THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 16825/02  
by Diāna PLOTIŅA  
against Latvia

The European Court of Human Rights (Third Section), sitting on 3 June 2008 as a Chamber composed of:

Josep Casadevall, *President,* Elisabet Fura-Sandström, Corneliu Bîrsan, Alvina Gyulumyan, Egbert Myjer, Ineta Ziemele, Ann Power, *judges,*and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 28 March 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 observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the further observations submitted by the parties in reply to the Court’s additional questions,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Mrs Diāna Plotiņa, is a Latvian national who was born in 1975 and lives in Jelgava District. She was represented before the Court by Mr T. Klauberg, a lawyer practising in Rīga. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine.

A.  The circumstances of the case

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

3.  On 5 September 1992 the applicant was staying in a café in Jelgava. On the premises there was also a certain K, who at the material time was an employee of the Security Service of the Republic of Latvia (*Latvijas Republikas Drošības Dienests*)[[1]](#footnote-1). K gave his gun to a private person, P, assuring him that the gun was unloaded. However, there was one bullet left in the barrel and the gun fired while P was examining it. Accidentally, the applicant was hit by the bullet. As a result of the injuries, she had to undergo several operations and rehabilitation procedures and was granted the status of a person with a second-degree disability. On the same day a prosecutor of the Jelgava Regional Public Prosecutor’s Office opened criminal proceedings in this connection.

*1.  Criminal proceedings against K*

4.  On 28 October 1992 K was charged with carelessly storing a firearm, under Article 220 of the Criminal Code. The charge was not presented to K as he did not appear at the prosecutor’s office.

5.  In 1992 the Jelgava Regional Public Prosecutor’s Office decided to separate the criminal case against P from the case against K, who had left Latvia in the meantime and had gone to Belarus without the permission of the prosecutor in charge of the case. The pre-trial investigation against K was stayed and he was put on the wanted-persons list.

6.  On 10 September 1997 and 23 February 1998 the applicant complained to the Presiding Prosecutor of Jelgava City about the lack of progress in the investigation of the criminal case against K.

7.  On 3 March 1998 the Jelgava Police Department informed the applicant that K was not wanted by the police any longer. K had been on the wanted-persons list from 12 November 1992 to 1 March 1993. It was established that he was living in Belarus and his extradition had to be decided by the Prosecutor General.

8.  On 20 April 1998 the applicant applied to the Prosecutor General, complaining about the lack of progress in the investigation of the criminal case against K and requesting him to take a decision concerning his extradition.

9.  On 21 May 1998 the Prosecutor General informed the applicant that K was residing in Belarus and the Jelgava City Prosecutor’s Office had requested the Belarusian Embassy to provide information concerning his citizenship. Thereafter it could be decided whether to request the extradition of K or to transfer the proceedings to the Public Prosecutor of Belarus. In addition, the Jelgava City Prosecutor’s Office was requested to speed up the investigation.

10.  On 9 April 1999, upon the applicant’s complaint, the Prosecutor General informed her that the relevant information concerning K’s citizenship had not yet been received. The Jelgava City Prosecutor’s Office was requested to speed up the investigation.

11.  On 29 November 2000, upon the applicant’s complaint of 20 October 2000, the Prosecutor General informed her that the case against K had been closed on 6 April 1999 having regard to the statute of limitations. This decision was quashed and the case returned for additional investigation. The Presiding Prosecutor of Jelgava City was requested to establish whether K could be held liable as a State official because of his previous employment with the Security Service and to conduct the investigation by 20 December 2000.

12.  On 27 December 2000 the Jelgava City Prosecutor’s Office informed the applicant that, in order to proceed with the criminal case against K, additional investigation was necessary.

13.  On 29 March 2001 a prosecutor of the Jelgava City Prosecutor’s Office decided to close the criminal case against K. He acknowledged the accuracy of the events of 5 September 1992 and the status of K at the time, as established in the course of the pre-trial investigation. The prosecutor noted that on 8 September 1992 K had been dismissed from the Security Service for infringement of service discipline. The prosecutor considered that K had not misused his official position on 5 September 1992 and that he could not therefore be held liable in accordance with Article 162 § 2 of the Criminal Code. According to the prosecutor, K could be formally held liable under Article 220 of the Criminal Code as he, when giving his gun to P, being convinced that it was unloaded, had failed to examine the barrel. The prosecutor also established that on 24 December 1992 the registration of K’s domicile in Latvia had been deleted. The prosecutor decided to close the case, in accordance with Article 53 of the Code of Criminal Procedure, taking into consideration the facts that K had been punished at a disciplinary level, that he was residing abroad, that 8 years had passed since the incident and that – although he had committed a criminal offence provided for in the Criminal Code – he personally had not caused a degree of harm such as to justify criminal punishment.

14.  On 23 November 2001 a prosecutor of the Prosecutor General’s Office quashed the decision of the prosecutor of the Jelgava City Prosecutor’s Office of 29 March 2001 as unsubstantiated, and decided to close the criminal case against K having regard to the statute of limitations. She also established that K had committed a criminal offence under Article 220 of the Criminal Code and that he could not be found liable for the criminal offence provided for in Article 162 § 2 of the Criminal Code. In the accompanying letter, the prosecutor informed the applicant that any material issues had to be dealt with in civil proceedings.

*2.  Criminal proceedings against P*

15.  On 28 October 1992 P was charged with unintentional grievous bodily harm, pursuant to Article 110 § 1 of the Criminal Code, and the charge was presented to him on the same day.

16.  On 3 November 1992 the Jelgava Regional Public Prosecutor’s Office decided to separate the criminal case against P from the case against K.

17.  On an unspecified date the prosecutor in charge of the investigation at the Jelgava Regional Public Prosecutor’s Office transferred the criminal case against P to the Jelgava City Court for adjudication.

18.  On 2 December 1992 the applicant submitted to the Jelgava City Court a detailed list of claims for medical and rehabilitation expenses amounting to 115,511 Latvian roubles*[[2]](#footnote-2)* (approximately 578 Latvian lati (LVL); EUR 822). She amended the list on 1 February 1993, claiming an additional 18,400 Latvian roubles (approximately LVL 92; EUR 131) for medical and rehabilitation expenses.

19.  On 3 December 1992 the Jelgava City Court found P guilty of unintentional grievous bodily harm and sentenced him to eight months’ imprisonment. The court left the applicant’s civil claim unexamined, stating that, in order to claim pecuniary damages, the applicant would have to bring civil proceedings.

20.  On 14 January 1993 the Criminal Chamber of the Senate of the Supreme Court upheld the judgment of the first-instance court, which entered into force on the same day.

21.  On 25 January 1993 the enforcement proceedings against P commenced. He was sent to Pārlielupes Prison to serve his sentence.

22.  On 19 April 1993, following an application (*protest*) by the Prosecutor General in the framework of the supervisory review procedure, the Supreme Court decided to transfer the case against P for adjudication *de novo* to the Jelgava City Court. The court acknowledged that the first-instance court had not taken into consideration, when it sentenced P, that he had been sentenced previously for another criminal offence and he had not served the sentence at that time.

23.  On 6 May 1993 P was released after having served his sentence.

24.  On 10 May 1993 the Jelgava City Court received the decision of the Supreme Court of 19 April 1993.

25.  On 17 May 1993, upon the decision of 19 April 1993, the Jelgava City Court scheduled a hearing for 10 June 1993. The hearing was not held as P had left Latvia in the meantime and the court decided to stay the proceedings. On 10 June 1993 the court decided to put P on the wanted-persons list and ordered a precautionary measure, namely his detention on remand.

26.  On 18 June 1993 P was put on the wanted-persons list.

27.  On 9 September 1993 P’s name was deleted from the list as he had been arrested in Russia.

28.  On 15 September 1993 the Jelgava City and District Police informed the Jelgava City Court that P had been detained abroad for burglaries.

29.  The case remained in the court without any progress until an unspecified date in 1997 when a judge of the Jelgava City Court applied to the police, inquiring about the progress of the investigation of the criminal case against P.

30.  On 27 October 1997 the Jelgava Police replied to the judge of the Jelgava City Court, informing him of the events of 18 June and 9 September 1993.

31.  On 3 March 1998 the Jelgava Police Department informed the applicant that P had been on the wanted-persons list from 18 June to 9 September 1993. He had been apprehended in Moscow for robbery and his stay there was being verified.

32.  On 9 March 1998 the Jelgava City Court informed the applicant that it had been decided to stay proceedings in the criminal case against P, as he was wanted by the police.

33.  In its decision of 23 November 2001 concerning the closure of the criminal case against K, the prosecutor of the Prosecutor General’s Office stated that at that date the criminal case against P was still pending before the Jelgava City Court as his whereabouts had not been established.

34.  The Government submitted a letter from the Presiding Judge of the Jelgava City Court dated 6 September 2006, the relevant part of which reads as follows:

“... The criminal case [against P] is currently pending before the Jelgava Court. Apparently it should be closed having regard to the statute of limitations. On 2 December 1992 the [applicant’s] representative submitted a civil claim against [P] for the amount of 115,511 roubles. In its decision on the case, the Jelgava Court left this claim for adjudication in the course of civil proceedings. After adjudication of the case in the court of cassation this judgment entered into force [on 14 January 1993] and the [applicant’s representative] was entitled to submit to a court an application to obtain this amount from [P], which he failed to do. After the annulment of the judgment by the Senate of the Supreme Court [on 19 April 1993] and until the adjudication of the criminal case, the civil claim could not be accepted in the course of civil proceedings in the absence of a judgment declaring [P] guilty. After the examination of the criminal case, or its closure having regard to the statute of limitations, the victim [the applicant] should be given the possibility of submitting a civil claim in the course of civil proceedings. I am of the view that the 10-year time bar for civil proceedings will not be applicable because it ran from 14 January 1993, when the judgment of the Jelgava City Court entered into force, but was suspended on 19 April 1993 when the judgment was quashed. However, I am doubtful of the effectiveness of civil proceedings, taking into consideration the personality of [P] and his location in the Russian Federation and his Russian citizenship ...”.

B.  Relevant domestic law

1. The Code of Criminal Procedure (Latvijas Kriminālprocesa Kodekss), in force until 1 October 2005

35.  Article 5 provided that a criminal case had to be discontinued in accordance with the statute of limitations.

36.  The relevant part of Article 53 provided that a public prosecutor could take a decision on the closure of a criminal case if a person had committed a criminal offence which was provided for by the Criminal Law but of which the consequences were not such as to justify criminal punishment.

37.  Article 101 stipulated that a civil claim could be submitted by persons who had suffered damage as a result of a crime and, irrespective of the amount of the claim, it had to be examined jointly with a criminal case. The civil claim could be brought against the accused or a person who was vicariously liable for the acts of the accused (paragraph 1). The civil claim could be lodged upon the initiation of a criminal case, during pre-trial investigation, or with the court before the adjudication of the case (paragraph 2). If the court stayed the adjudication, the civil claim could be lodged before the beginning of the adjudication and also in the subsequent court hearing (paragraph 3). A person had the right to lodge a civil claim in civil proceedings if the claim had not been brought in criminal proceedings or if the claim had not been adjudicated owing to the discontinuance of the criminal case or a not-guilty verdict (paragraph 7).

38.  Article 308 stipulated that if a civil claim was dismissed after its examination in criminal proceedings, the victim had no right to lodge the same claim in civil proceedings. If a civil claim was left without examination, the victim had the right to file the same claim in civil proceedings.

2.  The Criminal Code (Latvijas Kriminālkodekss), in force until 1 April 1999

39.  Under Article 110, the penalty for unintentional infliction of grievous or moderate bodily harm was up to one year’s imprisonment or a fine of up to ten minimal monthly salaries.

40.  Under Article 162 § 2, the penalty for causing grievous consequences as a result of abuse of an official position was from two to eight years’ imprisonment.

41.  The relevant part of Article 220 provided *inter alia* for imprisonment from three to five years for causing grievous consequences as a result of careless storage and carrying of firearms and ammunition which enabled a third person to use them.

3.  The Law on Civil Procedure (Civilprocesa likums), in force from 1 March 1999

42.  Article 96 § 3 states that a judgment in criminal proceedings is binding in civil proceedings to the extent that it concerns the determination of the offence, for which a defendant has been sentenced, and the liability of the defendant.

43.  The court must stay its proceedings if adjudication of the case is not possible prior to determination of another matter which is required to be adjudicated in accordance with criminal procedure (the relevant part of Article 214).

4.  The Civil Law (Civillikums)

44.  Article 1635 stipulates thatevery wrongful act or failure to act *per se* shall entitle the injured party to claim compensation from the wrongdoer, in so far as he or she may be held liable for such act.

45.  Everyone has a duty to compensate for losses they have caused through their acts or failure to act (Article 1779).

46.  Under Article 1895, all obligation-based rights which have not been expressly exempted from the impact of the statute of limitations, and the use of which is not by law subject to shorter terms, will lapse if the party entitled to them does not use them within a ten-year period.

*5.  The Instruction on the Carrying of Arms and Ammunition, as approved by Order no. 151 of the Security Service of the Republic of Latvia of 7 August 1992* (Latvijas Republikas Drošības Dienesta 7.augusta 1992.gada pavēle nr. 151 par Instrukcijas par bruņojuma un munīcijas glabāšanu apstiprināšanu)

47.  The relevant part of the Instruction prohibits the handing-over of a weapon to other persons.

COMPLAINTS

48.  The applicant complained under Article 6 § 1 of the Convention that her rights to have access to a court and to a trial within a reasonable time had been infringed as the criminal proceedings against K had been discontinued and the criminal case against P had not been adjudicated, thus depriving her of the possibility of claiming damages for injuries inflicted upon her as a result of the crime.

49. The applicant complained under Article 13 of the Convention that she did not have an effective domestic remedy in respect of her complaint under Article 6 § 1 of the Convention.

THE LAW

**A.  The parties’ submissions**

*1.  The Government*

50.  The Government submitted, at the outset, that the Court lacked jurisdiction with respect to the criminal proceedings against P, as the applicant had complained only about the proceedings against K. Secondly, the Government stated that the Court lacked jurisdiction *ratione loci* in the instant case as the Latvian Government could not be held responsible for the actions of another State which refused to extradite its citizens to Latvia. The Government submitted, thirdly, that there was no causal link between the criminal offence K had been charged with and the damage caused to the applicant’s health. In view of the foregoing, the Government submitted that Article 6 § 1 was not applicable in the instant case and the applicant could not claim to be a “victim” within the meaning of the Convention.

51.  In any event, according to the Government, the applicant had failed to exhaust domestic remedies as regards the criminal case against K. In this respect, the Government noted that the decision of 23 November 2001 gave the statutory time bar as a reason for the discontinuance of the criminal proceedings against K and explicitly referred to the applicant’s right to proceed with a civil claim. The Government explained that where criminal proceedings were discontinued because of the statutory time bar, it was not established whether a criminal offence had taken place or whether a person against whom a civil claim had been filed had committed the offence; consequently, a civil court would proceed with examination of the merits of the civil claim in civil proceedings. The Government submitted that, according to the domestic law of Latvia and in the circumstances of the present case, which involved the criminal and civil liability of K, civil liability could be established either by submitting a civil complaint in criminal proceedings or by initiating separate civil proceedings. The Government stressed the importance of civil proceedings in the present case since the applicant had been recognised as a “victim” in the criminal proceedings against K but never a “civil claimant”, as she had not introduced a civil claim in these proceedings. The Government submitted that the applicant, furthermore, had not initiated civil proceedings against K for a decision on his civil liability within the statutory period of ten years, without providing any explanations in this respect. The Government finally noted that the applicant could have submitted a civil claim for compensation against the former employer of K – the State Security Service – but had not done so either. Without providing the names of any cases, the Government stated: “the recent jurisprudence of the Latvian courts clearly evidences that civil claims against an employer whose employee has caused damage to a third party while acting in an official capacity have reasonable prospects of success”.

52.  As regards the criminal case against P, the Government recalled that the judgment of 3 December 1992 had stated that, in order to determine the question of the civil liability of P, the applicant had to initiate civil proceedings – the procedure exceptionally referred to by the criminal courts where the documents submitted to the court adjudicating the criminal case were not sufficient to allow the criminal court to make the necessary assessment and decide upon the extent of the civil liability of a defendant. According to the Government, as the enforcement proceedings regarding the aforementioned judgment had commenced, the applicant had the right to institute civil proceedings, which was, however, subject to the statutory time bar referred to in Article 1895 of the Civil Law. The Government contended that it did not play a material role for deciding on the applicant’s civil claim that the aforementioned judgment had been quashed upon the prosecutor’s application for supervisory review (*protest*) since the adjudication *de novo* of the case would deal only with the fact that P committed the offence at issue during the three-year period of his previous conditional conviction and merely re-assess the applicant’s sentence, without re-adjudicating the issue of P’s criminal liability or determining the applicant’s civil claim. Thus, the prosecutor’s application for review had not deprived the applicant of her right to initiate civil proceedings in order to submit her civil claim against P.

53.  To sum up, the Government reiterated that throughout the whole period following the pre-trial investigation and discontinuance of the criminal cases against K and P, the applicant had had the right to institute civil proceedings and she had not been deprived of this right by the provisions of either the criminal law or the law on civil procedure. Thus, the delay in the investigation and court proceedings in order to establish the criminal liability of K and P had not prevented the applicant from pursuing her civil claims for compensation in civil proceedings.

54.  As to the effectiveness of civil proceedings in the instant case, the Government provided an example of a case where civil courts had awarded compensation for non-pecuniary damage in the absence of a final judgment in a criminal case establishing the criminal liability of a wrongdoer. In that case, which had been adjudicated more than ten years after the alleged ill-treatment had taken place (the courts considered that the period of statutory limitation had started running from the day on which a medical expertise on the plaintiff, stating the bodily harm he had suffered, had been carried out – on 9 or 10 October 1995 – and not from the day on which the injuries had been inflicted upon the plaintiff – 7 June 1995; the plaintiff lodged his claim on 16 September 2005), on 28 December 2005 the first-instance court had awarded the plaintiff LVL 5,000 (approximately EUR 7,114) in compensation for damage caused by an excessive use of force by prison guards as a result of which his state of health had deteriorated sharply and he had had to undergo an operation for spleen extraction. The court had taken into account the fact that the criminal proceedings instituted against the particular prison administration and the Latvian Prison Administration were still pending at the pre-trial investigation stage. At the time the case was examined by the appeal court, the criminal proceedings against the prison guards had been discontinued. Nevertheless, the appeal court had considered that the discontinuance of these proceedings did not preclude it from examining the claim in civil proceedings and had awarded the plaintiff LVL 10,000 (approximately EUR 14,229) on 5 December 2006. The judgment had been upheld by the court of cassation on 25 April 2007.

*2.  The applicant*

55.  The applicant maintained that her right to have access to a court had been breached and that Article 6 § 1 was applicable in the instant case, since the delay in the investigation and court proceedings, both in the case against K and in that against P, had prevented her from pursuing her claims for compensation to date. According to the applicant, the causal link between the conduct of K and the damage sustained in the instant case was confirmed by, *inter alia*, the charge against K under Article 220 of the Criminal Code – infliction of bodily injuries – which presupposed a causal link between the conduct of K and the injury and subsequent damage sustained by the applicant.

56.  As to the exhaustion of domestic remedies in the instant case, the applicant submitted that, in accordance with Article 101 § 7 of the Code of Criminal Procedure, in most cases civil claims were adjudicated in conjunction with criminal matters. As to Article 96 § 3 of the Law on Civil Procedure, a court judgment on a criminal matter, once it had come into lawful effect, was binding on a court adjudicating a matter regarding the civil legal liability of a person only with respect to the issue of whether a criminal act, or failure to act, had occurred and whether that person had committed the act or allowed the failure in question. With regard to Article 241 § 5 of the Law on Civil Procedure, a stay of court proceedings was to be interpreted as a stay of the legal procedure owing to conditions which were such that their continued existence finally excluded the possibility of adjudging the matter on its merits. According to “a legal commentary” on this Article, it was difficult to establish the interconnectedness between the two matters – the matter under adjudication and the “other matter”. Therefore, a court was obliged to assess whether the conditions established by this “other matter”, that is to say a criminal matter, could substantially affect the matter under adjudication and whether there was a reasonable likelihood of such facts being established, the reason being that parties should not be able to prolong unnecessarily the finalising of the procedures or be in a position to obstruct their continuation.

57.  As to the effectiveness of the civil proceedings in the instant case, the applicant submitted that a civil court could adjudge a claim for compensation in the absence of a final judgment in the criminal matter. She also confirmed that such cases were regularly opened and processed in the courts. The applicant submitted: “although it is impossible to furnish information on court cases concerning identical circumstances, [Article 101 § 7 of the Criminal Procedure Code and Articles 96 § 3 and 214 § 5 of the Law on Civil Procedure] and the scholarly opinions clearly indicate that a civil court in the absence of final judgments in criminal cases against K and P could adjudge claims for compensation, and therefore the initiation of civil proceedings in order to claim compensation provided the applicant with reasonable prospects of success”. The applicant provided two examples of judgments, rendered on 12 October 2004 and 26 January 2005 respectively, where a civil court of appeal had admitted that there was no legitimate reason to stop the [civil] proceedings before the examination of the criminal case linked to those proceedings. This, according to the court, was in conformity with Article 214 § 5 of the Law on Civil Procedure.

*3.  The Government’s further comments on the applicant’s observations*

58.  In reply to the applicant’s observations, the Government submitted that in general they concurred with the applicant’s conclusions regarding the effectiveness of civil proceedings in the absence of a final judgment in criminal proceedings and her interpretation of Article 96 § 3 and Article 241 § 5 of the Law on Civil Procedure. The Government were, however, reluctant to agree with the applicant’s statement that “in most cases civil claims were adjudicated in conjunction with criminal matters” since no relevant substantiating evidence had been provided to support this statement. Furthermore, the Government pointed out that the final and binding interpretation of the law lay exclusively within the court’s own legal competence and did not necessarily follow the opinion expressed by a particular legal scholar or academic. The Government provided further examples of the case-law of the Civil Division of the Rīga Regional Court. In a judgment of 7 February 2007, the court had awarded a victim compensation for inflicted bodily injuries although criminal proceedings against the perpetrator had been discontinued by a criminal court. In a judgment of 9 February 2007, the court had examined a civil claim brought against certain State institutions on compensation for non-pecuniary damage in respect of allegedly unlawful interference with the claimant’s right to private and family life. The court, considering that it had not been established for what purpose the claimant’s telephone conversations had been wiretapped, although this had been formally authorised by a judge, had found the wiretapping unlawful and awarded the claimant compensation in this respect. At the same time, criminal proceedings were pending regarding the aforementioned facts. According to the Government, these two examples clearly indicated that the Latvian courts could decide upon the civil responsibility of the alleged wrongdoer in the absence of a final judgment in the criminal proceedings establishing the criminal responsibility of the alleged wrongdoer.

**B.  The Court’s assessment**

*1.  The general principles established by the Court’s case-law*

59.  Article 6 of the Convention does not apply to proceedings instituted against third parties unless the determination of civil rights and obligations is at stake (see *Moreira de Azevedo v. Portugal*, judgment of 23 October 1990, Series A no. 189, p. 17, § 67). Hence, for the purposes of establishing the applicability of Article 6 § 1 in the instant case, the question has to be examined whether the proceedings in issue concerned a dispute over the applicant’s “civil rights” (see, *mutatis mutandis*, *Acquaviva v. France*, judgment of 21 November 1995, Series A no. 333‑A, § 45). The Court reiterates in this respect that the concept of “civil rights” has an ‘autonomous’ meaning under the Convention which cannot be defined solely by reference to the way in which it is viewed under the domestic law of the respondent State (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 88, and *Ringeisen v. Austria*, judgment of 16 July 1971, Series A no. 13, § 94). However, according to the principles laid down in the Court’s case-law, the legislation of the State concerned is not without importance (see *Perez v. France* [GC], no. 47287/99, §§ 57-75, ECHR 2004‑I) and the Court must ascertain whether there was a dispute over a “right” which can be said, at least on arguable grounds, to be recognised under domestic law (see *Zander v. Sweden*, judgment of 25 November 1993, Series A no. 279‑B, § 22, and *Kerojärvi v. Finland*, judgment of 19 July 1995, Series A no. 322, § 32). The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and finally, the outcome of the proceedings must be directly decisive of the right in question (see *Hamer v. France*, judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996‑III, § 73, and *Acquaviva v. France*, cited above, § 46). The Court notes that Article 6 § 1 is not applicable solely to proceedings which are already in progress, it may also be relied on by anyone who considers that an interference with the exercise of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1 (see *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 23 June 1981, Series A no. 43, § 44). The Court also observes that a dispute in the aforementioned context can include not only disputes between two individuals but also disputes between an individual and a public authority (see *König v. Germany*, cited above, § 90). Finally, the Court recalls the general principles in respect of exhaustion of domestic remedies (see *Estrikh v. Latvia*, no. 73819/01, §§ 92-94, 18 January 2007).

*2.  Application of these principles in the instant case*

60.  The Court, first of all, dismisses the Government’s argument that it lacks jurisdiction in respect of the proceedings against P as the applicant in her complaints addressed to the Court referred explicitly to both proceedings, the proceedings against P and the proceedings against K. Secondly, as regards the Government’s allegations on applicability *ratione loci*, the Court observes that neither the Belarusian nor the Russian authorities refused to extradite P and K. According to the facts of the case, such request was apparently once made to the Belarusian Embassy but was never made to the Russian authorities. The Government did not provide any evidence to the contrary. Thirdly, the Court, taking into consideration Article 1635 of the Civil Law and the facts of the case, agrees with the applicant’s submission that the wrongful acts of K and P entitled her to claim compensation for the damage sustained as a result of the injury and therefore conferred on her ‘civil rights’ falling within the *ratione materiae* scope of the Convention.

59.  The Court observes that the applicant made a claim for pecuniary damages, which she submitted to the Jelgava City Court on 2 December 1992, in the framework of the criminal proceedings against P which commenced on 5 September 1992. On 3 December 1992 the Jelgava City Court stated in its judgment that she had to initiate civil proceedings against P in order to claim damages, which the applicant failed to do. She never submitted civil claims either against K or his former employer – the Security Service. The Court further notes that the applicant was instructed to submit the claim by initiating civil proceedings against K by the prosecutor of the Prosecutor General’s Office on 23 November 2001. The applicant did not provide any explanation as to why she did not try to bring civil proceedings against K, P or the Security Service, even though she had been advised by the national authorities to do so and there was a clear and sufficient basis in national law. She did not indicate whether there were any valid reasons why she had failed to bring the proceedings, any obstacles preventing her from doing so or whether it put an excessive burden on her. The Court can accept the applicant’s complaints about the length and ineffectiveness of the criminal proceedings and recognises that this might have had an effect on the applicant’s civil rights; however, the fact remains that she did not use the available civil remedies and, as for criminal proceedings, there is no right under the Convention to have other individuals prosecuted (see, *mutatis mutandis*, *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 51, ECHR 2002‑I).

62.  The Court notes from the additional observations submitted by the applicant that, according to her, adjudication of civil matters without a final judgment in criminal proceedings giving rise to those civil matters was possible. Moreover, the applicant explicitly stated that initiation of civil proceedings against P and K would have provided her with reasonable prospects of success. The Court lastly observes that even if the Presiding Judge of the Jelgava City Court in his letter of 6 September 2006 expressed doubts as to the effectiveness of such a remedy in the present case – namely the initiation of civil proceedings against P – in view of its special circumstances, he did not call into question the remedy as such.

63.  Against this background, taking into account the additional observations of the Government, in particular the examples from the case-law of the Latvian courts, and bearing in mind its subsidiary role, the Court comes to the conclusion that the application should be dismissed for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Santiago Quesada Josep Casadevall  
 Registrar President

1. The Security Service of the Republic of Latvia was established on 26 August 1991, by a decision of the Supreme Council of the Republic of Latvia of 26 August 1991. According to Decree No. 509 of the Cabinet of Ministers dated 22 November 1994, as of 28 November 1994 the Security Service of the Republic of Latvia was renamed as the Security Service of the President of the Republic of Latvia and the Parliament. [↑](#footnote-ref-1)
2. The Latvian rouble was emitted on 4 May 1992. In 1993 the Latvian national currency lats was emitted; the exchange rate was 1 lats= 200 Latvian roubles. [↑](#footnote-ref-2)