



The State had a duty to conduct an effective investigation into the ill-treatment which it had acknowledged in a unilateral declaration

In today's **Grand Chamber** judgment¹ in the case of *Jeronovičs v. Latvia* (application no. 44898/10) the European Court of Human Rights held, by ten votes to seven, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights under its procedural head.

The case primarily concerned the national authorities' refusal to reopen the criminal proceedings relating to Mr Jeronovičs's ill-treatment, following a unilateral declaration in which the Government had acknowledged, among other breaches, a violation of Article 3 of the Convention.

The Court had adopted a strike-out decision on 10 February 2009 in the case of *Jeronovičs v. Latvia* (no. 547/02) in respect of the complaints referred to in the declaration. In that connection the Court observed that the unilateral declaration procedure was an exceptional one and that, when it came to breaches of the most fundamental rights contained in the Convention, it was not intended to allow the Government to escape their responsibility. In the Court's view, it had been a pre-condition of its strike-out decision that Mr Jeronovičs should retain the possibility to exercise other remedies in order to obtain redress.

The Court held that its strike-out decision had not extinguished, and could not extinguish, the Latvian Government's continuing obligation to conduct an effective investigation into the allegations of ill-treatment. Accordingly, it could not be said that the State had discharged its continuing procedural obligation under Article 3 of the Convention by paying the amount of compensation indicated in its unilateral declaration and by acknowledging a violation of the Convention. Were it otherwise the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, thus making it possible for agents of the State to abuse the rights of those within their control with virtual impunity, and rendering the general legal prohibition of torture and inhuman or degrading treatment, despite its fundamental importance, ineffective in practice.

Principal facts

The applicant, Viktors Jeronovičs, is a Latvian national who was born in 1962. He is currently detained in Daugavpils Prison (Latvia).

Mr Jeronovičs was arrested by the police in April 1998 on suspicion of committing several offences and was sentenced to nine years' imprisonment in September 2000. Following his arrest he complained that he had been ill-treated by the police officers concerned, and criminal proceedings were instituted against them. The proceedings were subsequently discontinued for lack of evidence.

In 2001 Mr Jeronovičs lodged an application (no. 547/02) with the European Court of Human Rights, in which he complained in particular of the ill-treatment to which he had allegedly been subjected and of the lack of an effective investigation into his allegations. The Latvian Government submitted a unilateral declaration in that regard in which they acknowledged, in particular, a violation of Article 3 (prohibition of inhuman or degrading treatment) and of Article 13 (right to an effective remedy) of

1. Grand Chamber judgments are final (Article 44 of the Convention).

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the European Convention on Human Rights and offered to pay compensation to Mr Jeronovičs by way of redress. In a decision of 10 February 2009 the Court struck the application out of its list of cases in so far as it related to the complaints referred to in the unilateral declaration.

In October 2010 Mr Jeronovičs requested the Latvian prosecuting authorities to reopen the criminal proceedings leading to his conviction and the proceedings concerning his alleged ill-treatment. His request was refused in November 2010 on the ground, in particular, that the Government's unilateral declaration could not be regarded as a newly disclosed circumstance for the purposes of the relevant domestic provisions.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy), Mr Jeronovičs complained that, despite the fact that in its decision of 10 February 2009 in the case of *Jeronovičs v. Latvia* (no. 547/02) the Court had accepted the Government's unilateral declaration acknowledging various violations of his Convention rights, including his ill-treatment by police officers, the public prosecutor's office had refused to reopen the two sets of proceedings in connection with that case. In the applicant's view, this had deprived him of any effective remedy in that regard.

The application was lodged with the European Court of Human Rights on 26 July 2010. On 3 February 2015 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 1 July 2015. The Helsinki Foundation for Human Rights, a non-governmental organisation based in Warsaw, Poland, was given leave to intervene in the proceedings as a third party.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
Josep **Casadevall** (Andorra),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Mark **Villiger** (Liechtenstein),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Kristina **Pardalos** (San Marino),
Paulo **Pinto de Albuquerque** (Portugal),
André **Potocki** (France),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Johannes **Silvis** (the Netherlands),
Krzysztof **Wojtyczek** (Poland),
Jon Fridrik **Kjølbro** (Denmark) and,
Jautrīte **Briede** (Latvia), *ad hoc Judge*,

and also Lawrence **Early**, *Jurisconsult*.

Decision of the Court

[Article 3 \(prohibition of inhuman and degrading treatment\)](#)

The Court specified at the outset that it would not examine Mr Jeronovičs's complaint concerning the authorities' refusal to reopen the criminal proceedings leading to his conviction, as that

complaint had been dismissed by the Court in its decision of 9 October 2012. Hence, it would confine its examination to the complaints concerning the authorities' refusal to reopen the criminal proceedings relating to the allegations of ill-treatment. In that connection Mr Jeronovičs argued that the respondent State had been under an obligation to investigate his allegations of ill-treatment, in view of the fact that it had acknowledged a violation of Article 3 of the Convention and given an undertaking in the unilateral declaration (application no. 547/02) "to provide an effective remedy". The Government contested this assertion, arguing that neither the terms of the declaration nor the wording of the Court's decision gave rise to such an obligation.

The Court noted that in its strike-out decision of 10 February 2009 it had not expressly indicated whether the Government remained under an obligation to conduct an effective investigation or whether that obligation had been extinguished by the acknowledgment of a breach and the payment of compensation. It therefore proceeded to ascertain whether such an obligation could arise from the Government's undertaking contained in their unilateral declaration and from the Court's decision of 10 February 2009 striking out the applicant's complaint under the procedural limb of Article 3 of the Convention (application no. 547/02), or whether the refusal in question disclosed a failure to comply with any procedural obligation that continued to exist after that strike-out decision. The Court noted that the parties disagreed as to the implications of the wording of:

(a) the Government's undertaking "*to adopt all necessary measures in order to avoid similar infringements in future, as well as to provide an effective remedy*", and

(b) the sentence contained in paragraph 54 of the Court's decision, regarding the possibility of making use of other remedies: "*That decision is without prejudice to the possibility for the applicant to exercise any other available remedies in order to obtain redress*".

With regard to the undertaking under point (a), the Court considered that this was a general measure rather than a specific, individual measure. However, point (b) was particularly important in the Court's view since it had been a pre-condition of the Court's strike-out decision that the applicant should retain the possibility to exercise "*any other available remedies in order to obtain redress*". The Court therefore found that Mr Jeronovičs's right to avail himself of existing remedies in order to obtain redress had to be accompanied by a corresponding obligation on the Government's part to provide him with a remedy in the form of a procedure for investigating his alleged ill-treatment at the hands of State agents. The Court specified that the payment of compensation, whether resulting from a unilateral declaration or from domestic proceedings for damages, was not sufficient, having regard to the State's obligation under Article 3 of the Convention to conduct an effective investigation in cases of wilful ill-treatment by agents of the State. The Court therefore rejected the Government's interpretation to the effect that the payment of compensation constituted the final resolution of the case, observing that this would extinguish an essential part of the applicant's right and of the State's obligation under the procedural limb of Article 3 of the Convention.

The Court further stressed that the unilateral declaration procedure was an exceptional one and that, when it came to breaches of the most fundamental rights contained in the Convention, it was not intended either to circumvent the applicant's opposition to a friendly settlement or to allow the Government to escape their responsibility for such breaches. In the absence of an effective investigation into the applicant's ill-treatment, the strike-out decision of 10 February 2009 had not extinguished, and could not extinguish, the Latvian Government's continuing obligation to conduct an investigation in compliance with the requirements of the Convention. Accordingly, it could not be said that the respondent State had discharged its continuing procedural obligation under Article 3 of the Convention by paying the amount of compensation indicated in its unilateral declaration and by acknowledging a violation of the various Convention provisions. Under Latvian law it had been possible for Mr Jeronovičs to submit a request to the public prosecutor for the reopening of the

investigation, and he had availed himself of that possibility. The public prosecutor had been empowered to reopen the proceedings on the grounds of newly disclosed circumstances. Although, under section 655(2) of the Criminal Procedure Law, a finding by an international judicial authority that a decision by a Latvian court which had taken effect did not comply with international law binding on Latvia constituted a newly disclosed circumstance, the applicant's request had been dismissed on the ground that the Government's unilateral declaration did not constitute a newly disclosed circumstance for the purposes of that provision. In the Court's view, however, none of the national legal obstacles referred to by the higher-ranking prosecutor could detract from the State's continuing obligation under Article 3 of the Convention to carry out an effective investigation. Were it otherwise the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, thus making it possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and rendering the general legal prohibition of torture and inhuman or degrading treatment, despite its fundamental importance, ineffective in practice.

The Court therefore found that Mr Jeronovičs had not had the benefit of an effective investigation as required by Article 3 of the Convention, as the authorities had refused to reopen the criminal proceedings that had been closed concerning the ill-treatment which the Government had acknowledged in the unilateral declaration submitted in the context of application no. 547/02. **The Court therefore held that there had been a violation of Article 3 of the Convention under its procedural head.**

[Article 41 \(just satisfaction\)](#)

The Court held, by nine votes to eight, that Latvia was to pay Mr Jeronovičs 4,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Nicolaou expressed a partly dissenting opinion. Judge Silvis expressed a dissenting opinion, joined by Judges Villiger, Hirvelä, Mahoney, Wojtyczek, Kjølbros and Briede. Judge Wojtyczek expressed a dissenting opinion. These are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.