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Meeting: 1318th meeting (June 2018) (DH)

Item reference: Action report (02/05/2018)

Communication from Latvia concerning the case of Oderovs v. Latvia (Application No. 21979/08)

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Communication de la Lettonie concernant l'affaire Oderovs c. Lettonie (requête n° 21979/08) (**anglais uniquement**)

DGI

02 MAI 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

ACTION REPORT

**of the Government of the Republic of Latvia on the execution
of the judgment of the European Court of Human Rights
in the case of**

ODEROVS

v.

LATVIA

Application no.21979/08

**Judgment of 15 June 2017
Final on 15 June 2017**

I. INTRODUCTION

1. On 26 March 2008, Vladimirs Oderovs (“the applicant”) submitted an application to the European Court of Human Rights (“the Court”) under Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”). On 15 June 2017, the Court, sitting as a Committee, found a violation of Article 8 of the Convention. The judgment became final on the same date.
2. In the context of the working methods for the supervision of the execution of the judgments and decisions of the Court adopted by the Committee of Ministers on 4 December 2010, the Government of the Republic of Latvia (“the Government”) hereby presents its Action Report setting out the execution measures taken in the case of *Oderovs v. Latvia*.

II. CASE DESCRIPTION

3. The applicant is a Latvian national. The case concerned his complaint about the lawfulness of covert interception of his telephone conversations within the framework of the criminal proceedings against him and the fact that several of the intercepted conversations were between him and his defence counsel O.S.
4. On 5 November 2004, the criminal proceedings were initiated in connection with large-scale smuggling of oil products, and on 27 September 2005, the applicant was declared a suspect. On the same date the applicant appointed O.S. as his defence counsel.
5. Pursuant to the authorisation of the judge of the Supreme Court, from December 2004 until January 2006, the law-enforcement authorities intercepted the applicant’s telephone conversations with various individuals, including O.S. In particular, the conversations of 8 April and 22 April, 27 May and 7 October 2005 between the applicant and O.S. were intercepted.
6. On 27 June 2006, the Prosecutor Office informed the applicant that the judge of the Supreme Court had authorised the interception of his telephone conversations in accordance with the relevant provisions of *the Law on Operational Activities*. The applicant was not allowed to acquaint himself with the respective judicial authorisations as they constituted classified information.
7. On 9 June 2008, the first instance court found the applicant guilty of large-scale contraband, aggravated forgery and laundering of proceeds of crime in a group of persons and sentenced him to five years and one month of deprivation of liberty. On 23 September 2013, the appellate court fully acquitted the applicant. On 23 April 2014, the Supreme Court upheld the applicant’s acquittal.
8. Invoking Article 8 of the Convention, the applicant complained that interception of his phone conversations was not authorised and he could not obtain an effective safeguard to ascertain the lawfulness of the contested measure. He also complained that interception of his conversations with O.S. was in breach of legal privilege attached to the lawyer-client relationship. Relying on Article 6, paragraph 1 of the Convention, the applicant claimed that the interception of the telephone conversations violated his right to a fair trial.
9. The Court found a violation of Article 8 of the Convention. It emphasised that the applicant wished to verify whether there had been judicial decisions authorising the interception. While

he was informed by the Prosecutor Office that such decisions existed, he was not provided with any details allowing him to verify that the judicial authorisations had indeed been made.

10. Also, the domestic courts, while fully acquitting the applicant, did not examine the lawfulness of the contested interceptions at all. For these reasons, the Court concluded that the disputed measures were not “in accordance with the law” since the applicant was not able to verify whether the interference with his rights under Article 8 of the Convention had been carried out on the basis of a prior judicial authorisation and he also could not obtain an effective review of the lawfulness of the contested measures and did not have additional safeguards against arbitrariness in this respect. The Court also noted that one of the conversations – that on 7 October 2005 – was with the applicant’s defence counsel. In the absence of any reasons to suspect that this channel of privileged communication was being abused, the Court concluded that the interference with regard to that particular conversation was not “necessary in a democratic society”.
11. Having noted that the applicant was fully acquitted in the framework of domestic criminal proceedings, the Court considered that the applicant can no longer claim to be a victim of a violation of the right to a fair trial and declared the applicant’s complaint that the interception of the phone conversations violated his rights under Article 6 of the Convention inadmissible *ratione personae*.

III. INDIVIDUAL MEASURES

12. The Court awarded the applicant just satisfaction in respect of non-pecuniary damage and incurred costs and expenses.
13. The just satisfaction awarded by the Court in the total amount of EUR 2 500 was paid on 21 August 2017. The Government has notified the Execution Department and submitted evidence concerning the payment of just satisfaction by e-mail on 21 September 2017.
14. Taking into account the nature of the violation found by the Court, and the fact that the applicant was fully acquitted of criminal charges against him,¹ the Government considers that no further individual measures are required in the present case.

IV. GENERAL MEASURES

15. From the outset, it should be noted that the Convention has direct effect in the Latvian legal system.
16. In the present case violation of Article 8 of the Convention resulted from the applicant’s inability to objectively verify whether the disputed surveillance measures had been judicially authorised.
17. The Government wishes to refer to the general measures described in the Action Report in respect of the case *Šantare and Labazņikovs v. Latvia*², examined and closed by the Committee of Ministers on 5 July 2017 at the 1291st meeting of the Ministers’ Deputies

¹ See paragraphs 53-55 of the judgment.

² Action report concerning the judgment in the case of *Šantare and Labazņikovs v. Latvia* is available at [https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD\(2017\)681](https://search.coe.int/cm/Pages/result_details.aspx?Reference=DH-DD(2017)681)

(CM/ResDH(2017)213). In particular, the Government refers to the following remedies, which are able to address all aspects raised in the case of *Oderovs v. Latvia*.

18. Firstly, pursuant to Article 127, paragraph 4, of *the Criminal Procedure Law*, whenever the information obtained through surveillance measures is being used as an evidence in the criminal proceedings, the criminal case file must contain a reference letter with information pertaining to the authorisation of the measure that indicate the institution that had authorised the surveillance measure, the date of the authorisation and the period of time for which the measure had been authorised. The afore-mentioned reference letters are issued by the Supreme Court, which is the institution in charge for authorisation of the interception of the telephone conversations. In practice, this allows the individual concerned to verify whether the evidence acquired via surveillance measures had been obtained following the prescribed procedure (the procedural aspect of the verification of the disputed surveillance measure).
19. Secondly, as regards the substance of the verification of the disputed surveillance measures, Article 500, paragraph 4 of *the Criminal Procedure Law* (The Course of Examination of Evidence) enhances the competence of judiciary when dealing with admissibility of evidence obtained as a result of surveillance measures. This provision envisages that upon an arguable claim raised by the prosecutor, victim, defendant or the defence counsel, the trial court must acquaint itself with the materials pertaining to the surveillance measures that had not been included in the criminal case file and that concern the body of evidence used in the criminal proceedings. In practice, this remedy allows the court to verify both the substance and lawfulness of the disputed measure, since the materials pertaining to the surveillance measures also contain the judicial decision authorising the measure.
20. In the light of the foregoing, the Government concludes that the current legal framework provides sufficient safeguards for effective *ex post facto* judicial review thus meeting the requirement of “being provided by law” envisaged by Article 8, paragraph 2, of the Convention.
21. With regard to the interception of information protected by legal privilege, the Government submits that the present case constitutes an isolated incident, which resulted from insufficient knowledge by the prosecutorial and judicial authorities of the standards of the Convention. In this regard, the Government would like to inform that the Latvian Judicial Training Centre (“the LJTC”)³ on a constant and regular basis provides professional education on various topics for trial judges and investigating judges responsible for the observance of human rights during the criminal proceedings. On 31 October 2017, the LJTC in cooperation with the Office of the Government Agent conducted seminar and practical training for investigating judges on the human rights issues related to covert operational activities interfering, *inter alia*, with the right to respect for private life, home and correspondence. Particular emphasis in the training was put on the necessity to respect the confidentiality of communications covered by lawyer-client privilege when conducting operational activities.
22. Furthermore, the Court’s judgment in the case of *Oderovs v. Latvia* has been on number of occasions discussed by the Government Agent during various seminars, lectures and meetings with judges, prosecutors and law-enforcement personnel, whose duties involve conducting operational activities.

³ The Latvian Judicial Training Centre is a foundation that provides legal education and training, as well as improves the level of professional knowledge and ethics for all judges, court employees, bailiffs and other legal professionals in Latvia; <http://www.ljtc.lv/index.php?lng=2>

23. Furthermore, the Latvian authorities have translated and disseminated the Court's judgment in the case of *Oderovs v. Latvia*.
24. First of all, following the delivery of the judgment, a press release on the Court's judgment was issued, summarising the facts of the case and the Court's conclusions, as well as explaining reasoning thereof, including the reference to the judgment and a web-link to the website of the Court's case-law.⁴
25. Next, the Court's judgment in the case of *Oderovs v. Latvia* has been translated into Latvian and published on the official courts' website www.tiesas.lv,⁵ and both the judgment⁶ and its summary⁷ have been published in the official website of the Supreme Court of the Republic of Latvia.
26. In the light of afore-mentioned, the Government believes that no further general measures appear to be necessary in the present case.

V. CONCLUSIONS OF THE MEMBER STATE

27. The Government believes that the execution measures described above are sufficient to conclude that Latvia has complied with its obligations under Article 46, paragraph 1, of the Convention concerning violation of Article 8 of the Convention, and the examination of the case of *Oderovs v. Latvia* should be closed.



Kristine Līce

Agent of the Government of the Republic of Latvia
Riga, 2 May 2018

⁴ <http://www.mfa.gov.lv/aktualitates/zinas/57233-eiropas-cilvektiesibu-tiesa-pasludina-tris-nolemumus-latvijas-lietas>

⁵ https://tiesas.lv/Media/Default/Page/CASE%20OF%20ODEROVS%20v.%20LATVIA_LV.docx

⁶ <http://at.gov.lv/downloadetclawfile/955>

⁷ <http://at.gov.lv/downloadetclawfile/941>