



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

FOURTH SECTION

CASE OF CĒSNIIEKS v. LATVIA

(Application no. 9278/06)

JUDGMENT

STRASBOURG

11 February 2014

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 Cēsnieks v. Latvia,

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

Päivi Hirvelä, *President*,

Ineta Ziemele,

Ledi Bianku,

Vincent A. De Gaetano,

Paul Mahoney,

Faris Vehabović,

Robert Spano, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 21 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 9278/06) 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 Latvian national, Mr Valters Cēsnieks (“the applicant”), on 26 January 2006.

2. The applicant was represented by Ms J. Kvjatkovska, a lawyer practising in Riga. The Latvian Government (“the Government”) were represented by their Agent at the time Ms I. Reine and subsequently by Ms K. Līce.

3. The applicant alleged, in particular, that after he had appeared at the State Police station on 21 March 2002 police officers had subjected him to treatment in violation of Article 3 of the Convention, and that there had been no effective investigation into the alleged ill-treatment, in breach of Article 13 of the Convention. The applicant further claimed that evidence obtained in violation of Article 3 had been used at his trial, in breach of his right to a fair trial guaranteed by Article 6 § 1.

4. On 8 March 2010 the application was communicated to the Government.

5. On 6 March 2012 the Court took note of the unilateral declaration submitted by the respondent Government and the applicant’s acceptance of its terms and decided to strike the complaints under Articles 3 and 13 out of the list (see *Cesnieks v. Latvia* (dec.) (partial striking out), no. 9278/06, §§ 2-25, 30 and 38, 6 March 2012). The examination of the remainder of the application under Article 6 § 1 was adjourned. This part of the application is examined in the present judgment.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1975 and is detained currently in Matīsa Prison. The relevant facts of the case, as submitted by the parties, may be summarised as follows.

A. Ill-treatment

7. On 21 March 2002 the State Police telephoned the applicant and asked him to appear at their station. According to the applicant, at the State Police station, prior to any formal charges being laid against him, he was accused of murdering G.Č. The police officers used physical force against him in order to obtain a confession to the crime. As a result of the duress brought to bear upon him, the applicant made a written confession.

8. On 23 March 2002 the applicant was transferred to a short-term detention facility.

9. On 23 May 2002 the police opened an investigation into the alleged misconduct of police officers at the time of the applicant's questioning. On 25 June 2005 a prosecutor concluded that the complaint was no longer subject to the prosecutor's review. The prosecutor referred to the judgment of the Supreme Court of 26 April 2005 (see paragraph 40 below) dismissing the allegation of ill-treatment.

10. Further details in relation to the events following the applicant's appearance on 21 March 2002 at the State Police station are set out in the decision in *Cesnieks* (cited above), where the Government acknowledged, *inter alia*, that the applicant had been ill-treated while in police custody and there had been a lack of effective investigation of the applicant's complaint of a violation of Article 3 of the Convention (*ibid.*, §§ 30, 32 and 36).

B. The applicant's pre-trial statements

1. Questioning as a witness

11. The typewritten transcript of the applicant's questioning as a witness dated 21 March 2002 from 5.20 p.m. to 6.40 p.m.¹ recorded the applicant's statement to the police.

12. The applicant declared that he had given G.Č. documents concerning his late father's company, T.S.C., because G.Č. had been looking for a company to carry out the leasing of motor vehicles. Later, G.Č. had asked the applicant whether he knew anyone who could make withdrawals at the

¹ In some parts the text is not visible on the copy.

bank. The applicant had suggested his acquaintance Z.K. Occasionally Z.K. had sent Ģ.Č. sums of money that he had withdrawn from the bank via the applicant.

13. On the applicant's evidence at the end of January 2002 he travelled to Moscow. While there Ģ.Č. had called him looking for Z.K., because Ģ.Č. had needed Z.K. to collect money at the bank.

14. The applicant gave further information in his police statement about meeting Z.K. in Riga upon his return from Moscow and Z.K. telling him about a withdrawal of the funds and their handover to Ģ.Č.

15. The applicant stated that he had learnt of Ģ.Č.'s murder from the police officers on the day the police had contacted him.

2. Confession

16. In the applicant's handwritten confession dated 22 March 2002², he stated that in October 2001 he had borrowed the sum of 4,500 Latvian lati (LVL), which he had been unable to pay back.

17. On 25 January 2002 the applicant together with his acquaintance O.O. had travelled to Moscow hoping to obtain money there, but they were unsuccessful.

18. The applicant had told O.O. about the transfers of money to Ģ.Č. by Z.K. and himself. O.O. had also learnt that the sum of LVL 17,000 would arrive in the coming days in the bank account, to be sent on to Ģ.Č., and had told the applicant that he could resolve the issue of the debt if the applicant gave him full information.

19. On 1 February 2002 they had left Moscow and had arrived the next day in Riga. At around 2 p.m. the applicant had phoned Z.K., who later gave him LVL 5,600 and told him that the remaining amount would be withdrawn on Monday. On Sunday O.O. called the applicant, saying that everything was in order. Later the applicant realised that something terrible had occurred.

20. The same handwritten confession contained an addendum to the effect that O.O. had said that he would murder Ģ.Č.

3. Questioning as a suspect

21. According to the typewritten transcript of the applicant's questioning as a suspect dated 22 March 2002 from 11 a.m. to 12.30 p.m.³, the applicant confirmed the truthfulness of his confession.

22. He added that he had concealed the circumstances and the purpose of his travel to Moscow.

² In some parts the text is illegible or is not visible on the copy. It also appears that the date of 22 March was written on top of the date of 21 March.

³ In some parts the text is not visible on the copy.

23. He declared that he had borrowed a sum of money from his acquaintance O.O. which he had failed to return. O.O. had demanded to be repaid in a threatening manner and to go with the applicant to Moscow. O.O. had insisted that the applicant keep the money intended for Ģ.Č. and give him some of it in repayment of the debt instead. O.O. had told the applicant to forget about Ģ.Č., meaning that O.O. had decided to kill him.

24. After their return to Riga, on 3 February 2002 O.O. had told the applicant over the phone that he could now forget about Ģ.Č. and that nobody would ever find him. The applicant had understood him to mean that Ģ.Č. had been murdered.

25. A typewritten transcript of a further interview of the applicant as a suspect dated 22 March 2002 from 11.30 p.m. to 12.50 a.m.⁴ indicated that the applicant wished to supplement his previous statement.

26. The applicant stated that he had concealed the fact that he had sought the killing of Ģ.Č. in order to obtain the LVL 17,000 belonging to Ģ.Č. He had wanted Ģ.Č.'s money because he had been experiencing serious financial difficulties. He had ordered parts for his sports car from Japan but did not have the means to pay for them.

27. The applicant added that while in Moscow Ģ.Č. had phoned him, looking for Z.K. The applicant then had learnt that Z.K. was to withdraw the sum of LVL 17,000 for Ģ.Č. On 31 January 2002 the applicant had asked O.O. to kill Ģ.Č. That same day, using the applicant's phone, O.O. had called an acquaintance in Riga about the job and told his acquaintance that he would give details later. In the evening they had again phoned the same person from a hotel. That person had been Latvian and had had difficulty understanding Russian. O.O. had passed the phone over to the applicant, who had provided more information about Ģ.Č. On 1 February 2002, while on a bus to Riga, O.O. had again called the same person.

28. Both transcripts of the applicant's questioning recorded that he had wished to give a statement in the absence of a lawyer.

C. Trial and conviction

1. The applicant's acquittal by the first-instance court

29. The applicant and three co-accused O.O., V.Z. and J.G. were brought before the Riga Regional Court (*Rīgas apgabaltiesa*) to stand trial on charges related to the murder of Ģ.Č.

30. On 11 October 2004 the Riga Regional Court found V.Z. and J.G. guilty of aggravated murder. The Regional Court established that V.Z. and J.G. had murdered Ģ.Č. on 2 February 2002, which they had partly admitted in the course of the trial.

⁴ In some parts the text is not visible on the copy.

31. The Regional Court was unable to establish the guilt of the applicant and O.O.

32. With reference to the applicant, the Regional Court reasoned that at trial he had pleaded not guilty to the criminal offences he was charged with and recanted the statements he had given to the police. According to the applicant, he had provided these statements as a result of ill-treatment by police officers, who had beaten him and broken his nose. In this regard the Regional Court reasoned:

“In assessing the [applicant’s] explanation the court does not have a reason to not believe it, because, as is evident from the case materials, on 21 March 2002 from 5.20 p.m. to 6.40 p.m. [the applicant] was questioned as a witness ... however ... he was taken into custody on 21 March at 8 p.m. ... [but] he was not transferred to a detention facility until 1 a.m. on 23 March, remaining in the premises of the Riga police station (*Rīgas rajona policijas pārvalde*)...

The fact that [the applicant] had been asked at around 11 a.m. on the morning [of 21 March] to attend the police station was confirmed by the witness [S.R.], an employee of the Department for the Combat of Organised Crime (*Organizētās noziedzības apkarošanas pārvalde*)...

The foregoing was also confirmed by witnesses [A.B.], a police employee, and [I.K.], an inspector, who were unable to explain to the court why [the applicant] had not been released from the police station after having been questioned as a witness.

The fact that [the applicant] ... suffered bodily injuries while in custody is confirmed by the expert reports contained in the file...”

33. In that light, the Regional Court found that Article 3 of the Convention had been violated with respect to the applicant, irrespective of the fact that the criminal case against the police employees had been terminated.

34. The Regional Court also added that the applicant’s statements of 22 March 2002 had been contradictory. It deemed unreliable an expert report finding that there were no signs that the applicant had written the confession “in the circumstances of anxiety, fear or physical ill-treatment”. The Regional Court reasoned that the expert report did not contain “a study section” (*izpētes daļa*) that would allow it to understand how the expert had arrived at her conclusion.

35. Accordingly, the Regional Court ruled that the applicant’s statements of 22 March 2002 could not be used in the applicant’s conviction.

36. It further held that no other evidence had been obtained to the effect that the applicant had in any way organised, assisted or incited another person to commit Ģ.Č.’s murder. The evidence established that transactions involving money transfers had taken place between the applicant, Z.K. and Ģ.Č. This was corroborated by the evidence of witness I.Š., a police inspector who testified about an ongoing criminal investigation into illegal transactions involving all three individuals.

37. The Regional Court in its judgment referred to telephone call records admitted in evidence. On 1 February 2002 at 5.27 p.m. a phone call had been made from the applicant's mobile number to V.Z.'s mobile number. At the same time, it reasoned that V.Z. had never testified having spoken on the phone to the applicant or having previously known him. In addition, the Regional Court considered that it had no reason to conclude that O.O.'s testimony that he had used the applicant's phone in order to contact V.Z. about a vehicle had been false. It was evident from the telephone call records that on several occasions between 20 January and 18 March V.Z. had been contacted from a number which according to O.O. was his.

2. *The applicant's conviction upon appeal*

38. The first-instance judgment was appealed against to the Criminal Cases Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*) on behalf of the prosecution, the victim and both co-accused convicted at first instance.

39. On 26 April 2005 the Supreme Court overturned the applicant's acquittal and found him guilty of the aggravated murder of G.Č.

40. The judgment of the Supreme Court noted that in the appeal proceedings the applicant had continued to deny his initial statements and maintain that he had given them as a result of ill-treatment by police employees. In that regard, the Supreme Court reasoned as follows:

“The Regional Court groundlessly (*nepamatoti*) accepted that [the applicant's] statements and [his] confession given during the pre-trial investigation were not truthful.

The file does not contain impartial evidence affirming [the applicant's] assertion that he gave these statements as a result of physical and psychological ill-treatment by police employees, [and] that police employees dictated the testimonies [to him]. That it was merely a coincidence that during the commission of the crime [the applicant] was together with [O.O.] ... [and] that a call was made from his phone at that time to [V.Z.].

The criminal case ... against police employees that they possibly had exceeded their powers and inflicted injuries on [the applicant] has been terminated and [the applicant's] defence has not disputed this decision...

The Regional Court groundlessly rejected the expert report ... which concluded that the confession had been written by [the applicant] and [that there was] no indication ... of it being written in the circumstances of anxiety, fear or physical ill-treatment ... because the said expert report provides answers to the questions put to the expert. The expert report contains a study section providing the manner in which the expert reached the conclusion.

Furthermore ... in comparing [the applicant's] complaint of 25 March 2002 ... and the confession written on 22 March 2002 ... [there can be] no doubt ... that it is [the applicant's] free style (*brīvais stils*) [of handwriting].”

41. The Supreme Court allowed the applicant's statement of 22 March 2002 to be admitted in evidence and relied on it in its judgment.

42. The applicant was sentenced to eleven years' imprisonment, with confiscation of property and police control for two years. The applicant was immediately taken into custody.

3. *Decision upon appeal on points of law*

43. The defence lodged an appeal on points of law with the Criminal Cases Department of the Senate of the Supreme Court (*Augstākās tiesas Senāta Krimināllietu departaments*), arguing that the Supreme Court had convicted the applicant in violation of Articles 3 and 6 of the Convention because he had given the pre-trial confession and other statements relied upon by the court as a result of ill-treatment by police employees. The defence presented an extensive volume of evidence and pointed out that the applicant had been injured while in police custody and the circumstances of the injuries had not been explained. They submitted that there had been no other evidence in the file attesting to the applicant's guilt. The court had been under an obligation to assess the material in the criminal case against the police employees and not merely to rely on the fact that the case against them had been terminated. In the defence's submission, on 7 April 2004 they had appealed against the decision terminating that criminal case. Pursuing appeal had subsequently become impracticable "because the criminal case regarding the [applicant's] beating had been joined, as evidence, to the criminal case concerning [Ģ.Č.'s] murder".

44. On 26 August 2005 the Senate of the Supreme Court decided to dismiss the appeal without holding a hearing.

45. The decision of the Senate of the Supreme Court in its relevant part read as follows:

"... contrary to the [requirements of the] Criminal Procedure Code, the appeals filed ... are not substantiated with [submissions as to] a violation of the said provisions of the law, but [rather] factual submissions are put forward [with the aim of obtaining] a re-evaluation of the evidence on which the appeals court's guilty verdict is based.

...

Pursuant to the Criminal Procedure Code ... the re-evaluation of evidence and establishment of new facts ... is not within the competence of the cassation court.

The reference in the appeal on points of law to a violation of ... the relevant international Convention in the course of [the lower court's] adjudication is not based on the materials of this case and is therefore [purely] formal in nature."

46. The decision of the Senate of the Supreme Court was not subject to appeal.

II. RELEVANT DOMESTIC LAW

47. Article 92 of the Constitution (*Satversme*) enshrines everyone's right to defend his or her rights and lawful interests before a fair court.

48. Article 95 of the Constitution provides that the State has a duty to protect human honour and dignity. Torture or cruel or degrading treatment of a person is prohibited. No one can be subjected to inhuman or degrading punishment.

49. In accordance with section 130(2)1) of the 2005 Criminal Procedure Law evidence obtained through ill-treatment shall be inadmissible (see *Baltiņš v. Latvia*, no. 25282/07, § 35, 8 January 2013). There was not a similar provision contained in the Criminal Procedure Code, effective at the material time.

50. The provisions of the 2005 Criminal Procedure Law with regard to reopening of the criminal proceedings read as follows:

Section 655 – Basis for the reopening of criminal proceedings in connection with newly discovered circumstances

“(1) Criminal proceedings in respect of which a court judgment ... has become final may be reopened in connection with newly discovered circumstances.

(2) The following shall be deemed as circumstances newly discovered:

...

5) a determination by an international judicial institution that a decision (*nolēmums*) of Latvia which has become final contravenes an international norm binding upon Latvia (*neatbilst Latvijai saistošiem starptautiskajiem normatīvajiem aktiem*).

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. The applicant submitted that his right to a fair trial had been violated. In particular, he asserted that his guilt had been established on the basis of inadmissible evidence, namely statements obtained in breach of Article 3 of the Convention. Article 6 § 1 of the Convention provides:

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

52. The Government contested that argument.

A. Admissibility

53. The Government did not dispute the admissibility of this part of the application. The Court finds that it 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.

54. It must therefore be declared admissible.

B. Merits

1. *The applicant's submissions*

55. The applicant highlighted that in submitting their unilateral declaration the Government had admitted to the violation of the applicant's rights under Article 3 of the Convention, namely that he had been ill-treated by police officials while in custody.

56. Referring to *Jalloh v. Germany* ([GC], no. 54810/00, ECHR 2006-IX), he pointed out that the Court has distinguished between cases where disputed evidence was obtained in breach of Article 8 and where evidence was obtained in breach of Article 3 of the Convention, ruling that different considerations apply to evidence recovered by a measure found to have violated Article 3. An issue may arise under Article 6 § 1 in respect of evidence obtained in violation of Article 3 of the Convention, even if the admission of such evidence was not decisive in securing the conviction (*Jalloh*, cited above, § 99). In this regard the applicant reiterated that the violence by the police officers had been particularly targeted at extracting self-incriminating evidence from him. Therefore, the use of that evidence had in itself rendered the trial unfair.

57. Further, the applicant disagreed with the Government's assertion that apart from the evidence obtained in breach of Article 3 of the Convention there had been other evidence providing a sufficient basis for the applicant's conviction. He underlined that the first-instance court had acquitted him. The appeal court had considered the same evidence. It had been the applicant's confession and other statements admitted in evidence by the appeal court that had led to his conviction. In that respect the present case differed from *Bykov v. Russia* ([GC], no. 4378/02, 10 March 2009).

2. *The Government*

58. Drawing on the judgment in *Schenk v. Switzerland* (12 July 1988, §§ 45 and 46, Series A no. 140), the Government noted that while Article 6 of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law. In any given case the Court has only to ascertain whether the trial as a whole was fair.

59. The Government further relied on *Gäfgen v. Germany* ([GC], no. 22978/05, § 164, ECHR 2010), observing that in determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. In particular, it must be examined whether the applicant was given an opportunity to challenge the authenticity of the evidence and to oppose its use. In this connection, weight is attached

to whether the evidence in question was or was not decisive for the outcome of the proceedings (*ibid.*).

60. In the Government's view the applicant's pre-trial statements had not been the only evidence relied upon by the national courts in reaching his conviction.

61. In response to the Court's question concerning the possibility of reopening the criminal proceedings against the applicant in the light of the Government's admission of his ill-treatment and the Court's decision in *Cesnieks*, the Government opined that the Court's decision could not be considered as falling within the grounds listed in section 655(2)5) of the Criminal Procedure Law (see paragraph 50 above) warranting the reopening of the criminal proceedings against the applicant.

3. *The Court's assessment*

62. The Court reiterates that its duty, pursuant to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Gäfgen*, cited above, § 162). While Article 6 guarantees the right to a fair hearing, it does not, as the Government submitted, lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (*ibid.*).

63. It is not, therefore, the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the alleged unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (*ibid.*, § 163).

64. The Court agrees with the applicant that particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3.

65. In particular, the use of evidence secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction. Accordingly, the admission of statements obtained as a result of torture or of other ill-treatment in breach of Article 3 as evidence to establish the relevant facts in criminal proceedings renders the proceedings as a whole unfair (*ibid.*, §§ 165 and 166; see also *Kaçiu and Kotorri v. Albania*, nos. 33192/07 and 33194/07, § 117, 25 June 2013; *Zamferesko v. Ukraine*, no. 30075/06, § 70, 15 November 2012; *Tangiyev v. Russia*, no. 27610/05,

§ 73, 11 December 2012; and *El Haski v. Belgium*, no. 649/08, § 85, 25 September 2012).

66. This finding applies irrespective of the probative value of the statements and irrespective of whether their use is decisive in securing the defendant's conviction (see *Gäfgen*, cited above, § 166; *Kaçiu and Kotorri*, cited above, § 117; *Zamferesko*, cited above, § 70; *Tangiyev*, cited above, § 73; and *Harutyunyan v. Armenia*, no. 36549/03, § 66, ECHR 2007-III). This is to be contrasted with cases in which a conviction is not based on evidence obtained through ill-treatment but solely or to a decisive extent on the evidence of an absent witness in the absence of sufficient counterbalancing factors including strong procedural safeguards (compare and contrast *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 147, ECHR 2011).

67. Turning to the present case, the Government acknowledged that the applicant had been subjected to treatment in violation of Article 3 after he had appeared at the State Police station on 21 March 2002. The applicant claimed that as a result of that treatment he had made the self-incriminating statements in question. The Government in the proceedings before the Court did not claim otherwise.

68. Further, the Court observes that, unlike in *Alchagin v. Russia* (no. 20212/05, 17 January 2012), at trial the applicant did not plead guilty to the crime of which he was subsequently convicted and the applicant's defence counsel had not been present when he had made the self-incriminating statements (*ibid.*, §§ 11, 70, 71 and 73). It was common ground between the parties that this evidence had been used by the Supreme Court in convicting the applicant. The parties disputed whether or not it had been decisive in the applicant's conviction.

69. In the present case, however, the main issue for the Court is the use of evidence obtained through ill-treatment to convict the applicant (contrast *Gäfgen*, cited above, §§ 167 et seq.). The Court therefore rejects the Government's contention that the question of whether the applicant received a fair trial depends on the weight of that evidence for the outcome of the proceedings. Regardless of the impact of the applicant's self-incriminating pre-trial statements on the outcome of the criminal trial, their use rendered the trial as a whole unfair (see *Hajnal v. Serbia*, no. 36937/06, § 115, 19 June 2012).

70. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

71. The applicant contended that the overall assessment of the evidence had been arbitrary. He also argued that the appeal on points of law lodged

by his lawyer had not been examined on the merits because the Supreme Court had used the evidence obtained in violation of Article 3 of the Convention.

72. Having regard to its finding under Article 6 § 1 of the Convention, namely that the entire proceedings brought against the applicant were unfair, the Court considers that it is not necessary to separately examine the admissibility and the merits of the applicant's additional complaints made under Article 6 § 1 (see, *mutatis mutandis*, *ibid.*, § 137).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

74. The applicant claimed 9,490.61 euros (EUR) in respect of pecuniary damage on account of loss of salary resulting from his imprisonment following conviction. He argued that if at liberty he would have received at least the minimum wage applicable during the relevant period of time. The applicant also claimed EUR 50,000 in respect of non-pecuniary damage.

75. The Government contested these claims. With regard to pecuniary damage they opined that there was no causal link between the damage claimed by the applicant and the violation of the Convention.

76. In the Government's opinion the non-pecuniary damage claimed by the applicant was exorbitant. Referring to *Malininas v. Lithuania* (no. 10071/04, § 43, 1 July 2008) and *Lalas v. Lithuania* (no. 13109/04, §§ 52 and 53, 1 March 2011), they submitted that if the Court were to find a violation of the Convention such a pronouncement would in itself constitute adequate and sufficient just satisfaction, and if the violation necessitated a retrial such an opportunity would be provided for by the Criminal Procedure Law. In this connection, the Court notes that the Government submitted to the Court a letter of the Prosecutor General dated 2 April 2012 which stated that it was difficult to give a hypothetical opinion about the possibility of reopening the criminal proceedings if the Court found a violation of Article 6 § 1 of the Convention and that it would be a matter to be decided on by a prosecutor if the situation actually arose.

77. In this respect the applicant pointed out that under the Criminal Procedure Law a prosecutor may initiate the reopening of criminal proceedings, but does not have an obligation to do so. The Criminal Procedure Law also gives an accused the ability to apply to the Supreme

Court for reconsideration of the verdict. However, the applicant highlighted that on 28 April 2011 in case SKK-J-1/2011 the Supreme Court had denied the reopening of the criminal proceedings following the Court's judgment in *Pacula v. Latvia* (no. 65014/01, 15 September 2009).

78. The Court recalls that as regards redress for a violation of Article 6 of the Convention it has previously held that the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings if requested (see *Kaçiu and Kotorri*, cited above, § 168, and the cases cited therein, and *Zamferesko*, cited above, § 85).

79. As to the compensation claimed by the applicant in respect of pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. It cannot speculate on what the outcome of the proceedings would have been had they complied with Article 6 § 1. Consequently, it dismisses the applicant's claims under this head.

80. Having regard to the nature of the violation found in the present case and deciding on an equitable basis, the Court awards the applicant EUR 6,000 in compensation for non-pecuniary damage.

B. Costs and expenses

81. The applicant also claimed EUR 5,037 for costs and expenses incurred before the domestic courts and before the Court, which sum consisted of the legal fees he had paid.

82. The Government contested this claim. They pointed out that according to the payment receipts submitted in support of the claim they had been made by a different person than the applicant, namely V.M. It was also unclear whether the costs were related to the present case.

83. According to the Court's established case-law, costs and expenses will not be awarded under Article 41 unless it is established that they were actually and necessarily incurred, and are reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see, among many other authorities, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 109, 14 September 2010).

84. Making its own assessment based on the information contained in the case file, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention as regards the use of evidence admissible;
2. *Holds* that in that regard there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine separately other complaints under Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 11 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Päivi Hirvela
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate concurring opinion of Judge De Gaetano is annexed to this judgment.

P.H.
F.E.P.

SEPARATE CONCURRING OPINION OF JUDGE DE GAETANO

1. While I agree with the five heads of the operative part of the judgment, I regret that the reasons advanced, and the muted language used, in §§ 62-69 do not do justice to the gravity of the violation in this case.

2. In this case there is not simply a violation of Article 6 § 1, but a “flagrant denial of justice” in the sense described in § 259 of the judgment of 17 January 2012 in the case *Othman (Abu Qatada) v. the United Kingdom* (no. 8139/09). Like Article 2, Article 3 lies at the very core of the Convention – indeed, in some sense it can be considered as even more “fundamental” than Article 2 since, unlike Article 2, it admits of no exceptions or qualifications. Even in time of emergency, no derogation can be made to Article 3 (see Article 15 § 2). As was emphasised in *El Haski v. Belgium* (no. 649/08), the use in criminal proceedings of statements obtained as a result of a violation of Article 3, irrespective of the classification of the treatment as torture, inhuman or degrading treatment, renders the proceedings as a whole *automatically* unfair and in breach of Article 6 (and this applies also for the use of real evidence obtained as a direct result of acts of torture – if the real evidence is obtained as a result of acts which are in breach of Article 3 but which fall short of torture, there would be a breach of Article 6 only if that real evidence had a bearing on the outcome of the proceedings against the defendant) (see § 85 of *El Haski*). The necessity for this stringent automaticity was explained in *Othman (Abu Qatada)* at § 264. It is true that in that case Article 3 was being considered specifically in the context of torture, and of statements extracted under torture, but to my mind the same reasoning applies if statements are extracted under duress amounting to inhuman or degrading treatment. Admitting statements – whether made by the accused or by third parties – obtained in these circumstances “would only serve to legitimate indirectly the sort of morally reprehensible conduct which the authors of Article 3 of the Convention sought to proscribe” (*ibid.*)

3. In the instant case, it has been clearly established that the statements had been obtained from the defendant in breach of Article 3. The Riga Regional Court said so in its judgment of 11 October 2004 (see § 33). This was confirmed by the executive branch of Government in its letter of 20 October 2011 to the Court admitting the breach of Articles 3 and 13 (see *Cēsniēks v. Latvia* (dec.) (partial striking out), no. 9278/06, § 32, 6 March 2012). The Supreme Court was of a different persuasion. The *pons asinorum* appears to have been the distinction between the *truthfulness* of the applicant’s statements (see § 40) and their *admissibility* or *inadmissibility* as evidence (see § 41). Now, it is true that at the time when the Supreme Court pronounced itself (for the first time) on 26 April 2005, there was as yet *in force* no provision to the effect that evidence obtained

through ill-treatment would be inadmissible (§ 49). However the 2005 Criminal Procedure Law had been adopted on 21 April 2005, even though it was to come into force only on 1 October 2005. The Supreme Court (like the Senate of that court which later dismissed a further appeal on formalistic grounds, § 45) must have been aware of the provisions of the new section 130 of that law. Nevertheless it forged ahead with its decision of 26 April 2005, in effect riding roughshod over the applicant's fundamental human rights. I find that extraordinary.

4. Even more extraordinary, however, is the fact that with all the above as a backdrop to this case, and with the applicant serving a sentence of eleven years' imprisonment plus confiscation of property (§ 42), the respondent Government saw fit to contest the Article 6 violation as regards the use of evidence. Inconsistency of behaviour verging on the pathological is clearly not the prerogative of physical persons.