THIRD SECTION

**CASE OF ČERŅIKOVS v. LATVIA**

*(Application no. 71071/01)*

JUDGMENT

*This version was rectified on 6 July 2011*

*under Rule 81 of the Rules of Court*

STRASBOURG

31 May 2011

*This judgment is final but it may be subject to editorial revision*

In the case of Čerņikovs v. Latvia,

The European Court of Human Rights (Third Section), sitting as a committee composed of:

 Ján Šikuta, *President,* Ineta Ziemele, Kristina Pardalos, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 10 May 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1.  The case originated in an application (no. 71071/01) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a permanently resident non-citizen of the Republic of Latvia, Sergejs Čerņikovs (“the applicant”), on 6 June 2001.

2.  The Latvian Government (“the Government”) were represented by their Agent, Ms Inga Reine.

3.  On 26 January 2005 the President of the Third Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3). In accordance with Protocol No. 14, the application was subsequently allocated to a Committee of three Judges.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1970 and lives in Rīga.

A.  Pre-trial proceedings

5.  On 30 August 1998 the applicant was taken into custody on suspicion of murders and robbery.

6.  On 2 September 1998 a judge of the Ogre District Court ordered the applicant’s detention on remand.

7.  On 21 October 1998 the Ogre District Court extended the applicant’s detention until 30 November 1998. An appeal lodged by the applicant was dismissed on 13 November 1998 by the Rīga Regional Court.

8.  The Ogre District Court further extended the term of the applicant’s detention on the following dates: on 24 November 1998 until 30 January 1999; on 21 January 1999 until 30 March 1999; on 22 March 1999 until 30 May 1999; on 24 May 1999 until 30 July 1999; on 22 July 1999 until 30 September 1999; on 24 September 1999 until 30 October 1999; on 26 October 1999 until 30 December 1999. All the decisions contained an identical phrase which stated that the judge had taken into accountthe severity of the crime the applicant was suspected of, the danger of his possible absconding and the possibility that he could impede the investigation. The applicant did not appeal to the Rīga Regional Court against the aforementioned decisions.

9.  Meanwhile, on 8 October 1999 the Latgale Regional Court sentenced the applicant to one year and one month imprisonment for an unauthorised acquisition and storage of weapons. The period of detention on remand from 30 September 1998 to 8 October 1999 was included in the term of the sentence, which the applicant served until 30 October 1999.

10.  On 26 May 2000 the final indictment was presented to the applicant, and on 30 May 2000 the judge of the Rīga Regional Court remitted the criminal case for trial. The latter was scheduled to take place on 3 January 2002. By the same decision the preventive measure was left unchanged without giving reasons or setting a time-limit.

B.  Criminal proceedings

11.  In November 2001 the applicant’s lawyer asked the Rīga Regional Court to adjourn the proceedings. On 3 January 2002 the proceedings were adjourned for an unlimited period.

12.  On 6 March 2002 the court informed the applicant that the trial was scheduled to take place on 25 September 2002.

13.  On 1 October 2002, the court granted the request of a co-accused to undergo a psychiatric examination, and stayed the criminal proceedings.

14.  At the lower court’s request, on 1 November 2002 the Senate, in absence of the applicant or his lawyer, extended the applicant’s detention until 1 May 2003. The Senate relied on the serious nature of the charges, and on the necessity to ensure proper conduct of the court proceedings. The decision was not subject to an appeal.

15.  On 28 December 2002 the forensic experts asked for an extension of fifteen days in order to complete their report.

16.  On 27 January 2003 the Rīga Regional Court repeatedly requested the Senate to extend the applicant’s detention on remand. It relied on the fact that the case was particularly complex and that the hearing had been scheduled to take place on 4 June 2003. The Senate, in absence of the applicant or his lawyer, extended the applicant’s detention until 1 July 2003.

17.  From 4 to 11 June 2003 the hearings were repeatedly postponed due to the absence of witnesses.

18.  On 25 June 2003 the applicant was found guilty of two murders and sentenced to sixteen years’ imprisonment. On 2 December 2003 the Rīga Regional Court dismissed the applicant’s appeal, and on 20 August 2004 the Senate of the Supreme Court dismissed the applicant’s appeal on points of law.

C.  Civil proceedings brought by the applicant

19.  During the municipal election campaign, between 27 February and 11 March 2001, two private TV channels broadcasted an advertisement sponsored by a political party in which B., the Prime Minister at the material time, made statements that a candidate promoted by the political party had been credited with tracking down the applicant’s activities.

20.  On 23 May 2001 the applicant brought a civil defamation claim against B., the political party and owners of the TV channels.

21.  On 10 August 2001 the Rīga City Central District Court decided that the case felt within the jurisdiction of the Ogre District Court, which on 30 November 2001, following the defendants’ request, stayed the proceedings pending the outcome of the criminal proceedings against the applicant.

22.  According to the information submitted by the Government, the next hearing had been scheduled to take place on 11 May 2005, but had been adjourned at the applicant’s request; the next one had been scheduled to take place on 30 August 2005.

23.  No further information has been submitted by the parties in respect of the above proceedings.

D.  Alleged interference with the applicant’s right to respect for his family life

24.  On 17 December 1998 the applicant applied to the prosecutor for permission to receive letters from his relatives. On 30 December 1998 the prosecutor dismissed the applicant’s request, and the latter did not appeal. The applicant was allowed to receive short-term visits with his relatives as from May 2000, whereas on 31 August 2000 the Rīga Regional Court granted the applicant a permission to exchange correspondence with his relatives.

II. RELEVANT DOMESTIC LAW

25.  The relevant provisions of the *Code of* *Criminal Procedure* (Latvijas Kriminālprocesa Kodekss) applicable at the material time (in force until 1 October 2005), and other relevant practice are found in *Estrikh v. Latvia* (no. 73819/01, §§ 54-65; 81-82, 18 January 2007).

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

26.  The applicant complained that his detention on remand from 30 August 1998 to 25 June 2003 was excessive and in breach of Article 5 § 3 of the Convention, which 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. Release may be conditioned by guarantees to appear for trial.”

27.  The Government contested that argument.

28.  The applicant did not submit any comments on the Government’s observations.

A.  Admissibility

29. The Government submitted that the applicant failed to exhaust domestic remedies. The Court refers to its earlier case law, where it has dismissed identical preliminary objections raised by the Government, and established that at the time when the present complaint was invoked the applicant did not have effective remedies with respect to excessive length of pre-trial detention (see, amongst, other, *Estrikh,* cited above,§§ 95-104; *Vogins v. Latvia*, no. 3992/02, §§ 25-35, 1 February 2007). Therefore the Government’s objection as to non-exhaustion of domestic remedies must be dismissed.

30.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must, therefore, be declared admissible.

B.  Merits

31.  The Government argued that the period of the applicant’s detention from 30 September 1998 to 30 October 1999 (see paragraph 9 above) falls outside the scope of examination under Article 5 § 3 of the Convention. In addition, the Government relied on the complexity of the criminal case and the particularly grave accusations brought against the applicant, which rendered necessary his continued detention on remand.

32.  The Court agrees with the Government as to the period of detention which falls within the scope of examination under Article 5 § 3 of the Convention, and establishes that the detention under consideration lasted in total three years and nine months.

33.  The Court reiterates that there is a considerable case-law in respect of Latvia as concerns the scope and the nature of the obligations arising under Article 5 § 3 concerning length of detention, where the Court has found a violation of Article 5 § 3 of the Convention on the grounds of insufficient motivation and inadequate proceedings in deciding on continued detention (see, in particular, *Svipsta v. Latvia*, no. 66820/01, §§ 106-113, ECHR 2006‑III (extracts); *Moisejevs v. Latvia*, no. 64846/01, §§ 112-119, 15 June 2006; 72-76; *Čistiakov v. Latvia*, no. 67275/01, §§ 63-68, 8 February 2007). Besides,the Court recognized a systemic problem in relation to the apparently indiscriminate application of detention as a preventive measure in Latvia in the material time (*Estrikh*, § 127).

34.  The Court notes that the existing case-law against Latvia concerns the same period of time and circumstances complained about in the present case. In particular, the applicant’s detention from 30 August 1998 until 30 May 2000 was continuously extended by a decision repeating the same motivation provided in order to justify the initial detention (see paragraph 8 above), whereas as from 30 May 2000 until the adoption of the first-instance judgement the applicant was detained on the basis of a decision which failed to set a time-limit as well as to provide any motivation as to the necessity of the continued detention (see paragraph 10 above).

35.  The foregoing considerations are sufficient to enable the Court to conclude that the applicant’s continued detention was not ordered in compliance with the safeguards enshrined by the Convention.

36.  There has accordingly been a violation of Article 5 § 3 of the Convention.

II.  ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

37.  The applicant complained that the length of the civil and criminal proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

1. Admissibility

1.  Length of civil proceedings

38.  The Court notes that the period to be taken into consideration with respect to civil proceedings began on 23 May 2001 when the applicant lodged a claim aiming to institute defamation proceedings. At the time of communication of the complaint to the Government the civil proceedings had lasted four years before the first-instance court due to the fact that the defamation proceedings were stayed pending the criminal proceedings (see paragraph 21 above).

39.  The Government contended that the civil proceedings had been so far adjudicated within reasonable time.

40.  The applicant did not submit any comments to the Government’s observations, nor has provided further information concerning the outcome of the aforementioned proceedings.

41.  The Court concludes that the applicant has not shown reasonable diligence and has failed to provide the Court with the necessary information needed to examine this part of the complaint under Article 6 of the Convention. It follows that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2.  Length of criminal proceedings

42.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

1. Merits

43.  The period to be taken into consideration with respect to criminal proceedings began on 30 August 1998 and ended on 20 August 2004. It thus lasted five years and eleven months for three levels of jurisdiction.

44.  The Government considered that the length of the criminal proceedings was not excessive and that even if it has taken the trial court two years and four months to commence the adjudication of the criminal case, this delay could not be attributed solely to the national authorities.

45.  The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

46.  In addition to the fact that the particular criminal case was of certain complexity, the Court also notes that on at least two occasions the delays in the proceedings could be to some extent attributable to the applicant or his co-accused (see paragraphs 11 and 13 above). It must nevertheless be noted that after the applicant’s lawyer had requested the postponement of the first hearing, the next hearing was scheduled to take place ten months later. The Court also notes that the applicant’s co-accused cannot be blamed for exercising his defence rights (see, amongst others, *Svetlana Orlova v. Russia*, no. 4487/04, § 46, 30 July 2009). Besides, the delay of four months resulting from the above stay of the proceedings is not significant.

47.  Even assuming that the aforementioned two periods of inactivity of fourteen months were not attributable to the State but only to the accused, the Court is of the opinion that the most significant delays were caused by the fact that the hearings were not fixed at regular intervals. In particular, even though the case was sent to trial within a reasonable time, the first hearing was scheduled to take place on 3 January 2002, namely one year and seven months later, without this delay having been commented on by the Government.

48.  Moreover, even if the Government invited the Court to take into consideration that a judge was allowed to hear only one criminal case at a time, this argument has been already dismissed in examining identical complaints (see, amongst other, *Estrikh v. Latvia*, cited above, § 138,).

49.  Making an overall assessment of the complexity of the case, the conduct of the parties, the fact that throughout the criminal proceedings the applicant was detained on remand, as well as the total length of the proceedings, the Court considers that the latter could not be considered reasonable. There has, therefore, been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

50.  The applicant further complained of a violation of his right to respect for his family life in that during his detention on remand he was denied the right to correspondence with his family members. He relied on Article 8 of the Convention.

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

51.  The Government argued that that this part of the application was out of time.

52.  The Court agrees that since May 2000 the applicant had been granted family visits and that since 31 August 2000 he was authorized to exchange correspondence with his family members (see paragraph 24 above). Moreover it is not aware of any circumstances which could have interrupted the running of the six-month period, which has thus expired in February 2001 (contrast *Hilton v. United Kingdom*, no. 12015/86, Commission decision of 6 July 1988).

53.  Since the applicant submitted the above complaint only in June 2001, it follows that it is inadmissible under Article 35 § 1 as submitted out of time.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54.  Lastly, the applicant also alleged violations under various other articles of the Convention.

55.  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 under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention

V.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

56.  Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

57.  **On his application form the applicant stated that he estimated his pecuniary damage and costs and expenses at 10,000 United States dollars (USD). However, after the communication of the application he failed to submit a claim, within the time allowed to him for that purpose, under any head of damage or in respect of costs and expenses.**

**58.  The Court reiterates that it does not make any award by way of just satisfaction where quantified claims and the relevant documentation have not been submitted within the time-limit fixed for that purpose** **by** **Rule****60 § 1 of the Rules of Court, even if the applicant had indicated his claims at an earlier stage of the proceedings (see** *Fadıl Yılmaz v. Turkey***, no. 28171/02, § 26, 21 July 2005).**

**59.  In accordance with these principles, the Court finds that there is no reason to make any award by way of just satisfaction in the present case.**

FOR THESE REASONS, THE COURT UNANIMOUSLY

1.  *Declares* admissible:

(a) the complaint under Article 5 § 3 concerning the excessive length of the applicant’s detention on remand;

(b) the complaint under Article 6 § 1 concerning the unreasonable length of criminal proceedings;

2.  *Declares* the remainder of the application inadmissible;

3.  *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4.  *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5.  *Holds* that **there is no reason to make an award by way of just satisfaction in the present case.**

Done in English, and notified in writing on 31 May 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Marialena Tsirli Ján Šikuta Deputy Registrar President