



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

SECOND SECTION

CASE OF JAKUMAS v. LITHUANIA

(Application no. 6924/02)

JUDGMENT

STRASBOURG

18 July 2006

FINAL

18/10/2006

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 Jakumas v. Lithuania,

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

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

Mr A.B. BAKA,

Mr I. CABRAL BARRETO,

Mr R. TÜRMEŖ,

Mr M. UGREKHELIDZE,

Mrs A. MULARONI,

Ms D. JOČIENĖ, *judges*,

and Mrs S. DOLLĖ, *Section Registrar*,

Having deliberated in private on 27 June 2006,

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

PROCEDURE

1. The case originated in an application (no. 6924/02) 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 Ričardas Jakumas (“the applicant”), on 22 December 2001.

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

3. On 21 June 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1969 and lives in Vilnius.

A. The circumstances of the case

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

6. The applicant was a police officer. On 14 November 1995 the prosecution initiated criminal proceedings on suspicion of his mishandling official resources.

7. On the same date the applicant was arrested and questioned. He was released on bail on 17 November 1995.

8. On 28 November 1995 the applicant was charged with abuse of office under Article 285 of the Criminal Code as then in force.

9. On 18 December 1995 the prosecution instituted criminal proceedings against the applicant for smuggling. Separate criminal proceedings for another episode of smuggling were instituted on 19 December 1995.

10. On 20 December 1995 the prosecutor ordered the applicant's detention on remand on suspicion of his being an accomplice in the alleged smuggling scheme.

11. On 28 December 1995 the applicant was charged under Article 312 § 2 of the Criminal Code as then in force (smuggling).

12. On 30 December 1995 the applicant was dismissed from his job under the provisions on the status of the police, on account of his being suspected of having committed an act incompatible with his position as a law-enforcement officer (also see paragraph 44 below).

13. On 13 February 1996 all criminal cases against the applicant were joined into one set of proceedings.

14. On 26 August 1996 the applicant was released on bail, on his written undertaking not to leave the country.

15. On 11 December 1996 the charges against the applicant were reformulated. He was charged with exceeding official duties (Article 287 of the Criminal Code as then in force), complicity in smuggling (Articles 18 and 312 § 2) and abuse of office (Article 285).

16. On 16 December 1996 several other persons were charged with complicity in the same episodes of smuggling, but the charges against them were separated into a distinct set of proceedings as they had absconded.

17. The pre-trial investigation was finalised on 21 December 1996. Five other persons were charged along with the applicant.

18. From 21 December 1996 until 12 February 1997 the applicant and his lawyer were granted access to the case file.

19. On 21 February 1997 the prosecution rejected the applicant's request to discontinue the proceedings.

20. On 28 February 1997, upon approval of the bill of indictment, the case was transmitted to a court.

21. In a directions hearing held on 11 June 1997, the Vilnius Regional Court ordered the case to be returned to the prosecution for further investigative measures to be carried out. It was noted that the charges were not formulated in a clear and precise manner, and that the investigation of the alleged offence of abuse of office had been conducted with certain procedural irregularities. As a result of this decision, the prosecution eventually decided to drop the charge of abuse of office.

22. On 10 July 1997 the applicant was again charged with offences under Articles 18 § 6, 287 and 312 § 2 of the then Criminal Code, as well as with an offence under Article 204 thereof (misusing an official title).

23. On 1 August 1997 the pre-trial investigation was concluded, and the applicant and his lawyer were given access to the case file until 8 August 1997. The applicant's co-accused had access until 13 August 1997.

24. On 13 August 1997 the prosecution rejected the applicant's request to discontinue the proceedings.

25. On 20 August 1997 the Deputy Prosecutor General confirmed the bill of indictment, and the case was again sent for trial.

26. However, on 28 October 1997 the Vilnius Regional Court ordered the case to be returned for additional investigation due to various procedural irregularities. In particular, it was noted that the charges against the applicant were still too vague, and that certain documents were missing from the case file.

27. The prosecution appealed against that order, but to no avail, as their appeal was rejected by the Court of Appeal on 10 December 1997.

28. On 27 January 1998 the applicant was issued with a new statement of charges under Articles 204 (misusing an official title), 287 (exceeding official duties) and 312 § 2 (smuggling) of the then Criminal Code, which excluded the previous charges of being an accomplice.

29. On 29 January 1998 the pre-trial investigation was finalised, and the defence was granted access to the case file until 31 March 1998.

30. On 31 March 1998 the applicant's request to discontinue the proceedings was dismissed.

31. On 1 April 1998 the bill of indictment was confirmed by the Deputy Prosecutor General, and the case was referred to the Vilnius Regional Court.

32. On 22 June 1998 the applicant was committed for trial.

33. On 13 February 1999 the Vilnius Regional Court found the applicant guilty of three offences. He was sentenced to three years and six months' imprisonment. He was also deprived of the right to work in law-enforcement institutions for five years, and half of his property was confiscated. The applicant was relieved from serving the sentence for an offence of misusing an official title (Article 204 of the then Criminal Code) on the ground of statutory limitations.

34. On 2 March 1999 the applicant lodged an appeal.

35. On 6 May 1999 the Court of Appeal dismissed the appeal.

36. On 30 June 1999 the applicant submitted a cassation appeal to the Supreme Court, complaining *inter alia* about various infringements of criminal procedure.

37. On 14 December 1999 the Supreme Court quashed the lower decisions, returning the case for a fresh examination at first instance. It was noted that the trial court had based its findings on certain speculations as well as evidence that had not been examined at the trial. The Supreme Court

also observed that the appellate court had not answered all the issues raised in the applicant's appeal.

38. On 3 August 2000 the Vilnius Regional Court again convicted the applicant of the three offences as charged, sentencing him to three years and three months' imprisonment and the forfeiture of the right of employment in law-enforcement bodies for five years. The court also ordered confiscation of half of the applicant's property.

39. On 20 February 2001 the Court of Appeal dismissed the applicant's appeal. The applicant brought a cassation appeal, complaining that the courts had not established the facts properly, despite the requirements of the Supreme Court in its decision of 14 December 1999.

40. On 26 June 2001 the Supreme Court rejected the applicant's cassation appeal.

41. On 18 December 2002 he was released on licence.

42. On 12 December 2003 the applicant's criminal acts were re-classified under the new Criminal Code which had come into effect on 1 May 2003.

II. RELEVANT DOMESTIC LAW AND PRACTICE

43. Article 18 of the former Code of Criminal Procedure (in force until 1 May 2003) and Articles 2, 44 and 176 of the new Code of Criminal Procedure (effective since 1 May 2003) provide that the investigation and trial shall be conducted within a reasonable time.

44. Section 43 paragraph 7 of the Statute of the Ministry of Interior provides for dismissal of a person who has discredited the name of the police.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AS REGARDS THE LENGTH OF PROCEEDINGS

45. The applicant complained that the criminal proceedings against him were excessively long, in breach of Article 6 § 1 of the Convention, which provides, insofar as relevant, as follows:

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

A. Admissibility

46. The Court notes 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

47. The Government submitted that the total length of the case had not been such as to raise issues under Article 6 § 1, given in particular that it had been decided at three levels of jurisdiction. In any event, the case was complex, and there were 6 accused persons and 80 witnesses questioned in the course of the proceedings. There was no evidence of a delay which could be attributed to the investigative authorities. Furthermore, trial and cassation hearings had been adjourned three times in view of the failure of defence counsel or witnesses to appear at the trial. In sum, there had been no breach of Article 6 § 1. However, the Government conceded that the applicant had not caused essential delays in the course of the criminal proceedings.

48. The applicant stated that the length of the proceedings had been excessive.

49. The Court notes that the period to be taken into consideration began on 14 November 1995 and lasted until 26 June 2001 (paragraphs 6 and 40 above). The proceedings thus lasted for 5 years and 7 months at three levels of jurisdiction.

50. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, among many other authorities, *Šleževičius v. Lithuania*, no. 55479/00, § 29, 13 November 2001).

51. The Court considers that the present criminal proceedings were complex, owing in particular to the financial nature of the charges against the applicant and the number of the accused. However, it is noted that the courts twice returned the case file to the investigators on the same ground, namely that the charges against the applicant had been too vague (paragraphs 21 and 26 above). The ensuing jurisdictional dispute involving the prosecutors and courts further prolonged the proceedings (paragraph 27 above). Only upon the third attempt by the prosecutors did the courts finally accept to examine the charges, about two and a half years after the finalising of the investigation (paragraphs 17, 21, 26 and 32 above; also see, *mutatis mutandis*, the *Šleževičius* judgment cited above, § 30). Subsequently, the inadequacy of the lower courts' assessment of the evidence resulted in

repeated trial and appeal proceedings, causing a further delay before the final determination of the case (paragraphs 33-37 above).

52. The foregoing considerations are sufficient to enable the Court to conclude that the total length of these criminal proceedings exceeded the “reasonable time” requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. Under Article 6 of the Convention the applicant also complained that his trial had been unfair. In particular, he alleged that he had not been allowed to telephone his lawyer during the initial interrogations from 14 to 17 November 1995, that the charges against him had not been clearly formulated, that certain documents had allegedly been withdrawn from the case file, and that the courts’ assessment of the evidence had been wrong. The applicant also complained about a violation of the principle of the presumption of innocence on account of the fact that he had been dismissed from his job pending the outcome of the criminal proceedings against him.

54. The Court recalls that it is not its task to review alleged errors of fact and law committed by the domestic judicial authorities and that, as a general rule, it is for the national courts to assess the evidence before them and to apply domestic law. The Court’s task is to ascertain whether the proceedings as a whole were fair. First of all, it has not been alleged that the applicant was prevented by statute from having access to a lawyer at any stage of the proceedings. It has not been established that the applicant’s inability to contact his lawyer by telephone - or by any other means - from 14 to 17 November 1995 was not the result of his own fault (see, *Zhelezov v. Russia* (dec.), no. 48040/99, 23 April 2002). In any event, the applicant has not shown any impact of the alleged inability to telephone his lawyer on the overall fairness of the proceedings. In particular, there is no evidence that the interrogations of 14 to 17 November 1995 were conducted in intimidating circumstances, that the applicant was forced to confess, or that indeed he made any self-incriminating statements during that questioning or thereafter (see, by contrast, *Magee v. the United Kingdom*, no. 28135/95, ECHR 2000-VI).

55. Furthermore, the key element in the Court’s assessment of the fairness of the trial is that the applicant was subsequently afforded ample opportunities, personally and through his defence counsel, to state his case and contest the evidence which he considered false before the courts at three levels of jurisdiction (*Karalevičius v. Lithuania* (dec.), no. 53254/99, 6 June 2002). There is no evidence of a lack of subjective or objective impartiality of the courts, or any indication of any procedural disadvantage for the applicant vis-à-vis the prosecution during the trial. Accordingly, it has not been shown that the trial was unfair.

56. To the extent that the applicant has alleged that the fact of his dismissal from work pending the outcome of the criminal proceedings breached the principle of the presumption of innocence, the Court notes that the applicant did not bring a court action to contest the dismissal. It would appear therefore that he failed to exhaust domestic remedies in this respect as required by Article 35 § 1 of the Convention. In any event, the ground for the applicant's dismissal was the tainting of his reputation as a police officer, showing his unsuitability for police work from the point of view of the public-law provisions (paragraphs 12 and 44 above), with the result that a procedure in determination of the lawfulness of his dismissal on that basis would in any event have been ruled incompatible *ratione materiae* with Article 6 (see, *mutatis mutandis*, *Pellegrin v. France*, judgment of 8 December 1999, *Reports of Judgments and Decisions* 1999-VIII, §§ 64-67; *Pitkevich v. Russia* (dec.), no. 47396/99, 8.2.2001).

57. The Court further recalls that even exoneration from criminal responsibility does not, as such, preclude the establishment of civil or other forms of liability arising out of the same facts on the basis of a less strict burden of proof (see, *mutatis mutandis*, *Ringvold v. Norway*, no. 34964/97, § 38, ECHR 2003-II; also see, *C. v. the United Kingdom*, no. 11882/85, Commission decision of 7 October 1987, DR 54, p. 162). The only basis on which the present applicant can bring a complaint about a breach of the presumption of innocence in relation to his dismissal is by alleging that an official statement in the context of the dismissal procedure amounted to an unequivocal declaration of his guilt, which could have prejudged the subsequent assessment of the charges against him in the context of the ensuing criminal proceedings. However, this is not how the argument has been raised on behalf of the applicant. The fact of his dismissal, as such, is of no relevance in determining the compliance with the principle of the presumption of innocence, given the absence of any indication that the wording of the dismissal order - or indeed any other public statement made within or outside the context of the impugned criminal case - amounted to a premature declaration of his guilt (see, by contrast, *Butkevičius v. Lithuania*, no. 48297/99, §§ 49-54, ECHR 2002-II). It follows that the applicant's complaints about the presumption of innocence should be rejected under Article 35 of the Convention.

58. The applicant also complained that his detention on remand, which ended on 26 August 1996 (paragraph 14 above), was incompatible with Article 5 of the Convention (the right to liberty and security of person). However, the application was introduced on 22 December 2001, more than six months after the applicant's release on bail. In view of his allegation of an absence of domestic remedies for this complaint, he has failed to comply with the six month time-limit of Article 35 § 1 of the Convention (see, *Jėčius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant sought 10,000 euros (EUR) for non-pecuniary damage.

61. The Government considered these claims to be unjustified.

62. The Court finds that the applicant has suffered non-pecuniary damage as a result of the excessive length of the proceedings, which is not sufficiently compensated by the finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head (see, *inter alia*, *Meilus v. Lithuania*, no. 53161/99, § 33, 6 November 2003; also see, *Girdauskas v Lithuania*, no. 70661/01, § 35, 11 December 2003).

B. Costs and expenses

63. The applicant claimed EUR 1,000, by way of legal costs and expenses incurred during the domestic and Convention proceedings.

64. The Government considered the claim unjustified.

65. As the amount claimed does not appear excessive, the Court awards it in full.

C. Default interest

66. 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

1. *Declares* unanimously the complaint under Article 6 § 1 concerning the length of the proceedings admissible, and the remainder of the application inadmissible;

2. *Holds*, by 6 votes to 1, that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*, by 6 votes to 1,
 - (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, EUR 1,000 (one thousand euros) in respect of non-pecuniary damage, and EUR 1,000 (one thousand euros) for costs and expenses, plus any tax that may be chargeable, which sums are to be converted into the currency of the respondent State at the rate applicable on the date of settlement;
 - (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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 July 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President