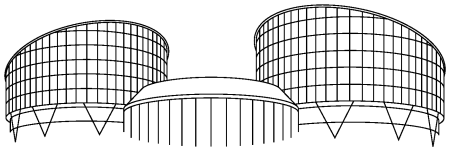

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 30780/13
Pēteris BĒRZIŅŠ
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 20 May 2014 as a Chamber composed of:

Päivi Hirvelä, *President,*
Ineta Ziemele,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 April 2013,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Pēteris Bērziņš, is a Latvian national, who was born in 1964 and lives in Kārsavas novads.

A. The circumstances of the case

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

1. Pre-trial proceedings

3. On 25 October 1999 criminal proceedings were initiated against the applicant on suspicion of abuse of office.

4. Between 25 October and 15 December 1999 the applicant was in pre-trial custody. On 15 December 1999 he was placed under police supervision.

5. On 14 December 1999 the prosecution issued an order suspending the applicant from office on the grounds that if he remained in office he could obstruct the investigation. The order stated that the applicant would be suspended during the pre-trial investigation.

6. On 21 December 2001 the pre-trial investigation was completed and the case was transferred to a court.

2. First instance

7. The applicant and twelve other co-accused were brought before the Ludza District Court (*Ludzas rajona tiesa*) for the main trial.

8. According to the indictment, on 25 October 1999 the applicant, in his official capacity as customs officer and acting in concert with other individuals, had processed documents for a vehicle that had not crossed the State border and had not exported goods.

9. On 24 November 2011 the applicant was found guilty of aggravated abuse of office under section 318(2) of the Criminal Law, in the wording in force until 1 January 2005.

10. The District Court considered that the applicant had committed a serious crime with one aggravating circumstance and no mitigating circumstances. It took into consideration the applicant's good character references and the fact that he had no previous convictions. Referring to section 5(2) of the Criminal Law (*lex mitior*) and section 49^1 of that Law (determination of sentence where the right to completion of criminal proceedings within a reasonable time has not been respected), the District Court considered it appropriate to impose a non-custodial sentence, namely, compulsory work, without any ancillary penalty.

11. In that regard, relying on section 14 of the Criminal Procedure Law (right to completion of criminal proceedings within a reasonable time), the District Court reasoned as follows:

> "Completion of criminal proceedings within a reasonable time is related to the volume of a case, its legal complexity, number of procedural actions [and] the attitude on the part of the persons involved in the proceedings towards their obligations, and [is related to] other objective circumstances. The criminal proceedings under consideration were commenced on 25 October 1999 [and] on 14 January 2002 the criminal case was received for adjudication by the court. [T]he adjudication of the case was restarted anew before three compositions of the trial bench [and] twenty-one court hearings were scheduled for the adjudication of the case. The reasons for postponement of the [proceedings] were not related to the non-performance of procedural obligations on the part of the accused [including the applicant]. In such circumstances [and] taking into account the volume of the case file and [its] legal complexity, with the accused charged in relation to nine incidents, [the court] finds that the right of the accused to completion of criminal proceedings within a reasonable time has not been respected."

12. In determining sentence the District Court cited the wording of section 49[1](1)1) of the Criminal Law (see paragraph 20 below). It stated that a court's finding of non-compliance with the reasonable-time guarantee could be taken into account in mitigating sentence. The District Court's further considerations read as follows:

> "The court deems it impossible to apply ... a fine, because neither the prosecution nor defence have submitted evidence on the financial situation of the accused that would enable the court to assess their ability to pay the fine immediately or their possibility to gain income [in the future] enabling them to pay the fine imposed within the time-frame foreseen by the law. In determining the sentence ... the court takes into consideration that ... a very long time has passed since the commission of the crime, the positive character references of the accused and the fact that [the applicant] cares for a child who is a Category 1 disabled ... and that there are no mitigating circumstances ... with respect to [the applicant] there is one aggravating circumstance..."

13. Accordingly, the District Court found that it could determine the sentence within or close to the minimum penalty prescribed by law.

14. Applying section 49[1] of the Criminal Law, the District Court imposed a sentence of forty hours' compulsory work on the applicant. It credited to the applicant's sentence the time he had spent in pre-trial custody between 25 October and 15 December 1999. As a result, the court concluded that the applicant had already served his sentence in full.

3. Appeal

15. On 7 May 2012 the Latgale Regional Court (*Latgales apgabaltiesa*) upheld the applicant's conviction on appeal.

16. The Regional Court noted that the sentence which had been imposed on the applicant complied with the Criminal Law and there were no grounds to consider that it was disproportionate.

4. Final decision

17. On 2 November 2012 the Senate of the Supreme Court (*Augstākās tiesas Senāts*) refused to consider an appeal on points of law lodged by the applicant.

18. That decision was final.

19. The applicant learnt of the decision of the Senate of the Supreme Court on 12 November 2012, when it was communicated to him.

B. Relevant domestic law and practice

20. The domestic law and practice has been cited in *Trūps v. Latvia* ((dec.), no. 58497/08, §§ 16-33, 20 November 2012). For the purposes of the present case it is appropriate to set out the wording of section 49[1](1)1) of the Criminal Law:

"(1) If a court finds that a person's right to completion of criminal proceedings within a reasonable time has not been respected, it may:

1) take this circumstance into account in determining sentence and mitigate the sentence;

..."

21. Under section 318(2) of the Criminal Law, an abuse of office that had caused grave consequences or had been committed with the intent to obtain a material benefit was punishable by a custodial sentence of up to eight years or a fine of up to one hundred and fifty minimum monthly salaries. On 1 January 2005 amendments to section 318(2) entered into force. The punishment of compulsory work and the ancillary penalty of prohibition on exercising certain duties for a period of one year to five years were added.

COMPLAINTS

22. The applicant complained under Article 6 § 1 of the Convention that the case had not been decided within a reasonable time. The first-instance proceedings had lasted almost ten years, from 21 December 2001 until 24 November 2011. He had borne the status of accused for thirteen years, during which time he had been suspended from work.

23. The applicant raised further complaints under Article 6 of the Convention.

THE LAW

A. As regards Article 6 § 1 of the Convention

24. According to the applicant, the length of the criminal proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

"In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

25. The Court notes at the outset that the applicant has not offered evidence that he had raised his complaint before the appeal court and the cassation court.

26. In this regard, the Court observes that in *Trūps* it found that the applicant had failed to exhaust domestic remedies because he had not lodged before the domestic courts a complaint about the length of the

criminal proceedings (cited above, § 57). It also held that, even where domestic courts had to consider matters of their own motion, the applicant was not dispensed from the requirement of Article 35 § 1 of the Convention (ibid., § 56).

27. The Court observes that in the present case, following the first-instance judgment, the applicant had no real sentence to serve (see paragraph 14 above). This may raise the question whether maintaining the applicant's complaint before the higher courts provided an effective remedy. However, the Court finds it unnecessary to assess this matter separately because it concludes that the complaint is, in any case, inadmissible on the following grounds.

1. The reasonableness of the length of the proceedings

28. The criminal proceedings in issue began on 25 October 1999, when the applicant was arrested and became aware of the criminal proceedings instituted against him the same day (see, *mutatis mutandis*, *Batuzov v. Germany* (dec.), no. 17603/07, 22 May 2012).

29. According to the Court's case-law, the period to be taken into consideration in determining the length of criminal proceedings normally ends with the day on which a charge is finally determined or the proceedings are discontinued (see, among many authorities, *Kalashnikov v. Russia*, no. 47095/99, § 124, ECHR 2002-VI).

30. In the instant case, the proceedings were finalised on 2 November 2012 (see paragraph 17 above), when the Senate of the Supreme Court refused to consider the applicant's appeal on points of law (see *Sorokins and Sorokina v. Latvia*, no. 45476/04, §§ 32 and 118, 28 May 2013; *Zandbergs v. Latvia*, no. 71092/01, § 86, 20 December 2011; and *Ž. v. Latvia*, no. 14755/03, §§ 55 and 82, 24 January 2008).

31. The proceedings therefore lasted for around thirteen years, at the investigation stage and at three levels of court jurisdiction.

2. Loss of victim status

32. It remains to be determined whether the applicant has lost his status of victim of a violation of Article 6 § 1 (see, *mutatis mutandis*, *Batuzov*, cited above, and *Dzelili v. Germany*, no. 65745/01, § 100, 10 November 2005).

33. In that regard, the Court reiterates that the mitigation of a sentence on the ground of the excessive length of the proceedings does not in principle deprive the individual concerned of his status of victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51,

and *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001). In cases concerning the failure to observe the reasonable-time requirement guaranteed by Article 6 § 1 of the Convention, the national authorities can afford adequate redress in particular by reducing the applicant's sentence in an express and measurable manner (see *Beck*, cited above, § 27).

34. In such circumstances, to duplicate the domestic process with proceedings before the Court would hardly appear compatible with the subsidiary character of the machinery of protection established by the Convention. The Convention leaves to each Contracting State, in the first place, the task of securing the enjoyment of the rights and freedoms it enshrines (see *T.K. and S.E. v. Finland* (dec.), no. 38581/97, 16 March 2004, and *Eckle*, cited above, § 66).

35. In the case at hand, the first-instance court found that the applicant's right to completion of criminal proceedings within a reasonable time had not been respected (see paragraph 11 above). That finding remained unchanged on appeal.

36. That suffices for the Court to conclude that the judicial authorities acknowledged in substance the breach of Article 6 § 1 of the Convention (see, *mutatis mutandis*, *Dzelili*, cited above, § 101, and contrast *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09, § 65, 10 May 2011).

37. In assessing the redress afforded by the domestic courts for the breach of the Convention, the Court notes that the first-instance court, when determining the applicant's sentence, considered a number of factors (see paragraphs 10 and 12 above). At the same time the domestic court expressly relied on section 49^1 of the Criminal Law (see paragraphs 10, 12 and 20 above). Having established that the proceedings had been unreasonably long, the Ludza District Court went on to consider whether it could impose a fine (see paragraph 12 above). The domestic court took that approach in the course of sentencing despite the gravity of the offence in question and the fact that the crime established was also punishable by a custodial sentence (see paragraph 21 above). It therefore emerges that the delay element stood out as being the primary mitigating factor (see, *mutatis mutandis*, *Beck*, cited above, § 28, and contrast *Dimitrov and Hamanov*, cited above, § 66). The applicant was eventually given a light sentence of forty hours' compulsory work by reference to section 49^1 of the Criminal Law (see paragraph 14 above). The applicant had already served that sentence in full, in view of the time he had spent in pre-trial custody.

38. The Court is satisfied that the substantial delay – more than twelve years from the institution of the proceedings against the applicant until the first-instance decision – caused by the domestic authorities was adequately taken into account by the Ludza District Court. Its judgment was upheld on appeal and the appeal proceedings themselves were speedy. Accordingly, the applicant was afforded adequate redress for the alleged violation.

39. Having regard to the foregoing considerations, the Court concludes that the applicant cannot claim to be a victim of a violation of Article 6 § 1 of the Convention.

40. It follows that the length-of-proceedings complaint must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other alleged violations of Article 6 of the Convention

41. The applicant complained under Article 6 § 2 of the Convention that he had been suspended from office. He also complained, under Article 6 § 3 (a), that a charge had been brought in respect of a trailer with a different registration number. He further alleged insufficient reasoning on the part of the domestic courts.

42. 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 these complaints 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.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President