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

Item reference: Action report (26/03/2018)

Communication from Latvia concerning the case of SHARMA v. Latvia (Application No. 28026/05)

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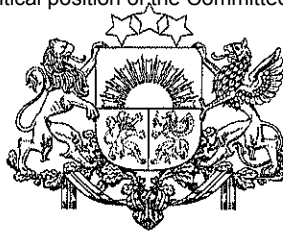
Référence du point : Bilan d'action

Communication de la Lettonie concernant l'affaire SHARMA c. Lettonie (requête n° 28026/05)
(anglais uniquement)

DGI

26 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



LATVIJAS REPUBLIKAS ĀRLIETU MINISTRIJA

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF LATVIA

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Mr Pavlo Pushkar
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Sent by e-mail only: dgi-execution@coe.int

No. 03-7921

Rīga, 26 March 2018

Dear Mr Pushkar,

Please find enclosed the Revised Action Report by the Government of the Republic of Latvia concerning the case of *Sharma v. Latvia* (application no.28026/05), judgment of 24 March 2016 (final on 24 June 2016).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kristine Lice'.

Kristīne Līce

Agent of the Government of the Republic of Latvia

DGI

26 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

REVISED 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**

Sharma

v.

Latvia

Application no.28026/05

**Judgment of 24 March 2016
Final on 24 June 2016**

I. INTRODUCTION

1. On 18 July 2005, Mr Pradeep Sharma (“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”).
2. On 24 March 2016, the Court unanimously found a violation of Article 1 of Protocol No.7 and Article 5, paragraph 4, of the Convention. Under Article 41 of the Convention, the Court ordered the Government of the Republic of Latvia (“the Government”) to pay the applicant within three months from the date on which the judgment became final in accordance with Article 44, paragraph 2, of the Convention, EUR 5,000 in respect of non-pecuniary damage. The judgment became final on 24 June 2016.
3. On 13 April 2017, in the context of the working methods for the supervision of the execution of the Court’s judgments and decisions, the Government submitted its Action Report setting out the execution measures taken with regard to the violations of Article 1 of Protocol No.7 and Article 5, paragraph 4, of the Convention. The present Revised Action Report provides additional information regarding individual measures, which had been taken following the submission of the Action Report of 13 April 2017.

II. CASE DESCRIPTION

4. The applicant is an Indian national, who was born in 1973, and lives in New Delhi, India.
5. On 18 July 2005, the applicant submitted an application to the Court (“the Court”). Firstly, relying on Article 8 of the Convention the applicant alleged before the Court that his expulsion from Latvia to India was in breach of his right to respect for family life. Secondly, the applicant alleged that his expulsion had been carried out in breach of Article 1, of Protocol No.7, of the Convention. Further, relying on Article 5, paragraph 2, of the Convention, the applicant complained that he had not been promptly informed about the reasons of his arrest, and, relying on Article 5, paragraph 4, of the Convention, that he could not have the lawfulness of his arrest reviewed by the domestic court.
6. The Court held that there had been a violation of Article 1, of Protocol No.7, of the Convention on the account that the applicant’s expulsion was based on a decision which had not yet become final, thus failing to comply with the procedure set out in the domestic law¹. The Court also held that there had been a violation of Article 5, paragraph 4, of the Convention as the applicant was not provided with a remedy whereby he could obtain a judicial review of the lawfulness of his detention².

¹ See paras. 82-83 of the Court’s judgment of 24 March 2016.

² Ibid, para. 104.

III. INDIVIDUAL MEASURES

7. In its judgment of 24 March 2016, the Court awarded to the applicant just satisfaction in the amount of EUR 5,000 in respect of non-pecuniary damage.
8. The Government informs that on 4 July 2016, the Government Agent's Office sent a letter to the applicant and Mr Anuj Castelino, the applicant's representative, informing them about the just satisfaction awarded by the Court and asking them to submit information on the applicant's bank account to allow the Government to pay the compensation awarded. Having received no answer from either the applicant himself, or his representative, the just satisfaction awarded by the Court in the total amount of EUR 5,000 was deposited with the State Treasury (with Pradeep Sharma as the indicated beneficiary) on 20 September 2016.
9. On 20 September 2016, the Government Agent's Office received the applicant's e-mail concerning the possibility to obtain a residence permit. On the same day, the Government Agent's Office, in response to the applicant's e-mail, repeatedly requested the applicant to submit information regarding his bank account for making the transfer of the just satisfaction awarded by the Court from the State Treasury to the applicant. Shortly afterwards, the Government Agent's Office sent a new request for information, and additionally provided the applicant with the necessary contacts of the Office of Citizenship and Immigration Affairs, an institution responsible for granting residence permits for entering in Latvia, and invited the applicant to consult websites containing information and guidance on submitting the request to issue a residence permit. It must be noted that the applicant has contacted the Office of Citizenship and Migration Affairs for further information on the procedure of issuing a residence permit. Should the applicant decide to lodge a formal request to obtain a residence permit with the Latvian authorities, this request will be duly examined in accordance with the well-established Court's case-law on application of Article 8 of the Convention, including the guiding legal criteria on family reunion aspects. The Government would like to also confirm that the applicant's name has been removed from the list of persons prohibited from entering in Latvia³.
10. Furthermore, with a letter of 23 December 2016, the Government informed the Department for the Execution of Judgments of the Court of Human Rights about the Government's previous communication with the applicant.
11. In reply to the e-mail received from the Department for the Execution of Judgments of the European Court of Human Rights on 3 March 2017, that contained information on the applicant's bank details, the Government Agent's Office immediately initiated the money transfer of the deposited amount. However, it came to the Government's notice that the applicant's bank account details were incomplete. Without any delay, on 3 March 2017, the Government repeatedly requested the applicant to provide the missing information so the money transfer can be processed⁴. However, the Government Agent's Office received no answer from the applicant.

³ See, para.19 of the Court's judgment of 24 March 2016.

⁴ The copy of the e-mail has been also sent to the Department for the Execution of Judgments of the European Court of Human Rights.

12. Taking into account the time elapsed since the last e-mail of the Government Agent's Office to the applicant, the Government Agent's Office attempted to contact the applicant by e-mail on 9 February 2018. The Government Agent's Office in its e-mail to the applicant once again requested the applicant to provide complete information of his bank account that would allow the transfer of the just satisfaction awarded by the Court. The Government Agent's Office also recalled that the compensation awarded to the applicant by the Court on 20 September 2016, was deposited to the account by the State Treasury, and would be transferred to the applicant's bank account upon the receipt of complete information about the applicant's bank account. However, the Government submits that despite numerous reminder e-mails sent to the applicant, up until the date of the present Revised Action Report the Government has not received from the applicant the full bank account details in order to complete the transfer of the compensation sum.
13. The Government confirms that the just satisfaction awarded by the Court to the applicant and deposited to the account held by the State Treasury will remain in this account for an indefinite period. Likewise, the Government confirms that the Government Agent's Office will continue its efforts to ensure that just satisfaction in the case of *Sharma v. Latvia* is duly paid to the applicant.

IV. GENERAL MEASURES

IV.1. General measures regarding Article 1 of Protocol No.7 of the Convention

14. First of all, it should be noted that the Convention has direct effect in the Latvian legal system.
15. The Government submits that the violation of Article 1 of Protocol No.7 of the Convention in the instant case constitutes an isolated incident, which resulted from a deficient legal framework and practice of the national authorities at the material time. The Latvian authorities have worked diligently on the issues identified by the Court both, by introducing fundamental changes to the respective legal framework and considerably improving the practice of national authorities involved in considering the lawfulness of a non-EU national's stay in Latvia.
16. In this regard, the Government would like to draw the Court's attention to the fact that on 16 June 2011, significant amendments to the *Immigration Law* were introduced. By these amendments the provisions of the *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*⁵ ("Return Directive") were duly transposed into the national law. This directive provides EU countries with common standards and procedures for returning non-EU nationals staying illegally on their territories, with certain exceptions. The implementation of the Return Directive has significantly changed both the legislative framework and administrative practice with respect to, *inter alia*, returning and detaining of illegally staying non-EU national, including the issues related to the enforcement of the decisions on return and detention of a non-EU national.

⁵ Published in the Official Journal of the European Union, L 348/98, 24 December 2008. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

17. Following the afore-said amendments, Article 50, paragraph 1, of the *Immigration Law*⁶ now provides that within seven days after a voluntary return decision or a return order that involves a decision to include a person in the list of persons prohibited from entering in Schengen territory has come into force, a third-country national has the right to challenge this decision before a higher authority.
18. Moreover, by transposing the Return Directive into the national law the afore-said legal provision has been amended in a way that a third-country national must be acquainted with the decision adopted by a higher authority in a language which he/she understands or which he/she should understand, and, if necessary, interpreting services may be used. National authorities must inform a third-country national about the essence of adopted decision, the procedure for challenging this decision, as well as notify him/her about the right to receive the State-financed legal aid.
19. Therefore, after the Return Directive was implemented, the *Immigration Law* clearly introduces an obligation for the national authorities to acquaint a third-country national with the adopted decision. In practice it means that a forcible expulsion can only be conducted after the Head of the Office of Citizenship and Migration Affairs has adopted a decision regarding an application by which a forcible expulsion had been challenged, and the third-country national has been duly acquainted with this adopted decision.
20. Furthermore, Article 50¹, of the *Immigration Law* provides that a decision adopted by a higher authority pertaining to a voluntary return decision or a return order that involves a decision to include a person in the list of persons prohibited from entering in Schengen territory, may be challenged before the Administrative District Court within seven days after the day of its entering into force. In accordance with the *Immigration Law* and *Administrative Procedure Law* provisions this appellate complaint postpones the enforcement of the decision. Finally, the law provides an opportunity to lodge a cassation complaint with the Department of Administrative Cases of the Supreme Court.
21. After the *Return Directive* has been implemented, necessary training and seminars were provided to the officers of the Office of Citizenship and Migration Affairs and the State Border Guard. The aim of the training was to strengthen capacity and improve knowledge of national authorities working with migration issues and those involved in considering the lawfulness of a non-EU national's stay in Latvia.

IV.2. General measures regarding Article 5, paragraph 4, of the Convention

22. With respect to the violation of Article 5, paragraph 4, of the Convention found by the Court, the Government notes that the Article 54, paragraph 1, of the *Immigration Law* pertaining to the detention procedure of a third-country national has since been amended.
23. In particular, this Article now provides that the State Border Guard officials have the right to detain a third-country national for the period not exceeding 10 days. In that

⁶ *Immigration Law* of 31 October 2002, published in the Official Journal *Latvijas Vēstnesis* 169 (2744), 20 November 2002. Available in Latvian and English at: <https://likumi.lv/doc.php?id=68522>

case, a person has the right to challenge the decision on his/her detention before the national court of general jurisdiction⁷; this complaint lodged with the national court does not postpone the enforcement of the decision. Afterwards, a person has the right to lodge an appellate complaint with the Regional Court.

24. The detention of a person for a period that exceeds 10 days can be authorised only by the court. In that case a person similarly has the right to challenge the decision on his/her detention before the national court of general jurisdiction.
25. Pursuant to Article 54¹ of the *Immigration Law* a judge, when adopting a decision to detain (or to prolong the detention, or to refuse to prolong the detention), must evaluate and consider the circumstances of the relevant case, in particular whether the circumstances forming the ground for the detention are still valid.
26. Furthermore, Article 56 of the *Immigration Law* contains necessary procedural safeguards, for example, a person has the right to contact his/her country's consular official and receive the State-financed legal aid. A person is notified about these rights upon his/her detention. A person also has the right to acquaint himself/herself with the case-file materials related to his/her detention, as well as is ensured with the right to communicate in a language which he/she understands or should understand.
27. Therefore, the Government submits that the domestic legislation as currently in force ensures proper judicial review of the lawfulness of the detention of a third-country national.

IV.3. Translation, publication and dissemination of the judgment

28. 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, including the reference to the judgment and a web-link to the website of the Court's case-law⁸.
29. The Court's judgment in the case of *Sharma v. Latvia* has been translated into Latvian and published on the official courts' website www.tiesas.lv⁹, and both the judgment and its summary have been published in the official website of the Supreme Court of the Republic of Latvia¹⁰.

V. CONCLUSIONS OF THE RESPONDENT STATE

⁷ Pursuant to the decision of 29 March 2011 of the Senate of the Supreme Court in the case No.5-14/3-2011. Available at (in Latvian): <http://at.gov.lv/files/uploads/files/archive/departments/2011/29.03.2011.pdf>

⁸ The press release and facts of the case of *Sharma v. Latvia* (application no.28026/05) is available at: <http://www.mfa.gov.lv/aktualitates/zinas/50207-eiropas-cilvektiesibu-tiesa-pasludina-spriedumu-lieta-par-indijas-pilsona-izraidisanu-no-latvijas>

⁹ Latvian translation of the judgment in case of *Sharma v. Latvia* (application no.28026/05) is available at: <https://www.tiesas.lv/eiropas-cilvektiesibu-tiesa-ect-spriedumi-un-lemumi>

¹⁰ The full text and the summary of the Court's judgment in case of *Sharma v. Latvia* (application no.28026/05) in Latvian is available at: <http://at.gov.lv/lv/judikatura/ect-nolemumi/eiropas-cilvektiesibu-un-pamatbrivibu-aizsardzibas-konvencija/pec-pieteiceja/page-29/>

30. The Government believes that no further individual measures are necessary or required in the present case and that the execution measures described above and in its Action Report of 13 April 2017 are sufficient to conclude that Latvia has complied with its obligations under Article 46, paragraph 1, of the Convention concerning violation of Article 1 of Protocol No.7 and Article 5, paragraph 4, of the Convention, and the examination of the case of *Sharma v. Latvia* should be closed.



Kristine Līce

Agent of the Government of the Republic of Latvia
Riga, 26 March 2018