CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 2333/02
by Haroldas TRIJONIS
against Lithuania

The European Court of Human Rights (Third Section), sitting on 17 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs A. GYULUMYAN,
Ms R. JAEGER,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 19 April 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Haroldas Trijonis, is a Lithuanian national, who was born in 1970 and lives in Klaipėda. The respondent Government were represented by Mrs Danutė Jočienė, of the Ministry of Justice.

A. The circumstances of the case

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

The applicant works in a private company.

On 27 November 1995 a criminal case was instituted against the applicant concerning the alleged appropriation of the property of another.

On 20 December 1995 the applicant was questioned as a suspected person.

On an unspecified date in early 1996 one of the co-suspects, VR, absconded from the investigation. On 19 February 1996 VR was declared wanted.

On 27 February 1996 the investigation was adjourned with a view to finding VR.

On 12 July 1996 procedures were initiated to extradite VR from the U.S.

On 30 December 1996 the pre-trial investigation was re-opened.

On 14 and 23 January 1997 the applicant was questioned as a suspect.

On 30 January 1997 the pre-trial investigation was again adjourned pending the extradition of VR.

On 12 December 2000 the pre-trial investigation was again re-opened.

On 14 December 2000 VR was finally extradited to Lithuania from the U.S.

On 15 December 2000 a police investigator ordered the applicant's bail by way of his “home arrest”, obliging him to remain at home 24 hours every day. On the same date the order was authorised by a prosecutor. No time-limit of the validity of the order was specified.

On 27 December 2000 the applicant was accused of complicity to appropriate the property of another (Article 275 § 2 of the Criminal Code as then in force).

On 27 December 2000 psychiatric examination of VR was ordered.

By way of a request of 21 December 2000 and complaint of 2 January 2001 the applicant contested the domestic lawfulness of the “home arrest” order before the prosecuting authorities.

On 11 January 2001 the “home arrest” order was amended, imposing milder bail conditions on the applicant. In particular, he was permitted to be at his work place during week-days, and obliged to stay at home from 7 p.m. until 7 a.m. during week-days and the whole day during week-ends.

On 25 January 2001 a new accusation, that of complicity to appropriate the property of another in large quantities, was presented against the applicant (Article 275 § 3 of the Criminal Code as then in force).

On 18 April 2001 the psychiatric examination of VR was carried out.

On 6 November 2001 the accusation against the applicant under Article 275 § 3 of the Criminal Code was amended.

On 8 November 2001 the preliminary investigation was concluded.

On 30 December 2001 a bill of indictment was confirmed. The case was transmitted to a court.

On 6 May 2002 the Klaipeda City District Court replaced the applicant's "home arrest" with a milder remand condition - written obligation not to change his permanent place of residence.

On 24 December 2002 the case was returned to the investigators for further pre-trial measures to be carried out.

On 28 February 2003 an amended accusation was presented against the applicant.

On 7 March 2003 the preliminary investigation was concluded.

It appears that to date the case is pending at first instance.

B. Relevant domestic law

Article 275 of the Criminal Code applicable at the material time punished the acts of appropriating the property of another and embezzlement.

According to Articles 95-99 of the Code of Criminal Procedure applicable at the material time, "home arrest" could be ordered by an investigator or prosecutor as a remand measure. Pursuant to Articles 10, 96 and 104 of the Code, detention on remand could only be authorised by a judge or court.

COMPLAINTS

1. Under Article 6 of the Convention the applicant complained that the criminal proceedings against him had been unreasonably long.

2. Under Articles 5 and 6 of the Convention the applicant complained that his "home arrest" had been arbitrary and unlawful, and that he had been afforded no judicial review of the "home arrest".

THE LAW

1. Under Article 6 of the Convention the applicant complained that the criminal proceedings against him had been unreasonably long.

Article 6 provides, insofar as relevant, as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ... ."

The Government submitted that the case could be regarded as particularly complex, and that there had been no delays on the part of the authorities in carrying out the investigation. Moreover, the Government noted that the case had been adjourned during the periods from 27 February 1996 until 30 December 1996 and from 30 January 1997 until 12 December 2000, in view of the disappearance of VR and pending his eventual extradition. All in all, the overall length of the proceedings had not been excessive.

The applicant argued with the Government's conclusions, stating that the length of the proceedings had been unreasonably long.

In the light of the parties' observations, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. It cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. Under Articles 5 and 6 of the Convention the applicant complained that his "home arrest" had amounted to a deprivation of liberty, which had been arbitrary and unlawful, and had not been open to judicial review.

Article 5 of the Convention provides, insofar as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ... .
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Government stated first that this part of the application should have been rejected for non-exhaustion of domestic remedies (Article 35 § 1 of the Convention) in that the applicant had an "effective" remedy by reason of his ability to apply to a prosecutor; however, the applicant had not specified in his complaints to the prosecutor of 21 December 2000 and 2 January 2001 that the "home arrest" had effectively amounted to detention within the meaning of Article 5 of the Convention. The Government further stated that the applicant's bail by way of the "home arrest" had not amounted to a deprivation of liberty, with the result that Article 5 was not applicable in this respect. They argued that the impugned bail condition had been a restriction on the applicant's liberty of movement, and that it had been compatible with Article 2 of Protocol, no. 4 to the Convention. Furthermore, the applicant had been afforded the right to contest it by way of bringing court proceedings, as a result of which the "home arrest" was lifted on 6 May 2002. There had therefore not been a violation of Article 6 of the Convention.

The applicant argued with the Government's conclusions, stating that the "home arrest" and the absence of its review had been contrary to Article 5 §§ 1, 3 and 4 of the Convention, and that he had also been deprived of the right to a court in this respect in breach of Article 6.

The Court notes first that the applicant's bail by way of the "home arrest", with an obligation to be at home 24 hours every day, was authorised on 15 December 2000 and was effective until 11 January 2001. Thereafter the "home arrest" measure was amended, with an obligation for the applicant to remain at home only on week-ends and from 7 p.m. until 7 a.m. during week-days, the possibility being given for him to be at work during the rest of the time. That bail condition was applicable until 6 May 2002, when the applicant's "home arrest" was finally lifted. There are thus two periods of the applicant's "home arrest" to be examined, that from 15 December 2000 until 11 January 2001, and that from 11 January 2001 until 6 May 2002.

a) "Home arrest" from 15 December 2000 until 11 January 2001

As regards this period of the applicant's "home arrest", the Court notes the Government's argument about non-exhaustion of domestic remedies. However, it is observed that the applicant did apply to a prosecutor on 21 December 2000 and 2 January 2001, contesting the domestic lawfulness of the "home arrest". The fact that he may not have mentioned an Article of the Convention does not deny the fact that he raised in substance a complaint about the validity of the impugned measure.

Furthermore, the very object of the applicant's complaints in this part of the application is the alleged absence of an adequate, judicial, remedy within the meaning of Article 5 § 4 of the Convention in regard to the alleged deprivation of liberty by way of the "home arrest". It is observed that the Government have not suggested the existence of a court remedy in respect of the "home arrest" applicable from 15 December 2000 to 11 January 2001; by contrast, they pointed out to a prosecutor being an "effective" remedy in connection with the applicant's complaints of 21 December 2000 and 2 January 2001 (see above), with the judicial remedy being afforded to the applicant for the first time only on 6 May 2002, that is a long time after the above period of the "home arrest" had ended.

To sum up, it has not been proved in connection with the period of the applicant's "home arrest" from 15 December 2000 until 11 January 2001 that there existed judicial remedies capable of redressing the applicant's complaints in this respect, or that the applicant failed to use other domestic remedies available at the material time. In short, the applicant's complaints about the above period of his "home arrest" cannot be rejected for non-exhaustion of domestic remedies under Article 35 § 1 of the Convention.

As regards the merits of the parties' arguments under Article 5 §§ 1, 3 and 4 of the Convention, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. It cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

As regards the applicant's complaint about being deprived of the "right to a court" under Article 6 during the above period of the "home arrest", the Court notes that it has decided to examine the merits of the applicant's complaints in this respect under Article 5 § 4 of the Convention, which is a *lex specialis* in view of the complaint about the lack of access to court under Article 6. Accordingly, the Court is not required to examine the same complaint under Article 6. The complaint about this period of the "home arrest" must therefore be declared inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention to the extent that it has been brought under Article 6.

b) "Home arrest" from 11 January 2001 until 6 May 2002

The Court is not required to examine the Government's objection about the alleged non-exhaustion of domestic remedies in connection with the above period of the "home arrest", because, even assuming that the applicant satisfied the requirements of Article 35 § 1 of the Convention in

this connection, this part of the application should in any event be rejected for the following reasons.

The Court observes, as regards the period of the applicant's "home arrest" from 11 January 2001 until 6 May 2002, that it did not amount to a deprivation of liberty, the applicant having been allowed to spend time at work as well as at home during that period (see, by contrast, *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, §§ 90-95). Article 5 of the Convention was thus not applicable to this period of the "home arrest", and the applicant's complaints in this connection are incompatible *ratione materiae* with the provision of the Convention (Article 35 § 3).

At the same time the Court considers that the "home arrest" during this period amounted to a restriction on the applicant's freedom of movement. The Court deems it necessary to examine these complaints under Article 2 of Protocol No. 4, which provides as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public ordre, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. ... ."

The Court observes however that the applicant has presented no arguments to call into question the lawfulness of his "home arrest" from 11 January 2001 until 6 May 2002 from the point of view of the domestic criminal procedure (see Articles 95-99 of the then Code of Criminal Procedure in the 'Relevant domestic law' part above), nor indeed has he shown that this measure could not be considered as "necessary in a democratic society", given in particular that it was ordered as a bail condition on suspicion of his having committed an offence. It follows that the applicant's complaints under Article 2 of Protocol No. 4 would in any event be manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

With regard to the remainder of the applicant's grievances in this part of the application, the Court finds no appearance of a violation of the Convention or its Protocols.

It follows that the applicant's complaints about the "home arrest" from 11 January 2001 until 6 May 2002 should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint under Article 5 §§ 1, 3 and 4 of the Convention about his "home arrest" from 15 December 2000 until 11 January 2001, and his complaint under Article 6 of the Convention about the length of criminal proceedings against him;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President