



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

THIRD SECTION

CASE OF VAIVADA v. LITHUANIA

(Applications nos. 66004/01 and 36996/02)

JUDGMENT

STRASBOURG

16 November 2006

FINAL

26/03/2007

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 Vaivada v. Lithuania,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN, *appointed to sit in respect of Lithuania*,

Mr C. BÎRSAN,

Mr V. ZAGREBELSKY,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 24 October 2006,

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

PROCEDURE

1. The case originated in applications (nos. 66004/01 and 36996/02) 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 Lithuanian nationals, Mr Valdas Vaivada and Mr Raimondas Vaivada (“the applicants”) on 7 September 2000.

2. The first applicant was represented by Mr G. Byčius, a lawyer practising in Jurbarkas. The second applicant was represented by Mr V. Gustas, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms D. Jočienė.

3. The applicants alleged, in particular, that their detention on remand from 1 March to 15 April 1998 had been unlawful, and that they had been unable to contest the lawfulness of the detention orders until 1 January 1999, in breach of Article 5 §§ 1 and 4 of the Convention.

4. By a decision of 24 November 2005 the Court declared the applications partly admissible.

5. The Government, but not the applicants, filed additional observations on the merits (Rule 59 § 1).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

6. The second applicant is the first applicant's uncle.

7. The second applicant, who then had a criminal record of two previous convictions, was arrested on 18 July 1997 and questioned in the context of criminal proceedings for theft. He was released on 21 July 1997.

8. The first applicant, then having a criminal record of four convictions, was arrested on 19 July 1997 and questioned in the context of another set of criminal proceedings for theft. He was released on 21 July 1997.

9. On 22 July 1997 the second applicant was arrested in the context of criminal proceedings for murder of VB, a third person. On the same date the Tauragė District Court ordered his detention on remand for two months on the ground that he might abscond from the investigation and commit fresh crimes.

10. On 31 July 1997 the second applicant was charged with murder.

11. On 2 August 1997 the first applicant was arrested in the context of criminal proceedings for attempted robbery.

12. On 4 August 1997 the Tauragė District Court ordered the first applicant's detention on remand for two months because of the danger of his absconding, committing fresh crimes and obstructing the investigation.

13. On 11 August 1997 the second applicant was also questioned in the attempted robbery case.

14. On 13 August 1997 a prosecutor charged the first applicant with attempted robbery.

15. On 15 August 1997 the Tauragė District Court ordered compulsory psychiatric examination of the second applicant.

16. On 19 August 1997 the Klaipėda Regional Court rejected the first applicant's appeal against the detention order.

17. On 21 August 1997 the two criminal cases for murder and attempted robbery were joined.

18. On 15 September 1997 the Tauragė District Court extended the term of the second applicant's remand in custody until 22 November 1997 on the same grounds.

19. On 2 October 1997 the Tauragė District Court extended the first applicant's remand in custody until 2 December 1997 on the same grounds.

20. On 21 October 1997 two more criminal cases, concerning unlawful possession of firearms and robbery, were joined to the criminal proceedings against the applicants.

21. On 19 November 1997 the Tauragė District Court extended the term of the second applicant's detention until 21 January 1998 on the ground that he may abscond from the investigation, commit fresh crimes and influence witnesses.

22. On 27 November 1997 the court prolonged the first applicant's remand in custody for two months on the same grounds.

23. On 20 January 1998 the Šiauliai Regional Court extended the term of both applicants' detention on remand until 1 March 1998 because of the danger of their absconding and influencing the investigation.

24. On 18, 24 and 25 February 1998 a number of new alleged episodes from other criminal cases, namely in relation to damaging property of another, assault, unlawful possession of weapons, causing bodily harm, aggravated murder, attempted robbery and theft were joined in the criminal proceedings against the applicants.

25. On 26 February 1998 the investigation was concluded, and the applicants and their defense counsel had access to the case-file.

26. On 27 February 1998 a prosecutor rejected the applicants' request to discontinue the proceedings.

27. On 2 March 1998 the bill of indictment was confirmed, and the case was sent to the Klaipėda Regional Court.

28. On 15 April 1998 the Klaipėda Regional Court committed the applicants for trial. It further stated in the decision that their remand measures should remain unchanged pending the adoption of a judgment in the case.

29. On 21 September 1998 the Klaipėda Regional Court returned the case to the prosecutors for further investigative measures to be carried out. Thereafter the courts extended the term applicant's detention on various occasions.

30. A new bill of indictment was confirmed on 29 December 1998.

31. On 11 May 1999 the case was transmitted to the Šiauliai Regional Court.

32. On 13 March 2000 the court returned the case for further investigation to be carried out in view of the prosecutors' request to bring a fresh charge against the first applicant. Subsequently, the charges against the applicants were again reformulated.

33. On 11 July 2000 a new bill of indictment was confirmed, and the case was sent to the Šiauliai Regional Court.

34. On 10 April 2001 the applicants were convicted: a) the first applicant on one count of attempted robbery; b) the second applicant on five counts of murder, attempted robbery, causing bodily harm, and unlawful possession of two types of weapons.

35. On 3 December 2001 the Court of Appeal amended the first applicant's conviction, but his sentence of imprisonment remained unchanged. The Court of Appeal also reclassified the second applicant's actions to aggravated murder, sentencing him to 13 years' imprisonment.

36. On 30 April 2002 the Supreme Court quashed the decision of the Court of Appeal insofar as it concerned the second applicant's conviction for aggravated murder, reinstating his sentence of 7 years and 6 months' imprisonment as it had been imposed by the first instance court.

37. On an unspecified date the second applicant completed the sentence, and was released from prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

38. The provisions of the Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*) applicable at the material time (repealed by entry into force of the new Code of Criminal Procedure on 1 May 2003):

Article 104 (in force from 21 June 1996) reads:

“Detention on remand shall be used only ... in cases where a statutory penalty of at least one year's imprisonment is envisaged.

...

The grounds for detention on remand shall be the reasoned suspicion that the accused will:

(1) abscond from the investigation and trial;

(2) obstruct the determination of the truth in the case [influence other parties or destroy evidence];

(3) commit new offences ... whilst suspected of having committed crimes provided in Articles ... [274] [cheating,] 275 [embezzlement] of the Criminal Code ...”

Article 104-1 (in force from 21 June 1996 to 24 June 1998) reads:

“... [T]he arrested person shall be brought before a judge within not more than 48 hours ... The judge must hear the person as to the grounds of the arrest. The prosecutor and counsel for 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 ... [it] can order, vary or revoke the detention on remand.”

Pursuant to the amended Article 104-1 (in force from 24 June 1998 until 1 May 2003), the prosecutor and defence counsel must take part in the first judicial inquiry of the arrested person, unless the judge decides otherwise. The amended provision also permits the court to extend the detention on remand before its expiry.

Article 106 § 3 (in force from 21 June 1996 to 24 June 1998) reads:

“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 the prosecutor and, if necessary, the detained person shall be called.”

The Code in force since 24 June 1998 makes obligatory the attendance of the detainee at the remand hearings.

Article 109-1 (in force from 21 June 1996 to 24 June 1998) reads:

“An arrested person or his counsel shall have the right during the 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 further appeal shall be determined when examining the extension of the term of the detention on remand.”

Pursuant to the amended Article 109-1 (in force from 24 June 1998 to 1 May 2003), an appeal may be submitted to a higher court, which would hold a hearing against a decision ordering or extending the term of detention both at the stage of pre-trial investigation and trial, in the presence of the detainee and his counsel, or only his counsel.

Article 226 § 6 (in force until 24 June 1998) reads:

“The period when the accused and his counsel have access to the case-file is not counted towards the overall term of pre-trial investigation and detention. Where there are several accused persons, the period during which all the accused and their counsel have access to the case-file is not counted towards the overall term of pre-trial investigation and detention.”

Since 24 June 1998 this period is no longer relevant for remand decisions.

Article 372 § 4 (in force until 1 January 1999) reads:

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

Pursuant to the general provision of Article 399, a first instance decision was not effective pending the time-limit for an appeal against that decision or during the appeal proceedings. Only those decisions against which no appeal was possible, including remand decisions under the former Article 372 § 4, became effective and were executed on the date when they were taken. Pursuant to the amended Article 104-3 § 3 (version in force from 21 December 1999 until 1 May 2003), all decisions of detention on remand become effective and are executed on the date when they are taken, regardless of the fact that an appeal is possible against any such decision under the amended Article 109-1 (as in force from 24 June 1998 to 1 May 2003, see above).

Other relevant provisions of the Code of Criminal Procedure which was in force until 1 May 2003:

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 249 § 1 reads:

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

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

Article 250 § 1 reads:

“After having decided, that there is a sufficient basis to commit the accused for 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 reads:

“The defendant has the right to ... 3) submit requests; ...

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

Article 277 reads:

“In the course of the trial, a court may decide to order, vary or revoke a remand measure in respect of the defendant.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

39. The applicants complained that their detention on remand from 1 March to 15 April 1998 had been in breach of Article 5 of the Convention, which 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;

...”

40. The Government admitted that there had been no valid court order as to the applicants' detention from 1 March to 15 April 1998; they stated however that the domestic law applicable at the material time could be interpreted as requiring no further decision to justify the applicants' detention during that period, in view of the applicants having access to the case-file and the case being transmitted for trial.

41. The applicants disagreed, stating there had been no valid court orders authorising their remand in custody.

42. The Court recalls that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 of the Convention

essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (*Jėčius v. Lithuania*, no. 34578/97, 31.7.2000, § 56, ECHR 2000-IX).

43. In the aforementioned *Jėčius* case the Court found that the fact of the case-file being transmitted to the court, or the existence of the procedural provisions linking the accused's access to the case-file to the validity of the term of his detention, did not constitute a “lawful” basis for detention on remand within the meaning of Article 5 § 1; consequently, those circumstances could not prolong or replace the valid detention order (*loc. cit.*, §§ 56-64).

44. The Court observes that from 1 March to 15 April 1998 no order was made by a judge authorising the applicants' detention under Articles 10 and 104-1 of the Code of Criminal Procedure as then in force (see paragraphs 23-28 and 38 above); nor was there any other “lawful” basis for the applicants' remand in custody during that period from the point of view of Article 5 § 1 (cf., *mutatis mutandis, ibid.*).

45. The Court therefore finds that there has been a violation of Article 5 § 1.

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

46. The applicants also claimed that until 1 January 1999 they had been unable to take court proceedings to contest the lawfulness of their detention in breach of Article 5 § 4 of the Convention, which provides as follows:

“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.”

47. The Government argued that the domestic law had afforded the applicants ample opportunities to contest the lawfulness of their detention, namely to submit requests for release which could be reviewed by the domestic courts. The trial courts on many occasions of their own motion had verified the appropriateness of the applicants' remand in custody, thereby affording them the guarantees of Article 5 § 4 of the Convention.

48. The applicants argued that the absence of a possibility to contest the lawfulness of their detention due to the statutory bar under the former provision of Article 372 § 4 of the Code of Criminal Procedure had violated their rights under Article 5 § 4.

49. The Court recalls its previous findings in a number of cases lodged against Lithuania (see, among other authorities, the aforementioned *Jėčius* case, §§ 100-101; also see *Stašaitis v. Lithuania*, no. 47679/99, §§ 90-92, 21 March 2002) that the then statutory bar under the former Article 372 § 4 of the Code of Criminal Procedure had effectively deprived the detained persons from the right to take judicial proceedings to contest the lawfulness of their detention within the meaning of Article 5 § 4 of the Convention. The Court finds no reason to depart from those findings in the circumstances of the present case.

50. There has thus been a breach of Article 5 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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.”

52. The applicants did not specify their claims for damages or legal costs, although asked by the Court to submit these claims on a number of occasions following the adoption of the decision on admissibility of 24 November 2005. It is further noted that in his letter of 4 September 2006 the second applicant requested the Court to rule on the merits of the case, while submitting no claims for just satisfaction.

53. In view of these circumstances, the Court does not consider it necessary to rule under this head.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds* that it is not required to rule under Article 41 of the Convention.

Done in English, and notified in writing on 16 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President