THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13295/02
by Jurijs GAĻINS
against Latvia

The European Court of Human Rights (Third Section), sitting on 22 November 2007 as a Chamber composed of:

 Mr B.M. Zupančič, *President*,
 Mr C. Bîrsan,
 Mrs E. Fura-Sandström,
 Mrs A. Gyulumyan,
 Mr E. Myjer,
 Mrs I. Ziemele,
 Mrs I. Berro-Lefèvre, *judges*,
and Mr S. Naismith, *Deputy* *Section Registrar*,

Having regard to the above application lodged on 8 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 failure of the applicant to submit observations in reply,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jurijs Gaļins, is a Latvian national who was born in 1975 and is currently serving his sentence in Grīvas Prison, Daugavpils District. The Latvian Government (“the Government”) were represented by their Agent, Mrs I. Reine.

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

On 16 October 1998 the applicant was arrested on suspicion of having committed murder. On the same date the applicant was interrogated; he confessed and indicated the location of a body.

On 19 October 1998 a judge of the Rīga District Court decided to detain the applicant on remand.

On 21 October 1998 the applicant, naming as his accomplices O.T. (who had died on 15 June 1998) and S.J., confessed that on unspecified dates he had committed burglaries in two summer cottages.

On 13 November 1998 the applicant was charged with murder.

On 19 and 25 November 1998 criminal proceedings in respect of the burglaries were initiated against the applicant. On 26 November 1998 these criminal cases were joined.

On 3 December 1998 and 2 February 1999 a judge of the Rīga District Court, in the context of the criminal proceedings regarding the murder, extended the applicant’s detention on remand until 16 February and 16 March 1999 respectively.

On 16 February 1999 the prosecutor in charge of the investigation of the murder ordered that the applicant undergo a psychiatric examination, which was carried out on 26 February 1999. According to the expert report, the applicant was of sound mind and thus accountable for the murder.

On 4 March 1999 the criminal cases concerning the murder and the burglaries were joined.

On 15 March 1999 a judge of the Rīga District Court extended the applicant’s detention on remand until 16 May 1999.

On 7 May 1999 the murder charge against the applicant, which at the time involved an accomplice K.P., was supplemented with the charges in respect of the burglaries committed with accomplices S.J. and O.T.

On 16 May 1999 the final bill of indictment was presented to the applicant, S.J. and K.P.

On 31 May and 7 June 1999 respectively the criminal cases were sent to the Rīga Regional Court for adjudication.

On 26 and 28 July 1999 respectively a judge of the Rīga Regional Court, who was in charge of the adjudication of the applicant’s case, committed him, K.P. and S.J. for trial, joined the criminal cases and scheduled a hearing for 13 to 24 November 2000. On an unspecified date before 25 September 2000 the judge died.

On 25 September 2000 the applicant informed the Rīga Regional Court and the Prosecutor General about his intention to begin a hunger strike as a sign of his protest against the delay in setting a date for the trial. On 2 October 2000 he commenced a hunger strike, which apparently lasted for ten days, requesting that a date be set for a hearing in his case. On 11 October 2000 the applicant informed the President of the Rīga Regional Court that he had been on a hunger strike since 2 October 2000 and requested that a hearing be scheduled. The applicant also expressed his concerns regarding the recent death of the responsible judge and its impact on the adjudication of his case.

On 12 October 2000 the applicant was informed that his case had been transferred to another judge of the Rīga Regional Court and that the hearing had been set for 15 January 2001.

The hearing did not commence as planned on 15 January 2001 because there was no court room available; it was adjourned for a day.

The hearing started on 16 January 2001; however, it was adjourned as S.J. failed to appear.

On 18 January 2001 the hearing was resumed but it was postponed as one of the key witnesses failed to appear.

On 19 January 2001 the hearing was resumed. During the hearing the applicant asked the court to order a psychiatric examination. This petition was rejected as the applicant had already undergone such an examination during the pre-trial investigation on 26 February 1999.

On 29 January 2001 the Rīga Regional Court convicted the applicant of aggravated murder, robbery and theft and sentenced him to eleven years’ imprisonment. The applicant appealed against the judgment.

On 24 April 2001 the Criminal Chamber of the Supreme Court declared the applicant’s appeal admissible and scheduled the hearing for 29 May 2001.

On 29 May 2001 the Criminal Chamber of the Supreme Court held a hearing. On the applicant’s request, the court ordered his medical examination in a psychiatric hospital. The applicant was examined at the hospital between 25 June and 24 July 2001, when the medical experts carrying out the examination declared the applicant of sound mind and thus accountable for the criminal offences of which he had been convicted by the Rīga Regional Court.

The appeal court resumed the hearing on 21 November 2001. The court dismissed the applicant’s complaint about the expert opinion of 24 July 2001 and upheld the judgment of the first instance court. The applicant filed a cassation appeal against this decision on 7 February 2002.

On 26 February 2002 the Senate of the Supreme Court by a final decision dismissed the applicant’s cassation appeal.

The applicant is currently serving his sentence.

COMPLAINTS

1.  The applicant complained that the length of his detention on remand was in breach of Article 5 of the Convention.

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

THE LAW

The applicant’s first complaint relates to the length of his detention on remand, which – as he was arrested on 16 October 1998 and the first instance court delivered its judgment on 29 January 2001 – lasted two years, three months and 13 days.

According to the applicant, the length of his pre-trial detention was contrary to Article 5 of the Convention.

The Government submitted that the applicant’s complaint about the alleged violation of Article 5 § 3 of the Convention should be declared inadmissible on account of the applicant’s failure to submit his application within the six month time limit from the final decision, as required by Article 35 § 1 of the Convention. The Government, referring to the Court’s case-law and, in particular, the *B. v. Austria* judgment of 28 March 1990, Series A no. 175, §§ 34-40, stated that the first instance court’s judgment in the instant case had put an end to the period of the applicant’s detention on remand and thus should be considered the final decision for the purposes of Article 35 § 1. Consequently, noting that the application was introduced on 3 September 2001, the Government pointed out that it was submitted out of time, as the six month time limit for introducing the complaint about the applicant’s pre-trial detention expired in July 2001. Accordingly, the Government asked the Court to declare the present complaint inadmissible pursuant to Article 35 § 1 of the Convention. The Government further submitted that the applicant had failed to exhaust domestic remedies in the instant case.

The Court recalls that in accordance with Article 35 § 1 of the Convention, it may only examine complaints which have been submitted within six months of the date of the “final” domestic decision or of the end of a continuing situation of which the applicant complains (see *Danov v. Bulgaria*, no. 56796/00, §§ 56 and 57, 26 October 2006 and *Ječius v. Lithuania*, no. 34578/97, § 44, ECHR 2000‑IX). Under the Court’s case-law, Article 5 § 3, which guarantees the right for everyone detained to be tried within a reasonable time, applies only in the situation envisaged in Article 5 § 1 (c), with which it forms a whole (see *Ciulla v. Italy*, judgment of 22 February 1989, Series A no. 148, p. 16, § 38). A person convicted at first instance is in the position provided for by Article 5 § 1 (a) which authorises deprivation of liberty ‘after conviction’ (see *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, p. 14, § 36). Leaving aside the question of exhaustion of domestic remedies in the present case, the Court observes that the Rīga Regional Court delivered its judgment on 29 January 2001, i.e. more than six months before the application was introduced (8 March 2002 and not 3 September 2001, as stated by the Government), with the result that this complaint was submitted out of time. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

The second complaint relates to the length of the proceedings, which began on 16 October 1998 and ended on 26 February 2002, thus lasting for three years, four months and 10 days.

According to the applicant, the length of the proceedings was in breach of the “reasonable time” requirement laid down in Article 6 § 1 of the Convention.

The Government disagreed with the applicant. They noted first of all that the pre-trial investigation lasted only for nine and a half months as it was completed on 26 July 1999, when the applicant was committed for trial. The Government drew the Court’s attention to the complexity of the criminal proceedings against the applicant, as they involved several criminal offences and three accomplices. The Government acknowledged that the first instance court needed one and a half years to commence the adjudication of the applicant’s case. However, they considered that the delay could not be attributed solely to the national authorities. Thus, the Government asked the Court to take into consideration that a judge is allowed to hear only one criminal case at a time and that the applicant’s case was scheduled in the order of its registration at the court. The Government pointed out that the applicant complained about the delayed hearing only one year and two months after he was committed for trial, assuming that it was because of the death of the judge who was in charge of the adjudication of the applicant’s case. This, according to the Government, caused a certain delay in the present proceedings. However, the national authorities took all necessary steps and scheduled the hearing for the earliest date possible – 15 January 2001 – as the judge who was newly appointed needed some time in order to become acquainted with the case. The Government further submitted that the conduct of one of the co-accused and one of the witnesses led to the hearing being adjourned twice. As to the appeal proceedings, the Government was of the opinion that they were properly conducted. Furthermore, the Government recalled that the delay was caused because of the applicant’s request for a psychiatric examination, which was granted and thereafter assessed by the appeal court. Finally, the Government noted that the proceedings before the cassation court were prepared and adjudicated within just one month. Accordingly, the Government submitted that this part of the application was manifestly ill-founded or there had been no violation of Article 6 § 1 of the Convention. In addition, the Government pointed out that the applicant had failed to exhaust domestic remedies. Pursuant to the judgment of the Constitutional Court of Latvia of 5 December 2001 in case no. 2001-07-0103, if the applicant believed that his rights were infringed in the instant case, he could have submitted a claim for compensation to a court, which – in the Government’s view – was an effective and accessible remedy, providing reasonable prospects of success.

As regards the exhaustion of domestic remedies, the Court notes the Government’s submissions that Latvia recognises the right to compensation if the right to a fair trial within a reasonable time has been violated. However, the language of the Constitutional Court’s decision is general (see *Kornakovs v. Latvia*, no. 61005/00, §§ 53 and 54, 15 June 2006) and the Government has not supplied the Court with any examples where the principle announced by the Constitutional Court has worked in practice as concerns the issue of the length of proceedings. The Court has therefore doubts as concerns the effectiveness of this remedy but it will not examine this issue further since the application is in any event inadmissible for the following reason.

The Court observes that the applicant’s conduct did not contribute to the delay in the commencement of the adjudication of his case and recalls that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see *Estrikh v. Latvia*, no. 73819/01, § 138, 18 January 2007). The Court acknowledges, however, that the instant case was rather complex (it involved three different criminal offences and three accomplices) and that the pre-trial investigation and the appeal and cassation proceedings were conducted speedily. As to the first instance court proceedings, the Court notes that the applicant did not object to the trial dates initially scheduled but started complaining about the delays in adjudication of his case only after the death of the judge. The Court accepts that a certain delay in the adjudication of the applicant’s case was caused by the death of the judge. However, it considers that the period of approximately four months between this *force majeure* circumstance and the adjudication of the applicant’s case, involving the appointment of another judge who had to get acquainted with the case, cannot be considered as excessive, having regard to the complexity of the case. Taking into account the aforementioned factors, the fact that certain delays in the instant case were to the applicant’s advantage (the postponement of the hearing because of the failure of the key witness and the co-accused to appear before the court, the ordering, carrying out and assessment of the psychiatric examination) and the fact that the overall length of the criminal proceedings was less than four years before three levels of jurisdiction, the Court considers, in the light of the criteria established in its case-law, that the length of the proceedings did not exceed a “reasonable time”. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Decides* to discontinue the application of Article 29 § 3 of the Convention, and

*Declares* the application inadmissible.

 Stanley Naismith Boštjan M. Zupančič
 Deputy Registrar President