

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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 24086/03
by Mārtiņš RAUDEVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 8 March 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 3 July 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Mārtiņš Raudevs, is a Latvian national who was born in 1941 and lives in Rīga.

A. The circumstances of the case

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

1. Defamation proceedings

a) Initiation of criminal proceedings against the applicant

2. On 4 November 2000 the applicant addressed a letter to the World Bank, the parliament of the Republic of Latvia and the President of the Supreme Court in which he alleged, in a confused manner, that certain judges in Latvia were corrupt and had acted fraudulently. In the letter he, *inter alia*, called the President of the Civil Chamber of the Senate of the Supreme Court "a super cheater" and "a fundamental cheater who commits criminal offences". He insisted that the judges should be charged with having committed various criminal offences. It appears that on other occasions before and after the aforementioned letter the applicant accused various other state officials in a similar manner.

3. On 20 December 2000, upon an application received from the President of the Supreme Court, the Office of the Prosecutor initiated criminal proceedings against the applicant for defamation of state officials. At the material time such activities were considered a criminal offence under section 271 of the Criminal Law.

4. On 11 October 2001 a prosecutor of Rīga Centre District Office of the Prosecutor brought charges against the applicant. On the same day the applicant was informed thereof.

b) Ordering of an in-patient medical examination

5. Within the scope of the investigation of the aforementioned criminal case, on 14 June 2001 the applicant underwent an out-patient psychiatric examination. Experts recommended that the applicant undergo an in-patient medical examination in order for a decision to be made about his mental responsibility. Accordingly, on 19 October 2001 the Rīga Centre District Court ordered the applicant's compulsory placement in a psychiatric hospital. Following an appeal by the applicant, on 30 November 2001 the Rīga Regional Court upheld the decision. The applicant was present during the hearing.

6. From 25 October to 7 December 2001 the applicant underwent an in-patient medical examination at the Rīga Centre for Psychiatry (*BOVSIA Psihiatrijas centrs*). In their conclusion of 22 November 2001 the experts established that since 1985 the applicant had been having fantastic and other-worldly ideas which had turned into paranoid delusions. The experts concluded that the applicant suffered from paranoid schizophrenia and at the time of committing the criminal offence had not been fully aware and in control of his actions. Therefore, it was advised that the applicant should be treated as having diminished responsibility with respect to the charges brought against him. The experts recommended that the applicant receive compulsory medical treatment in a secure psychiatric hospital owing to the fact that he was in denial about his illness, refused to take medication and

had "delusional plans with respect to certain judges and officials". The conclusion also stated that the applicant's participation in the pre-trial investigation and his presence during trial would not be useful.

c) Decision to absolve the applicant from criminal responsibility and to order compulsory medical treatment

7. On 6 December 2001 a judge of Rīga Centre District Court imposed a preventive measure on the applicant of confinement in a psychiatric hospital pending a court order of compulsory medical treatment. It appears that the order was not executed.

8. On 21 January 2002 the Rīga Centre District Court, in the presence of the applicant's wife and his lawyer, absolved the applicant from criminal responsibility. The court found that the applicant was not dangerous to society and decided to release him into the care of his wife and the supervision of a medical institution.

9. Upon the prosecutor's appeal, on 6 March 2002 the appellate court established that the lower court had failed to provide an assessment of the experts' conclusion and the evidence proving the applicant's guilt. The aforementioned decision was quashed and the criminal case was remitted to the lower court for re-examination.

10. On 13-16 September 2002 the Rīga Centre District Court, in which the applicant was represented by his lawyer, established the applicant's guilt and absolved the applicant from criminal responsibility, ordering him to compulsory medical treatment in a psychiatric hospital.

11. Upon the appeal submitted by the applicant's legal representative, on 3 December 2002 the Rīga Regional Court upheld the lower court's decision. The court noted that the applicant's wife could not exercise effective control over the applicant's medical treatment and his behaviour in that the applicant continued to send unsubstantiated applications to various domestic authorities.

12. On 17 December 2002, in a letter addressed to the applicant, a judge of the Rīga Regional Court explained to him that an appeal on points of law could be submitted only by the applicant's legal representative, guardian or the prosecutor.

13. On 16 January 2003, in a preparatory meeting, the Senate of the Supreme Court dismissed the appeal on points of law submitted by the applicant's legal representative.

d) Constitutional proceedings leading to amendments to the Criminal Law concerning defamation of state officials

14. Meanwhile, on 3 January 2003 representatives of a national newspaper brought a constitutional complaint asking the Constitutional Court to establish that section 271 of the Criminal Law was not in

compliance with the fundamental rights protected under the Constitution, in particular, the right to freedom of expression and equality before the law.

15. On 24 February 2003 the constitutional proceedings were instituted and on 28 February 2003 the official newspaper *Latvijas Vēstnesis* published information thereof.

16. On 29 October 2003 the Constitutional Court found section 271 of the Criminal Law incompatible with the Constitution and thus void from 1 February 2004, unless the legislator specified before the aforementioned date the groups of officials which, owing to their official capacity, required special protection under criminal law.

17. By amendments to the Criminal Law adopted on 22 January 2004 the contested provision was repealed. The amendment came into force on 1 February 2004.

e) Execution of the court's order of 13-16 September 2002

18. On 5 July 2004 the Rīga Centre Distric Court issued an execution order for the judgement of 13-16 September 2002. The judgment was executed on 30 July 2004 when police took the applicant to a secure psychiatric centre for compulsory medical treatment.

f) The applicant's complaints against being placed in a psychiatric hospital

19. On the same day, 30 July 2004, the applicant complained to the Rīga Central District Court asking to be released from the hospital on the ground that since 1 February 2004 section 271 of the Criminal Law was no longer in force.

20. On 4 August 2004 the applicant complained to the Office of the Prosecutor requesting his release from the psychiatric hospital. He also asked for criminal proceedings to be instituted on the basis of his forced placement into hospital.

21. On 9 August 2004 a prosecutor of the Rīga City Vidzeme District Prosecutor's Office confirmed that the execution of the court's decision of June 2002 had been lawful.

22. On 24 September 2004 the lower court revoked the decision of 13-16 September 2002 in accordance with the aforementioned judgement of the Constitutional Court, and subsequently, on the same day the applicant was released from the psychiatric hospital.

2. Incapacitation proceedings

a) Initiation of incapacitation proceedings

23. On 13 August 2003 the applicant addressed to the Senate of the Supreme Court a complaint in which he claimed four million euros in compensation for alleged violations of his human rights. The Office of the Prosecutor General informed the applicant that the above letter had been

added to his file. On 26 August 2003 the applicant, in a confused manner, repeatedly asked the Senate to reopen the criminal proceedings.

24. It appears that on numerous occasions the applicant addressed letters to various institutions alleging that judges and prosecutors had acted unlawfully. He submitted that on 18 March 2004 a judge of the Centre District Court had refused the applicant's request for criminal proceedings to be instituted against three prosecutors in connection with alleged unlawful activities.

25. On 29 September 2004 the Rīga Regional Court submitted a request to the Office of the Prosecutor asking for measures to be taken with respect to the applicant's legal capacity.

26. On 22 February 2005 the Rīga City Vidzeme District Court, in the absence of the applicant, whose interests were represented by the Orphans' Court, ordered that the applicant undergo a psychiatric examination. This was deliberately an out-patient psychiatric examination and was scheduled for 11 April 2005. The applicant did not appear so on 9 January 2006 the court ordered that the applicant undergo a compulsory in-patient medical examination. The aforementioned hearing was held in the absence of the applicant because the court relied on the expert's conclusion of 2001 (see above, paragraph 6). The court had asked the experts, *inter alia*, whether the applicant should participate in the court proceedings.

27. From 24 March to 27 April 2006 the applicant underwent an in-patient psychiatric examination. The experts observed that the previous medical treatment had not been effective because the applicant continued to write complaints about his alleged enemies, which were becoming more elaborate. The conclusion stated that the applicant had only basic social skills and a limited ability to deal with simple everyday situations, and that owing to his heart disease and lack of self-awareness, the applicant's observations in court would be "counter-productive".

b) Incapacitation proceedings before the court

28. On 18 May 2006, in the absence of the applicant, the Rīga City Vidzeme District Court held that the applicant was not legally capable. The applicant was represented by a representative of the Orphans' Court. The court relied on the experts' conclusion and the prosecutor's application, which stated that since 1996 the applicant had been writing numerous unsubstantiated complaints. The applicant appealed.

29. On 10 August 2006 the Rīga Regional Court dismissed the applicant's appeal. The hearing was held in private and the applicant's representative B., a member of a non-governmental organisation established by the applicant, was asked to leave the hearing. The applicant was represented by a representative of the Orphans' Court.

30. On 8 March 2007 the Senate of the Supreme Court, in a preparatory meeting, dismissed the appeal on points of law because it was submitted by B. who was not authorised to do so.

31. According to the applicant, on 24 July 2007 the Constitutional Court dismissed the applicant's constitutional claim, noting that only the applicant's guardian was authorised to submit an appeal on the applicant's behalf.

32. It appears that in 2008, at the applicant's request, the Supreme Court extended the period for submitting the applicant's appeal on points of law. On 10 July 2009, in a preparatory meeting, the Senate of the Supreme Court instituted cassation proceedings and on 30 September 2009 the Senate quashed the appellate court's judgment of 10 August 2006 and remitted it to the Regional Court. The Senate noted that the lower court had not assessed all the evidence and had failed to provide adequate reasoning as to the applicant's legal incapacity. The Senate observed that in reaching the conclusion that the applicant was legally incapable, the lower court had merely rewritten the expert's opinion and referred to the various complaints submitted by the applicant.

33. On 16 November 2009 the applicant asked the Supreme Court to inform him of his right to receive compensation in respect of the quashed decision of the appellate court. He was informed that providing such advice exceeded the competence of the Supreme Court.

34. Information available in the database of the Latvia Courts Portal shows that on 4 June 2010 the Rīga Regional Court re-examined the appeal and dismissed it. In January 2011 the appeal proceedings were pending before the Senate of the Supreme Court.

c) Proceedings concerning reinstatement of legal capacity

35. On several occasions the Orphans' Court asked the Rīga City Vidzeme District Court to reinstate the applicant's legal capacity. In particular, on 12 February 2007 the Orphan's Court requested that the applicant's legal capacity be reinstated because since 2006 no guardian had been assigned to the applicant and throughout this period the applicant had been able to take care of his daily needs himself. The Orphans' Court considered that the applicant's health condition had improved.

36. After various decisions, on 12 February 2009 the proceedings were stayed pending the incapacitation proceedings.

3. The applicant's attempts to receive compensation for allegedly unlawful actions and decisions

37. On 11 January 2006 the applicant sought to claim damages from the Office of the Prosecutor. The civil claim was not allowed because the applicant had submitted it to the wrong court.

38. On 20 June 2006 the applicant lodged a complaint with the administrative court concerning damage sustained on 24 March 2006 when police officials had taken him for the in-patient medical examination. On 2 February 2007 the proceedings were stayed pending assignment of the applicant's guardian.

39. According to the applicant, several other civil and administrative proceedings initiated by him were stayed on the same grounds.

B. Relevant domestic law

1. Criminal Law

40. Section 271 (in force until 1 February 2004) provided for a penalty (deprivation of liberty for up to two years, arrest or compulsory labour) for defaming and injuring the dignity of a representative of public authority or other state official with respect to their official duties.

41. By the amendments adopted on 22 January 2004 and in force since 1 February 2004, section 271 was repealed from the Criminal Law. The amendments also provided that convicted persons sentenced before 1 February 2004 for criminal offences under section 271 be released from imprisonment.

2. Code of Criminal Procedure

42. Under section 402[1], at the proposal of the head of the medical institution or a prosecutor, the court shall decide whether to revoke or amend a compulsory medical measure.

3. Competence of Orphans' Courts

43. Pursuant to provisions of the Law on Orphans' Courts and Parish Courts (*in force until 1 January 2007*), Orphans' Courts shall appoint a guardian to persons divested of their legal capacity, supervise the activities of the guardians and, in certain circumstances, authorise the guardians to enter into agreements on behalf of persons divested of legal capacity. Under the Law on Orphans' Courts (*in force since 1 January 2007*), Orphans' Courts have, *inter alia*, the authority to lodge claims and complaints in a court on behalf of persons divested of legal capacity, as well as to provide assistance to legally incapable persons who have requested it. The Courts also decide on introducing court proceedings aimed at reinstating legal capacity.

COMPLAINTS

44. The applicant complains in substance under Article 5 of the Convention that from 30 July to 24 September 2004 he was unlawfully confined to a psychiatric hospital, that his confinement was not subjected to a judicial review within a reasonable time and that he could not obtain compensation for his allegedly unlawful detention.

45. He further complains in substance under Article 6 of the Convention that he was deprived of access to court, in particular, that all the court proceedings initiated by him were stayed pending the incapacitation proceedings.

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

THE LAW

47. The applicant complains that his confinement to a psychiatric hospital was contrary to Article 5 the Convention, which in so far as relevant provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (e) the lawful detention ... of persons of unsound mind;
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

48. The applicant further complained that he was denied access to a court as provided in Article 6 § 1 of the Convention, which reads as follows:

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

49. The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints 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.

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

51. 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. 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

Decides to adjourn the examination of the applicant's complaints concerning the unlawfulness of his detention, the lack of speedy judicial review thereof and of an enforceable right to compensation, as well as his complaint relating to his right of access to a court;

Declares the remainder of the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President