THIRD SECTION

DECISION

Application no. 16999/02
by Sergejs KAPITONOVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 24 June 2008 as a Chamber composed of:

 Josep Casadevall, *President,* Elisabet Fura-Sandström, Corneliu Bîrsan, Boštjan M. Zupančič, Alvina Gyulumyan, Egbert Myjer, Ineta Ziemele, *judges,*and Stanley Naismith, *Deputy* *Section Registrar*,

Having regard to the above application lodged on 12 April 2002,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

Having regard to the partial decision of 5 April 2007,

Having regard to the unsuccessful friendly settlement negotiations,

Having regard to the Government’s request to strike the case out of its list of cases and to the text of a unilateral declaration made with a view to resolving the issues raised by the applicant,

Having regard to the applicant’s comments on the Government’s proposal for a unilateral declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Sergejs Kapitonovs, is a Latvian national who was born in 1968 and lives in Riga. The Latvian Government (“the Government”) are represented by their Agent, Mrs I. Reine.

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

On 31 January 2000 the applicant was found guilty of an aggravated criminal offence and sentenced to a suspended sentence of three years’ imprisonment with two years’ probation. During the probation period the applicant was charged with other criminal offences, relating to several incidents.

On 9 February 2001 a judge of the Latgale District Court of the City of Riga, taking into account the gravity of the offence the applicant was suspected of, and his personality, occupation, age and state of health, decided to remand him in custody as a preventive measure.

On 6 April 2001 a judge of the Latgale District Court, taking into account, *inter alia*, the gravity of the offence the applicant was suspected of, the danger of his absconding and the possibility that he would impede the investigation, extended the applicant’s pre-trial detention.

On 17 April 2001 the applicant’s legal counsel appealed to the Riga Regional Court against the decision of 6 April 2001, stating, *inter alia,* that the applicant had a permanent job and place of residence, and that he had never absconded or impeded the investigation.

On 24 April 2001 the Riga Regional Court upheld the decision of 6 April 2001. It considered that in spite of the submissions of the applicant’s counsel, who was present at the hearing, there was a danger of the applicant’s absconding and a possibility that he would impede the investigation.

On 11 June 2001 a prosecutor from the Riga Regional Public Prosecutor’s Office informed the applicant that in the interests of the pre-trial investigation he was not allowed to meet his relatives or his minor son. This prohibition could only be revoked upon completion of the pre-trial investigation.

On 10 July 2001 the applicant was informed that the prosecutor in charge of the investigation of his case had decided to restrict his right to receive visits and to correspond.

On 8 August 2001 a judge of the Latgale District Court, taking into account the fact that the applicant was suspected of a criminal offence relating to 14 incidents, committed during the probation period, as well as the gravity of the offence, the danger of his absconding and the possibility that he could impede the investigation, extended the applicant’s pre-trial detention until 8 October 2001.

On 28 August 2001 the Riga Regional Court, on the applicant’s appeal, upheld the decision of 8 August 2001. The court took into account the submissions of the applicant, his legal counsel and the public prosecutor. It considered the gravity of the criminal offence the applicant was suspected of and the possibility that he could impede the investigation. The applicant and his counsel were present at the hearing.

On 8 October 2001 a judge of the Latgale District Court, taking into account the gravity of the offence the applicant was charged with, the danger of his absconding and the possibility that he could impede the investigation, extended the applicant’s pre-trial detention until 8 December 2001. The applicant’s legal counsel was present.

On 26 November 2001 the prosecutor informed the applicant that, taking into consideration his personality and the circumstances of the criminal case, it had been decided not to allow him to see his relatives.

On 7 December 2001 a judge of the Latgale District Court, taking into account the gravity of the offence the applicant was charged with, the danger of his absconding and the possibility that he would impede the investigation, extended his pre-trial detention until 30 December 2001.

On 27 December 2001 a judge of the Latgale District Court, taking into account the gravity of the offence the applicant was charged with, the danger of his absconding and the possibility that he would impede the investigation, extended the applicant’s detention on remand until 30 January 2002. The applicant appealed against this decision.

On 18 January 2002, on the applicant’s appeal, the Riga Regional Court upheld the decision of 27 December 2001. The court took into account the submissions of the applicant and the prosecutor, who were present at the hearing. It considered the personality of the applicant, the fact that he had been convicted twice, the danger of his absconding and the possibility that he would commit new criminal offences.

On 29 January 2002 a judge of the Latgale District Court, taking into account the gravity of the offence the applicant was charged with, his personality, the danger of his absconding and the possibility that he would commit new criminal offences, extended the applicant’s pre-trial detention until 28 February 2002. The applicant was not summoned for the hearing and he complained about this to the judge.

On 5 February 2002 the judge replied that, in accordance with the Instruction on the coordination of work organisation, when deciding to impose or extend a preventive measure a judge could summon the person concerned if it was regarded as necessary. In the instant case, she had considered the presence of the applicant unnecessary.

On 18 February and 25 March 2002 the prosecutor informed the applicant that on 15 and 22 March respectively he and co-accused in the case had started to consult the case file and that this period would not be included in the period of pre-trial detention.

On 19 February 2002, on the applicant’s appeal, the Riga Regional Court upheld the decision of 29 January 2002. The applicant was present at the hearing. The court took into account his submissions, the gravity of the offence he was charged with, the danger of his absconding and the possibility that he would commit new criminal offences.

On 28 February 2002 a judge of the Latgale District Court, taking into account the gravity of the offence the applicant was charged with and the fact that the offence related to sixteen incidents, the applicant’s personality and his two previous convictions, the danger of his absconding and the possibility that he could commit new criminal offences, extended the applicant’s pre-trial detention until 20 March 2002. The applicant’s legal counsel was present during the deliberations.

On 1 March 2002 the prosecutor dismissed the applicant’s request to allow him to exchange correspondence with his family members or meet them.

On 15 March 2002 the pre-trial investigation was completed. From that date until 28 March 2002 the applicant and three co-accused took cognisance of the case file.

After 20 March 2002, when the applicant’s pre-trial detention expired, he was kept in detention until 28 March 2002, pursuant to Article 77 § 5 of the Criminal Procedure Code.

On 28 March 2002 the case was transferred to the Riga Regional Court for adjudication. The court received the case on 2 April 2002.

On 3 April 2002 a judge of the Riga Regional Court, without holding a hearing, decided to commit the applicant for trial. The applicant was not summoned and the preventive measure imposed on him was left unchanged. Following this decision, the applicant had five family visits – on 13 May, 18 June, 19 July, 20 August and 20 September 2002.

On 17 May 2002 the judge, in reply to a complaint lodged by the applicant, stated that there had been no grounds to hold a hearing on 3 April 2002; this decision was not subject to appeal.

On 3 September 2002 the judge, in reply to a complaint lodged by the applicant, informed him that, because of the court’s workload, a hearing in his case had been scheduled for 3 February 2003. Regarding the applicant’s pre-trial detention, there were no grounds for changing it. That question had been decided on 3 April 2002. The applicant could raise the issue concerning a change of the preventive measure imposed on him during the hearing on 3 February 2003.

It appears that on an unspecified date the applicant’s case was transferred to the Vidzeme Regional Court for adjudication.

On 16 December 2002 a judge of the Vidzeme Regional Court notified the applicant that the issue concerning the preventive measure imposed on him had been decided and that there were no grounds to revoke it.

On 27 December 2002 the judge of the Vidzeme Regional Court informed the applicant that his case would be adjudicated on 24 March 2003.

On 10 January 2003, in reply to a complaint lodged by the applicant, the judge explained to him that the hearing could not be scheduled earlier than 24 March 2003 because of the court’s workload.

On 24 March 2003 the judge wrote to the applicant informing him that the case would be adjudicated in May 2003.

On 9 April 2003 a judge of the Vidzeme Regional Court informed the applicant that the adjudication of his case had been postponed because of the retirement of the judge who was in charge of his case. The hearing had been rescheduled for 26 May 2003 and another judge would be appointed.

Between 26 May and 9 June 2003 the Vidzeme Regional Court examined the applicant’s case. It remitted the case for additional investigation to the public prosecutor at the Riga Regional Court. The court changed the preventive detention measure imposed on the applicant to a prohibition on changing his residence, which he had to acknowledge by his signature (*paraksts par dzīves vietas nemainīšanu*). The applicant was present at the hearing and requested that the case be transmitted for additional investigation.

On 25 March 2004 a prosecutor of the Riga Region decided to charge the applicant with fraudulent acquisition of property, relating to 18 incidents, and forgery of documents.

Apparently, on 22 April 2004 the additional investigation of the applicant’s case was completed and the case was transferred to the court for adjudication.

On an unspecified date in April 2004 the Riga Regional Court received the applicant’s case.

On 27 April 2004 a judge of the Riga Regional Court decided to examine the case at hearings scheduled for 2 December 2004 to 12 January 2005.

On 13 July 2004 the judge informed the applicant that the hearing in his case had been scheduled in the light of the workload of the judges and the order in which cases were received.

On 14 January 2005 the Riga Regional Court found the applicant guilty of aggravated fraud and forgery of documents and sentenced him, taking into account his conviction by the Talsu District Court of 31 January 2000, to twelve years’ imprisonment and confiscation of property. In establishing the applicant’s guilt, the court relied on incriminating statements made by three co-accused and forty-three witnesses, on seven expert opinions and on documentary evidence.

On 26 January 2005 the judge of the Riga Regional Court informed the applicant that there was no prohibition on corresponding with or meeting his family members.

On 21 February 2006 the Criminal Chamber of the Supreme Court commenced the hearing in the appeal proceedings. The applicant requested the dismissal of his legal counsel at the time and informed the court that he wished to appoint another legal counsel of his own choice. The court accepted the applicant’s request and postponed the hearing.

On 6 March 2006 the Supreme Court informed the applicant that the appeal proceedings would take place between 4 and 6 October 2006.

On 4 October 2006 the Criminal Chamber of the Supreme Court commenced the hearing in the appeal proceedings. The applicant was present and a new lawyer was appointed as his legal counsel. The applicant refused assistance by his newly-appointed legal counsel and requested that another be appointed. This, according to the letter of the Supreme Court, was the reason the appeal proceedings were stopped on 5 October 2006.

On 23 January 2007 the Supreme Court informed the applicant that on 5 October 2006 the appeal proceedings had been postponed and that they would be held between 29 May and 1 June 2007.

On 31 May 2007 the Supreme Court reduced the applicant’s sentence to six years and six months’ imprisonment.

On 1 April 2008 the Senate of the Supreme Court dismissed the applicant’s cassation appeal.

B.  Relevant domestic law

Article 77 § 5 of the Criminal Procedure Code *(Latvijas Kriminālprocesa Kodekss)* applicable at the material time (in force until 1 October 2005) provided that the time taken by defendants to take cognisance of the documents in the investigation file was not taken into account in calculating the length of detention pending trial.

COMPLAINTS

1.  The applicant complained under Article 5 §§ 1 and 5 of the Convention about the unlawfulness of his pre-trial detention after 20 March 2002.

2.  The applicant complained under Article 5 § 3 of the Convention about the length and unlawfulness of his pre-trial detention.

3.  The applicant complained under Article 6 § 1 of the Convention that he was deprived of a trial within a reasonable time.

4.  The applicant complained, without invoking any Article of the Convention, about the prohibition on corresponding and on receiving family visits during his pre-trial detention.

THE LAW

On 5 December 2007 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the applicant. They further requested the Court to terminate the proceedings accordingly.

The declaration provided as follows:

“The Government of the Republic of Latvia represented by [their] Agent Inga Reine (hereinafter – the Government) admit that [the applicant’s] detention, [the] unreasonably lengthy criminal proceedings initiated against the applicant, as well as [the] restrictions on [visits from his] family during his detention did not meet [the] standards enshrined in Article 5, Article 6 and Article 8 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 *ex gratia* to the applicant compensation in the amount of 3,000 euros ([LVL 2,109]), 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] *Kapitonovs v. Latvia* (application no. 16999/02).

The Government undertake to pay the above compensation within three months from the date of delivery 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 shall be transferred to the bank account indicated by the applicant.

This payment will constitute the final resolution of the case.”

The applicant requested the Court to reject the Government’s proposal on the basis that the infringements had not been eliminated and his rights had not been restored. He submitted new complaints about other facts not related to the present case.

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 and the applicant’s statement in respect thereof 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).

The Court considers that under certain circumstances it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (Article 37 § 1 *in fine*) (see *Tahsin Acar*, cited above, § 75).

Relevant factors in this respect include the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases and the impact of these measures on the case at issue. It may also be material whether the facts are in dispute between the parties, and, if so, to what extent, and what prima facie evidentiary value is to be attributed to the parties’ submissions on the facts. Other relevant factors include the question of whether in their unilateral declaration the respondent Government have made any admission(s) in relation to the alleged violations of the Convention and, if so, the scope of such admissions and the manner in which they intend to provide redress to the applicant. The foregoing list is not intended to be exhaustive. Depending on the particulars of each case, it is conceivable that further considerations may come into play in the assessment of a unilateral declaration for the purposes of Article 37 § 1 (c) of the Convention (see, in particular, *Tahsin Acar*, cited above, §§ 76-77, and also *Swedish Transport Workers Union v. Sweden* (striking out), no. 53507/99, 18 July 2006, and *Van Houten v. the Netherlands* (striking out), no. 25149/03, ECHR 2005‑IX).

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 their obligations arising under Articles 5, 6 and 8 of the Convention (see, in particular, *Estrikh v. Latvia*, no. 73819/01, § 127, 18 January 2007; and *Svipsta v. Latvia*, no. 66820/01, 9 March 2006; *Moisejevs v. Latvia*, no. 64846/01, 15 June 2006; *Ž. v. Latvia*, no. 14755/03, 24 January 2008; *Lavents v. Latvia*, no. 58442/00, 28 November 2002; *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, 9 February 2006; *Kornakovs v. Latvia*, no. 61005/00, 15 June 2006; *Jurjevs v. Latvia*, no. 70923/01, 15 June 2006; *Vogins v. Latvia*, no. 3992/02, 1 February 2007; and *Čistiakov v. Latvia*, no. 67275/01, 8 February 2007). The Court has repeatedly found a violation of these obligations and has awarded just satisfaction in accordance with the requirements of Article 41 of the Convention.

Having regard to the specific circumstances of the case, the Government’s admission to violations of Articles 5, 6 and 8 of the Convention with respect to the applicant, as well as their acknowledgment of the general problem and their readiness to tackle it through the adoption of “all necessary measures” with a view to preventing similar violations of the Convention in the future, and the amount of compensation proposed to the applicant, the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)) (see, for the relevant principles, *Tahsin Acar*,cited above, and *Haran v. Turkey*, no. 25754/94, judgment of 26 March 2002).

The Court further notes that this decision constitutes a final resolution of this application only insofar as the proceedings before the Court are concerned. It is without prejudice to the applicant’s right to use other remedies before the domestic courts to claim further compensation in respect of the impugned issues.

In the light of all the above considerations, 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*).

For these reasons, the Court unanimously

*Takes note* of the terms of the respondent Government’s declaration and of the modalities for ensuring compliance with the undertaking referred to therein;

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

 Stanley Naismith Josep Casadevall
 Deputy Registrar President