FOURTH SECTION

DECISION

Application no. 21694/06
Harijs KROŅKALNS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 17 September 2013 as a Chamber composed of:

 David Thór Björgvinsson, *President,*

 Ineta Ziemele,

 Päivi Hirvelä,

 Ledi Bianku,

 Vincent A. De Gaetano,

 Paul Mahoney,

 Faris Vehabović, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 18 April 2006,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Mr Harijs Kroņkalns, is a Latvian national born in 1926 living in Riga (“the applicant”). He was represented by Ms D. Rone, a lawyer practising in Riga.

2.  The Latvian Government (“the Government”) were represented by their former Agent, Mrs I. Reine and subsequently by their present Agent, Mrs K. Līce.

A.  The circumstances of the case and applicable legislation

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

1.  The applicant’s arrest and labour during the Second World War

4.  During the Second World War the applicant was arrested by occupying German forces in Riga. He was first forced to work in Riga but was later transferred to Stende (more than 100 kilometres away) where he and others were made to live under guard in barracks and forced to work as forest labourers. On 3 December 1943 he managed to escape and to return to Riga.

5.  On 2 March 1944 the applicant was re-arrested and taken to the Central Prison in Riga. According to him, he was made to work in the prison and was also sent to work in the Vecmīlgrāvis district of Riga.

6.  Amidst preparations for a transfer of prisoners to Germany on 2 October 1944 he managed to escape, remaining in hiding until the Soviet Army reached Riga on 13 October 1944.

2.  Setting up of the compensation scheme

7.  On 2 August 2000 the *Bundestag* adopted the Creation of a Foundation for “Remembrance, Responsibility and Future” Act (*Erinnerung, Verantwortung und Zukunft* in German; hereinafter “the German Foundation” and “the German Act”). It entered into force on 12 August 2000. Its purpose was “to make financial compensation available through partner organisations to former forced labourers” and other victims of the National Socialist regime (section (2)(1)). The Foundation allocated 8.1 billion deutschmarks for distribution to the victims through the partner organisations, including 835 million deutschmarks for the partner organisation responsible for Russia, Latvia and Lithuania (section 9(2)(3)). Section 10(1) delegated full responsibility for decisions concerning the payment of compensation to the partner organisations.

8.  Section 11(1) limited the eligibility to compensation to the following groups:

“1.  persons who were detained in a concentration camp as defined in Section 42, Paragraph 2 of the German Indemnification Act or in another place of confinement outside the territory of what is now the Republic of Austria or a ghetto under comparable conditions and were subjected to forced labour;

2.  persons who were deported from their homelands into the territory of the German Reich within the borders of 1937 or to a German-occupied area, subjected to forced labour in a commercial enterprise or for public authorities there, and detained under conditions other than those mentioned in [subsection (1)], or were subjected to conditions resembling detention or similar extremely harsh living conditions ... ”

9.  Section 12(1) clarified that “specific characteristics of other places of confinement referred to in [subsection (1)] are inhumane conditions of detention, insufficient nutrition, and lack of medical care”.

10.  Lastly, section 19 obliged partner organisations “to create appeals bodies that are independent and not subject to external intervention”.

11.  The partner organisation responsible for the Russian Federation and the Republics of Latvia and Lithuania was the Foundation for Mutual Understanding and Reconciliation (*Фонд взаимопонимания и примирения* in Russian; hereinafter “the Russian Foundation”), incorporated under Russian law as a State institution and managed by the Russian Government.

12.  On 13 January 2001 the Cabinet of Ministers of the Republic of Latvia authorised the Latvian State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*; “the VSAA”) to conclude an agreement with the Russian Foundation to lay down a procedure for accepting and processing applications from people potentially eligible for compensation. Under section 3 of the Law on International Agreements of the Republic of Latvia (*Par Latvijas Republikas starptautiskajiem līgumiem*) the Cabinet of Ministers took decisions to enter into international agreements. However, at the relevant time decisions concerning international agreements that pertained to peace, the basics of international relations, the army and its dislocation, borders, membership in customs unions, free trade areas and economic, military and political unions, as well as agreements concerning the presence and status of foreign military forces in Latvia, had to be taken by Parliament.

13.  On 10 July 2001 the VSAA concluded an agreement with the Russian Foundation, by which the VSAA was designated as “the central institution for accepting [compensation] applications”. In this capacity the VSAA was authorised, among other things, to receive and register applications and supporting documents, to translate the received applications and supporting documents into Russian, to forward the received applications to the Russian Foundation, to inform the public about the availability of compensations and so forth. Its functions with respect to the processing of applications were limited to ensuring that they were complete and supported by the necessary documentation.

14.  People seeking compensation could choose to submit their applications either directly to the Russian Foundation or by using the VSAA as an intermediary. In either case, decisions concerning applications were to be made by the Russian Foundation.

15.  Article 8 of the agreement provided that an “appeals body” (*pārsūdzības institūcija*) was to be set up in order to examine complaints about decisions taken with regard to applicants residing in Latvia. Article 8 specified that the appeals body was to be “independent and not subject to intervention”. Depending on where the original application had been submitted, the applicants could lodge their appeals with either the Russian Foundation or the appeals body. Article 8(3) stated that the appeals body was to be composed of three members appointed by the German Foundation, the Russian Foundation and the VSAA (a representative of each). The latter two members had to be approved by the German Foundation. The president of the appeals body was to be the member appointed by the German Foundation. The decisions of the appeals body were to be taken by majority vote. Organisational and technical support was to be provided by the VSAA. The appeals body’s meetings were to take place in Riga.

16.   Appeals and supporting documents were to be received by the VSAA and sent to the organisation with jurisdiction over the specific appeal – either the appeals body or the Russian Foundation. The appeals body had the authority to review decisions concerning applications with regard to both the substance of the decision and the amount of the compensation. Article 9(7) provided that decisions taken by the appeals body were final.

3.  The applicant’s claim for compensation

17.  On 22 October 2001 the applicant lodged a completed application form with the VSAA seeking compensation for the time he had spent in Stende and the Central Prison in Riga. In support of his application he appended an information note issued by the Latvian State Archives confirming that from 2 March to 2 October 1944 he had been imprisoned in Riga for fleeing from transport organised by the German army.

18.  His application was forwarded to the Russian Foundation.

19.  On 20 April 2004 the Russian Foundation issued a decision concerning the applicant’s claim. It said that he had been transferred from his residence to somewhere else in the German-occupied territory which was nevertheless within the Latvian borders as they had been in 1937. Since the applicant had neither been in a concentration camp or a ghetto within the meaning of section 11(1)(1) of the German Act, nor a camp or prison classed as “another place of confinement” by the German Foundation, it was decided that he had no right to compensation.

20.  On 17 June 2004 the applicant appealed, insisting that he had been subjected to forced labour “in another place of confinement”.

21.  On 18 January 2005 the applicant was informed that the appeals body had met in Riga on 29 September 2004 in his absence and, after reading the documents he had submitted, had found no reason to alter the Russian Foundation’s decision.

22.  On 10 February 2005 the applicant submitted a complaint to the Latvian ambassador in Germany, who forwarded his letter to the appeals body. On 13 April 2005 the applicant amended his complaint by explaining that from the Central Prison of Riga he had been transported to Vecmīlgrāvis, where he and other prisoners had been forced to make wooden building materials for constructing German army barracks.

23.  On 13 April 2005 the applicant was heard by the appeals body. On 21 April 2005 he received a written decision stating that the Central Prison had not been classed as “another place of confinement”. He could therefore only receive compensation if he had been a forced labourer. After considering the applicant’s amendments to his complaint, the appeals body requested additional information from the Latvian State Archives.

24.  On 28 April the State Archives informed the appeals body that it had found no information about forced labour being carried out by prisoners of the Riga prison between 2 March and 2 October 1944.

25.  For that reason on 9 June 2005 the appeals body refused to re-open the applicant’s case.

4.  The applicant’s appeal to the administrative courts

26.  On 29 August 2005 the applicant lodged an appeal with the Administrative District Court, seeking a dismissal of the appeal body’s decision.

27.  On 31 August 2005 the District Court refused to allow the applicant’s appeal. It held that under section 103 of the Law of Administrative Procedure, the substance of administrative proceedings was the judicial review of the legality of administrative acts and actions of a public authority (*iestādes faktiska rīcība*). Under section 1(1) of the same Law “an institution” was defined as a legal entity on which specific public authority powers concerning State administration have been conferred by a law or regulation or a public law contract.

28.  It appeared from the co-operation agreement concluded between the Russian Foundation and VSAA that the partner organisation within the meaning of the German Act was the Russian Foundation. According to the co-operation agreement, decisions of the appeals body were final and not amenable to further appeal. The court held that the appeals body did not exercise State functions and did not act in the field of public law. For that reason it was held that it was not “an institution” and its decisions were not administrative acts, but instead decisions taken in the field of private law.

29.  On 13 September 2005 the applicant lodged an ancillary complaint against the decision of the first-instance court. He argued that since the German Foundation had been established by law, its subdivision – the appeals body – was “an institution” within the meaning of the Law of Administrative Procedure.

30.  On 28 November 2005 the Administrative Regional Court dismissed the applicant’s ancillary complaint. As well as repeating the arguments of the first-instance court, the Regional Court emphasised that according to the co-operation agreement, the appeals body was independent and not subject to external intervention. The court also considered that the functions of the VSAA and the appeals body as specified in the co-operation agreement were radically different and that therefore the latter could not be considered to be “an institution”. The fact that the German Foundation had been established by law was insufficient to render it an institution with competencies in the field of State administration.

31.  On 17 January 2006 the Senate of the Supreme Court dismissed the applicant’s ancillary complaint, referring to the decision of the Administrative Regional Court. The applicant had indicated that, since the appeals body had the authority to quash decisions adopted by the Russian Foundation, it was clearly “an institution”. The Senate disagreed. It considered that the appeals body was not carrying out its duties in the name of the Republic of Latvia. Furthermore, it had not been delegated any functions of State authority by law or by a public law contract.

COMPLAINTS

The applicant complained under Article 3 of the Convention about the tediousness of the bureaucratic procedures which could be equated to torture.

He also complained under Article 6 § 1 of the Convention that he had been denied the opportunity to establish in a court his rights which had been violated in the territory of Latvia. He further submitted that the appeals body had not been considered “an institution” despite the fact that it carried out its duties under the auspices of the VSAA.

He also complained under Article 13 about the impossibility to dispute the infringement of his rights in a court.

THE LAW

A.  Alleged violation of Article 6 § 1 of the Convention

32.  The applicant complained, in essence, that the administrative courts’ refusal to review the merits of his complaint about the decision of the appeals body amounted to a violation of his right to access to court under Article 6 § 1 of the Convention, which, in so far as is relevant, provides as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

1.  The parties’ submissions

33.  The Government submitted that the agreement between the VSAA and Russian Foundation was an inter-institutional treaty (*starpresoru līgums*). The applicant could have lodged an individual constitutional complaint under section 192 of the Constitutional Court Law (*Satversmes tiesas likums*) contesting the compatibility of that agreement with Article 92 of the Constitution (right to a fair trial) and Article 6 § 1 of the Convention. The Government referred to the Court’s previous finding that an individual constitutional complaint was an effective domestic remedy to be used in cases where the alleged violation resulted from the wording of a legal act (see *Grišankova and Grišankovs v. Latvia* (dec.), no. 36117/02, ECHR 2003‑II). The Government further noted that section 16(2) of the Constitutional Court Law expressly authorised the Constitutional Court to review the constitutionality of international treaties signed or entered into by the Republic of Latvia.

34.  The Government submitted that on two earlier occasions the Constitutional Court had examined the constitutionality of treaties entered into by Latvia.

35.  In addition, the Government pointed out that if the Constitutional Court were to find a conflict between an international treaty and the Constitution, section 32(4) of the Constitutional Court Law obliged the Cabinet of Ministers to immediately ensure that the treaty be amended, withdrawn from or suspended.

36.  The Government argued that the above considerations established that the applicant had failed to avail himself of an effective domestic remedy and that therefore this part of the application had to be declared inadmissible and rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

37.  The applicant described the Government’s suggestion as a legal dispute of a “purely theoretical nature”. Given that he had taken his claim to the highest-level court in Latvia (the Senate of the Supreme Court) and that he was elderly, he could not have been expected to do anything more.

2.  The Court’s assessment

38.  The Court can agree with the Government’s submissions to the effect that an individual complaint to the Constitutional Court challenging the constitutionality of the agreement between the Russian Foundation and the VSAA was a remedy that was accessible, capable of providing redress in respect of the applicant’s complaints and offered reasonable prospects of success (see *Melnītis v. Latvia*, no. 30779/05, § 46, 28 February 2012). The Constitutional Court has the competence to review the constitutionality of international treaties concluded by Latvia. In the Latvian legal system the alleged violation may result from a legal norm contained in an international treaty since international treaties are directly applicable in Latvia. The Constitutional Court has previously engaged in the review of the constitutionality of international treaties and has the authority to rectify the situation if a conflict between the Constitution and the treaty in question were to be found (see paragraphs 33 to 35 above). This may give rise to new court proceedings and be the basis for claims for compensation. It therefore falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him from the requirement (see, for example, *Bazjaks v. Latvia*, no. 71572/01, § 85, 19 October 2010).

39.  The only special circumstance relied on by the applicant appears to be his advanced age. The Court notes that by the time the proceedings before the administrative courts had ended, the applicant had indeed been almost 80 years old. Nevertheless, the Court notes that he, without the benefit of legal representation, was capable of advancing coherent legal and factual arguments before three levels of administrative court. It sees no reason why an application to the Constitutional Court ought to be considered any more burdensome. It clearly followed from Article 9(7) of the agreement between the Russian Foundation and VSAA that the decisions of the appeals body were final and hence not amenable to judicial review. At the same time, Article 92 of the Latvian Constitution guarantees the right to a fair trial, which also incorporates the right of access to a court. The potential conflict between the two pieces of legislation ought to have been clear even to a person without specialist legal training. In any case, the applicant should have become aware of this conflict by the latest at the moment when the administrative courts refused to examine his complaint.

40.  In addition, should the applicant have considered that by authorising the VSAA to conclude the agreement with the Russian Foundation the Cabinet of Ministers had exceeded its competence under the Law on International Agreements of the Republic of Latvia, in that the agreement might have raised issues under Articles 1 (“Latvia is an independent democratic republic”) and 2 (“The sovereign power of the State of Latvia is vested in the people of Latvia”) of the Constitution, such a complaint would clearly fall within the sphere of competence of the Constitutional Court.

41.  The Court concludes that the applicant has failed to exhaust domestic remedies and that therefore this part of the application is to be declared inadmissible and rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

42.  In the light of this conclusion the Court is not called to examine other potential grounds of inadmissibility put forward by the Government.

B.  Other alleged violations of the Convention

43.  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 finds that the applicant’s complaints under Articles 3 and 13 of the Convention do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

 Françoise Elens-Passos David Thór Björgvinsson
 Registrar President