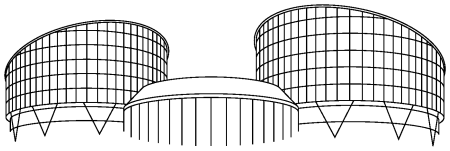

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TALMANE v. LATVIA

(Application no. 47938/07)

JUDGMENT

STRASBOURG

13 October 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Talmane v. Latvia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President,*
Khanlar Hajiyev,
Erik Møse,
Faris Vehabović,
Yonko Grozev,
Carlo Ranzoni,
Mārtiņš Mits, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 20 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 47938/07) 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 Russian national, Ms Lilija Talmane ("the applicant"), on 10 October 2007.

2. The applicant was represented by Ms E. Kalniņa, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agents, Mrs I. Reine, and subsequently Mrs K. Līce.

3. The applicant alleged that the refusal of the Senate of the Supreme Court to examine her appeal on points of law without a reasoned decision infringed her right to a fair hearing.

4. On 15 January 2009 the above complaint was communicated to the Government of the Republic of Latvia. The Government of the Russian Federation did not exercise their right to intervene in the above case as a third party.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966. At the time she submitted her complaint she lived in Madona Region, Latvia.

6. On 17 November 2006 the Madona District Court, acting as a first-instance court, found the applicant guilty of a traffic offence which had

caused moderate bodily injury to a victim. The court ordered the applicant to perform 100 hours of community service and suspended her driving licence for a year.

7. In establishing the applicant's guilt, the first-instance court relied on incriminating statements by the victim and two witnesses. It also relied on other evidence, including a medical expert opinion on the bodily injuries sustained by the victim.

8. The applicant appealed against the judgment to the Vidzeme Regional Court. She alleged, *inter alia*, that the first instance court had failed to order an inspection and a technical examination of her vehicle, and had also not carried out a confrontation of witnesses.

9. On 13 February 2007 the Vidzeme Regional Court upheld the judgment of the first-instance court but changed in part the punishment by revoking the suspension of the applicant's driving licence.

10. On 8 March 2007 the applicant submitted an appeal on points of law to the Senate of the Supreme Court. She alleged that the appellate court had failed to carry out and to order a number of investigating activities. Specifically, according to the applicant, the appellate court has not carried out a confrontation between the witnesses and the victim. It has not ordered an investigative experiment, an inspection and a technical examination of her vehicle.

11. The applicant maintained that the evidence in the case was not sufficient to establish her guilt, and thus the appeal court had acted contrary to numerous sections of the Criminal Procedure Law.

12. In a letter dated 11 April 2007 a judge of the Senate of the Supreme Court informed the applicant that on 11 April 2007 her appeal on points of law was not admitted for examination in the cassation proceedings. It relied on section 573 of the Criminal Procedure Law and stated that "[the appeal on points of law] was not substantiated by any fundamental infringement of the Criminal Law or the Law on Criminal Procedure". It was also stated that it was not within the competence of the cassation court to re-examine or obtain evidence, or to explain the factual circumstances of the case.

II. RELEVANT DOMESTIC LAW

Criminal Procedure Law *(Kriminālprocesa likums)*

13. Relevant provisions of Chapter 63 of the Criminal Procedure Law (CPL) on the review of judgments and decisions which have entered into force have been summarised in the case of *Dāvidsons and Savins v. Latvia*, nos. 17574/07 and 25235/07, §§ 24-26, 7 January 2016.

14. Section 569 provides that cassation proceedings may be instituted by means of submitting to the Senate of the Supreme Court an appeal on points of law with regard to the legality of an appellate court's judgment or

decision that has not yet entered into force. The cassation court shall not re-examine evidence.

15. Section 573 of the CPL provides that the legality of a judgment or decision shall be examined in accordance with procedures regulating cassation proceedings only in cases where the complaints in the appeal on points of law have been substantiated with reference to a violation of the Criminal Law or a fundamental violation of the CPL.

16. With the amendments which entered into force on 1 July 2009, section 573 was supplemented with additional paragraphs, which provide that a judge rapporteur appointed by the President of the Senate of the Supreme Court shall decide on whether a judgment or decision shall be subjected to examination on points of law. The decision is adopted in the form of a written resolution on the appeal on points of law, and that decision is final.

17. Section 575 provides as follows:

> "(1) Fundamental violations of the Criminal Procedure Law are violations which lead to revocation of a court judgment or decision in the event that:
>
> 1) a court has adjudicated a case in an unlawful composition;
>
> 2) there has been a failure to comply with the conditions that exclude the participation of a judge in the adjudication of a criminal case;
>
> 3) a case has been adjudicated in the absence of the accused or individuals involved in the proceedings, if the participation of the accused and of those individuals is mandatory under this Law;
>
> 4) the right of the accused to use a language that he or she understands, and to have the assistance of an interpreter, has been violated;
>
> 5) the accused was not given the opportunity to make a defence speech or was not given the opportunity to have the last word;
>
> 6) there is no transcript of a court hearing, in a case where a transcript is mandatory;
>
> 7) in rendering a judgment, the secrecy of court deliberations has been violated.
>
> (2) The expulsion of an accused or victim from a courtroom may be recognised as a substantial violation of this Law, if the expulsion was unjustified, and if the expulsion has substantially restricted the procedural rights of such persons, and, therefore, led to an unlawful adjudication.
>
> (3) Other violations of this Law that [have] led to adoption of an unlawful judgment or decision may also be recognised as fundamental violations of this Law."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF A REASONED DECISION

18. The applicant complained that the refusal of the Senate of the Supreme Court to examine her appeal on points of law without a reasoned decision infringed her right to a fair hearing as provided in Article 6 § 1 of the Convention, which in its relevant part reads as follows:

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

A. Admissibility

1. The parties' submissions

19. The Government argued that the applicant had failed to exhaust domestic remedies. Specifically, she had not asked the prosecutor to lodge an appeal (*protests*) against the judgment of 13 February 2007, as provided for under chapter 63 of the Criminal Procedure Law, which set out conditions for the review of judgments and decisions which have entered into force (see paragraph 13 above).

20. The applicant did not comment on this matter.

2. The Court's assessment

21. According to the Court's case-law, the applicants are only obliged to use an effective remedy that is actually available in theory and in practice at the relevant time (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). It follows that Article 35 § 1 of the Convention does not require that discretionary or extraordinary remedies be exhausted (see, among other authorities, *Babayev v. Azerbaijan* (dec.), no. 36454/03, 27 May 2004).

22. In the case of *Dāvidsons and Savins v. Latvia*, nos. 17574/07 and 25235/07, § 36, 7 January 2016, the Court already assessed an identical argument raised by the Government and found that the review procedure enshrined in chapter 63 of the Criminal Procedure Law constituted an extraordinary remedy.

23. The aforementioned suffices to conclude that this procedure cannot be taken into account for the purposes of Article 35 § 1 of the Convention. The Government's objection must therefore be rejected.

24. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

25. The applicant upheld her initial submissions set out in her application form in which she principally argued that her appeal on points of law should have been examined on its merits.

26. With regard to the applicant's complaint that her appeal on points of law was not admitted with a properly reasoned decision, the Government argued that the sufficiency of the reasoning should be assessed in the context of the nature and role of such a decision at the relevant stage of proceedings. The competence of the Senate in cassation proceedings was limited to ascertaining whether the substantial and procedural provisions of the Criminal Procedure Law had been applied (see paragraph 13 above). The Senate would examine only those appeals on points of law which cited violations of the Criminal Law or fundamental violations of the Criminal Procedure Law (see paragraph 15 above). A judge rapporteur assessed whether an appeal on points of law complied with the above provisions and adopted a decision by a written resolution. This procedure initially derived from the Senate's jurisprudence, whereas from 1 July 2009 the procedure was codified in the Criminal Procedure Law (see paragraph 16 above).

27. The Government argued that at this preliminary stage there was no objective need for more complex reasoning by the judge rapporteur, apart from a reference to the relevant provision of the Criminal Procedure Law. In support the Government relied of the cases of *Gorou v. Greece (no. 2)* ([GC], no. 12686/03, 20 March 2009), and *Bufferne v. France* ((dec.), no. 54367/00, ECHR 2002-III (extracts)) in which the Court has not found such a practice incompatible with the requirement of sufficient reasoning under Article 6 of the Convention. Given that the applicant submitted her appeal on points of law in an attempt to achieve a re-examination of evidence already assessed by the appellate court, and that the appeal on points of law did not cite any violation susceptible to the institution of cassation proceedings, the Government contended that the impugned decision contained sufficient reasoning.

2. The Court's assessment

28. According to the Court's case-law, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I).

29. The Court has held that courts of cassation comply with their obligation to provide sufficient reasoning when they base themselves on a specific legal provision, without further reasoning, in dismissing cassation appeals which do not have any prospects of success (see *Sale v. France*, no. 39765/04, § 17, 21 March 2006, and *Burg and Others v. France* (dec.), no. 34763/02, ECHR 2003-II; for the same approach with regard to constitutional court practice see *Wildgruber v. Germany*, (dec.) no. 32817/02, 16 October 2006). In order to determine whether the requirements of fairness in Article 6 were met, the Court has considered matters such as the nature of the filtering procedure and its significance in the context of the proceedings as a whole, the scope of the powers of the court of appeal, and the manner in which the applicant's interests were actually presented and protected before that court (see e.g. *Hansen v. Norway*, no. 15319/09, § 73, 2 October 2014, with further references to *Ekbatani v. Sweden*, 26 May 1988, § 27, Series A no. 134, and *Monnell and Morris v. the United Kingdom*, 2 March 1987, § 56).

30. The Court observes that in the applicant's case the Senate, represented by a judge rapporteur, found that the requirements of section 573 of the Criminal Procedure Law had not been complied with (see paragraph 12 above). In accordance with section 573 of the Criminal Procedure Law, the Senate may refuse to admit an appeal on points of law, if such an appeal is not substantiated by fundamental violations of Criminal Procedure Law. Such "fundamental violations" are defined in section 575 of that law. The first and second paragraphs of that provision lay down specific violations, which are automatically presumed to be "fundamental". By contrast, the third paragraph is open-ended – it refers to any violations of the Criminal Procedure Law which may be declared "fundamental" because they have "led to adoption of an unlawful judgment or decision".

31. It is true that a general reference to the specific legal provision included in the cassation court's letter did not specify why, in view of the applicable provision, the complaints contained in the appeal on points of law was not considered by the Senate to be fundamental in character. The reasons adduced by the appellate courts are of importance for the Court satisfying itself that a national court did in fact address the essential issues which were submitted to its jurisdiction and, for example, did not merely endorse without further ado the findings reached by a lower court (see *Helle v. Finland*, 19 December 1997, § 60, *Reports of Judgments and Decisions* 1997-VIII). Besides, the Court must ascertain that decisions of national courts are not flawed by arbitrariness or otherwise manifestly unreasonable, this being the limit of the Court's competence in assessing whether domestic law has been correctly interpreted and applied (see, for example, *Marina v. Latvia*, no. 46040/07, § 61, 26 October 2010).

32. In the present case, given the nature of the applicant's appeal on points of law, the Court considers it sufficiently proved that the Senate had

ruled out the existence of circumstances warranting the initiation of cassation proceedings. In all her appeals the applicant raised several complaints concerning the procedure followed in establishing the evidence in her criminal case. These complaints were duly examined by two court instances with full jurisdiction, and in its judgments the lower courts provided proper reasoning. It was not for the Senate to re-examine the existing evidence or to obtain new evidence, as requested by the applicant. Furthermore, as showed by the documents submitted to the Court, the Senate had considered the applicant's arguments, had given the reason for rejecting the complaint and had explained to the applicant its competence in relation to the re-examination of evidence (see paragraph 12 above). In these circumstances the Court is satisfied that the Senate has duly examined the grounds of the applicant's appeal on points of law, and that the cassation court's reasoning in this case has been sufficient.

33. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. The applicant also raised a complaint under Article 6 § 2 of the Convention that the principle of the presumption of innocence in her criminal case had been violated. This complaint was not communicated to the Government.

35. In the light of all the material in its possession, and in so far as the matter complained of is within its competence, the Court considers that the remaining complaint does not disclose any appearance of a violation of Article 6 § 2 of the Convention or any other provision of the Convention or its Protocols. It follows that it is inadmissible under Article 35 § 3 (a) and must be rejected pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 6 § 1 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention;

Done in English, and notified in writing on 13 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President