is a considerable case-law with respect to the respondent State as concerns the scope and the nature of its obligations arising under Article 6 § 1 of the Convention as regards the guarantee of the right to a trial within a reasonable time in criminal proceedings (see, in particular, *Lavents v. Latvia*, no. 58442/00, §§ 85-87, 99-104, 28 November 2002; *Freimanis and Līdums v. Latvia*, nos. 73443/01, 74860/01, §§ 106-109, 123-126, 9 February 2006; *Kornakovs v. Latvia*, no. 61005/00, §§ 113-116, 120-130, 15 June 2006; *Moisejevs v. Latvia*, no. 64846/01, §§ 136-143, 15 June 2006; *Estrikh v. Latvia*, no. 73819/01, §§ 136-143, 18 January 2007; and *Čistiakov v. Latvia*, no. 67275/01, §§ 74-91, 8 February 2007). The Court has repeatedly found a violation of this obligation and has awarded just satisfaction in accordance with the requirements of Article 41 of the Convention. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1(c)).

22. The Court further notes that this decision constitutes a final resolution of this application only in so far as the proceedings before the Court are concerned. It is without prejudice to the use by the applicant of other remedies before the domestic courts to claim further compensation in respect of the length of the impugned proceedings.

23. 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 this part of the application (Article 37 § 1 *in fine*).

24. Accordingly it should be struck out of the list.

B. Other complaints

25. The applicant also alleged violations under various other Articles of the Convention.

26. 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 above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaint about the length of the proceedings under Article 6 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Ján Šikuta
President