



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

THIRD SECTION

CASE OF KAMBANGU v. LITHUANIA

(Application no. 59619/00)

JUDGMENT
(friendly settlement)

STRASBOURG

19 July 2007

This judgment is final but it may be subject to editorial revision.

In the case of Kambangu v. Lithuania,

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

Mr B.M. ZUPANČIČ, *President*,

Mr C. BÎRSAN,

Mrs E. FURA-SANDSTRÖM,

Mrs A. GYULUMYAN,

Mr E. MYJER,

Mr DAVID THÓR BJÖRGVINSSON,

Mrs I. ZIEMELE, (*appointed to sit in respect of Lithuania*), *judges*

and Mr S. QUESADA, *Section Registrar*,

Having deliberated in private on 28 June 2007,

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

PROCEDURE

1. The case originated in an application (no. 59619/00) 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 Pedro Katunda Kambangu (“the applicant”), on 28 April 2000.

2. The applicant was represented by Mr Marius Urbelis, a lawyer practising in Vilnius, and Mr Kevin Kitching, of the International Centre for the Legal Protection of Human Rights (Interights), London. The Lithuanian Government (“the Government”) were represented by their Agents, Mr G. Švedas, Ms D. Jočienė and Ms E. Baltutytė.

3. The applicant complained about violations of Article 5 §§ 1 and 4 of the Convention, alleging that his stay in the Aliens Registration Centre had amounted to an unlawful deprivation of liberty, and that no effective judicial review thereof had been carried out.

4. By a decision of 17 March 2005 the Court declared the application partly admissible.

5. Ms D. Jočienė, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Ms I. Ziemele to sit in her place (Article 27 § 2 of the Convention and Rule 29 § 1).

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

THE FACTS

7. The applicant, Pedro Katunda Kambangu, is an Angolan national who was born in 1968. At present he lives in Houston, the United States.

8. The applicant arrived in Lithuania on 2 March 1998 with a transit visa valid until 4 March 1998. On the latter date the immigration police ordered the applicant to leave Lithuania by 9 March 1998.

9. On 10 March 1998 the applicant was arrested while trying to cross the border between Lithuania and Belarus. He alleged that his passport had been stolen, and that he had intended to go to the Embassy of Angola in Moscow to obtain a new passport. The applicant was arrested for violating the Lithuanian immigration rules requiring possession of a valid passport for foreign travel. From 10 to 12 March 1998 he was held in police custody in Vilnius.

10. According to the applicant, on 12 March 1998 he was moved from Vilnius to the Pabradė Aliens Registration Centre (“ARC”) on the ground that he was staying in Lithuania illegally. The applicant alleged that the conditions of his stay at the ARC amounted to a deprivation of liberty. In particular, he was not allowed to leave the ARC, save for the purpose of leaving the country, and was subjected to an overall strict disciplinary regime. The Government argued that the applicant himself had requested the accommodation at the ARC, and that he was allowed, “in case of necessity”, to leave the premises of the ARC, if accompanied by a guard.

11. On 22 June 1998 the applicant applied for asylum.

12. The applicant's complaints about his continued stay at the ARC were dismissed by the Higher Administrative Court on 11 October 1999, and by the Court of Appeal on 7 December 1999. The courts contended that the applicant's stay at the ARC did not amount to a deprivation of liberty.

13. Having obtained a new passport from the Embassy of Angola in Moscow, the applicant left the ARC on 21 January 2000 upon having expressed his wish to leave the country. It appears that he voluntarily left the country on 21 January 2000.

THE LAW

14. On 16 February 2007 the Court received the following declaration from the Government:

“I ... declare that the Government of Lithuania offer to pay *ex gratia* 10,000 euros to Pedro Kambangu with a view to securing a friendly settlement of the above-mentioned case pending before European Court of Human Rights.

The sum is to cover pecuniary and non-pecuniary damage as well as costs and expenses, and it will be payable within three months from the date of notification of

the judgment by the Court pursuant to Article 39 of the European Court of Human Rights. In the event of failure to pay this sum within the said three-months period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

The Government further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention.”

15. On 1 February 2007 the Court had already received the following declaration from the applicant:

“I ... note that the Government of Lithuania are prepared to pay *ex gratia* 10,000 (ten thousand) euros to the applicant Pedro Kambangu with a view of securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights.

This sum is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, and it will be payable within three months from the date of notification of the judgment by the Court pursuant to Article 39 of the European Convention of Human Rights. 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.

We accept the proposal and waive any further claims against Lithuania in respect of the facts of this application. We declare that this constitutes the final resolution of the case.

This declaration is made in the context of a friendly settlement with the Government and the applicant had reached.

We further undertake not to request that the case be referred to the Grand Chamber under Article 43 § 1 of the Convention after delivery of the Court's judgment.”

16. The Court takes note of the friendly settlement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention and its Protocols and finds no public policy reasons to justify a continued examination of the application (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

17. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the Parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 19 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Registrar

Boštjan M. ZUPANČIČ
President