FOURTH SECTION

DECISION

Application no. 8283/07
Uldis DREIBLATS
against Latvia

The European Court of Human Rights (Fourth Section), sitting on 4 June 2013 as a Chamber composed of:

 David Thór Björgvinsson, *President,* Ineta Ziemele, Päivi Hirvelä, George Nicolaou, Paul Mahoney, Krzysztof Wojtyczek, Faris Vehabović, *judges,*and Fatoş Aracı, *Section Registrar,*

Having regard to the above application lodged on 2 February 2007,

Having deliberated, decides as follows:

THE FACTS

1.  The applicant, Mr Uldis Dreiblats, is a Latvian national, who was born in 1960 and lives in Rīga.

**A.  The circumstances of the case**

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

*1.  Background information*

3.  During the municipal elections of 2005 the election results in one of the municipalities were annulled because the election procedure had been breached. Shortly before new elections took place in August 2005, the authorities carried out an investigative operation involving phone tapping. P., a candidate in the elections, was among those whose telephone conversations were recorded. He was head of a company which, at about the same time, had been unexpectedly inspected by the tax authorities (*VID Finanšu policija*). The police discovered various shortcomings in the company’s accounting records as well as alleged tax evasion, and criminal proceedings were instituted.

*2.  Criminal proceedings leading to the order to disclose journalist’s source (first set of proceedings)*

4.  On 10 August 2006 the newspaper “*Neatkarīgā Rīta Avīze*” published an article entitled “Scandal. [Political] party’s black money cash-box discovered?” (“*Skandāls. Vai atklāta partijas melnā kase*?”). It contained, *inter alia*, transcripts of P.’s telephone conversations recorded in August 2005. The conversations reflected P.’s attempts to use his political contacts to settle a problem with the tax authorities. The conversations also raised questions as to the unofficial financing of the political party of which P. was a member.

5.  The published telephone conversations had been obtained in the course of an investigative operation carried out by the Security Police (*Drošības policija*) and were therefore considered as classified operational information. On 10 August 2006 the Security Police instituted criminal proceedings under section 94 of the Criminal Law for breach of confidentiality. No charges were brought.

6.  It appears from the case-file that the investigating authorities searched the office of the newspaper concerned and seized an audiotape of the impugned conversations.

7.  On 15 August 2006 the applicant, who was a journalist at the aforementioned newspaper and the author of the article, was asked by the Security Police to give a statement in the criminal proceedings. Invoking his journalist’s privileges, the applicant refused to disclose the source of the recorded telephone conversations.

8.  Following a request by the Security Police, on 5 September 2006 the investigative judge of Rīga City Centre District Court, after having heard the prosecutor and the applicant, upheld the part of the request concerning the disclosure of the source of the published telephone conversations.

9.  On 20 September 2006 the Rīga City Centre District Court dismissed an appeal lodged by the applicant. The judge noted, *inter alia*, that the investigation into the breach of confidentiality had not identified any suspects and therefore had not established at what level those responsible for disclosing the classified information had accessed it. The decision stated that even if other means of investigating could have been deployed, in a period when Latvia was preparing to host a NATO summit the persistence of the aforementioned criminal activities could have put public safety and national security at risk. It concluded that it had been an exceptional situation and that the restrictions of the rights of an individual were proportional to the protection of the public interests.

10.  The court also noted that the investigating judge had only partly upheld the request of the Security Police.

11.  On 21 September 2006 the Office of the Prosecutor General dismissed a request submitted by the applicant to terminate the criminal proceedings in which the applicant had to give statements (see paragraph 5 above). It explained *inter alia,* that the criminal proceedings had been instituted not as a result of the publication of the tapped telephone conversations but because of a breach of confidentiality committed by an individual who had been entrusted with the information in the course of his or her official duties. The letter further noted that the sole aim of the request to divulge the journalist’s source was to identify the official responsible for the breach of confidentiality. The response could be appealed against to the Prosecutor General.

12.  On 12 October 2006 the Security Police asked the applicant to execute the court order of 5 September 2006. The applicant was also informed about possible criminal liability under section 296 of the Criminal Law in the event of non-compliance with the order. The applicant again refused to disclose the information, invoking his rights as a journalist as well as the right against self-incrimination.

13.  In a letter dated 6 December 2006 the Security Police again asked the applicant to submit the information. They also explained that he had the status of a witness in the respective criminal proceedings, so his testimonies could not be used against him and his argument in that respect was unfounded. In his response, the applicant confirmed his refusal to disclose the source.

*3.  Criminal proceedings against the applicant for non-compliance with the court order to disclose the source (second set of proceedings)*

14.  On 29 March 2007 the applicant was charged under section 296 of the Crime Act for refusal to comply with a court order.

15.  On 10 May 2007 the Rīga City Centre District Court found the applicant guilty and fined him 1,200 lati (LVL) (1,712 euros (EUR)). The court noted that the intentional nature of the offence had been proven by the fact that the applicant had refused to give witness statements in the first set of criminal proceedings. The court concluded that the obligation imposed on the applicant by the court order was not contrary to the second paragraph of Article 10 of the Convention in that by complying with the order the applicant would have prevented a criminal offence from being committed.

16.  The appellate court upheld the lower court’s judgment. It noted that in the first set of criminal proceedings the applicant’s journalistic immunity had been overridden by the court order of 5 September 2006. The applicant had been aware of the procedural obligation imposed on him by the court order and therefore his refusal to obey had constituted the *mens rea* required for the offence provided for under section 296 of the Criminal Law. The appellate court noted that the proportionality of the measure had already been measured at the time of issuing the order. In addition, judging from the responses of the Security Police found in the case file and the investigation in the first set of criminal proceedings, the appellate court concluded that the Security Police had had no other means of disclosing the source of the information.

17.  In his appeal on points of law the applicant argued that his activities could not be qualified under section 296 of the Criminal Law as there was a lack of intention on his part. He also relied on a recommendation of the Committee of Ministers of the Council of Europe and contended that the court order had not been proportional.

18.  By virtue of sections 584 (2) and 574 (2) of the Criminal Procedure Law, the Senate of the Supreme Court of its own motion extended the limits of the appeal on points of law and found that the Office of the Prosecutor and the lower courts had wrongfully interpreted and applied section 296 of the Criminal Law. In particular, the aforementioned provision provided for criminal liability for the non-execution of judgments or decisions if the execution fell within an individual’s official duties. As that qualification did not apply to the applicant, there was no legal basis for applying the above provision to his non-compliance with the court order. The Senate revoked the lower court’s decision and terminated the criminal proceedings.

19.  In January 2008 the applicant asked the Office of the Prosecutor General whether, based on the outcome of the aforementioned criminal proceedings, it would publicly apologise to him, and whether measures had been taken in order to avoid similar situations in the future. In response, the Office of the Prosecutor General indicated that:

“...[t]he Criminal Procedure Law provides for an acquittal or conviction, ... the law does not provide for an obligation on the part of the prosecutor to apologise to someone for having brought charges in proceedings which resulted in an acquittal.”

20.  The applicant was informed by the Office of the Prosecutor General of his right to institute civil proceedings for non-pecuniary damages in accordance with the Law on Compensation for Damage caused by State Institutions (*Par izziņas izdarītāja, prokurora vai tiesneša nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu*).

**B.  Relevant domestic and international law**

*1.  Criminal Law*

21.  In accordance with section 94, a person who intentionally discloses an official secret, having been warned about the consequences of disclosure but where the offence does not involve espionage, may be sentenced to up to eight years’ imprisonment or receive a fine not exceeding the minimum monthly salary.

22.  By virtue of section 296, a person who intentionally fails to execute a court judgment or decision, or delays the execution thereof, will be subject to a fine not exceeding sixty minimum monthly salaries.

*2.  Criminal Procedure Law*

23.  Under section 154 of the Criminal Procedure Law (as in force at the material time), a court may order a journalist or editor to indicate the source of published information. An investigating judge will decide on the proposal of an investigator or public prosecutor, having listened to the submitter of the proposal, or a journalist or editor, and having familiarised him or herself with the materials of the case. An investigating judge will take a decision on the indication of the source of information, giving due consideration to the proportionality of the rights of the person and the public interests. The decision may be challenged against to the chairman of the court whose decision is final.

*3.  Law on the Press and Other Mass Media*

24.  Under section 22, journalists may choose not to indicate the source of their information. If the person who has provided the information requests that his or her name is not to be indicated, this request shall be binding upon the editorial board. The source of information may be revealed only at the request of a court or prosecutor.

*4.  Law on Compensation for Damage caused by State Institutions* (Par izziņas izdarītāja, prokurora vai tiesneša nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu)

25.  Section 2 of the Law on Compensation for Damage caused by State Institutions deals with the unlawful conduct of investigative bodies, the Office of the Prosecutor General and the courts and provides that pecuniary and non-pecuniary damages may be awarded, *inter alia*, in the event of an acquittal for reasons of rehabilitation. Requests for pecuniary damages in the event of an acquittal by the court must be submitted to the Ministry of Justice. In relation to non-pecuniary damages, a person has the right to submit a civil claim to a court of general jurisdiction.

*5.  Civil Law (*Civillikums*)*

26.  Section 5 provides that a judge must be guided by the general principles of law and justice when a court is called upon to adjudicate on its own discretion or when exceptional circumstances have to be taken into account.

*6.  Recommendation No. R (2000) 7 of the Committee of Ministers to Member States on the right of journalists not to disclose their sources of information (adopted on 8 March 2000)*

27.  Principle 3 (Limits to the right of non-disclosure)

“a.The right of journalists not to disclose information identifying a source must not be subject to other restrictions than those mentioned in Article 10, paragraph 2 of the Convention. In determining whether a legitimate interest in a disclosure falling within the scope of Article 10, paragraph 2 of the Convention outweighs the public interest in not disclosing information identifying a source, competent authorities of member states shall pay particular regard to the importance of the right of non-disclosure and the pre-eminence given to it in the case-law of the European Court of Human Rights, and may only order a disclosure if, subject to paragraph *b*, there exists an overriding requirement in the public interest and if circumstances are of a sufficiently vital and serious nature.

b. The disclosure of information identifying a source should not be deemed necessary unless it can be convincingly established that:

i. reasonable alternative measures to the disclosure do not exist or have been exhausted by the persons or public authorities that seek the disclosure, and

ii. the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, bearing in mind that:

- an overriding requirement of the need for disclosure is proved,

- the circumstances are of a sufficiently vital and serious nature,

- the necessity of the disclosure is identified as responding to a pressing social need, and

- member states enjoy a certain margin of appreciation in assessing this need, but this margin goes hand in hand with the supervision by the European Court of Human Rights.

c. The above requirements should be applied at all stages of any proceedings where the right of non-disclosure might be invoked.”

COMPLAINTS

28.  The applicant, a journalist, complains under Article 10 of the Convention that he was ordered by a court to disclose his source of information. He further complains that after the criminal proceedings against him for non-disclosure of a journalist’s source of information, the State institutions failed to provide adequate redress.

29.  The applicant also complains under Article 6 that his complaint against the aforementioned order was examined in his absence, that important arguments raised in the complaint were not answered, and that he was unable to challenge it to a higher authority.

THE LAW

**A. Complaint under Article 10 of the Convention**

30.  The applicant, a journalist, alleges that the investigating judge’s order to disclose his source of confidential information infringed his right to freedom of expression, protected under Article 10 of the Convention. He further complains that after the criminal proceedings against him for non-disclosure of a journalist’s source of information, the State institutions failed to provide adequate redress.

31.  The Court reiterates at the outset the terms of Article 35 § 1 of the Convention, which provide as follows:

“1.  The Court may only deal with the matter after all domestic remedies have been exhausted...”

32.  The Court further reiterates that the purpose of the above rule is to afford the Contracting State the opportunity of preventing or putting rightthe violation alleged against them before those allegations are submitted to the Court; nevertheless the rule must be applied without excessive formalism (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999‑I).

33.  The only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010), namely, a remedy that offers a chance of redressing the alleged breach and is not a pure repetition of a remedy already exhausted. There is no requirement to use another remedy which has essentially the same objective (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999). However, noting the strong affinity between Article 35 § 1 and Article 13, the Court has ruled that if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002‑I; *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI, § 157; and *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, ECHR 2001-V, § 107).

34.  The Court cannot ignore the particular circumstances of the case outlined below, which must be taken into account when applying Article 35 of the Convention. The applicant’s refusal to obey the court order to disclose his sources served as grounds for instituting a second set of proceedings, which were later discontinued following a ruling by the Senate of the Supreme Court that criminal liability for non-compliance with a disclosure order could not be extended to a journalist (see paragraph 18 above) and in practical terms, the order became unenforceable. Moreover, the prosecutor’s office informed the applicant of his right to institute proceedings under the Law on Compensation for Damage caused by State Institutions.

35.  The above law provides for an administrative procedure for pecuniary damage claims and a civil procedure for non-pecuniary damage caused by the unlawful activities of investigators, prosecutors or courts. In a case where criminal proceedings resulted in an acquittal, the provisions of the special compensation law enshrine the principles of objective responsibility of State authorities, according to which it is not for the person invoking the procedure to prove the unlawfulness of the impugned act. Pursuant to section 5 of the Civil Law, the national courts would be tasked with assessing all the circumstances of the case with a view to establishing an equitable amount of compensation for an acquitted individual.

36.  The Court observes that the above mechanism does not seem *a priori* unlikely to result in success and in this respect the Court reiterates that, even when a doubt exists as to the effectiveness of a remedy, that remedy has to be tried (see, amongst other authorities, *Reif v. Greece, no. 21782/93,* 28 June 1995).

37.  Without prejudging whether the measure would have deprived the applicant of his status as a victim in the light of the Convention, the Court considers that by failing to follow the procedures as provided for under the compensation law, the applicant has not exhausted the domestic remedies.

38.  In the light of the aforementioned considerations, the Court concludes that this complaint must be rejected under Article 35 § 1 of the Convention.

1. **Complaint under Article 6 of the Convention**

39.  The applicant also complains under Article 6 that his challenge against the court order to disclose his source was made in his absence, that the court failed to answer important arguments raised in his appeal, and that it was not subject to a further appeal. The relevant parts of Article 6 provide as follows:

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

40.  The Court observes that the duty to give evidence in criminal proceedings forms part of a normal civic duty (see *Voskuil v. the Netherlands*, no. 64752/01, § 86, 22 November 2007). Accordingly, an order to give evidence does not involve the determination of the witness’s “civil rights and obligations” (see *BBC v. United Kingdom*, no. 25798/94, Comm. Dec. 18 January 1996, DR 84-A), nor does it involve the determination of a “criminal charge” against the witness (see *Voskuil*, ibid.).

41.  Observing that the impugned order was issued in the first set of proceedings in which the applicant had the status of witness and that the order in substance demanded the applicant to provide witness statements, the Court concludes that in the light of the principles set out above, this complaint is incompatible *ratione materiae* with Article 6 of the Convention.

42.  It must therefore be declared inadmissible in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

 Fatoş Aracı David Thór Björgvinsson
 Deputy Registrar President