FOURTH SECTION

DECISION

Application no. 7257/03
Igors MAKSIMOVS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 2 April 2013 as a Committee composed of:

 Päivi Hirvelä, President,

 Ledi Bianku,

 Paul Mahoney, *judges*,

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 January 2003,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Mr Igors Maksimovs, is a Latvian national, who was born in 1970 and is currently being held in a prison in Rīga in connection with another set of criminal proceedings.

2.  The Latvian Government (“the Government”) were represented by their Agent at the material time, Mrs I. Reine.

A.  The circumstances of the case

1.  The applicant’s arrest and detention

3.  On 29 October 1999 the applicant was arrested on suspicion of robbery. He was questioned as a suspect. On the same date a witness recognised the applicant as having participated in the robbery under investigation.

4.  On 1 November 1999 a confrontation was held between the applicant and the witness. The applicant confessed to having committed the robbery.

5.  On 1 November 1999 a judge authorised the applicant’s detention on remand.

6.  On 10 November 1999 the applicant gave another statement.

7.  On 28 December 1999 and 28 February 2000 the same judge authorised the applicant’s detention for two months, on each occasion citing the following reasons: the applicant might abscond, impede the investigation or re-offend; and in view of the severity of the offence, his previous convictions and his absence of a registered place of residence.

8.  On 27 April and 25 May 2000 another judge authorised the applicant’s detention for one further month, on each occasion for the following reasons: the applicant might abscond and re-offend; and more investigative steps had to be taken.

9.  On 27 June and 27 July 2000 two more judges authorised the applicant’s detention for one further month, on each occasion citing the same reasons as mentioned above. The applicant lodged an appeal against the latter decision. He submitted that he would not abscond or impede the investigation, that he had two minor children who need his help and that the youngest of them had some health-related problems.

10.  On 18 August 2000 the latter decision was upheld by an appeal court on the grounds that the decision had been justified. No more reasons were provided.

11.  On 24 August 2000 a judge authorised the applicant’s detention for one more month. Reasons remained the same as those in the previous decision.

12.  On 8 September 2000 the pre-trial investigation was completed and the applicant started to acquaint himself with the case-materials. He finished on 28 September 2000. On the same date the final charge was brought against the applicant and his co-accused.

13.  On 2 October 2000 the applicant and the co-accused were committed for trial before the Rīga Regional Court and the first hearing was scheduled for 26 June 2002. The preventive measure imposed on the applicant (detention on remand) remained unchanged; no reasons were given.

14.  No more detention orders were issued in respect of the applicant.

2.  The applicant’s trial

15.  Between 26 and 28 June 2002 the hearings before the Rīga Regional Court took place, and were concluded on the latter date.

16.  On 2 July 2002 the Rīga Regional Court pronounced the judgment and read out its operative part to the applicant. The applicant was convicted of robbery and sentenced to six years’ imprisonment. He received a copy of the full judgment on 11 September 2002.

17.  On 13 February 2003, upon the appeal complaints submitted *inter alia* by the applicant and his counsel, the judgment was upheld by the appellate court.

18.  On 23 April 2003 the applicant’s appeal on points of law was dismissed.

3.  The applicant’s children

19.  During the course of his pre-trial detention, in 2000, the applicant’s civil partner gave birth to their second child. According to the applicant, he could not be registered as his child’s father due to the fact that his passport was held by the prison authority. Allegedly, he had also been unable to register himself as the father of his first child, born in 1994, for the same reason.

20.  On 18 August 2000 the applicant’s civil partner gave a statement. She stated that she and the applicant had two children – born in 1994 and 2000. Paternity had not been established, as at the time of their birth the applicant had been imprisoned and for that reason “it had been complicated”. She also testified that they had lived together before the applicant’s arrest at her apartment, but this fact had not been registered in the relevant domicile register.

21.  On 23 October 2003 the Chairman of the Supreme Court received a letter form the applicant, who asked that his passport be sent to the prison authority with a view to his entering into marriage with his partner and with a view to establishing the paternity of his children. The applicant mentioned, among other things, that he had not raised this issue with any other domestic authority beforehand.

22.  According to the information provided by the Government, the applicant’s passport had been kept in the applicant’s personal file in the respective prison, of which fact the applicant was also informed.

23.  The Government submitted information from the relevant domestic register to attest to the fact that the children were born on 26 December 1994 and 20 July 2000 respectively. The applicant’s partner had been registered as their mother; no information concerning their father had been recorded. The relevant register provided information that neither the applicant nor his civil partner had approached it with a view to entering into marriage or establishing paternity of their children.

B.  Relevant domestic law

24.  A full description of the law and practice as concerns the pre-trial detention at the relevant time may be found in *Svipsta v. Latvia* (no. 66820/01, §§ 53-66, ECHR 2006‑III (extracts)).

25.  The relevant sections of the Civil Law (*Civillikums*) provide:

Section 146

“... The husband of the mother of a child is presumed to be the father of the child who is born to the woman during marriage ... (presumption of paternity). ...”

Section 154

“If the child’s filiation to the father cannot be established under section 146 of this Law ..., the filiation to the father shall be based on voluntary acknowledgement of paternity ...”

Section 155

“To acknowledge paternity, both father and mother of a child shall lodge with the Civil Registry Office a joint application; the application shall be signed in person or duly notarised. The relevant entry in the birth register shall be made concerning the acknowledgement of paternity ...”

COMPLAINTS

26.  The applicant complained under Article 5 § 3 of the Convention about the length of his pre-trial detention. He also complained, in essence under Article 5 § 1 of the Convention, that upon his arrest authorities had not taken into account the fact that he had a job, an apartment, and one child and that his partner had been pregnant. He submitted that throughout the proceedings against him, these factors had not been taken into consideration. Finally, he complained, in essence, that he could not challenge the lawfulness of his detention.

27.  The applicant alleged that he could not register himself as the father of his second child, born in 2000 while he was detained, as his passport had been held by the prison authority. He also stated that he could not register himself as the father of his first child, born in 1994, for the same reason.

28.  The applicant raised a number of further complaints under Articles 3 and 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

THE LAW

A.  Alleged violations of Article 5 of the Convention

29.  The applicant raised several complaints about the length and the lawfulness of his pre-trial detention as well as about the alleged lack of judicial control during that period under Article 5 §§ 1, 3 and 4 of the Convention (see paragraph 26 above). The relevant parts of that Article 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 or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3.  Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4.  Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

30.  The Government contested admissibility on two grounds.

31.  First of all, they considered that the applicant had not furnished the Court with copies of the relevant decisions of the domestic courts and of his complaints lodged with the domestic authorities. They considered that he had thereby failed to comply with Article 34 of the Convention and had not properly lodged an application within the meaning of Rule 47 of the Rules of Court.

32.  Secondly, they argued that the complaints under Article 5 of the Convention had not been lodged within the six-month time-limit. They considered that the starting point, the *dies a quo*, for the six-month period had been 2 July 2002.

33.  In response to the Government’s submission that the applicant had not properly lodged his complaints before the Court, it suffices to note that the Court has already examined and rejected similar arguments in other cases (see *Marina v. Latvia*, no. 46040/07, §§ 34-44, 26 October 2010, and *Petriks v. Latvia*, no. 19619/03, §§ 18-20, 4 December 2012). It sees no reason to decide otherwise in the present case. Accordingly, the Government’s objection has to be dismissed.

34.  As to the Government’s second objection, the Court reiterates that where an applicant is entitled to be served with a written copy of a final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the written judgment (see *Worm v. Austria*, 29 August 1997, § 33, Reports of Judgments and Decisions 1997-V). The Court notes, however, that in so far as concerns the complaints about the length and the lawfulness of the pre-trial detention or about the lack of judicial control under Article 5 of the Convention, the date of the “final decision” for the purpose of Article 35 § 1 of the Convention is the date on which the charge is determined, even if only by a court of first instance (see, among many other authorities, *Daktaras v. Lithuania* (dec.), no. 42095/98, 11 January 2000; *Popov v. Russia*, no. 26853/04, § 153, 13 July 2006; *Labita v. Italy* [GC], no. 26772/95, § 147, ECHR 2000‑IV; and, more recently, *Idalov v. Russia* [GC], no. 5826/03, § 112, 22 May 2012).

35.  In the instant case the Court notes that on 2 July 2002 the Rīga Regional Court convicted the applicant of robbery and sentenced him to six years’ imprisonment. The judgment was delivered on that date, as rightly pointed out by the Government. From that date onwards the applicant’s detention was effected on the basis of subparagraph (a) of Article 5 § 1 of the Convention, and no longer on the basis of subparagraph (c) of the same provision. The fact that the applicant received the full and reasoned text of the first-instance court judgement only on 11 September 2002 is not material (see *Žarskis v. Latvia* (dec.), no. 33695/03, § 49, 17 March 2009). On 2 July 2002 the first-instance court pronounced its judgment and convicted the applicant of robbery; it also fixed the applicant’s sentence. The operative part of the judgment (the applicant’s conviction and sentence) was read out to him on the same date; this part of the judgement was later reproduced in the full judgment, which the applicant received later on, in identical terms. Furthermore, the Court observes that the applicant did not make a separate complaint concerning the lawfulness of his detention following the first-instance court judgment. Accordingly, the Court considers that the *dies a quo* for the applicant’s complaints concerning the length and the lawfulness of his pre-trial detention and the alleged lack of judicial control was 2 July 2002 and that he had to lodge these complaints with the Court within the six-month period from that date, that is, not later than on 2 January 2003. The applicant lodged these complaints with the Court belatedly, on 6 January 2003.

36.  The Court, therefore, upholds the Government’s preliminary objection. It follows that these complaints have been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B.  Alleged violation of Article 8 of the Convention

37.  The applicant further alleged that he could not be registered as father of his children born in 1994 and 2000 (see paragraph 27 above). The Court will examine this complaint under Article 8 of the Convention, which reads in its relevant part:

“1.  Everyone has the right to respect for his ... family life ... .

2.  There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

38.  The Government contested the admissibility of this complaint on two grounds. Firstly, they argued that the applicant had not been a victim of the alleged violation as he had never approached the domestic authorities with any requests to settle the paternity-related issues. Secondly, they submitted that the applicant’s complaint had been manifestly ill-founded as no rights had been denied to him.

39.  The Court takes note of the factual information submitted by the Government that during his detention the applicant did not bring his family situation, in particular, the birth of his second child, to the attention of any domestic authority, including the relevant prison authority. He did not inquire about the possibilities of registering paternity of his first child, either at the time of his birth, which was before the entry into force of the Convention in Latvia, or at any later moment. Nor did his partner, in her statement of 18 August 2000, ask the competent investigating authority to take any steps in this connection; she merely expressed her view that registering the applicant as the father of their children would be “complicated”. The Court considers that the applicant has failed to substantiate before it, let alone to submit *prima facie* evidence (see *Aleksejeva v. Latvia*, no. 21780/07, § 51, 3 July 2012), that it had not been possible to establish the paternity of his children while he was detained and that any issues arose under Article 8 of the Convention in that connection. Furthermore, the Court observes that in the meantime the applicant has not expressed his will, on the basis of the legal provisions cited by the Government (see paragraph 25 above), to proceed with establishing paternity of his children. The fact that he waited for more than three years to make an inquiry about his passport to the Supreme Court, and that he did so only after he had lodged his application with the Court, only provides further evidence for the Court’s conclusion that he did not attempt to establish the paternity of his children while in custody.

40.  The Court, therefore, upholds the Government’s preliminary objection. 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.  Other alleged violations of the Convention

41.  The applicant raised a number of further complaints under various Articles of the Convention (see paragraph 28 above).

42.  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.

43.  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