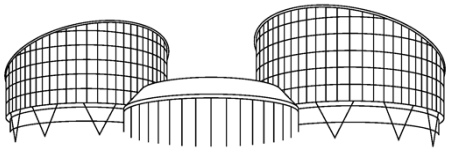

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VOROTŅIKOVA v. LATVIA

(Application no. 68188/13)

JUDGMENT

Art 6 § 1 (administrative) • Fair hearing • Failure to inform applicant of State institutions' opinions addressing the core question in the proceedings and aiming to influence their outcome • Refusal to admit applicant's comments on these opinions to the case-file • Guarantees emanating from the right to adversarial proceedings not limited to the observations filed by parties to proceedings • Lack of safeguard in relevant domestic law to ensure the right to adversarial proceedings

STRASBOURG

4 February 2021

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 Vorotņikova v. Latvia,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Latif Hüseynov,
Jovan Ilievski,
Ivana Jelić,
Arnfinn Bårdsen, *judges,*
Daiga Rezevska, ad hoc *judge,*
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application 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, Ms Valentīna Vorotņikova ("the applicant"), on 28 October 2013;

the decision to give notice to the Latvian Government ("the Government") of the complaint concerning the right to adversarial proceedings and to declare inadmissible the remainder of the application;

the parties' observations;

Considering that Judge Mārtiņš Mits, the judge elected in respect of Latvia, was unable to sit in the case (Rule 28) and that on 25 August 2020 the President of the Chamber decided to appoint Judge Daiga Rezevska to sit as an *ad hoc* judge (Rule 29);

Having deliberated in private on 12 January 2021,

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

INTRODUCTION

1. The case concerns a complaint under Article 6 § 1 of the Convention that the dispute had been decided on the basis of unlawfully acquired documents, which had not been sent to the parties to the proceedings, and that the applicant's comments on those documents had not been admitted to the case file, in breach of the right to adversarial proceedings.

THE FACTS

2. The applicant was born in 1952 and lives in Riga. The applicant was granted legal aid and was represented by Ms J. Averinska, a lawyer practising in Riga.

3. The Government were represented by their Agent, Ms K. Līce.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. On 18 January 2011 the applicant applied for an early retirement pension on the grounds that she had cared for a disabled child until his death at the age of seven. On 6June 2011 the State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*), an institution which operated under the auspices of the Ministry of Welfare (*Labklājības ministrija*), refused the pension application. One of the grounds relied on was that the requirement set out in section 11 of the Law on State Pensions had not been met – the requirement that the disabled child in question should have been cared for until the age of eight.

6. The applicant challenged that refusal before the administrative courts. On 24 May 2012 the Administrative District Court (*Administratīvā rajona tiesa*) found that the applicant had cared for a child who had been declared disabled prior to reaching the age of eight. The Administrative District Court considered that this satisfied the requirement of section 11 of the Law on State Pensions. It therefore found that the applicant was entitled to the early retirement pension. The State Social Insurance Agency, which acted as the opposing party in the proceedings, lodged an appeal.

7. On 3 December 2012 the Administrative Regional Court (*Administratīvā apgabaltiesa*) reversed that ruling. It considered that, as the applicant's child had not lived until the age of eight, the requirement of section 11 of the Law on State Pensions that the disabled child in question had to be cared for until the age of eight had not been met.

8. The applicant filed an appeal on points of law (*kasācijas sūdzība*), arguing, *inter alia*, that section 11 of the Law on State Pensions had been interpreted wrongly. She submitted that the requirement of section 11 of the Law on State Pensions had already been satisfied, because the disabled child in question had been cared for while he was under the age of eight.

9. On 20 February 2013 the Senate of the Supreme Court wrote letters to the Parliamentary Committee on Social and Labour Matters (*Saeimas Sociālo un darba lietu komisija*), the Ministry of Welfare, and the Ombudsperson (*Tiesībsargs*), asking for their opinion as to the correct interpretation of section 11 of the Law on State Pensions. These requests did not indicate the legal provision they were based on. All three institutions expressed the opinion that section 11 of the Law on State Pensions referred to the time period during which a disabled child had been cared for, and therefore required that the child had reached the age of eight.

10. The responses of the institutions were not sent to the parties to the proceedings. Nonetheless, the applicant learned of them when she consulted the case file. On 11 March 2013 she filed her comments on the opinions. By a letter of 14 March 2013 the Senate of the Supreme Court returned the applicant's comments to her and noted that they could not be admitted to the case file, as the Administrative Procedure Law did not provide for the opportunity to submit additional observations on the opinions expressed by

State institutions which were not parties to proceedings. This response did not refer to any specific provisions of the Administrative Procedure Law.

11. On 7 May 2013, having considered the case in written proceedings, the Senate of the Supreme Court upheld the judgment of the Administrative Regional Court. It concluded that prior to the amendments of 2012, section 11 of the Law on State Pensions had provided that the disabled child in question had to have reached the age of eight. As the applicant's son had not reached that age, she had not acquired the right to an early retirement pension.

RELEVANT LEGAL FRAMEWORK

12. At the time the applicant applied for the early retirement pension, section 11(4) of the Law on State Pensions provided that persons who had cared for five or more children or for a disabled child until they had reached the age of eight had a right to request a retirement pension five years before the retirement age. On 14 June 2012 that provision was amended to state that the right to an early retirement pension was to be granted to persons who had cared for a disabled child for at least eight years.

13. Section 107(4) of the Administrative Procedure Law provides that in order to determine the true circumstances of a case and to examine the case lawfully and fairly, the court shall give instructions and make recommendations to the parties to the administrative proceedings and shall collect evidence upon its own initiative (principle of objective investigation). Section 30(1) of the Administrative Procedure Law states that in instances provided for by law, an institution or the court may invite other State institutions to express their opinion on a case, within the limits of their competence. Section 30(3) of the Administrative Procedure Law also grants the court the right to do so at its discretion. In accordance with section 24 of the Administrative Procedure Law, an institution which has been invited under section 30 to express an opinion (*pieaicinātā iestāde*) does not have the status of a party to the relevant proceedings (*procesa dalībnieks*).

14. Section 145(1) of the Administrative Procedure Law states that applicants and respondents have the following procedural rights:

> "[The right:]
>
> 1) to consult the case file...;
>
> 2) to participate in court hearings;
>
> 3) to apply for recusals or removals;
>
> 4) to submit evidence;
>
> 5) to participate in the examination of evidence;
>
> 6) to submit requests;

7) to provide oral and written submissions to the court;

8) to present their arguments and observations;

9) to raise objections to the requests, arguments and observations of other parties to the administrative proceedings;

10) to appeal against court judgments and decisions; and

11) to receive copies of the judgments and decisions in the case, as well as to make use of other procedural rights granted to them by this Law."

THE LAW

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

15. The applicant complained that her case had been decided on the basis of unlawfully acquired evidence that had not been sent to the parties to the proceedings. Moreover, her comments on that evidence had not been admitted to the case file. She relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

A. Submissions by the parties

16. The Government submitted that in accordance with Article 30 of the Administrative Procedure Law, an administrative court could, in cases provided for by law, or at its own discretion, invite a State institution to participate in proceedings to express its opinion on the legal matter at hand. The Government also pointed out that administrative proceedings were based on the principle of "objective investigation", which required a court to take a more active role in achieving the most appropriate solution in the case. In the present case, the Senate of the Supreme Court had asked the institutions in question to provide an opinion on only the interpretation of the relevant legal provision. It had not invited them to express their opinion on a possible solution in the case or submit new information concerning the facts of the case. The opinions which were obtained by that procedure were tools for interpreting the provisions of the domestic law, and could be likened to research on doctrine or jurisprudence.

17. The Government noted that the right to adversarial proceedings was enshrined in section 145 of the Administrative Procedure Law, which granted parties to proceedings the right to consult the relevant case file, submit evidence, participate in the examination of evidence and exercise other procedural rights. In the present case, the applicant had been informed of her right to consult the case file, and had always been able to comment on and express her views regarding the submissions of the respondent. In contrast, the institutions that had provided their opinions on the

interpretation of the domestic law had not been parties to the proceedings, and the Administrative Procedure Law did not grant applicants a procedural right to submit supplementary comments on the opinions expressed by institutions that were not parties to proceedings. Even though the Senate of the Supreme Court had had the discretion to forward those opinions to the parties to the proceedings for their comments, in this particular case, the court had considered that unnecessary, as those opinions had addressed a purely legal matter. Accordingly, neither of the parties to the proceedings had been given an opportunity to submit a reply. Besides, the applicant had already expressed her opinion on the interpretation of the domestic law in her previous submissions. Therefore, the principle of equality of arms and the right to adversarial proceedings had been respected.

18. The applicant submitted that her right to a fair trial had been breached, as the Senate of the Supreme Court had not decided the case on the basis of the material before it, but had requested additional evidence – a step not provided for under the domestic law. The administrative courts' discretion to invite an institution to express an opinion had to be utilised lawfully. State institutions were only entitled to express their opinions after they had become parties to the proceedings, which was no longer possible at the cassation stage of proceedings. Hence, the Supreme Court should have either resolved the legal issue by giving the particular legal provision its own interpretation in the light of the principles of the Administrative Procedure Law, or suspended the administrative proceedings and lodged an application with the Constitutional Court.

19. The applicant further submitted that she had not been informed of the additional documents, and although she had consulted the case file and read those documents, she had not been allowed to submit her comments on them. According to her, there had been no legal grounds for the refusal to admit her comments to the case file, since the judgment in the case could only be given after all participants had had the opportunity to express their views.

B. Admissibility

20. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

C. Merits

21. The Court reiterates that the requirements resulting from the right to adversarial proceedings, which is one of the fundamental components of the concept of a "fair hearing" within the meaning of Article 6 § 1 of the Convention, are in principle the same in both civil and criminal cases (see

Nideröst-Huber v. Switzerland, 18 February 1997, § 28, *Reports of Judgments and Decisions* 1997-I, and *Werner v. Austria*, 24 November 1997, §§ 63 and 66, *Reports* 1997 VII). The right to adversarial proceedings entails parties' right to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (see, amongst other authorities, *Kress v. France* [GC], no. 39594/98, §§ 65 and 74, ECHR 2001-VI; *Ferreira Alves v. Portugal* (no. 3), no. 25053/05, §§ 37-38, 21 June 2007; and *K.D.B. v. the Netherlands*, 27 March 1998, § 43, *Reports* 1998-II). This also applies to administrative proceedings qualified as "civil" or "criminal" under Article 6 of the Convention, regardless of their special features domestically (see, for example, *Kress*, cited above; *Regner v. the Czech Republic* [GC], no. 35289/11, 19 September 2017; and *Meral v. Turkey*, no. 33446/02, 27 November 2007).

22. This means that parties to proceedings must have the opportunity to familiarise themselves with the evidence before the court, as well as the opportunity to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time, if need be, in writing and in advance (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 42, 3 March 2000, and *Colloredo Mannsfeld v. the Czech Republic*, nos. 15275/11 and 76058/12, § 33, 15 December 2016). Parties to any dispute may legitimately expect to be consulted about whether a specific document calls for their comments. What is particularly at stake is applicants' confidence in the workings of justice, which is based on, *inter alia*, the assumption that they are afforded the opportunity to express their views on every document in the case file (see *Pellegrini v. Italy*, no. 30882/96, § 45, ECHR 2001-VIII; *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, § 203, 12 December 2013; and *Juričić v. Croatia*, no. 58222/09, § 75, 26 July 2011). This requirement applies equally to non-binding advisory opinions intended to assist the court (see, for example, *K.D.B.*, cited above, § 43), as well as information and opinions obtained by the court on its own initiative in order to reach an informed decision (see, for example, *Zagrebačka banka d.d.*, § 201, and *Juričić*, § 74, both cited above). Parties have a legitimate interest in receiving copies of written observations containing reasoned opinions on the merits, and it is only for them to judge whether or not a particular document calls for their comments (see *Ferreira Alves*, cited above, § 41). The Court does not need to determine whether the omission to communicate a document caused the applicants prejudice, as the existence of a violation is conceivable even in the absence of prejudice (see *Milatová and Others v. the Czech Republic*, no. 61811/00, § 65, ECHR 2005-V).

23. In the present case, the Court observes that section 30 of the Administrative Procedure Law allowed the Senate of the Supreme Court to request opinions from State institutions. As institutions which are invited to

express such opinions do not have the status of parties to proceedings (see paragraph 13 above), the Court finds no support for the applicant's claim that no such request could be made at the cassation stage of proceedings. The Court therefore dismisses the applicant's allegation that the opinions in question were acquired unlawfully.

24. With respect to the fact the applicant was not informed of the opinions which had been obtained, the Court notes that, in conformity with the principle of "objective investigation" (see paragraphs 13 and 16 above), the Senate of the Supreme Court requested those opinions in order to reach an informed decision on the correct interpretation of the applicable legal provision. The interpretation of that legal provision was the crux of the dispute brought before the Senate of the Supreme Court, and it determined the outcome of the applicant's case. The Court therefore concludes that those opinions were clearly given with a view to influencing the court's decision, albeit in a non-binding manner. Accordingly, the applicant could legitimately have expected to be consulted about whether those documents called for her comments. As the Court has previously held, this position is not altered when observations are neutral on the issue to be decided by a court or, in the opinion of the court concerned, do not present any fact or argument which has not been raised previously (see *Zagrebačka banka d.d.*, § 197, and *Juričić,* § 73, both cited above). The effect these opinions actually had on the ruling of the Senate of the Supreme Court is of little consequence (compare *Nideröst-Huber*, cited above, § 27).

25. In relation to the Government's argument that the applicant had been informed of her right to consult the case file, the Court reiterates that the opportunity to consult a case file is not, of itself, a sufficient safeguard to ensure an applicant's right to adversarial proceedings (see *Göç v. Turkey* [GC], no. 36590/97, § 57, ECHR 2002-V, and *Milatová and Others*, cited above, § 61). Accordingly, as a matter of fairness, it was incumbent on the Senate of the Supreme Court to inform the applicant that the State institutions' opinions had been obtained, and that she could, if she so wished, comment on them in writing. On the basis of the available information (see paragraphs 10, 13 and 14 above), the Court observes that the above mentioned important requirement, implicit in the Court's case-law on the right to adversarial proceedings, which forms part of the right to a fair trial , is not secured in the domestic law.

26. Furthermore, the applicant's comments on the State institutions' opinions were not admitted to the case file on the grounds that the Administrative Procedure Law did not provide for the opportunity to comment on the opinions submitted by State institutions which were not parties to proceedings. The Court reiterates that the guarantees emanating from the right to adversarial proceedings are not limited to the observations filed by parties to proceedings (see *Ferreira Alves*, cited above, § 38). In the Court's case-law, these guarantees have also been applied to other

situations, including with respect to evidence and opinions obtained on a court's initiative (see *Krčmář and Others*; *Juričić*; and *Zagrebačka banka d.d.*, all cited above). What the Court seeks to determine is whether submissions were filed or arguments were adduced with a view to influencing the court's decision. As established above (see paragraph 24), that was the case here.

27. The foregoing considerations are sufficient to enable the Court to conclude that, in the present case, respect for the right to a fair hearing, guaranteed by Article 6 § 1, required that the applicant be given the opportunity to familiarise herself with and comment on the State institutions' opinions produced at the request of the Senate of the Supreme Court.

28. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicant invited the Court to award her compensation in accordance with its case-law.

31. The Government invited the Court to conclude that a finding of a violation in itself constituted sufficient just satisfaction.

32. The Court awards the applicant 3,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

33. The applicant also claimed EUR 850 for the legal costs incurred before the Court.

34. The Government agreed that the applicant had submitted itemised payment documents in relation to this claim.

35. Regard being had to the documents in its possession, the Court awards the applicant EUR 850 for the costs incurred in the proceedings before the Court, plus any tax that may be chargeable to her.

C. Default interest

36. 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 concerning the right to adversarial proceedings admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 850 (eight hundred and fifty 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.

Done in English, and notified in writing on 4 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Registrar	President