THIRD SECTION

DECISION

Application no. 6904/02
by Boriss BORISOVS
against Latvia

The European Court of Human Rights (Third Section), sitting on 2 September 2008 as a Chamber composed of:

 Josep Casadevall, *President,* Elisabet Fura-Sandström, Boštjan M. Zupančič, Alvina Gyulumyan, Ineta Ziemele, Luis López Guerra, Ann Power, *judges,*and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 6 March 2002,

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

Having regard to the applicant’s response to the Government’s unilateral declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Boriss Borisovs, is a Latvian national who was born in 1964 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 28 July 1995 the applicant was detained on suspicion of having committed two aggravated burglaries.

On 27 June 1996 the pre-trial investigation of the applicant’s case was completed and it was transferred to the Central District Court of the City of Riga for adjudication.

On 27 June 1997 the Convention entered into force with respect to Latvia.

On 15 September 1999 the Central District Court of the City of Riga found the applicant guilty of the aggravated burglaries he was suspected of and sentenced him to eight years’ imprisonment. In establishing the applicant’s guilt, the court relied on the incriminating statements of ten witnesses and documentary evidence.

On 24 October 2001 the Riga regional Court re-assessed the applicant’s submissions, statements of the witnesses and documentary evidence and reduced the applicant’s sentence to seven years’ imprisonment.

On 22 May 2002 the Senate of the Supreme Court, dismissed the applicant’s cassation appeal.

COMPLAINTS

1.  The applicant complained that his rights guaranteed by Articles 5 § 2 and 6 § 3 (a), (c) and (e) of the Convention were infringed during his pre-trial detention.

2.  Under Article 5 § 3 of the Convention he complained about the length of his pre-trial detention.

3.  The applicant complained under Article 6 § 1 of the Convention about the length of the criminal proceedings against him.

4.  Under Article 6 §§ 1 and 3 (d) of the Convention he complained that his right to a fair trial was breached since the courts refused to summon witness X for examination.

THE LAW

*1.  The complaint under Articles 5 § 2 and 6 § 3 (a), (c) and (e)*

The applicant complained that his rights guaranteed by Articles 5 § 2 and 6 § 3 (a), (c) and (e) of the Convention were infringed during the period of the pre-trial detention.

The Court notes that in addition to his failure to exhaust domestic remedies (the applicant did not submit any information or documents proving that he had complained to competent domestic authorities about the alleged infringements of his rights), the applicant complained about the events which took place prior the adjudication of his case by the first instance court on 15 September 1999 when the applicant was sentenced, i.e. more than six months before the date on which the application was submitted to the Court (6 March 2002). This part of the application must therefore be dismissed as submitted outside the six-month time limit in accordance with Article 35 §§ 1 and 5 of the Convention.

*2.  The complaint under Article 5 § 3*

The applicant complained about the length of his pre-trial detention. Article 5 § 3 of the Convention, in its relevant part, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial.”

The Court notes that the pre-trial detention of the applicant ended with the judgment of the Central District Court of the City of Riga on 15 September 1999, i.e. more than six months before the date on which the application was submitted to the Court (6 March 2002). This part of the application must therefore be dismissed as submitted outside the six-month time limit in accordance with Article 35 §§ 1 and 5 of the Convention.

*3.  The complaint under Article 6 § 1*

The applicant complained about the length of the criminal proceedings against him. Article 6 § 1 of the Convention, in its relevant part, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

On 12 March 2008 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue 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 length of the criminal proceedings [against 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 this case, the Government declare that they offer to pay *ex gratia* to the applicant compensation in the amount of 2,000 euro[s] ([approximately LVL 1,400]), 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] **Borisovs v. Latvia** (application no. 6904/02).

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 amount proposed was not adequate. He asked EUR 25,000 as compensation.

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 notes that under certain circumstances it may 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. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law (see, in particular, *Tahsin Acar*, cited above, §§ 75-77, *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, and also *Kapitonovs v. Latvia* (striking out), no. 16999/02, 24 June 2008).

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 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, *Estrikh v. Latvia*, no. 73819/01, §§ 136-143, 18 January 2007; and *Svipsta v. Latvia*, no. 66820/01, 9 March 2006; *Moisejevs v. Latvia*, no. 64846/01, 15 June 2006; *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; and *Čistiakov v. Latvia*, no. 67275/01, 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 specific circumstances of the case, the Government’s admission to violation of Article 6 § 1 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, *Haran v. Turkey*, no. 25754/94, judgment of 26 March 2002 and *Kapitonovs*, cited above).

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*). Accordingly, this part of the application should be struck out of the list.

*4.  The complaint under Article 6 §§ 1 and 3 (d)*

The applicant complained that he was deprived of a fair trial because of the courts’ refusal to summon witness X for examination. Article 6 §§ 1 and 3 (d) of the Convention, in its relevant part, reads as follows:

“1.  In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... .

...

3.   Everyone charged with a criminal offence has the following minimal rights:

...

(d)  to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ... .”

The Court notes that the applicant did not submit any evidence supporting his allegation that he had requested the courts to summon any additional witness for examination and thus he failed to exhaust domestic remedies. In any event, the applicant was convicted on the basis of substantial evidence and there is no indication that the absence of the person concerned at the hearings impaired his rights under Article 6 § 3 (d) or, more generally, under Article 6 § 1. This part of the application must therefore be dismissed as being manifestly ill-founded pursuant to Article 35 §§ 3 and 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 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.

 Santiago Quesada Josep Casadevall
 Registrar President