FOURTH SECTION

**CASE OF DAVIDOVS v. LATVIA**

*(Application no. 45559/06)*

JUDGMENT

STRASBOURG

7 July 2015

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

In the case of Davidovs v. Latvia,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

 Krzysztof Wojtyczek, *President,* Faris Vehabović, Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 16 June 2015,

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

PROCEDURE

1.  The case originated in an application (no. 45559/06) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Latvian national, Mr Gundars Davidovs (“the applicant”), on 16 October 2006.

2.  The Latvian Government (“the Government”) were represented by their Agent, Mrs K. Līce.

3.  On 14 October 2010 the application was communicated to the Government.

4.  Written observations were received from the Government and just satisfaction claim was received from the applicant.

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1969 and is detained in Valmiera prison.

6.  On 31 May 2005 the applicant was arrested on suspicion of having commuted a theft.

7.  On 3 June 2005 by a decision of the Valmiera District Court the applicant was detained on remand until 3 August 2005. In substantiating the decision, the judge referred to numerous previous convictions of the applicant. The applicant did not appeal against the decision.

8.  At the applicant’s request to lift the detention order, on 29 June 2005 he was informed that adjudication of the criminal case would commence on 31 August 2005, when the judge would also examine the request for change of the preventive measure.

9.  On 31 August 2005 by a judgment of the lower court the applicant was convicted and sentenced to nearly three years’ imprisonment. He was maintained in detention until the judgment came into force.

.  On 16 September 2005 the Vidzeme Regional Court decided to schedule for 10 January 2006 the appeal in the applicant’s criminal case. It also decided, without any reasoning, that the applicant should remain in detention. It appears that in 2006 the scheduled trials where postponed twice upon the request raised by the defence.

11.  On 21 August 2006 the Vidzeme Regional Court adopted a decision by which the lower court’s judgment was set aside and remitted once again to examination on the merits. No mention was made of the preventive measure. The applicant remained in detention.

12.  On 24 August 2006 the applicant asked the Vidzeme Regional Court to lift the detention order. On 28 August 2006 he was informed by a judge Ā. that, since the request has not been raised before or during the appeal hearing, the Vidzeme Regional Court at this stage was no longer authorised to change the preventive measure.

.  On 12 and 16 September 2006 the applicant addressed an identical request to the Valmiera District Court.

14.  On 13 September 2006 a judge of the Valmiera District Court decided to schedule for 17 October 2006 the appeal in the applicant’s criminal case. It was also decided, without any reasoning, that the applicant should remain in detention. The applicant appealed against the decision to keep him in detention, to which on 5 October 2006 Valmiera District Court informed him that the request to lift the preventive measure would be examined during the trial on 17 October 2006.

15.  On 3 October 2006 in response to the applicant’s complaint about the lawfulness of his pre-trial detention the Ministry of Justice referred to sections 276 and 277 of the CPL (see paragraphs 22 - 23 below).

16.  On 17 October 2006 the Valmiera District Court lifted the applicant’s detention order and changed it to police surveillance. The prosecution supported the applicant’s request, noting that the applicant’s health condition had deteriorated, and that the applicant had to undergo a forensic medical expertise.

.  On 12 January 2007 by a decision of the Valmiera District Court the applicant was detained on remand in other criminal proceedings on suspicion of having committed a theft and burning on 11 January 2007. It was applied on the grounds that the applicant might influence witnesses.

18.  The forensic examination, carried out from 25 April to 24 May 2007, concluded that at the time of committing the thefts the applicant fully understood and led his actions, notwithstanding the fact that he had personality and behavior disorders, as well as an addiction to alcohol.

.  On 27 August 2008 the applicant was convicted and sentenced to two years and nine months’ imprisonment. The appeal court upheld the judgment, by reducing the final sentence to two years and seven months’. The applicant did not appeal against the judgment.

II.  RELEVANT DOMESTIC LAW

A.  The Code of Criminal Procedure

.  The relevant provisions of the Code of Criminal Procedure (in force until 1 October 2005) applicable at the material time have been cited in, amongst others, *Shannon v. Latvia*, no. 32214/03, §§ 28-35, 24 November 2009.

21.  In addition, Section 77 of the Code of Criminal Procedure provided that during the pre-trial investigation detention on remand must not exceed two months. In certain circumstances by a decision of a judge the detention on remand could be prolonged up to 18 months, not exceeding two months in one decision. Further prolongation in principle was allowed in exceptional circumstances. Part 7 of section 77 provided that from the day the criminal case had been remitted to trial until the termination of its adjudication by the first instance the maximum length of pre-trial detention must not exceed one year and six months.

B.  The Criminal Procedure Law

22.  Section 276 of the Criminal Procedure Law (in force from 1 October 2005; further referred to as CPL) provides that during the adjudication of the criminal case the detention shall be ordered by the adjudicating court upon its own initiative or upon initiative of the prosecutor.

.  Section 277 provides that the term of detention with regard to persons charged with serious crimes (such as the applicant) shall not exceed 12 months, of which the person shall be permitted to be held in detention during the preliminary investigation stage no longer than 6 months. Both an investigating judge during the preliminary investigation stage and a higher-level court judge during a trial may extend a term by three more months, if there have been no unjustifiable delays attributable to the person directing the proceedings, or if the person who performs defence has intentionally delayed the progress of proceedings, or if a faster completion of proceedings has not been possible due to the particular complexity thereof.

24.  Section 281 sets out a procedure of control over the application of detention. It provides, in particular, that a detained person may at any time ask the investigation judge or court to assess the necessity of subsequent application of detention. Such a request may be refused if less than four weeks have passed since the last assessment and no new arguments have been submitted. Such an assessment is automatic if a detained person has not submitted a request within a term of two months after the detention.

.  Section 286 provides that if a preventive measure related to deprivation of liberty is applied to a person after the beginning of the adjudication on the merits, and the next trial is not scheduled for during the next 14 days, an appeal against the decision, may be submitted to a higher-level court.

.  Pursuant to Section 287 of the CPL a judge of a higher-level court shall examine a complaint regarding the application of a compulsory measure related to deprivation of liberty, or regarding a refusal to apply such compulsory measure, in a closed court session within a term of seven days from the day of the receipt of the relevant decision and complaint.

THE LAW

I.  ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

27.  The applicant complained that his pre-trial detention had been unlawful and excessively long and had therefore been in breach of 5 §§ 1 (c) and 5 § 3 of the Convention, which read as follows:

“1.  Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(c)  the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ...

3.  Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A.  Admissibility

28.  The Government contested the admissibility of these complaints on several grounds for each separate period of detention.

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

30.  The Court shall examine separately each period of detention.

1. Periods to be considered under 5 § 1 (c)

(a) period of detention from 31 May to 31 August 2005

31.  The Court observes that the applicant was detained within the meaning of Article 5 § 1 (c) from 31 May 2005 until his conviction on 31 August 2005 which is more than six months before 16 October 2006 when the applicant first addressed the Court, therefore as far as the legality of the pre-trial detention is concerned this part of the complaint is inadmissible under Article 35 § 1 of the Convention as submitted out of time. It is not necessary to examine other inadmissibility grounds raised by the Government in this respect.

(b) period of detention from 31 August 2005 to 21 August 2006

32.  The Court observes that from 31 August 2005 until 21 August 2006, when the Vidzeme Regional Court quashed the conviction, the applicant was detained “after conviction by a competent court”, within the meaning of Article 5 § 1 (a).

(c) period of detention from 21 August to 17 October 2006

33.  The Court observes that from 21 August 2006 to 17 October 2006, when the detention order was lifted and changed to police surveillance, the applicant was again in pre-trial detention falling under Articles 5 § 1 (c).

2. Period to be considered under 5 § 3

.  For the purpose of Article 5 § 3 of the Convention the Court shall make an overall evaluation of the accumulated periods of detention (see, among many other authorities, *Solmaz v. Turkey*, no. 27561/02, §§ 34‑37, 16 January 2007). In the particular case, after deducting the period of detention falling within the scope of Article 5 § 1 (a) and thus falling outside the scope of Article 5 § 3 of the Convention (see paragraph 32 above), the period to be taken into consideration is 4 months 3 weeks and 5 days.

3. Other inadmissibility grounds raised by the Government

35.  The Government argued, first, that the applicant had not used the right to complain about the legality of his pre-trial detention before the national courts.

36.  The Court refers to its earlier case law, where it has dismissed the same preliminary objections raised by the Government in comparable circumstances (see *Shannon,* cited above, § 40). Therefore in the circumstances where the applicant had disputed the necessity to keep him in custody (see paragraphs 12, 14) and thus given the national authorities ample opportunity to address the issues raised in his application to the Court, the objection as to non-exhaustion of domestic remedies must be dismissed.

37.  Secondly, the Government contended that the applicant had to ask the appellate court to review the detention measure before or during the appellate hearing but the applicant came up with the request three days later (see paragraph 12, above). Thirdly, the Government considered that the applicant could have submitted a constitutional complaint concerning possible incompatibility of section 77 (7) of the old Code of Criminal Procedure (see paragraph 21 above) or the applicable new provision of the Criminal Procedure Law.

38.  Observing that the Government raise the same arguments concerning the merits of the complaints under Article 5 § 1 of the Convention, the Court considers that both non-exhaustion grounds should be joined to the merits.

39.  Further, in relation to the applicant’s continued detention the Government alleged that he had not invoked a complaint about the length of his pre-trial detention before or during the appellate court proceedings and before the cassation court which would influence at least the sentence, similarly to the case of *Moisejevs v. Latvia* (dec.), no. 64846/01, 15 June 2006.

40.  The Court notes that, according to its case-law, in a situation where the person was still detained, an effective remedy under Article 5 § 3 should be able to lead to the lifting of the detention order (see *McKay v. the United Kingdom* [GC], no. 543/03, § 45, ECHR 2006‑X). It shall therefore dismiss, similarly as in *Ķipēns v. Latvia* (dec.), no. 5436/05, § 47, 5 March 2013, the argument that a later compensatory remedy, as argued by the Government, could have been adequate and sufficient in the particular case.

41.  Finally, the Government contended that the applicant had not suffered any significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention as his pre-trial detention during the above-mentioned period for the purposes of 5 § 1 (c) lasted for 1 month 3 weeks and 5 days only.

42.  In this relation the Court refers to its earlier case law in which the Court had not accepted that the issue of the lawfulness of a deprivation of liberty which lasted twenty days could constitute an “insignificant” disadvantage (see *Sýkora v. the Czech Republic*, no. 23419/07, § 56, 22 November 2012). Observing that the particular circumstances are comparable, the Court therefore dismisses the Governments objection.

4.  Conclusion

43.  The Court will examine under Article 5 § 1 (c) the lawfulness of the applicant’s detention from 21 August to 17 October 2006 and under Article 5 § 3 the length of his detention for the duration of 4 months 3 weeks and 5 days. In this part, the Court considers that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. Having reserved the examination of the question of the exhaustion of domestic remedies to a later stage, declares it admissible.

B.  Merits

1.  Complaint under Article 5 § 1 (c)

.  The applicant in substance maintained his initial complaint.

45.  The Government argued that the applicant had failed to raise in time his request to change the security measure (see paragraph 37 above). According to their submissions, even if between 21 August and 13 September 2006 the applicant was remained in detention without a court decision, the situation was regularised on 13 September 2006 when the court adopted a detention order and on 17 October 2006 when the order was lifted.

46.  The Court at the outset refers to the general principles in relation to the rights guaranteed under Article 5 § 1 (c) of the Convention (summarised in the Court’s well-established case-law, such as, for example, *Svipsta v. Latvia*, no. 66820/01, § 79, 9 March 2006), and reiterates that a period of detention is, in principle, “lawful” if it is based on a court order (*Mooren v. Germany* [GC], no. 11364/03, § 74, 9 July 2009).

47.  Turning to the particular case the Court observes that it is not disputed between the parties that from 21 August 2006 when the appellate court quashed the judgment of the lower court, until 13 September 2006 no order was made by judge authorising the applicant’s detention, and the applicant remained in a state of uncertainty as to the grounds for his detention. Such situation is incompatible with the principle of legal certainty and protection from arbitrariness enshrined in Article 5 of the Convention (see *Baranowski v. Poland*, no. 28358/95, §§ 53-58, ECHR 2000‑III, *Jėčius v. Lithuania*, no. 34578/97, §§ 60-64, ECHR 2000‑IX), and poses a problem under Article 5 § 1 (c) (see *Svipsta*, cited above, § 85).

48.  In relation to the question whether this period of detention was in compliance with “a procedure prescribed by law”, the Court refers back to the Government’s preliminary objections that the applicant has failed to ask for the review of his detention during the appellate proceedings (see paragraph 37 above). In rebutting this argument the Court refers to section 276 of the Criminal Procedure Law (see paragraph 22 above) which provides a competence of the national court to decide on the detention upon its own initiative. Notwithstanding the applicant’s earlier requests to change the preventive measure it does not appear that the national courts had acted in compliance with the respective provision of the CPL with the purpose of protecting the individual from arbitrariness (see *Mooren,* cited above, § 72). As a consequence, observing that the alleged violation resulted from interpretation of a legal provision which, in its content, is not unconstitutional, the procedure of an individual constitutional complaint therefore cannot serve as an effective remedy (see *Savičs v. Latvia*, no. 17892/03, § 113, 27 November 2012, and *Liepājnieks v. Latvia* (dec.), no. 37586/06, § 73, 2 November 2010). In addition, noting that the Government has suggested that several provisions, both from the old Code of Criminal Procedure and the Criminal Procedure Law could be subjected to a constitutional review, the Court has already ruled that a constitutional review of broad range of legal provisions cannot be considered an effective remedy (*Taraneks v. Latvia*, no. 3082/06, § 84, 2 December 2014)*.* In the light of the above, the Court dismisses the Government’s objection in relation to non-exhaustion of domestic remedies.

49.  The period of detention running from 13 September to 17 October and its reasonableness shall be examined under Article 5 § 3 of the Convention.

50.  The foregoing considerations are sufficient to enable the Court to conclude that during the period from 21 August to 13 September 2006 there was no valid domestic decision or other “lawful” basis for the applicant’s detention on remand.

There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

2.  Complaint under Article 5 § 3

51.  The applicant in substance maintained his initial complaint.

52.  The Government maintained that the length of the applicant’s pre-trial detention was short, the pre-trial investigation was completed in three months and was therefore in sharp contrast to other Latvian cases where a violation due to long inactivity periods was found. By referring to the case *Dergačovs v. Latvia* (dec.), no. 417/06, 12 April 2011 the Government reiterated that the applicant has failed to submit in time his request to change the security measure (see paragraph 37 above).

53.  In this relation the Court refers to its earlier reasoning under Article 5 § 1 (c) (see paragraph 48 above). Furthermore, the Court finds it necessary to distinguish the particular case from the *Dergačovs v. Latvia* (dec.) and *Ķipēns v. Latvia* (dec.), both cited above. In those cases the applicants did not appeal against any of the lower court’s decisions to the appellate court. In the applicant’s case, however, the Court has already established that from 21 August to 13 September 2006 there was no detention order to appeal against, whereas the applicant has exercised his right to appeal against the detention order adopted on 13 September 2006 (see paragraph 14 above). Thus the argument put forward by the Government shall also be dismissed.

54.  Turning next to the impugned decision of 13 September 2006, the Court observes that it did not contain any reasoning and merely stated that the applicant should be remained in detention. It must be noted that the criminal case at issue did not contain complex issues and the applicant, who suffered from mental health problems, confessed to the thefts and when the court finally lifted the detention order, the prosecutor also supported changing the detention measure (see paragraph 16 above).

55.  The above circumstances lead the Court to the conclusion that the period to be taken into consideration for the purposes of Article 5 § 3 of the Convention was nearly 5 months, out of which for more than a month the judicial authorities failed to give any grounds in their decision authorizing the applicant’s detention. In this respect the Court refers to its well established case-law according to which the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices (*Estrikh v. Latvia*, no. 73819/01, § 120, 18 January 2007). Furthermore, the justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Belchev v. Bulgaria*, no. 39270/98, § 82, 8 April 2004; *Sarban v. Moldova*, no. 3456/05, § 97, 4 October 2005), which was not the case in the particular circumstances.

56.  The foregoing considerations are sufficient to enable the Court to conclude that the authorities have failed to justify the applicant’s detention on remand at least from 21 August 2006 until the applicant’s release on 17 October 2006, which is incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (c), to whom Article 5 § 3 has close affinity. In those circumstances it is not necessary to examine whether the proceedings were conducted with due diligence (see *Belchev v. Bulgaria*, cited above, § 81).

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

II.  REMAINDER OF THE APPLICATION

57.  Lastly, the applicant complained of numerous violations under Articles 3, 6, 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

.  In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that the remainder of the application does not disclose any appearance of a violation of any of the above Articles of the Convention. It follows that these complaints are inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

59.  Article 41 of the Convention provides:

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

A.  Damage

60.  The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

61.  The Government disagreed with the claim.

62.  The Court awards the applicant EUR 3,250 in respect of non-pecuniary damage.

B.  Costs and expenses

63.  The applicant also claimed 300 Latvian lati (LVL), (approximately EUR 427) for the costs and expenses incurred before the domestic courts.

64.  The Government disagreed with the claim.

65.  Regard being had to the documents in its possession and to its case-law, the Court rejects the claim for costs and expenses in the domestic proceedings.

C.  Default interest

66.  The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Joins to the merits* the Government’s preliminary objections that the applicant’s complaint under Article 5 § 1 of the Convention is inadmissible due to non-exhaustion of domestic remedies;

*2.  Declares* the complaints under Article 5 §§ 1 and 3 of the Convention admissible and the remainder of the application inadmissible;

3.  *Holds*, that there has been a violation of Article 5 § 1 of the Convention;

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

5.  *Holds*

(a)  that the respondent State is to pay the applicant, within three months, EUR 3,250 (three thousand, two hundred and fifty euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(b)  that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 7 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Krzysztof Wojtyczek
 Deputy Registrar President