



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

THIRD SECTION

CASE OF GRAUŽINIS v. LITHUANIA

(Application no. 37975/97)

JUDGMENT

STRASBOURG

10 October 2000

FINAL

10/01/2001

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

In the case of Graužinis v. Lithuania,

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

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr L. LOUCAIDES,

Mr P. KŪRIS,

Mr K. JUNGWIERT,

Sir Nicolas BRATZA,

Mrs H.S. GREVE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 2 March 1999 and 19 September 2000,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 37975/97) against the Republic of Lithuania lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Arminas Graužinis (“the applicant”), on 21 July 1997.

2. The applicant was represented by Mr K. Stungys, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Mr G. Švedas, Deputy Minister of Justice.

3. The applicant alleged violations of Article 5 §§ 3 and 4 of the Convention in that he was not brought before a judge repeatedly and he could not contest the lawfulness of his detention.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 2 March 1999, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Lithuanian national, born in 1960. He lives in Klaipėda, Lithuania.

A. Particular circumstances of the case

9. In May 1997, an owner of a café alleged that the applicant had beaten him and threatened to take over the control of his property.

10. The applicant was arrested on 19 May 1997. On 21 May 1997 he was brought before the Klaipėda City District Court which issued a detention order against him. The court reasoned that the applicant might commit further crimes while under this current suspicion.

11. On 22 May 1997 the applicant was indicted for attempting to obtain property by threats of force.

12. On 27 June 1997 the applicant appealed against the decision to remand him in custody, claiming *inter alia* that there was no reason for his detention and asking for bail.

13. On 3 July 1997 the Klaipėda Regional Court dismissed the appeal. The applicant was not present at the hearing, but his counsel was. The Regional Court noted that the applicant had been brought before the District Court which had issued the detention order, and that the first instance court could therefore assess the need for him to be held in custody *inter alia* on the basis of his personality and attitude. The appellate court concluded that the first instance court had properly specified the danger of the applicant committing further crimes as the reason for his remand in custody.

14. On 17 July 1997 the Klaipėda City District Court extended the term of the applicant's detention, in his absence but with his counsel present. The court no longer held that the applicant might commit further crimes, but specified fresh grounds for the detention, namely that the applicant could abscond and influence witnesses.

15. On 5 September 1997 the applicant appealed, claiming *inter alia* that his detention on remand was unlawful under domestic law and the Convention. He alleged in particular that the decision was arbitrary, as the court had presented no facts in support of its conclusion that he might abscond or influence witnesses. He requested bail.

16. On 9 September 1997 a judge of the Klaipėda Regional Court returned the appeal without examination. The judge informed the applicant by letter that the Code of Criminal Procedure did not provide for an appeal against a decision extending the term of detention.

17. On 16 October 1997 a judge of the Klaipėda City District Court committed the applicant to trial in the absence of the parties. In his decision the judge also decided that the applicant should remain in custody. No grounds or term for that detention were specified. The judge did not mention the applicant's complaints regarding the lawfulness of his detention.

18. The charges against the applicant were subsequently replaced as he was indicted for affray. On 24 February 1998 the Klaipėda District Court convicted him. He was sentenced to 1 year and 4 months' imprisonment. He did not appeal against the first instance judgment.

19. The applicant has now been released from prison after having completed his sentence.

II. RELEVANT DOMESTIC LAW

<Translations are given>

20. Article 30 § 1 of the Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*) provides:

"A person whose constitutional rights or freedoms are violated shall have the right to apply to court."

21. Relevant provisions of the Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*):

Article 52 § 2 (3) and (8) and Article 58 § 2 (8) and (10) provide, respectively, that the accused and their counsel have the right to "submit requests" and to "appeal against acts and decisions of an interrogator, investigator, prosecutor and court."

Article 104-1 (in force until 24 June 1998):

"... the arrested person shall be brought before a judge in not more than 48 hours ... The judge must hear the person as to the grounds of the arrest. The prosecutor and the counsel of the arrested person may take part in the inquiry. After having questioned the arrested person, the judge may maintain the arrest order by designating the term of detention, or may vary or revoke the remand measure.

... after the case has been transmitted to the court ... [the court] can order, vary or revoke the detention on remand / arrest."

Article 106 § 3 (in force until 24 June 1998):

"For the purpose of extending the term of detention on remand [at the stage of pre-trial investigation] a judge must convene a hearing to which

defence counsel and a prosecutor and, if necessary, the detained person shall be called.”

Article 109-1 (in force until 24 June 1998):

“An arrested person or his counsel shall have the right during pre-trial investigation to lodge [with an appellate court] an appeal against the detention on remand With a view to examining the appeal, there may be convened a hearing, to which the arrested person and his counsel or only counsel shall be called. The presence of a prosecutor is obligatory at such a hearing.

The decision taken by [the appellate judge] is final and cannot be the subject of a cassation appeal.

A renewed appeal shall be determined when examining the extension of the term of the detention on remand.”

The present Article 109-1 (in force from 24 June 1998) provides that the detainee is able to appeal against decisions authorising detention both at the stage of pre-trial investigation and during the trial. With a view to examining the appeal, the court is now under the obligation to convene a hearing, to which the detainee and his defence counsel or only counsel must be called.

Article 249 § 1:

“A judge individually or a court in a directions hearing, in deciding whether to commit the accused to trial, shall determine ...

11) whether the remand measure has been selected appropriately.”

Article 250 § 1:

“After having decided, that there is a sufficient basis to commit the accused to trial, a judge individually or a court in a directions hearing shall determine the questions ...

2) of the remand measure in respect of the accused”

Article 267 § 1:

“The defendant has the right to ...

3) submit requests; ...

11) appeal against the judgment and decisions of a court.”

Article 297:

“... upon adjourning the examination of a case ... a court shall hear requests of the parties to the proceedings and shall adopt appropriate decisions thereon.”

Article 372 § 4 (in force until 1 January 1999, now repealed):

“Decisions of courts ... ordering, varying or revoking a remand measure ... cannot be the subject of appeal”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

22. The applicant alleged a violation of Article 5 § 3 of the Convention, which reads:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this article [on suspicion of having committed an offence] 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.”

23. The applicant complained that in the months after his arrest he was not brought repeatedly before a judge, i.e. when the Klaipėda Regional Court examined his appeal against the detention order of 21 May 1997, and when the Klaipėda City District Court extended the term of his detention on 17 July and 16 October 1997.

24. The Government submitted that Article 5 § 3 did not require that the applicant be brought before a judge repeatedly.

25. The Court notes that the applicant was brought before a judge two days following his arrest. The guarantee of Article 5 § 3 was therefore met in the present case. The Court considers that the applicant’s complaint that in the course of several months following his arrest he was not brought repeatedly before a judge falls to be examined under Article 5 § 4 of the Convention (see, *mutatis mutandis*, Trzaska v. Poland, no. 25792/94, 11.7.2000, §§ 70-79).

In these circumstances, the Court finds that Article 5 § 3 does not include a right to be brought repeatedly before a judge (also see, *mutatis mutandis*, Jėčius v. Lithuania, no. 34578/97, 31.7.2000, §§ 84-87).

26. There has therefore been no violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

27. The applicant further alleged a violation of Article 5 § 4, which provides:

“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.”

28. Under the above provision the applicant again complained that he was not brought repeatedly before a judge (also see § 23 of the present judgment).

He also complained that, by virtue of the former provision of Article 372 § 4 of the Code of Criminal Procedure, he was effectively barred from pursuing an appeal against the decisions extending the term of his detention.

He finally complained that on 16 October 1997 the judge of the Klaipėda City District Court extended the term of his detention without hearing the parties, thereby breaching the applicant’s right to contest the lawfulness of his detention by way of an adversarial procedure.

29. The Government argued that Article 5 § 4 of the Convention did not require that the applicant be brought repeatedly before a judge.

The Government further submitted that the guarantees of Article 5 § 4 were satisfied in the present case. In particular, the applicant’s appeal against the detention order of 21 May 1997 was examined by the Regional Court in an adversarial hearing.

As to the procedure whereby the term of the applicant’s detention was extended, the Government submitted that the applicant’s lawyer was present before the District Court on 17 July 1997. By reference to the Court’s case-law (see the *Sanchez-Reisse v. Switzerland* judgment of 21 October 1986, Series A. no. 107), the Government stated that there was no need for the parties to be heard by the judge on 16 October 1997, as the “written procedure” sufficed for the purpose of Article 5 § 4.

30. The Court recalls that Article 5 § 4 of the Convention entitles arrested or detained persons to take proceedings bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty (see the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).

31. In addition, the domestic court dealing with such matters must provide the “guarantees of a judicial procedure”. The proceedings must be adversarial and must always ensure equality of arms between the parties - the prosecutor and the detainee. In the case of a person whose detention falls within the ambit of Article 5 § 1 (c), a hearing is required (see the aforementioned Trzaska judgment, § 74).

32. Article 5 § 4 guarantees no right, as such, to appeal against decisions ordering or extending detention as the above provision speaks of “proceedings” and not of “appeal”. The intervention of one organ satisfies Article 5 § 4, on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (see the Jėčius judgment cited above, § 100). However, where domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see the Toth v. Austria judgment of 12 December 1991, Series A no. 224, § 84).

33. Turning to the facts of the present case, the Court notes that the applicant’s detention on remand was ordered when he was brought before the Klaipėda City District Court on 21 May 1997.

Lithuanian domestic law gave him a right of appeal against that decision, to which the provisions of Article 5 § 4 of the Convention may be said to apply. At this appeal some six weeks later on 3 July 1997, the applicant was represented by counsel before the Klaipėda Regional Court, but was not present himself.

According to Article 109 paragraph 3 of the Code of Criminal Procedure at the material time, proceedings for the extension of the remand decision were deemed to be renewed appeals. Accordingly, the Court considers that the extension of the applicant’s remand on 17 July 1997 by the Klaipėda City District Court also attracted the guarantees of Article 5 § 4 of the Convention. However, the applicant was not present at this hearing, many weeks after the original remand, and the court amended the basis of the remand the risk of the applicant re-offending to the risk of the applicant absconding and influencing witnesses.

Thereafter, the applicant had no remedy within the meaning of Article 5 § 4 of the Convention. This is shown by the fact that the applicant sought to lodge an appeal against the remand decision which was refused by way of a letter dated 9 September 1997 from the Klaipėda Regional Court. Moreover, the new decision of the trial court to maintain the applicant in custody on 16 October 1997 was taken in the absence of both the prosecution and the defence.

34. The Court considers that, given what was at stake for the applicant, i.e. his liberty, as well as the lapse of time between the various decisions, and the re-assessment of the basis for the remand, the applicant’s presence was required throughout the pre-trial remand hearings of 3 and 17 July 1997

in order to be able to give satisfactory information and instructions to his counsel.

Furthermore, viewed as a whole, these and the subsequent proceedings failed to afford the applicant an effective control of the lawfulness of his detention, as required by Article 5 § 4 of the Convention.

In these circumstances, the Court concludes that the applicant was not given the guarantees appropriate to the kind of deprivation of liberty in question.

35. Accordingly, there has been a breach of Article 5 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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. Damages

37. The applicant requested the Court to award him pecuniary and non-pecuniary damage, but specified no particular sums in this regard.

38. The Government stated that the applicant’s claims were unsubstantiated.

39. The Court finds no causal link between the violation of Article 5 § 4 of the Convention and the claim for pecuniary damage. It accordingly dismisses the claim under this head (see, *inter alia*, the *Demir and Others v. Turkey* judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2660, § 63).

40. However, the Court considers that the applicant has suffered certain non-pecuniary damage, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant 5,000 Lithuanian litai (LTL) under this head.

B. Costs and expenses

41. The applicant also claimed 4,000 LTL for legal fees in connection with the proceedings before the Convention organs.

42. The Government contended that the above claim was excessive.

43. Making its assessment on an equitable basis, the Court awards the applicant 3,000 LTL for the legal fees, plus any value-added tax that may be chargeable.

D. Default interest

44. According to the information available to the Court, the statutory rate of interest applicable in Lithuania at the date of adoption of the present judgment is 9.5 % per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
2. *Holds* that there has been a violation of Article 5 § 4 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 according to Article 44 § 2 of the Convention,
 - (i) 5,000 (five thousand) Lithuanian litai for non-pecuniary damage;
 - (ii) 3,000 (three thousand) Lithuanian litai for legal costs and expenses, plus any value-added tax that may be chargeable;
 - (b) that simple interest at an annual rate of 9.5 % shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 10 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President