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

FIFTH SECTION

DECISION

Application no. 7239/07
Tors VIESTURS
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 5 July 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 27 December 2006,

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 Tors Viesturs, is a Latvian national, who was born in 1962 and lives in Riga. He was represented before the Court by Ms A. Bērzkalne, a lawyer practising in Riga.

2. The Latvian Government ("the Government") were represented by their Agents, Ms I. Reine and, subsequently, 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. On 5 January 2004 the applicant lodged a civil claim with the Riga City Vidzeme District Court contesting his paternity of a child. By a judgment of 3 May 2005 the Riga City Vidzeme District Court dismissed

the applicant's claim. The applicant lodged an appeal with the Riga Regional Court.

5. The applicant failed to attend the first hearing held by the Riga Regional Court and requested the second hearing to be postponed. At the day of the third hearing both the applicant and his lawyer filed written requests for the hearing to be postponed again. The applicant submitted that he was on a sick leave; his lawyer alleged that she had to attend another hearing in different court proceedings. The court found their absence unjustified, as there was no information in the case file indicating that the applicant's illness would not allow him to participate in the hearing, and as the lawyer's allegations contradicted the documents she had provided. Hence, the court proceeded to examine the applicant's appeal in his absence. By a judgment of 13 December 2005 the Riga Regional Court dismissed the applicant's claim.

6. On 3 May 2006 the Senate of the Supreme Court dismissed the applicant's appeal on points of law and upheld the judgment of the Riga Regional Court. According to the Government, the judgment of the Senate of the Supreme Court was pronounced in the presence of the applicant and his lawyer and the full text of that judgment was made available at the registry of the Supreme Court on 9 May 2006. On the same day it was also sent to the parties to the case. The applicant has not contested these submissions.

7. The applicant alleges that on 18 July 2006 he completed his application form, which he then sent to the Court on 21 July 2006. On 27 December 2006, after having failed to receive a response from the Court, he sent another letter requesting to be informed of the progress of the processing of his complaint. This latter correspondence was received at the Court's Registry on 2 January 2007. It was accompanied by a copy of an application form that carried a copied signature, dated 18 July 2006, and an original signature, dated 21 December 2006.

B. Relevant domestic law

8. With regard to the first-instance and appeal proceedings section 208, in conjunction with section 433, of the Civil Procedure Law provides that a judgment shall be sent within three days to a party to the case that has not participated in the hearing. If a party to the case has taken part in the hearing and the court has pronounced a summary judgment, a copy of the full text of the judgment is sent to him or her within three days after its completion on the basis of a written request.

9. Concerning the judgments in cassation proceedings section 472(4) of the Civil Procedure Law provides that the chairperson of the hearing pronounces the judgment by reading its operative part and announces when the parties to the case will be able to consult the full text of the judgment.

COMPLAINT

10. Invoking Article 8 of the Convention, the applicant complained that he had been deprived of a fair hearing because the appeal court had held a hearing in his absence, disregarding his request to postpone it.

THE LAW

11. The applicant complained under Article 8 of the Convention that his appeal had been examined in his absence. The case was communicated to the Government under Article 6 of the Convention.

1. The parties' submissions

12. The Government argued that the complaint should be declared inadmissible on account of the failure to comply with the six-month time-limit. According to the Government, in civil proceedings there was no obligation under domestic law to send a full text of the final judgment taken by the cassation court to the parties to the case. There was only an obligation to notify the parties to the case of the date when the full text of the judgment would be made available to them. Accordingly, the time-limit started running on 9 May 2006, that is, on the day when the full text of the final judgment was made available at the Registry of the Supreme Court. The present application having been lodged on 27 December 2006, the six-month time-limit had been missed.

13. The applicant did not express his opinion as to the date from which the six-month time-limit should be calculated. Instead, he argued that the application form had been sent to the Court on 21 July 2006, that is, well within the time-limit. As the applicant had received no response from the Court, he had sent the same application form again on 27 December 2006. To that effect the applicant referred to a copy of a document that states:

> "The post office is responsible for the consignments it has accepted for a period of six months from the day of receipt. The sales note is not valid without a post office's date stamp."

14. This document caries a date stamp of 21 July 2006, placed by the Mangaļi post office. The Government contested the reliability of that document on the ground that it contained no name of the sender, no information on the type of correspondence, and no name of the addressee.

15. The applicant has submitted a copy of another document – a post office's sales note no. 251 indicating that a registered postcard, letter or parcel has been accepted by a post office. The sales note carries the address of the central post office in Riga. It also states that the recipient of the aforementioned correspondence is the Court. The date stamp on this sales

note is illegible. It contains no further information. The Government submitted no comments with regard to this document.

2. The Court's assessment

16. The Court reiterates that under the terms of Article 35 § 1 of the Convention it may only examine complaints in respect of which domestic remedies have been exhausted and which have been submitted within six months of the date of the "final" domestic decision (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 68, ECHR 2002-II (extracts)). Where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision the object and purpose of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, 29 August 1997, § 33, *Reports of Judgments and Decisions* 1997-V, see also *Marina v. Latvia*, no. 46040/07, §§ 39-44, 26 October 2010). However, where the domestic law does not provide for service, the Court considers it appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to find out its content (see *Papachelas v. Greece* [GC], no. 31423/96, § 30, ECHR 1999-II).

17. In *Kāns and Others v. Latvia* ((dec.), no. 57823/00, 9 October 2003) the Court accepted the Government's argument that at the relevant time there was no obligation under domestic law to send a final judgment in civil proceedings to the parties to the case. As there was only a requirement to notify the parties of the date on which the full text of the ruling would become available, the six-month time-limit was calculated from the date the judgment was made available. The aforementioned decision concerned the Code of Civil Procedure, which on 1 March 1999 was replaced by the Civil Procedure Law (see also *Perry v. Latvia* (dec.), no. 30273/03, 18 January 2007, with regard to administrative cases under the Code of Civil Procedure). The Court observes that even though the matter is now governed by a different procedural law, the regulation with regard to this specific issue does not appear to have changed. Also currently there is an obligation to serve the judgments of the first- and second-instance courts on the parties to the case that have been absent from the hearing, whereas in the cassation proceedings the court is only obliged to announce a date on which the full text of the judgment would become available (compare *Kāns and Others v. Latvia*, cited above). Accordingly, it is the date when the final judgment was made available that must, in principle, be considered for the calculation of the six-month time-limit. The Court notes that this conclusion is without prejudice to other procedural decisions with regard to which the obligation of service might differ (see *Marina v. Latvia*, cited above, §§ 39-44, concerning the final decisions taken with respect to ancillary complaints). It follows that in the present case the six-month time-limit started running on 9 May 2006.

18. The Court observes that it is the applicant's case that he had sent his application form already on 21 July 2006. Nonetheless, the first communication the Court received from the applicant was sent only on 27 December 2006. Accordingly, the Court will determine on the basis of the documents before it whether the six-month requirement laid down in Article 35 § 1 of the Convention has been complied with (see and compare *Kemevuako v. the Netherlands* (dec.), no. 65938/09, §§ 23 and 25, 1 June 2010; *Fleri Soler and Camilleri v. Malta*, no. 35349/05, § 32, ECHR 2006-X; and *Foxley v. the United Kingdom* (dec.), no. 33274/96, 12 October 1999).

19. In support of his submissions the applicant has provided a copy of a document that contains a post office's date stamp of 21 July 2006 (see paragraphs 13-14 above). However, as noted by the Government, this document does not comprise any information on the sender, the recipient or the type of consignment accepted by the post office. Hence, this document is clearly insufficient to establish that the applicant did indeed send his application form already on 21 July 2006.

20. The other document submitted by the applicant – the post office's sales note no. 251 – only indicates that some correspondence has been sent to the Court (see paragraph 15 above). The date stamp on this sales note is illegible. Besides, it contains no information on the sender. Furthermore, the Court finds no indication in the case file that the two documents would be connected and should be read together. On the contrary, they appear to be issued by two different post offices. Accordingly, also this document does not allow the Court to make any inferences as to the date on which the application form was first dispatched.

21. Accordingly, the Court considers that the date of dispatch of the first correspondence that was actually received at the Court, namely, 27 December 2006, has to be regarded as the date of introduction of the application.

22. It follows that the applicant has not complied with the six-month time-limit and the application 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 28 July 2016.

Milan Blaško
Deputy Registrar

Erik Møse
President