



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

THIRD SECTION

CASE OF JANKAUSKAS v. LITHUANIA

(Application no. 59304/00)

JUDGMENT

STRASBOURG

24 February 2005

FINAL

06/07/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jankauskas v. Lithuania,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mr C. BÎRSAN,

Mrs A. GYULUMYAN,

Ms R. JAEGER,

Mr E. MYJER, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 59304/00) 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, Ramūnas Jankauskas (“the applicant”), on 22 June 1999.

2. The applicant, who had been granted legal aid, was represented by Mr V. Vilkas, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Mrs D. Jočienė, of the Ministry of Justice.

3. The applicant complained, in particular, under Article 8 of the Convention about the opening up and reading by the administration of the Šiauliai remand prison of his correspondence.

4. 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. Mr P. Kūris, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Mr J. Hedigan to sit as the judge elected in respect of Lithuania (Article 27 § 2 of the Convention and Rule 29 § 1).

5. By a decision of 16 December 2003, the Court declared the application partly admissible.

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

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1972. He lives in Šiauliai.

9. The applicant, a former police investigator, was suspected of abuse of office and bribery. His detention on remand was ordered by the Šiauliai City District Court on 12 March 1999 on the fear of his absconding and influencing witnesses. His remand in custody was thereafter prolonged.

10. On 3 October 2000 the Šiauliai Regional Court convicted the applicant of abuse of office and bribery, sentencing him to eight years' imprisonment. On 29 June 2001 the Court of Appeal upheld the lower judgment. On 18 December 2001 the Supreme Court rejected the applicant's cassation appeal in the case. The sentence was subsequently reduced in view of an amnesty law. The applicant was released from prison after having completed the sentence on 18 August 2003.

11. According to the applicant, all his letters to and from the State authorities, non-governmental organisations as well private persons - namely his family, relatives, friends and legal counsel - were opened up and read in his absence while he was in the Šiauliai remand prison during the period from 12 March 1999 until 20 July 2001. The applicant states that a total of 362 of his letters had been opened and read. The applicant has submitted a letter addressed to his lawyer by the Šiauliai remand prison administration on 18 February 2004, attesting that during the period from 15 March 1999 to 20 July 2001 the applicant had sent letters to 241 addressees, including the State authorities, NGOs, the European Court of Human Rights, and various third persons. All of these letters were listed in detail by the prison administration, with reference to their date, addressee, and their number in the applicant's file.

II. RELEVANT DOMESTIC LAW

12. Article 22 of the Constitution guarantees the right to respect for one's private life, family life and correspondence.

According to Article 15 of the Detention on Remand Act 1996 and Rule 72 of the Remand Prisons Internal Rules 1996, which were applicable at the material time, remanded persons' letters could be subject to censorship.

Rule 75 of the Remand Prisons Internal Rules provides that the remand centre administration cannot open letters of detainees addressed to the European Court of Human Rights if those letters were given to the administration to be sent in a closed envelope.

Rule 83 provides that the remand prison administration shall familiarise the detainee with a reply to his correspondence within three days following receipt of the letter addressed to the detainee. Therefore, all letters received by the detainees are not given to them and are kept in their files by the remand centre administration.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

13. Following the adoption of the decision on admissibility in the present case on 16 December 2003, the respondent Government submitted two memorials on the merits of the case dated 10 February and 30 April 2004. While in these memorials the Government did not make a specific claim that the case should have been rejected for non-exhaustion of domestic remedies, they none the less stated that the applicant could have applied to the administrative courts regarding his complaints about the censorship of his correspondence. It can therefore be considered that the Government submitted a preliminary objection in the case, requesting to declare the application inadmissible for non-exhaustion (Article 35 § 1 of the Convention).

14. The Court observes that in the decision on admissibility of the application it was established that the applicant's complaint about the alleged censorship of his correspondence with the Court should have been rejected for non-exhaustion under Article 35 § 1 of the Convention because that type of censorship had been prohibited by the domestic law, and the applicant had failed to apply to the administrative courts in this respect. However, as to the applicant's complaint about the censorship of the remainder of his correspondence, the Court considered that that aspect of the case could not be rejected for non-exhaustion of domestic remedies.

15. The Court further observes that the Government do not dispute the fact that the censorship of the applicant's correspondence - excluding that with the European Court of Human Rights - was permitted by the relevant domestic provisions applicable at the material time (see § 12 above, also see § 17 below). It has not been shown that at the material time a court action in this respect would have been available in theory or in practice, or that any other domestic avenue could have afforded the applicant a plausible chance

of success in connection with the impugned censorship (see, *mutatis mutandis*, *Valašinas v. Lithuania* (dec.), no. 44558/98, 14.3.2000; also see, *Puzinas v. Lithuania* (dec.), no. 44800/98, 14.3.2000; *Karalevičius v. Lithuania* (dec.), no. 53254/99, 6.6.2002). Accordingly, the Court rejects the Government's preliminary objection.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

16. The applicant alleged that during the period from 12 March 1999 until 20 July 2001 the Šiauliai remand prison administration had opened all his letters, addressed to the State authorities, non-governmental organisations and private persons, namely his family, relatives, friends, and his lawyer. In this connection he alleged a breach of Article 8 of the Convention, the relevant parts of which provide as follows:

“1. Everyone has the right to respect for his ... correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the prevention of disorder or crime ...”

17. The Government did not deny that the applicant's letters could have been subjected to censorship in that it was permitted by the domestic provisions on remand conditions (Article 15 of the Detention on Remand Act and Rule 72 of the Remand Prisons Internal Rules). The Government claimed however that the censorship was justified in view of the nature of the offences alleged against the applicant - namely abuse of office and bribery - as a result of which the applicant could have been suspected of trying to influence witnesses, otherwise obstruct the investigation or escape trial. According to the Government, the fact of the applicant being a law-enforcement officer suspected of a crime, as well as the legal interest to ensure the proper administration of justice, were sufficient to justify the censorship of the applicant's correspondence by the remand prison administration. All in all, the domestic authorities had not overstepped their margin of appreciation in the present case.

18. The applicant disagreed, claiming that the routine censorship of all his correspondence breached Article 8. The applicant mentioned in particular that the censorship of his correspondence with his lawyer had been absolutely unnecessary. He noted in addition that many of the censored letters contained only his complaints about his detention conditions addressed to various State authorities.

19. The Court notes first that the present case does not concern an alleged censorship of the applicant's correspondence with the Court (see the above mentioned decision on admissibility in this case, also see § 14 above). The applicant's admissible complaints concern the opening up and reading by the remand prison administration of all his letters to and from the

State authorities, NGOs and private persons such as his family, relatives, friends and legal counsel.

20. The Court notes that the Government do not contest the substance of the applicant's allegation that all his letters had been subject to censorship by the remand prison administration. Indeed, and in view of the domestic statutes as well as the factual evidence submitted by the applicant (see §§ 11-12 above), the Court considers it established that a substantial number of the letters written by the applicant as well as an equally important number of the letters received by the applicant were opened up and read in his absence, to be later put and classified in his prison file. There was, therefore, an interference with the applicant's right to respect for his correspondence under Article 8 of the Convention, which can only be justified if the conditions of the second paragraph of the provision are met. In particular, such interference must be "in accordance with the law", pursue a legitimate aim and be necessary in a democratic society in order to achieve that aim (see the Court's judgment in the *Valašinas* case cited above, 24.7.2001, ECHR 2001-VIII, § 128).

21. The interference in the present case had a legal basis, namely the provisions of Article 15 of the Detention on Remand Act and Rule 72 of the Remand Prisons Internal Rules, and the Court is satisfied that it pursued the legitimate aim of "the prevention of disorder or crime". However, as regards the necessity of the interference, the Government have not explained why the control of all the applicant's letters addressed to and coming from the outside world was indispensable. The reason put forward in this respect by the Government - namely the fear of the applicant's absconding or influencing trial (see § 17 above) - may have been relevant for the purpose of justifying his remand in custody or even giving basis for a certain form of interference with part of his correspondence, such as, for example, checking of some correspondence of non-legal nature or his correspondence with certain persons of dangerous character (see, *mutatis mutandis*, *Silver and Others v. the United Kingdom* judgment of 25 March 1983, Series A no. 61, pp. 32-40, §§ 83-105).

22. However, this fear alone could not be sufficient to grant the remand prison administration an open licence for indiscriminate, routine checking of all of the applicant's correspondence. This is particularly so in connection with the censorship of the applicant's letters addressed to and coming from his legal counsel, the confidentiality of which must be respected - save for reasonable cause (see, the *Campbell v. the United Kingdom* judgment of 25 March 1992, Series A no. 233, pp. 16-21, §§ 32-54). The Court also does not find any reason to justify the censorship by the prison administration of the applicant's letters to the State authorities whereby he may have complained about his detention conditions, or may have made other submissions unrelated to the criminal case against him. All in all, the Government have not presented sufficient reasons to show that such a total

control of the applicant's correspondence with the outside world was "necessary in a democratic society".

23. There has consequently been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 300,000 euros (EUR) for pecuniary damage, allegedly incurred as a result of his medical treatment as well as the lost salary and opportunities. The applicant claimed a further sum of EUR 30,000 for non-pecuniary damage.

26. The Government considered the applicant's claims exorbitant.

27. The Court dismisses the applicant's request to award pecuniary damages, as it can detect no reasonable link between the violation of Article 8 found as a result of the censorship of the applicant's correspondence, and the pecuniary damage claimed.

28. However, the Court considers that the applicant suffered certain non-pecuniary damage in view of the above violation (see, for example, the above mentioned *Valašinas* judgment, § 141; also see the Court's judgment in the *Puzinas* case cited above, 14.3.2002, §§ 18-26). Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head.

B. Costs and expenses

29. The applicant requested EUR 3,700 for legal costs and expenses in relation to the defence of his Convention rights before the domestic organs, and the technical expenses for translations and telephone conversations incurred during a period while he had represented himself before the Court. He requested a further award, to be calculated by the Court of its own motion, to compensate for his representation before the Court by Mr Vilkas.

30. The Government considered these claims to be excessive.

31. The Court recalls that in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were

actually and necessarily incurred, and reasonable as to quantum (see, *Jėčius v. Lithuania*, no. 34578/97, 31.7.2000, ECHR 2000-IX, § 112).

32. The Court does not consider it necessary to award the applicant most of his expenses incurred by way of his legal presentation before the domestic courts in the context of the criminal case against him, in view of the fact that most of those costs related to his defence against the criminal charges, and did not concern his claim of a violation of Article 8 of the Convention that has been established by the Court (see, *mutatis mutandis*, *ibid.*).

33. However, the Court considers it necessary to reimburse the legal costs and expenses related to the applicant's representation before the Court, as well as the technical expenses that the applicant may have incurred himself in the context of presenting his application to the Court.

34. Against the above background, the Court awards the applicant EUR 3,000 for his legal costs and expenses, plus any value-added tax that may be chargeable.

C. Default interest

35. The Court considers it appropriate that the 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 8 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, the following amounts:
 - (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 claim for just satisfaction.

Done in English, and notified in writing on 24 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President