

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

FOURTH SECTION

DECISION

Application no. 58497/08
Andris TRŪPS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 20 November 2012 as a Chamber composed of:

David Thór Björgvinsson, *President,*
Ineta Ziemele,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Vincent A. De Gaetano,
Paul Mahoney, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 26 November 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Andris Trūps, is a Latvian national who was born in 1975 and lives in Jelgava. He was represented before the Court by Ms J. Averinska, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine who was succeeded by the Agent, Mrs K. Līce.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

A. The circumstances of the case

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

3. On 22 January 2002 the police authorities initiated criminal proceedings.

4. On 2 February 2002 the applicant was arrested in the aforementioned criminal proceedings on suspicion of murder.

5. On 1 March 2002 the prosecutor brought a criminal charge against the applicant of aggravated murder. On a later date he was also charged with robbery.

6. On 29 May 2002 the prosecutor sent the criminal case to the Rīga Regional Court.

7. On 6 June 2002 the Rīga Regional Court decided to commit the applicant and his co-accused for trial, and to keep the applicant in detention. He was held on remand until 27 October 2002. It appears that he was subsequently kept in detention in connection with other criminal proceedings.

8. On 19 May 2003 the first hearing was scheduled for 16-18 June 2003, on which date it was postponed indefinitely given the need to carry out a forensic examination of the co-accused.

9. On 28 October 2003 the Rīga Regional Court delivered a judgment convicting the applicant and sentencing him to 17 years' imprisonment for aggravated murder.

10. On 29 December 2003 the applicant's appeal was scheduled to be heard on 20 April 2004.

11. On 5 February 2004 the applicant supplemented his appeal by asking the court to summon witness T. on his behalf. On 20 April 2004 the hearing was postponed in order to ensure the appearance of the witnesses. The next hearing was scheduled for 27 October 2004.

12. From October 2004 to June 2006 the court scheduled four hearings, one of which was postponed owing to the non-appearance of the witnesses (in April 2005) and three of which were postponed because of the absence of the co-accused (in October 2004 and November 2005 when the co-accused or his representative was ill, and in June 2006 when he was absent without a valid reason).

13. On 6 June 2006 the criminal proceedings were suspended in order to search for the co-accused. On 16 October 2006 the police informed the court that his whereabouts were unknown.

14. On 2 January 2008 the criminal proceedings were re-opened. The appellate court referred to the police information of 16 October 2006 and the fact that, according to the materials in the file, the co-defendant's mother, with whom the co-defendant was in contact, had received the summons to the appellate court hearing in June 2006. It fixed a further

hearing for 30 June 2008, on which date the Supreme Court upheld the lower court's judgment.

15. On 14 October 2008 the Senate of the Supreme Court dismissed an appeal on points of law lodged by the applicant.

B. Relevant domestic law and practice

1. *Relevant principles set out in the Law of Criminal Procedure (wording in force as from 1 October 2005) with subsequent amendments*

16. Section 14 (1) provides that everyone has the right to the completion of criminal proceedings within a reasonable time, that is, without unjustified delay. Section 14 (5) provides that the non-observance of the reasonable time requirement may be the basis for termination of criminal proceedings in accordance with the procedures of the Law of Criminal Procedure.

17. By virtue of the amendments of 12 March 2009, which became effective as from 1 July 2009, section 14(1) was supplemented with a text providing that the completion of criminal proceedings within a reasonable period is related to the volume and difficulty of the case, the number of procedural measures, the attitude of those involved in the proceedings towards their responsibilities and other objective circumstances.

18. Section 61, as in force at the material time, provided that persons against whom criminal proceedings had been instituted had the right to completion of the criminal proceedings within a reasonable period of time. This applied from the time when the person carrying out the procedural measures or the official in charge of the criminal proceedings informed the accused that criminal proceeding had been instituted against him.

2. *Termination of criminal proceedings and discharge from criminal liability*

19. Section 58 of the Criminal Law, as in force at the material time, provided for the circumstances in which a person could be relieved of criminal liability. It was applicable to those who had committed a less serious crime and reached a settlement with the victim; those who had helped to disclose a crime that was more serious than the crime of which they themselves were charged; or those in circumstances provided for by the Special Part of the Criminal Law.

20. By virtue of the amendments to section 58 of 21 October 2010, which came into force on 1 January 2011, a person could also be relieved of criminal liability if it was established that his or her right to the completion of criminal proceedings within a reasonable period had not been observed.

21. Sections 481(2) and 379(1)(1) of the Law of Criminal Procedure, as in force at the material time, provided for the termination of criminal proceedings while relieving the accused of criminal liability if a court established that the consequences of a criminal offence did not warrant a criminal-law sanction. In addition, section 481(2) provided that a court may terminate criminal proceedings, relieving a person of criminal liability, in the cases specified under section 379 of that Law. In particular, if a less serious criminal offence had been committed; a settlement with a victim had been reached; or in certain circumstances, if the criminal offence had been committed by a minor.

22. By virtue of the amendments of 12 March 2009, which came into force on 1 July 2009, section 379(1) was supplemented with subsection 4, providing that criminal proceedings may be terminated, relieving a person of criminal liability, if it was not possible to complete the criminal proceedings within a reasonable time.

3. Determination of sentence

23. Section 49 of the Criminal Law, as in force at the material time, provided that if a court, taking into account various mitigating circumstances and the character of the offender, considered it appropriate to impose a shorter sentence than the statutory minimum for the relevant criminal offence, or to impose a less severe form of punishment, it could reduce the punishment accordingly, setting out its reasons in the judgment. Also, a court could decide not to apply an additional punishment that had been provided for as mandatory for the relevant criminal offence by this Law. The above provisions were not applicable if the court found that the criminal offence had been committed in aggravating circumstances.

24. By virtue of the amendments that came into force on 1 January 2012, section 49^1 now provides that if the court determines that a person's right to have his or her criminal proceedings brought to a conclusion within a reasonable time has not been observed, it may either take this circumstance into consideration when determining the sentence and reduce it; impose a shorter sentence than the statutory minimum for the relevant criminal offence; or impose another, less severe punishment than that provided by the law for the relevant criminal offence. Subsection 2 states that if the court determines that a person's right to have his or her criminal proceedings brought to a conclusion within a reasonable time has not been observed and the person has committed a crime punishable by life imprisonment under the Special Part of the Criminal Law, the court may impose a custodial sentence of twenty years instead of life imprisonment.

4. Other provisions

25. In accordance with Article 241 of the Code of Criminal Procedure (in force until 1 October 2005), adjudication of a criminal case must commence no later than one month after the criminal case has been received at the court.

5. Relevant domestic practice

(a) From 2005-2009

26. On 16 January 2007 the Senate of the Supreme Court dismissed an appeal on points of law in which the defendants relied on section 14 of the Law of Criminal Procedure and complained that the appellate court had failed to adjudicate the case within a reasonable period of time, in particular because the appellate proceedings had lasted for more than two years. The Senate observed that the criminal case (which concerned robbery with violence committed in a group and by persons who had previously committed a robbery) had been received by the appellate court in June 2004 and the first hearing had been scheduled for December 2004, when it was postponed because the defendants had requested a forensic medical examination, which was finished in May 2005. The next hearing was scheduled for February 2006 but was postponed because the defendant was ill. A judgment on the merits was delivered in September 2006. Relying on the aforementioned observations, the Senate concluded that none of the delays could be attributable to the appellate court.

27. On 22 December 2008 the Rīga Regional Court, as a lower court, discontinued criminal proceedings in a criminal case that had been remitted for the court's adjudication in 1999 concerning theft, the value of which was 135 lati (approximately 200 euros). The defendant's lawyer had asked the court to discontinue the criminal proceedings because the defendant had been missing for almost ten years. The prosecutor noted that the Law of Criminal Procedure neither substantiated the "reasonable time" principle nor provided a procedure in which a criminal case could be terminated based on a breach of the aforementioned principle. The prosecutor also noted that, in view of the nature of the offence, the harm done and other circumstances, in this particular case section 14 (5) could be applied and the criminal proceedings discontinued. The court reasoned that adjudication was not possible because the whereabouts of the defendant had been unknown to the court since 2000, and that the harm caused by the offence was less than the minimum monthly salary in Latvia.

28. On 27 and 29 December 2006 Prosecutor A. of the Liepāja City Prosecutor's Office discontinued three different sets of criminal proceedings (concerning various offences of theft; robbery committed by a person who had previously committed a robbery or extortion; destruction of property as

a result of which grave consequences were caused) that had been instituted in 1993, 1996 and 1999 respectively. In each case the decision referred to section 14 of the Law of Criminal Procedure and noted that the investigation could not be completed within a reasonable time. More detailed information with respect to these criminal proceedings is given below.

29. In the criminal proceedings of 1993 the charges against the accused were brought in March 1996, but in April 1996 the proceedings were suspended because his whereabouts were unknown.

30. Similarly, the criminal proceedings of 1996 were suspended in 1998 because the whereabouts of one of the accused were unknown. In 2006 the criminal proceedings were discontinued against all three accused persons.

31. In the criminal proceedings instituted in 1999 charges could not be brought against the accused because his whereabouts were unknown.

(b) After 2009

32. On 16 October 2009 the Cēsu District Court gave judgment in a case relieving the defendant of criminal liability and discontinuing the criminal proceedings that had been instituted in 1995 because the whereabouts of the defendant had been unknown for more than 15 years. The court referred to sections 14(5), 481(2) and 379(1.4) of the Law of Criminal Procedure and Article 6 of the Convention, and concluded that the criminal proceedings were unreasonably long and should therefore be discontinued.

33. On 5 November 2009 the Rēzekne Court, referring to the above-mentioned provisions, relieved the defendant of criminal liability and discontinued the criminal proceedings that had been instituted in February 2007, and remitted the case for trial in June 2009, thus breaching the rule on time-limits concerning the commencement of the adjudication.

COMPLAINT

34. The applicant complained, under Article 6 § 1 of the Convention, about the length of the criminal proceedings, which had lasted for almost seven years. He invoked the same Article and complained that during the criminal proceedings he had been deprived of various procedural rights, such as the right to receive the materials of the criminal case in order to adequately prepare for his defence. The applicant also complained that information related to his criminal case had been passed to the media.

35. The applicant further complained, under Article 6 § 3 (b) and (c) of the Convention, that even though he had been unable to afford a lawyer, after the trial he had been ordered to pay for the State-appointed defence lawyer.

36. The applicant complained in substance under Article 6 § 3 (d) of the Convention that the court had failed to grant permission to allow a witness to attend the trial.

37. Lastly, the applicant complained under Article 7 § 1 of the Convention that he had been convicted under the wrong section of the Criminal Law.

THE LAW

A. Complaint under Article 6 of the Convention

38. The applicant's complaint relates to the length of the proceedings, which began on 2 February 2002 and ended on 14 October 2008, at three levels of jurisdiction. They therefore lasted six years and eight months.

1. The Government

39. The Government submitted that the applicant had failed to exhaust domestic remedies. They argued that the new Law of Criminal Procedure, which became effective as from 1 October 2005, introduced for the first time the principle that everyone had a right to expect the completion of criminal proceedings within a reasonable time (see paragraph 16 above). Moreover, by virtue of section 14(5) of the Law of Criminal Procedure the court could terminate criminal proceedings if the reasonable time requirement had not been observed (ibid.) Therefore, the Government argued that the applicant could have asked the domestic court either to terminate the criminal proceedings or to impose a more lenient sentence.

40. The Government drew the Court's attention to several examples as early as 2006, in which prosecutors had referred to section 14 of the Law of Criminal Procedure and terminated criminal proceedings that had been instituted before the Law of Criminal Procedure had come into force (see paragraphs 28-31 above). They also cited examples in which the domestic courts had examined identical complaints and applied the same provision in order to terminate criminal proceedings. In this respect the Government highlighted the decision of the Supreme Court (see paragraph 26 above) in which it had thoroughly analysed the alleged breach of the reasonable time requirement enshrined in section 14 of the Law of Criminal Procedure. The Government also referred to the case of *Moisejevs v. Latvia*, no. 64846/01, 15 June 2006, in which the appellate court had imposed a lighter sentence because of the unreasonable length of the applicant's pre-trial detention. Even though in that case the Court had found a violation on account of insufficient reasoning, the Government submitted that by the time the

present case was examined, the national courts would have taken into account the Court's findings in the *Moisejevs* case.

41. In their additional observations the Government further referred to *Akdivar and Others v. Turkey* (16 September 1996, *Reports of Judgments and Decisions* 1996-IV), and contended that the applicant should have relied on the new general principles established by the Law of Criminal Procedure which introduced an obligation to complete criminal proceedings within a reasonable time. They noted that it was the task of the defence to raise objections against excessively lengthy criminal proceedings and that by relying on the provisions of the Law of Criminal Procedure the applicant could have asked the national court to reduce his sentence or sever the criminal proceedings.

2. The applicant

42. The applicant's representative contended that the applicant had had no domestic remedies available to him, because under domestic law an individual could influence neither the speed of the adjudication of a criminal case, nor the organisation of the work of the national courts.

43. The representative conceded that the court could have reduced the sentence as compensation for the duration of the criminal procedure, but observed that it had not done so. Nor had the court severed the criminal proceedings while the co- defendant was being sought by the police. It was noted that the final decision in the applicant's case was adopted in October 2008, whereas the legal provision authorising the court to terminate unreasonably lengthy criminal proceedings came into force only on 1 July 2009 (see paragraph 22 above).

44. In the additional observations, the applicant's representative cited an example in which the defendant's request to speed up the proceedings had not influenced the total length of the criminal proceedings. The representative contended that after the Law of Criminal Procedure had entered into force, the domestic remedies in relation to length of criminal proceedings had remained ineffective. Lastly, she contended that it was the domestic court's responsibility to ensure that proceedings were not excessively lengthy and to take into consideration all the circumstances when determining sentence, including the length of the criminal proceedings.

3. The Court

(a) General principles

45. With respect to the alleged breach of the reasonable time requirement in criminal proceedings, the Court has previously recognised that the Contracting States have a certain discretion as to the manner in

which they provide relief, (see *Kudła v. Poland* [GC], no. 30210/96, § 154, ECHR 2000-XI). Various types of remedies could in theory be compatible with the principles enshrined in Article 35 § 1 and Article 13 of the Convention - an effective preventive remedy that expedites the criminal proceedings and subsequently prevents them from becoming unreasonably lengthy; a compensatory remedy that provides adequate redress, pecuniary or non-pecuniary, for any violation that has already occurred; or a combination of both the above (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 74-78, ECHR 2006-V, with further references).

46. The Court has accepted that such forms of non-pecuniary compensatory remedies as discontinuation of criminal proceedings (see *Sprotte v. Germany*, no. 72438/01, 17 November 2005) or mitigation of the sentence (see *Dzelili v. Germany*, no. 65745/01, § 103, 10 November 2005) would be considered as effective in cases of unreasonably lengthy criminal proceedings, so long as the national authorities have acknowledged the infringement in a sufficiently clear way and applied the redress in an express and measured manner (see *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001, and *Moisejevs,* cited above, § 101).

(b) Application to the instant case

47. The Court reiterates its earlier case-law in which it established that during the period when the former Code of Criminal Procedure was in force in Latvia, the individuals concerned were not afforded effective remedies in relation to excessive length of criminal proceedings (see, amongst others, *Korņakovs v. Latvia*, no. 61005/00, § 112, 15 June 2006, and *Moisejevs,* cited above, § 122).

48. The Government argued that the legal situation had changed as from 1 October 2005 when the new Law of Criminal Procedure effective and had set out the principles to be observed in adjudicating criminal proceedings, including the principle that everyone was entitled to completion of criminal proceedings within a reasonable time (see paragraph 16 above). The Government did not argue that the new criminal procedure provided for a mechanism that could be used to expedite the criminal proceedings and prevent them from becoming unreasonably long. Nevertheless, they stated that by virtue of section 14 of the Law of Criminal Procedure in view of the already excessively lengthy criminal proceedings, the applicant could have received a compensatory remedy in the form of termination of the criminal proceedings against him, or, alternatively, the mitigation of his sentence.

49. The Court has, in its case-law, accepted that the termination of criminal proceedings could in principle serve as an effective *ex post-facto* remedy in excessive length of criminal proceedings cases, at least in situations where the remedy was applied on the assumption that the persons concerned could be found guilty (see *Ommer v. Germany (no. 2)*, no. 26073/03, § 58, 13 November 2008). Similarly, a measured reduction of

a sentence compensates or diminishes the consequences arising from excessively long criminal proceedings (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 57, 6 March 2012).

50. The Court observes that following the enactment of the new Law of Criminal Procedure in Latvia the wording of section 14 (5) in combination with sections 379 and 481 of the Law of Criminal Procedure at the material time provided that national courts could discontinue criminal proceedings if these had not been completed within a reasonable time. The amendments of 12 March 2009 to section 14 of the Law of Criminal Procedure, which became effective on 1 July 2009, provided even more expressly that the excessive length of criminal proceedings served as grounds on which the national courts could discontinue criminal proceedings (see paragraph 22 above). The amendments further clarified the meaning of the new principle which was provided by the Law of Criminal Procedure as from 2005 (see paragraph 17 above). It was also supplemented with the amendments to the Criminal Law which expressly authorised the national courts to take into consideration the length of criminal proceedings in determining sentence (see paragraph 24 above).

51. The above overview illustrates that as from 1 October 2005 when the new Law of Criminal Procedure came into force, the national practice with a view to clarifying as much as possible the scope of the principle, and the procedural as well as substantive criminal-law provisions progressively developed. They now provide for a sufficiently clear and precise compensatory remedy that enables defendants to raise complaints of delays in criminal proceedings that have already occurred.

52. The Court acknowledges that there might be certain doubts as to whether, at the material time, the Law of Criminal Procedure was sufficiently clear as to the existence of the compensatory remedy. The Court is nevertheless mindful that the national courts are entrusted with the task of resolving problems of interpretation and application of domestic legislation. Besides, in its earlier case-law the Court has recognised that in order to keep pace with changing circumstances, laws may not be absolutely precise (see, amongst other authorities, *Šoć v. Croatia*, no. 47863/99, § 92, 9 May 2003, with other references), the Court will therefore examine whether at the material time the approach of the national courts in dealing with complaints about lengthy criminal proceedings in practice complied with the principles established by the Court's case-law.

53. Having examined the domestic decisions submitted to it, the Court is satisfied that the application of section 14 of the Law of Criminal Procedure was not limited by temporal restrictions (see *Stefan Kozłowski v. Poland*, no. 30072/04, § 38, 22 April 2008) in that, as demonstrated by the domestic case-law examples, section 14 of the Law of Criminal Procedure had been applied in order to terminate unreasonably lengthy criminal proceedings

instituted before 1 October 2005, that is, the date when the Law of Criminal Procedure became effective.

54. The Court further observes that in four of the five domestic decisions adopted before 2009, the prosecuting authorities or courts had discontinued the criminal proceedings by relying explicitly on section 14 of the Law of Criminal Procedure. The Government have also submitted an example in which, after 1 October 2005, in comparable factual circumstances and by applying the principle of completion of criminal proceedings within a reasonable time, the national court had assessed how the actions of the defendants and the authorities had affected the overall length of the proceedings (see paragraph 26 above). Later decisions from 2009 contained a similar but more elaborate analysis of how the various circumstances of the proceedings had affected their length (see paragraphs 32-33 above).

55. The examples of the national courts' practice show that already before and most notably after the amendments the national courts had carried out a thorough assessment of the complaints about length of proceedings. In addition, the applicant does not contest in his observations the fact that the national court could have taken into consideration the length of the proceedings and reduced the final sentence accordingly (see paragraph 43 above). The above examples do not support the applicant's allegations that the national courts could terminate the criminal proceedings only after the entry into force of the amendments of 1 July 2009. In the light of the above the Court considers that the Government have discharged their burden of proof, whereas the applicant has not put forward any arguments which could absolve him from the requirement to raise the issue of the unreasonable length of criminal proceedings before the domestic courts. It has to be recalled that when a doubt exists as to the effectiveness of a remedy, that remedy has to be tried (see, amongst other authorities, *Reif v. Greece, No 21782/93,* 28 June 1995).

56. In connection with the applicant's allegations that the domestic courts had not assessed the length of the proceedings on its own motion, the Court recalls that, even where domestic courts have to consider matters on their own motion, the applicants are not exempted from the requirement of Article 35 (1) of the Convention (see, amongst other, *Braithwaite v. the United Kingdom* (dec.), no. 15123/89).

57. Observing that it is not in dispute that the national courts could in practice take into consideration the length of criminal proceedings in determining the sentence, and taking note of the national courts' practice in discontinuing unreasonably long criminal proceedings, the Court considers that by failing to lodge before the domestic courts a complaint about the length of the criminal proceedings, the applicant has not exhausted the domestic remedies, without prejudging whether the measure would have deprived the applicant of his status of a victim in the light of the Convention.

58. Relying on the aforementioned considerations, the Court concludes that this complaint must be rejected under Article 35 § 1 of the Convention.

B. Other complaints

59. The applicant also complained of other violations under Articles 6 and 7 of the Convention.

60. 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 the remainder 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 and must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Lawrence Early
Registrar

David Thór Björgvinsson
President