



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

SECOND SECTION

CASE OF KRAVTAS v. LITHUANIA

(Application no. 12717/06)

JUDGMENT

STRASBOURG

18 January 2011

FINAL

18/04/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kravtas v. Lithuania,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos,

Guido Raimondi, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 12717/06) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Petras Kravtas (“the applicant”), on 26 March 2006.

2. The applicant was represented by Mr K. Motieka, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged that the length of the criminal proceedings in his case had exceeded the “reasonable time” requirement enshrined in Article 6 § 1 of the Convention. He also argued that the obligation not to leave his place of residence, imposed on him by the Lithuanian authorities, was in breach of his right to free movement.

4. On 20 January 2009 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1950 and lives in Klaipėda.

6. From 15 October 1993 until 30 October 1995 the applicant was the chairman of the commercial bank Vakarų Bankas.

7. On 6 September 1995 a criminal case was instituted regarding embezzlement of the bank's property.

8. The Government submitted that on 6 November 1995 the applicant was questioned as a suspect in the case. The questioning of the applicant lasted for three to four hours, including breaks and examination of documents.

9. On 21 October 1996 the applicant was charged with embezzlement of property of a high value. He was later also charged with forgery of an official document. A prosecutor imposed a remand measure on the applicant pending further action – the obligation not to leave his place of residence.

10. On 30 July 1997 the applicant was arrested and remanded in custody. On 26 January 1999 the Vilnius Regional Court decided to release the applicant from pre-trial detention on 29 January 1999, as on that date the statutory eighteen-month time-limit for holding him in detention would end.

11. From 30 January 1999 until 29 July 1999 the applicant was held under house arrest.

12. From 29 July 1999 until 3 October 2005 the applicant was under an order not to leave his place of residence.

13. On 29 July 1999 the prosecutor brought the case before the Klaipėda City District Court.

14. On 12 August 1999 the Klaipėda City District Court committed the applicant for trial and set 2 December 1999 as the date of the first hearing.

15. By a judgment of 20 April 2001, the Klaipėda City District Court acquitted the applicant, dismissing both charges against him. The court also acquitted the applicant's co-defendant in the case.

16. Following an appeal by the prosecutor, on 23 April 2002 the Klaipėda Regional Court upheld the lower court's judgment acquitting the applicant. The appellate court quashed the trial court's judgment in respect of the co-defendant and remitted that part of the case to the prosecutor's office for further investigation.

17. The prosecution and the applicant's co-defendant submitted cassation appeals.

18. On 15 October 2002 the Supreme Court decided that the prosecution had failed to properly formulate the charges against the applicant and his co-defendant. The court concluded that this failure was a violation of essential procedural rules and therefore remitted the case to the Klaipėda Regional Prosecutor's Office for further investigation.

19. On 6 August 2004 the applicant's lawyer requested the prosecutor not to proceed with the case, as the applicant had not committed the crimes with which he had been charged.

20. On 13 August 2004 the prosecution dismissed his request.

21. On 3 September 2004 the Klaipėda Regional Prosecutor's Office concluded its pre-trial investigation and notified the applicant thereof. Having submitted a new bill of indictment, in which the applicant was

charged with embezzlement of property of a high value, the prosecution transferred the case to the Klaipėda Regional Court on 9 September 2004.

22. By a judgment of 27 May 2005, the Klaipėda Regional Court dismissed the charges against the applicant as unfounded. As to the applicant's co-defendant, he was acquitted of some charges; criminal action on the remaining charges lapsed through the term of prescription.

23. The prosecution and the applicant's co-defendant appealed.

24. On 3 October 2005 the Court of Appeal acquitted the applicant's co-defendant of all charges and upheld the remaining part of the lower court's judgment. The court also ordered that the obligation on the applicant not to leave the place of residence be terminated. The decision became final upon the prosecution's decision not to submit a cassation appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

25. The relevant domestic law and practice concerning domestic remedies for the excessive length of civil and criminal proceedings is reproduced in the judgment *Šulcas v. Lithuania* (no. 35624/04, § 52, 5 January 2010).

THE LAW

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

26. The applicant complained that the length of the criminal proceedings had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

27. The Government submitted that the applicant had failed to exhaust domestic remedies by not claiming redress for the length of the criminal proceedings. In the alternative, they argued that the complaint was manifestly ill-founded.

28. The applicant contested the Government's submissions.

29. Having had regard to the Government's arguments and the materials they submitted, the Court finds that the Government have not presented any convincing reasons which would require the Court to depart from its

established case-law to the effect that the applicant did not have an effective domestic remedy at his disposal which he had failed to exhaust before lodging his application with the Court (see *Norkūnas v. Lithuania*, no. 302/05, §§ 29-30, 20 January 2009, and *Šulcas v. Lithuania*, cited above, §§ 60 and 62). It follows that the Government's objection as to non-exhaustion of the domestic remedies must be dismissed.

30. The Court also considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The Government submitted that although criminal proceedings had been instituted on 6 September 1995 and the applicant had been questioned as a suspect on 6 November 1995, the institution of the criminal proceedings and the actions of the investigating authorities had not had any effect on the applicant until he was charged on 21 October 1996. The period in question ceased to run on 3 October 2005 when the Court of Appeal upheld the applicant's acquittal.

32. Whilst admitting that the criminal proceedings had lasted for a relatively long time, the Government nevertheless argued that such a time frame had been preconditioned by the circumstances of the case. The applicant had been charged with economic crimes, the case was complex on account of the volume of documentary evidence, it had been necessary to undertake audit and expert reports, and more than thirty suspects and defendants had been questioned in related criminal proceedings. However, there had been no periods of stagnation or unjustifiable delays attributable to the authorities.

33. The applicant disagreed with the Government and alleged that the length of the criminal proceedings in his case had been excessive.

34. The Court notes the Government's argument that the applicant was not charged with embezzlement of the bank's property until 21 October 1996. However, for the reasons outlined below, the Court cannot concur with the Government's line of reasoning as to the date on which the applicant became affected by the criminal proceedings.

35. The Court recalls that in criminal matters, in order to assess whether the "reasonable time" requirement contained in Article 6 § 1 has been complied with, one must begin by ascertaining from which moment the person was "charged"; this may have occurred on a date prior to the case coming before the trial court (see, for example, *Deweert v. Belgium*, 27 February 1980, § 42, Series A no. 35), such as the date of arrest, the date when the person concerned was officially notified that he would be prosecuted, or the date when the preliminary investigation was opened

(see *Wemhoff v. Germany*, 27 June 1968, § 19, Series A no. 7; *Neumeister v. Austria*, 27 June 1968, § 18, Series A no. 8; and *Ringeisen v. Austria*, 16 July 1971, § 110, Series A no. 13). Whilst “charge”, for the purposes of Article 6 § 1, may in general be defined as “the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence,” it may in some instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect (see *Corigliano v. Italy*, 10 December 1982, § 34, Series A no. 57).

36. On the facts of the present case the Court notes that the criminal proceedings were commenced on 6 September 1995. However, as the Government unequivocally pointed out in their observations on the admissibility and merits of the case, on 6 November 1995 the applicant was questioned as a suspect, the questioning lasting for three to four hours. In such circumstances, the Court holds that on that date the applicant officially learned of the investigation and began to be affected by it (see *Jokitaipale and Others v. Finland*, no. 43349/05, § 29, 6 April 2010). Thus, the period to be taken into account ran from the latter date until the charge was finally determined by the Court of Appeal on 3 October 2005, amounting to a total of nine years and nearly eleven months. The applicant's case was adjudicated at three levels of jurisdiction.

37. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. What was at stake for the applicant has also to be taken into account (see, among many other authorities, *Philis v. Greece (no. 2)*, 27 June 1997, § 35, *Reports of Judgments and Decisions* 1997-IV, and *Portington v. Greece*, 23 September 1998, § 21, *Reports* 1998-VI).

38. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to those in the present application (see, most recently, *Norkūnas*, cited above, §§ 36-41).

39. Turning to the case at hand, the Court shares the Government's view that the case was complex. However, the Court finds that some delays in the proceedings were occasioned by mistakes or inertia on the part of the domestic authorities. As a result, the case had to be remitted for further investigation on 15 October 2002 by the Supreme Court, thereby prolonging the proceedings by two years (see paragraphs 18 and 21 above). In this connection the Court also notes that for almost nine years whilst the criminal proceedings against the applicant were pending, remand measures – pre-trial detention, house arrest and the obligation not to leave his place of residence – were imposed upon the applicant, further compounding and aggravating the applicant's situation (see paragraphs 9 and 24 above).

40. Thus, having regard to the above and to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION AND OF ARTICLE 2 OF PROTOCOL NO. 4

41. The applicant complained that the obligation not to leave his place of residence, imposed upon him from 29 July 1999 until 3 October 2005, was in breach of his right to liberty and his right to liberty of movement. He relied on Article 5 § 1 of the Convention and Article 2 of Protocol No. 4 to the Convention.

The relevant parts of Article 5 § 1 of the Convention read 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...”

Article 2 of Protocol No. 4 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 *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

42. The Government submitted that the applicant had failed to exhaust available domestic remedies, given that he had not appealed against the decision of 29 July 1999 obliging him not to leave his place of residence. In the alternative, the Government argued that during the period the restrictive measure had been imposed on the applicant, he had, in reality, faced limited restrictions. In particular, the applicant had been entitled to freely move,

work and travel, rather than being obliged to constantly stay at his place of residence. Moreover, within the period that the restriction had been applied, the applicant had travelled in and out of Lithuania at least fifty-five times. As a result, the reality of the inconvenience that the restriction had caused the applicant was too insignificant for the applicant's complaint to be examined under Article 5 § 1 of the Convention or Article 2 of Protocol No. 4. In the further alternative, the Government submitted that the obligation imposed on the applicant not to leave his place of residence was compatible with the requirements of Article 2 of Protocol No. 4 because it was lawful, pursued a legitimate aim and was proportionate.

43. Having examined the documents presented to it, the Court shares the Government's view that the impugned remand measure did not entail restrictions on the applicant's right to liberty of such severity that Article 5 § 1 of the Convention would come into play (see, by converse implication, *Guzzardi v. Italy*, 6 November 1980, §§ 92 and 95, Series A no. 39). Consequently, the complaint, as raised under this provision, must be dismissed as inadmissible *ratione materiae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

44. In contrast, the Court notes that, as he was under the obligation not to leave his place of residence, the applicant was free to move unrestrictedly only within the confines of the city where he lived and was prohibited from changing his residence or leaving the city without the authorisation of the prosecuting authority. Therefore, the Court finds that the obligation not to leave his place of residence, which, moreover, lasted six years, did restrict the applicant's right to freedom of movement under Article 2 of Protocol No. 4 (see *Hajibeyli v. Azerbaijan*, no. 16528/05, § 58, 10 July 2008). The Court observes, however, that the applicant failed to challenge the lawfulness and reasonableness of that remand measure before the domestic authorities. It follows that the complaint must be dismissed for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. Invoking Article 5 §§ 1, 2 and 3 of the Convention, the applicant complained that his pre-trial detention was unlawful. The Court notes, however, that the applicant was detained from 30 July 1997 to 29 January 1999. Given that the applicant lodged the application with the Court only on 26 March 2006, this complaint must be dismissed as having been lodged out of time, pursuant to Article 35 §§ 1 and 4 of the Convention.

46. Relying on the same provisions of the Convention, the applicant further complained that his right to liberty was infringed by his being placed under house arrest from 30 January to 29 July 1999. Nonetheless, as with the above-mentioned complaint in respect of the lawfulness of the pre-trial

detention, these matters have been raised out of time and must therefore be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

47. The applicant also complained that he had not been properly informed about the nature and cause of the charges against him, as required by Article 6 § 3 (a) of the Convention. The Court observes, nevertheless, that the applicant was eventually acquitted of all the charges against him. The Court holds that under such circumstances the applicant may not be considered to be a victim within the meaning of Article 34 of the Convention. Consequently, this complaint must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

48. Lastly, the applicant complained that the criminal investigation, during which he was portrayed in the press as a criminal, violated his right to respect for his privacy. The applicant relied on Article 8 of the Convention. The Court notes, however, that the applicant failed to raise these issues before the domestic courts. It follows that the complaint must be dismissed for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 500,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

51. The Government contested these claims as unsubstantiated.

52. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 4,800 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed 100,000 Lithuanian litai (LTL, approximately EUR 28,960) for the costs and expenses incurred before the domestic authorities and the Court.

54. The Government contested this sum as unreasonable.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

56. In the present case, the Court notes that part of the fees claimed concerned the applicant's defence of the criminal charges against him before the domestic courts. These fees do not constitute necessary expenses incurred in seeking redress for the violation of Article 6 § 1 of the Convention which the Court has found on account of the length of the criminal proceedings alone (see *Graushys v. Lithuania*, no. 36743/97, § 74, 10 October 2000). Accordingly, the Court finds it reasonable to award the applicant EUR 2,000 for costs and expenses.

C. Default interest

57. The Court considers it appropriate that default interest 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 excessive length of the proceedings admissible and the remainder of the application inadmissible;
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 sums, to be converted into the national currency of that State at the rate applicable on the date of settlement:
 - (i) EUR 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 18 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Section Registrar

Françoise Tulkens
President