FOURTH SECTION

DECISION

Application no. 33674/02
Zoja ZUZANE
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 21 May 2013 as a Chamber composed of:

 David Thór Björgvinsson, *President,* Ineta Ziemele, George Nicolaou, Ledi Bianku, Zdravka Kalaydjieva, Vincent A. De Gaetano, Paul Mahoney, *judges,*and Françoise Elens-Passos, *Section Registrar,*

Having regard to the above application lodged on 3 September 2002,

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, Ms Zoja Zuzane, is a Latvian national who was born in 1952 and lives in Skulte parish (Latvia). She is represented before the Court by Mr A. Zvejsalnieks, a lawyer practising in Rīga. The Latvian Government (“the Government”) are represented by their Agents, Mrs I. Reine and subsequently by Mrs K. Līce.

A.  The circumstances of the case

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

1.  Events giving rise to the applicant’s damage claim

3.  The applicant acquired an oil press in 1995 for 5,000 Latvian lati (LVL) from a private individual, V.R. The applicant subsequently leased that press to two companies.

4.  On 20 July 1997 the applicant concluded a sales agreement with a farm for LVL 6,000, which she received on condition that she would deliver the press by 22 August 1997. Meanwhile, on 10 August 1997 K.O., the chairman of a co-operative organisation, seized the press and took it to its premises. The applicant found out about the seizure on the next day and reported it to the police.

5.  The applicant did not fulfil her contractual obligation to deliver the press and thus incurred a contractual penalty of LVL 12,000; she paid it on 26 August 1997.

6.  On 12 April 1999 the press was returned to the applicant.

2.  Criminal proceedings

7.  On 1 September 1997 criminal proceedings were instituted in relation to arbitrary seizure under section 195 of the former Criminal Code (*patvarība*). On 3 September 1997 the applicant was joined as a civil party (*civilprasītājs*) in the criminal proceedings.

8.  On 30 March 1998 K.O. was charged with aggravated abuse of official authority (*dienesta stāvokļa ļaunprātīga izmantošana*) under section 162, paragraph 2 of the former Criminal Code.

9.  On 1 June 1998 that charge was dropped and K.O. was charged with exceeding official authority (*dienesta pilnvaru pārsniegšana*) under section 162.1, paragraph 1 of the former Criminal Code.

10.  On 23 July 1998 the case was sent to the Ogre District Court for adjudication. That court, in its first hearing on 27 August 1998, granted the request by defence counsel to send the case for additional investigation.

11.  The criminal proceedings were terminated on several occasions, namely on 4 May 1999, 9 November 1999 and 10 August 2000, on grounds that no crime had been committed. All these decisions were subsequently quashed because V.R., whose testimony was crucial to establish the truth in the proceedings, had not been questioned. In fact, she did not co-operate and the police could not forcibly transport her; her whereabouts were not known. Finally, on an unspecified date before August 2000, V.R. submitted a written testimony. She refused to appear before the prosecutor in person.

12.  On 30 January 2001 the last decision to terminate the criminal proceedings was quashed on grounds that witness V.R. had not been questioned contrary to previous instructions. The case was sent for additional investigation.

13.  On 5 July 2001 another decision to terminate the criminal proceedings was adopted on grounds that no crime had been committed.

14.  On 5 October 2001 a superior prosecutor quashed that decision because he saw arbitrariness in the actions of K.O. but brought no charges against him due to statute of limitations. Thus, the legal grounds for terminating the criminal proceedings were twofold: no elements of crime as concerns exceeding official authority and statute of limitations as concerns arbitrary seizure.

15.  With a final decision of 5 November 2001, replying to the applicant’s complaint, another prosecutor upheld the decision to terminate the criminal proceedings. The prosecutor noted that the applicant had a right to seek damages in civil proceedings.

3.  Civil proceedings

16.  On 23 September 1997 the applicant lodged an application with the Ogre District Court to secure her eventual civil claim against K.O. On 26 September 1997 the court ordered an attachment on the respondent’s property (real estate, assets and money). On 8 September 2000, following an application lodged by K.O., this decision was revoked and an attachment on a land plot was ordered instead.

17.  On 28 October 1997 the applicant lodged a civil claim against K.O. with the Ogre District Court for pecuniary damages in the amount of LVL 6,000.

18.  On 6 February 1998 the civil proceedings were stayed, upon the applicant’s request, pending the outcome of criminal proceedings.

19.  On 15 March 2002, on the applicant’s request, the Ogre District Court renewed the civil proceedings and scheduled a hearing.

20.  On 20 May 2002 the Ogre District Court held a hearing. The applicant increased her claim of damages to LVL 66,264.93. The proceedings were adjourned upon the respondent’s request to add the criminal case-material. Another hearing was adjourned on 29 November 2002 at the request of the respondent.

21.  On 6 December 2002 the Ogre District Court held a third hearing. The applicant maintained her claim of damages. The district court decided to forward the case to a higher court since it lacked competence to hear cases involving determination of claims above LVL 30,000.

22.  On 31 March 2003 the Rīga Regional Court examined the case; the applicant retracted her increased claim of damages and maintained her claim only in the amount of LVL 6,000. The regional court upheld the applicant’s claim in full and ordered the respondent to pay LVL 6,000 in damages.

23.  On 16 October 2003 the Civil Chamber of the Supreme Court, upon an appeal lodged by the respondent, upheld the ruling of the regional court and upheld the applicant’s claim. The Supreme Court in its ruling referred to the 5 October 2001 decision to terminate the criminal proceedings on grounds of statute of limitations as concerns actions of K.O., which the prosecutor had deemed arbitrary. The court found that there were no legal grounds to seize the press and thus K.O.’s actions were unlawful. Thus, he incurred liability for damage.

24.  The ruling took effect on 16 October 2003; the parties did not lodge an appeal on points of law. A writ of execution was issued on the same date.

4.  Attachment of the respondent’s property and enforcement

25.  On 22 September 2000, following the decision to remove the attachment on the respondent’s property, a bailiff addressed the competent domestic register (*Zemesgrāmata*) to record that removal. At the same time, she did not proceed to register the newly ordered attachment – on the respondent’s land plot – with that register.

26.  On 25 September 2000 K.O. registered a mortgage in favour of a bank on the land plot as collateral for a loan. Henceforth, the land plot could not be sold.

27.  On 11 November 2003 the applicant submitted the writ of execution regarding the 16 October 2003 judgment to another bailiff. The respondent agreed to comply with the ruling voluntarily and to repay the debt until 20 December 2004.

28.  On 27 February 2004 the Civil Chamber of the Supreme Court rejected K.O.’s application to pay damages in instalments by 31 March 2005.

29.  By 26 November 2004 the applicant received the whole amount due in at least two separate instalments.

30.  On 25 October 2004 criminal proceedings were instituted against the bailiff, who had failed to record the changes in the attachment of the respondent’s property, for having not executed her official duties.

31.  On 1 December 2005 the criminal proceedings were terminated for lack of crime. The police concluded that the whole debt had been settled; the applicant’s argument that she had suffered substantive damage (a constitutive element of the crime) as a result of the bailiff’s actions was dismissed.

B.  Relevant domestic law

1.  Former Code of Civil Procedure

32.  The former Code of Civil Procedure (*Civilprocesa kodekss*), in force until 1 March 1999, provided that a court was under an obligation to stay civil proceedings if it could not adjudicate a case until such time when another criminal case was to be determined. The civil proceedings were stayed until a decision was taken in the criminal proceedings (section 218, paragraph 4).

33.  Under section 220 of the same code, a court had to renew the civil proceedings on the application by one of the parties or *proprio motu*.

2.  Law of Civil Procedure

34.  Under section 632, paragraph 1 of the Law of Civil Procedure (*Civilprocesa likums*), in force since 1 March 1999, bailiff’s actions concerning enforcement can be appealed against by submitting an application to a district (city) court within a ten-day time-limit from the date on which a person has learned about the impugned actions.

COMPLAINTS

35.  The applicant complained under Article 6 § 1 of the Convention that, in view of ineffective and lengthy investigation in the criminal proceedings, she was denied access to court to examine her civil claim. The applicant also complained, under the said Article, about the length of proceedings.

36.  The applicant submitted that the enforcement of the judgment of 16 October 2003 had been delayed, in breach of Article 6 § 1 of the Convention.

37.  The applicant also alleged a violation of Article 1 of Protocol No. 1 to the Convention on account of additional pecuniary damage caused by payments in instalments and effects of inflation. She found that the domestic authorities were at fault for that, in particular, the sworn bailiff who had failed to record the changes in the attachment of the respondent’s property in the relevant register.

38.  The applicant submitted, relying on Article 13 of the Convention, that she did not have effective remedies for the above complaints.

THE LAW

A.  Alleged violation of Article 6 § 1 of the Convention on account of the access to court

39.  The applicant argued that she was, in effect, denied access to court to examine her damage claim because the criminal proceedings against K.O. had lasted too long and were not effective. She relied on Article 6 § 1 of the Convention, which in its relevant part provides:

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

40.  The Government raised a preliminary objection of non-compliance with the six-month time-limit, in view of the fact that the criminal proceedings had been terminated with a final decision of 5 November 2001 and that she brought her complaint to the Court only on 3 September 2002. In the alternative, they argued that the applicant was not denied access to court as she was able to lodge a claim in civil courts to seek damages.

41.  The applicant argued in reply that the decision of 5 November 2001 was not a final decision in so far as her civil claim was concerned. She submitted that the examination of her case continued after that date in civil courts and thus her complaint was not out of time. Finally, the applicant considered that she was denied access to court to examine her civil claim within the criminal proceedings, as they never reached a court.

42.  The Court does not need to rule on the preliminary objection raised by the Government as this complaint is inadmissible in any event.

43.  The Court reiterates that the Convention does not provide for a right to institute criminal proceedings against third persons (see *Liģeres v. Latvia*, no. 17/02, § 57, 28 June 2011). Nor is it required under the Convention for the Contracting States to establish a judicial system whereby any loss or harm suffered as result of an unlawful act or a crime is solely determined in the framework of criminal proceedings. Indeed, in cases against Latvia the Court has seen no obstacles for victims of crime to bring their damage claims to the civil courts after a convicting ruling in the criminal proceedings (see *Liģeres*, cited above, § 58) and even in the absence of such a ruling (see *Plotiņa v. Latvia* (dec.), no. 16825/02, §§ 61-63, and *Blūmberga v. Latvia*, no. 70930/01, § 67, 14 October 2008). Turning to the present case, the Court cannot but note that it is evident that the applicant was able to bring her damage claim before the civil courts notwithstanding the fact that the criminal proceedings against K.O. had been terminated. Eventually, her claim was satisfied and she was awarded damages.

44.  In such circumstances the Court concludes that the applicant’s access to court to determine her civil claim was not restricted in any way. This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B.  Alleged violation of Article 6 § 1 of the Convention on account of the length of proceedings

45.  The applicant complained under Article 6 § 1 of the Convention that the domestic proceedings, in connection with which her damage claim against K.O. was adjudicated, were unreasonably long.

46.  The Government submitted observations in relation to the criminal and the civil proceedings against K.O. separately. They argued that the complaint concerning the length of the criminal proceedings was submitted outside the six-month time-limit and that the complaint concerning the length of the civil proceedings was manifestly ill-founded owing to the applicant’s conduct. In their submission the civil proceedings were a separate set of proceedings, unconnected to the criminal proceedings, and it was not necessary to await their outcome in order to proceed with the civil case. In the Government’s view, at no stage in the civil proceedings the domestic courts were inactive. They concluded that there were no delays in the civil proceedings attributable to the relevant authorities.

47.  The applicant disagreed. She emphasised the protracted criminal investigation in support of her complaint and did not accept that she was responsible for the stayed civil proceedings. In fact, the applicant’s view of the domestic law was that it was an obligation incumbent on domestic courts to stay civil proceedings whenever a criminal investigation was in progress.

48.  In the light of its well-established case-law the Court finds that both sets of proceedings were closely linked; it would be inappropriate to separate them and to assess their length in isolation (see, among others, *Liģeres*, cited above, §§ 57-58). In the present case the prosecutor advised the applicant to seek damages in civil proceedings, advice similar to that given by the criminal court to Mrs Liģere and her daughter.

49.  The Court considers that the period to be taken into consideration in the present case commenced on 3 September 1997, when the applicant was joined as a civil party in criminal proceedings against K.O.

50.  The period in question ended on 16 October 2003, when a final ruling in respect of the applicant’s claim of damages was taken in the civil proceedings. Accordingly, the period to be taken into consideration is six years, one month and thirteen days for pre-trial investigation and two levels of jurisdiction. Due to the applicant’s increased claim of damages, the case was examined in three instances, two of which were at the same level of jurisdiction (first instance).

51.  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 and what was at stake for the applicant in the dispute (see, among many other authorities, *Liģeres*, cited above, § 68).

52.  The Court considers that the case was not complex; it involved a damage claim against K.O. in connection with his seizure of the press. However, the Court considers that regard must be had to the fact that a claim for damages by a civil party is not the only issue to be determined in the criminal proceedings, but is accessory to the issue of criminal liability, which must be determined in the same set of proceedings. As to the issues at stake for the present applicant, the Court notes that the press itself had been returned to the applicant. There is no suggestion that the nature of the dispute called for particular diligence on the part of the domestic courts (contrast with *Gheorghe and Maria Mihaela Dumitrescu* *v. Romania*, no. 6373/03, § 26, 29 July 2008).

53.  As regards the conduct of the applicant, the Court does not agree with the Government that the delay of four years and one month that followed the decision to stay the civil proceedings was solely attributable to her. The parties disagree whether the Ogre District Court was under an obligation to stay the civil proceedings pending the outcome of criminal investigation; it suffices for the Court to note in this regard that there was legal basis to stay the proceedings and that the domestic court decided to do so. It is not the Court’s task to assess the facts or evidence which have led a national court to adopt one decision, rather than another, unless there is clear evidence of arbitrariness (see *Liģeres*, cited above, § 70). The Court does not discern any arbitrariness in the decision to stay the civil proceedings. On the other hand, however, the applicant herself contributed to the length of proceedings after the civil proceedings were renewed as she increased her damage claim. As a result of the increase, the Ogre District Court no longer had competence to determine her case and had to forward the case to a higher court – the Rīga Regional Court, before which the applicant subsequently withdrew her increased claim. Thereby the applicant was solely responsible for a total delay of ten months.

54.  As to the conduct of domestic authorities, the Court finds that the civil case was dormant before the Ogre District Court for four years and one month while the criminal investigation was pending. Even though such a period could contravene the requirement of timely examination of the case, it is not so in the present case. The domestic authorities did not remain inactive during this period – the criminal proceedings were underway and several procedural activities were undertaken concerning a key witness, who initially refused to co-operate (see paragraph 11 above). As soon as the Ogre District Court learned about the final decision to terminate the criminal proceedings against K.O., the civil proceedings were renewed and three hearings took place. It was due to the applicant’s increased damage claim that the Ogre District Court could not examine the case and had to forward it to a higher court. As soon as the case was received at the competent court – Rīga Regional Court – it was examined in a proper and speedy manner. The hearing was scheduled and the court gave its ruling in less than four months. Subsequently, the respondent’s appeal against that ruling was examined by the Civil Chamber of the Supreme Court in less than seven months. Overall, the applicant’s civil claim was determined with a final decision in less than one year in two instances following the completion of the criminal proceedings. The Court does not consider it excessive in the particular circumstances of the case.

55.  In the light of the foregoing the Court finds that the length of the proceedings in the present case did not exceed the “reasonable time” requirement contained in Article 6 § 1 of the Convention.

56.  It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C.  Alleged violation of Articles 6 § 1 of the Convention on account of the enforcement of the 16 October 2003 judgment

57.  The applicant further complained, invoking Article 6 § 1 of the Convention, about delayed enforcement of the 16 October 2003 judgment.

58.  The Government disagreed and argued that the delay in enforcing the judgment did not violate Article 6 § 1 of the Convention.

59.  The Court notes that in the present case one year, one month and eleven days passed between 16 October 2003, the date of the judgment, and 26 November 2004, when the applicant received the last payment following the enforcement procedure.

60.  In the circumstances of the present case, taking into account that enforcement proceedings were opened and completed within a little over one year, the Court considers that the period of enforcement in the present case complies with the requirements of the Convention.

61.  It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D.  Alleged violation of Article 1 of Protocol No. 1 of the Convention on account of the additional pecuniary damage

62.  The applicant submitted that she had incurred additional pecuniary damage on account of payments in instalments and effects of inflation. It was the applicant’s view that the sworn bailiff had been liable for the respondent’s inability to repay the debt immediately because she had failed to record the attachment of the respondent’s property in the relevant register. She relied, in this regard, on Article 1 of Protocol No. 1 to the Convention. Its relevant part reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

63.  The Government disagreed. They submitted that the enforcement of the judgment had been duly conducted and that it did not impose an individual and excessive burden on the applicant. The Government argued that there was no evidence that the bailiff’s activities entailed detrimental consequences for the enforcement proceedings as a whole.

64.  The Court notes, at the outset, that the interference with the applicant’s right to the peaceful enjoyment of possessions was perpetrated by a private individual, who was subsequently found liable to pay the damage by the civil courts. In this respect, the State has fulfilled its positive obligation under Article 1 of Protocol No. 1 to the Convention to ensure that property rights are sufficiently protected by law and that adequate remedies are provided (see *Blūmberga*, cited above, § 67).

65.  The Court will now turn to the applicant’s main concern under Article 1 of Protocol No. 1 to the Convention – that a sworn bailiff was responsible for the fact that the respondent could not settle the debt immediately. In this connection the Court notes that it has already found that adequate remedies for actions of sworn bailiffs are established in Latvia (see *Liģeres*, cited above, § 95). The applicant has not brought forward any argument why she considered that these remedies were not effective or not available for her. In such circumstances the Court considers that also in this respect the State has complied with its positive obligations under Article 1 of Protocol No. 1 to the Convention.

66.  It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

E.  Alleged violation of Article 13 of the Convention in conjunction with the above complaints

67.  The applicant complained that she did not have an effective remedy in respect of all of the above complaints under the Convention. She relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

68.  The Government contested this allegation.

69.  The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms, in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see *Liģeres*, cited above, § 80).

70.  In view of the above findings as regards all of the applicant’s complaints, the Court concludes that the applicant did not have arguable claims to a remedy under Article 13 of the Convention.

71.  It follows that this complaint 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