FOURTH SECTION

DECISION

Application no. 9175/06
Sergo AMIRS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 11 December 2012 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 Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 1 March 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 Sergo Amirs, is a Latvian national, who was born in 1948 and lives in Piņķi. He was represented before the Court by Mr A. Ogurcovs, a lawyer practising in Rīga.

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

THE CIRCUMSTANCES OF THE CASE

A.  Events prior to the communication of the application

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

4.  According to the applicant, on 20 October 1994 four armed persons, alleging that they were police officers, tried to enter his apartment at Kurzemes prospekts 126 in Rīga. The applicant refused to open the door, as the persons were not in uniform and were behaving aggressively. After a while they left. They returned within two hours and presented a document summoning the applicant to the police station. The applicant dialled the telephone number indicated on the document and was informed that M.B. – the head of one of the sections of the Organised Crime Combating Office (*Organizētās noziedzības apkarošanas birojs*) – would like to meet him.

5.  The applicant claimed that when he arrived at the police station on an unspecified later date (possibly 22 October 1994), M.B. brandished his gun and demanded a promissory note, apparently in the applicant’s possession, entitling him to 50,000 United States dollars (USD). The applicant refused to hand it over, after which M.B. demanded him to pay USD 20,000 instead. The applicant refused to pay.

6.  The applicant alleged that following the incident he received threats and anonymous phone calls.

7.  On 2 October 1995 the applicant secretly left his apartment at Kurzemes prospekts 126 and moved to another apartment.

8.  On 10 January 1997 an explosion took place in the stairwell of the Kurzemes prospekts 126 apartment building. V.B., who, according to the Government, was a member of a notorious criminal gang, was injured in the explosion. The Government submitted that the explosion had been one of many assassination attempts directed against V.B., who was eventually assassinated in 2000.

9.  On 14 December 1997 the applicant left Latvia and went to Australia. The Government submitted that after the expiry of his tourist visa, the applicant applied for asylum there. His asylum request was eventually rejected, and on 2 June 2001 he was deported back to Latvia. The applicant argued that he had travelled to Australia on a “business visa”, which was permanent, and that after spending three months in Australia he had applied for a “refugee visa”, which would have allowed him to legally seek employment in Australia. The applicant told the Supreme Court during the appeal proceedings in the criminal case against M.B. (see paragraph 21 below) that he had left Australia voluntarily and legally.

10.  In the meantime, on 9 April 2001 another explosion took place in a lift at Kurzemes prospekts 126. Information given by the State Police to the Security Police on 1 February 2007 suggested that on that date criminal proceedings concerning both the first and second explosions were pending. The applicant had not been granted any procedural status in those proceedings and had not submitted any statements or claims relating thereto. The State Police pointed out that, at the time of both explosions, the applicant had no longer been residing at the address in question.

11.  After the applicant’s return to Latvia he changed his name.

12.  On 1 October 2001 M.B. was remanded in custody on suspicion of having committed various crimes, none of which was related to the applicant or the alleged incidents of October of 1994.

13.  On 11 October 2001 a certain M.A. informed the Security Police that M.B. had committed aggravated extortion. M.A. put himself and the applicant forward as victims of M.B.

14.  On 16 October 2001 the applicant was questioned by the Security Police. According to the Government, during the interview he gave information about the alleged incident of 1994 but did not make any allegations about any current or past threats to his life.

15.  On 22 October 2001 M.B. was released on bail and, on the following day, the applicant applied to the Office of the Prosecutor General with a request that M.B. be rearrested or else that the applicant be granted special procedural protection.

16.  On 3 November 2001 the Office of the Prosecutor General refused to grant special procedural protection to the applicant, since such protection was only afforded to persons who were parties to criminal cases, which the applicant was not.

17.  On an unspecified date M.B. was also charged in connection with the alleged events of October 1994 and the applicant was officially recognised as having the procedural status of victim. A trial before the Zemgale Regional Court took place between 7 June 2004 and 10 May 2005. During the trial the applicant gave evidence about the events of 20 October 1994 and the days that followed. He informed the court that he had complained both in writing and orally to various institutions in this regard. He stated that his life had been under threat and on 14 December 1997 he had been forced to flee to Australia to avoid M.B. taking revenge on him.

18.  The Zemgale Regional Court delivered its verdict on 10 May 2005. It found M.B. not guilty. When assessing the applicant’s statements, the court noted, amongst other things, that a forensic psychological and psychiatric report had revealed that the applicant was an “egocentric with paranoid tendencies”. However, the applicant had not been found to be suffering from a mental disorder. After having assessed the facts of the case and the available evidence, the court came to the conclusion that they were contradictory and did not support the applicant’s allegations. The court took into account, *inter alia*, the fact that the applicant had not travelled to Australia until three years after the alleged incidents of October 1994.

19.  It appears that the applicant was sent a Russian translation of the verdict on 30 January 2006. The applicant argued that therefore he could not have complied with the requisite time-limit for lodging an appeal. On 23 February and 1 March 2006 the applicant submitted two identical petitions to the Supreme Court, complaining that the first-instance court had not mentioned in its verdict that he had submitted a civil claim against M.B.

20.  A prosecutor and the other alleged victim, M.A., had in the meantime submitted their appeals, and appeal proceedings had been initiated in the Supreme Court. The Supreme Court scheduled the hearings to take place between 20 and 24 February 2006 and decided to issue a summons to the applicant.

21.  On 4 July 2006, several months after the completion of the first round of appellate court hearings (in which the applicant had given evidence and which had lasted for four days from 20 to 23 February 2006), the applicant sought leave to appeal, which he had apparently not been able to do within the requisite time-limit because he had not been in Rīga. On 14 August 2006 the Zemgale Regional Court examined that request and denied his request for leave to appeal. That decision was subsequently upheld by the Supreme Court.

22.  On 10 October 2006 the applicant applied to the Supreme Court to be granted special procedural protection because he had allegedly “been attacked” on 8 May 2006.

23.  The application was communicated to the respondent Government on 23 October 2006.

B.  Events following the communication of the application

24.  After receiving the applicant’s request for special procedural protection, the Supreme Court requested the Prosecutor General to verify the applicant’s allegations and, after receiving a reply, on 30 October 2006 granted special procedural protection to the applicant.

25.  On 19 December 2006 the Supreme Court delivered its verdict, convicting M.B. of charges in connection with M.A.’s allegations but upholding the first-instance court’s decision to acquit M.B. with regard to the applicant’s allegations. In its verdict the Supreme Court indicated that the applicant’s suspicions linking M.B. to the explosions, the armed men near his apartment building and the violent deaths of various individuals were not established by the materials in the case file. The Supreme Court agreed with the lower court’s conclusion that the applicant’s leaving Latvia three years after the alleged events could not have been linked to the events in connection with which M.B. had been charged.

26.  The Government submitted that on 9 January 2007 the applicant had requested the Supreme Court to lift his special procedural protection. That request was granted the following day. The applicant contended that he had waived his special protection after being prompted to do so by the police officers who had been assigned to guard him.

27.  On 18 December 2007 the Senate of the Supreme Court gave its final verdict in the criminal case against M.B., in which it dismissed the appeals on points of law lodged by the prosecutor, M.B. and his counsel, the applicant, and M.A.’s counsel.

COMPLAINTS

28.  Without relying on any Article of the Convention the applicant complained that his life was endangered because of the illegal actions of M.B. and the lack of action by the Latvian authorities.

29.  Without relying on any Article of the Convention, the applicant further complained that his property rights had been infringed in that M.B. had deprived him of USD 50,000, which the Latvian authorities had failed to reimburse.

30.  The applicant complained under Article 6 § 1 of the Convention that he had been deprived of a trial within a reasonable time.

31.  The applicant also complained under Article 6 § 3 (d) of the Convention that the first-instance court had not summoned additional witnesses despite requests made by him.

32.  The applicant further complained under Article 8 § 1 of the Convention that M.B. had stolen his documents and had been spying on him.

33.  Lastly, the applicant complained under Article 13 of the Convention that for twelve years his life had been endangered, his property rights infringed and that he had been deprived of access to a court.

THE LAW

A.  Article 2 of the Convention

34.  The applicant’s complaints (summarised in paragraphs 28 and 33 above) were communicated to the respondent Government under Articles 2 and 13 of the Convention. The Court deems it appropriate to examine them under Article 2 § 1 of the Convention alone, which, in so far as relevant, reads as follows:

“Everyone’s right to life shall be protected by law. ...”

35.  The Court first has to determine the scope of the applicant’s complaints. In their observations on the admissibility and merits of the application, the Government assumed that what the applicant was complaining about were three separate incidents: (a) the visit of armed men to his apartment on 20 October 1994 and the applicant’s subsequent encounter with M.B. at a police station in Rīga; (b) the explosion that took place at the apartment building located at Kurzemes prospekts 126 on 11 January 1997; and (c) the explosion that occurred in the same apartment building on 9 April 2001. The applicant in his observations did not dispute that those incidents formed the basis of his complaints.

36.  However, after the application was communicated to the respondent Government, in observations received by the Court on 18 July 2008, the applicant implied that Article 2 had also been violated when, after the alleged attack on him on 8 May 2006, he had not been immediately granted special procedural protection.

37.  With regard to the last-mentioned incident, the Court notes that the first time the applicant formulated a complaint to the Court was not only more than six months after the alleged initial incident, but also more than six months after procedural protection had been granted to him and then waived by him. It follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

38.  As regards the remaining incidents, the Court does not find it necessary to analyse whether they formed part of an ongoing threat to the applicant’s life, whether the domestic remedies had been exhausted, whether the application had been submitted within the six-month period provided for in Article 35 § 1 of the Convention, or whether it was relevant that some of the incidents took place before Latvia ratified the Convention on 27 June 1997, because the Court finds the applicant’s complaints manifestly ill-founded for the reasons set out below.

39.  The Court reiterates that the first sentence of Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998‑III). At the same time, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities; accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (see *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998‑VIII). What needs to be determined is whether the authorities knew or ought to have known of the existence of a real and immediate risk to the life of the applicant from the criminal acts of a third party (ibid.).

40.  Turning to the present case, and even assuming that the applicant had duly informed the competent authorities of his fear that the three incidents under review posed a risk to his life, the authorities were not bound by his assessment of the situation. The Court does not consider it unreasonable that the authorities might have concluded that no real and immediate risk to the applicant’s life existed.

41.  It cannot be excluded that the alleged visit by armed men to the applicant’s apartment and his later encounter with M.B. at the police station might have appeared somewhat ominous to the applicant at the time. However, the Court cannot fail to note that it took the applicant almost a full year after the alleged incident to try to protect his security by secretly moving to another apartment (see paragraph 7 above). The Court also attaches significance to the fact that the domestic authorities reacted quickly to the complaint by M.A. that he and the applicant had been victims of aggravated extortion; five days after M.A. submitted his complaint, the applicant was questioned by the Security Police (see paragraphs 13 and 14 above). In addition, it appears that the first time the applicant requested special procedural protection was after criminal proceedings had been instituted in response to M.A.’s complaint, namely in October 2001, seven years after the alleged incident involving the applicant and M.B. (see paragraph 15 above).

42.  With regard to the first of the two explosions in the building located at Kurzemes prospekts 126, the applicant had moved away from that building more than a year earlier. Besides, the Government’s suggestion that the intended target of the explosion was another person (who had in fact been injured as a result) does not appear unconvincing.

43.  The second explosion took place more than three years after the applicant had left Latvia to reside in Australia. If the applicant’s account of the circumstances of his leaving Australia and returning to Latvia voluntarily (see paragraph 9 above) is accurate, the Court finds that his decision to return to Latvia less than two months after the explosion is hardly compatible with his alleged fear for his life.

44.  In conclusion, even if the facts of the case are interpreted and construed in the most favourable light to the applicant, the Court is unable to conclude that at any time there existed a real and immediate risk to the applicant’s life. Accordingly, the Latvian authorities were under no obligation to take any particular steps to safeguard his life. 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.

B.  Other complaints

45.  The applicant also submitted several other complaints (see paragraphs 29-32 above). However, 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 they 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.

 Lawrence Early David Thór Björgvinsson
 Registrar President