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

SECOND SECTION

DECISION

Application no. 17331/18
Romas ADOMAVIČIUS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 11 April 2023 as a Committee composed of:

Pauliine Koskelo*, President*,
Egidijus Kūris,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 17331/18) 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") on 4 April 2018 by a Lithuanian national, Mr Romas Adomavičius ("the applicant"), who was born in 1953, lives in Vilnius and was represented by Mr R. Mikliušas, a lawyer practising in Vilnius;

the decision to give notice of the application to the Lithuanian Government ("the Government"), represented by their Agent, Ms K. Bubnytė-Širmenė;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint that he was incited to take a bribe by an individual acting under the supervision of law-enforcement authorities.

2. At the material time, the applicant was the deputy mayor of Vilnius.

3. In April and May 2012 the Special Investigations Service (*Specialiųjų tyrimų tarnyba*, hereinafter "the STT") received information that a certain public procurement process relating to water management in the Vilnius municipality might have not been carried out transparently and that the applicant might have profited from it.

4. In May 2012 company V., a municipal water management company in the Vilnius municipality, announced four public procurement processes for the construction and renovation of water management installations in several areas of the municipality. The successful companies were announced on 15 June 2012. Company U. competed for three of the contracts and won one of them. In order for it to be able to carry out the works, it had to sign a contract with the Vilnius municipality. However, it appears that the municipality was hesitating with the signing of the contract.

5. Later in June 2012 the STT received information that the applicant had met with D.N., who was a member of the same political party and had been acting as an "unofficial representative" of company U. The informant alleged that the applicant and D.N. had discussed the "prospects" of that company and the possible need for it to pay the applicant in order for the procurement contract to be signed.

6. On 28 June 2012 the STT opened an operational investigation concerning the above-mentioned allegations. On 3 July 2012 the Šiauliai Regional Court authorised the STT to carry out secret surveillance of the applicant's communications for three months.

7. According to an official report of the STT, in July 2012 it received information that D.N. wished to contact it. Meetings between D.N. and STT officers took place on 11, 12 and 13 July 2012. D.N. told them that he had spoken to the applicant during a party meeting, which had taken place on 30 June 2012; the applicant had asked him about his links to company U. and had invited him to meet at a later date to discuss the procurement process. The applicant and D.N. had met again several times. According to D.N., during those meetings they had discussed the procurement process and company U., the applicant had told D.N. that "a final decision regarding the winners of the procurement process had not been adopted" and that he had been waiting for "offers", which D.N. had understood to mean a bribe. The STT officers discussed with D.N. the possibility of him being authorised to simulate criminal conduct – to promise or to give a bribe to the applicant, while secretly recording their conversations. The officers warned D.N. that he should not entrap the applicant.

8. On 16 July 2012 the chief prosecutor of the Organised Crime and Corruption Investigations Department of the Prosecutor General's Office authorised the application of a "criminal conduct simulation model" for six months: D.N. was authorised to promise or to give a bribe to the applicant in exchange for him influencing the result of the procurement process in favour of company U.

9. Between 18 July and 27 September 2012 the applicant and D.N. met at least ten times. Some of the meetings were initiated by the applicant, others by D.N. The latter recorded the conversations with a hidden device provided to him by the STT. During those meetings they spoke, in vague terms, about "business" and "prospects". On 18 July 2012 D.N. passed the applicant a

piece of paper on which he had written the names of the companies which had participated in the procurement process and had indicated certain numbers near the name of company U. On several occasions D.N. asked the applicant why the signing of the contract was taking so long, and the applicant replied that he was talking to the persons in charge. The STT gave D.N. 40,000 Lithuanian litai (approximately 11,600 euros) to be used as a bribe. On 27 September 2012 the applicant told D.N. that they needed to "talk about the details" and that "some things need[ed] to be done before the signing". D.N. told the applicant that he had "forty" with him and asked what he should do with it. The applicant opened his car with a remote control and D.N. placed the money in the car.

10. On 28 September 2012 D.N. was questioned as a witness by the STT and described the details of his meetings and conversations with the applicant. He stated that although the applicant had always spoken in vague phrases, without giving specific facts or numbers, D.N. had understood that he had expected to be offered a bribe for taking decisions favourable to company U.

11. On 3 October 2012 the applicant was notified that he was suspected of having accepted a bribe.

12. In March and December 2013 D.N. sent letters to the Prosecutor General and the Vilnius Regional Court. He asserted that he had agreed to cooperate with the STT because they had promised him that he would be treated more favourably in another criminal case in which he was a suspect, and that he had pressured the applicant to take the bribe at the insistence of the STT.

13. On 12 June 2015 the Vilnius Regional Court found the applicant guilty of having accepted a bribe. On 22 December 2016 the Court of Appeal upheld that decision.

14. In particular, the Court of Appeal held that the criminal conduct simulation model had been authorised and applied lawfully and that there were no grounds to find that the authorities had entrapped the applicant. Contact between the STT and D.N. had been initiated by the latter, and at that time the applicant had already spoken to D.N. about the procurement process (see paragraph 7 above). Having examined the transcripts of D.N.'s conversations with the STT officers, the court found no indication that the officers had pressured D.N. to agree to simulate criminal conduct or that they had asked him to incite the applicant to accept a bribe.

15. The applicant had submitted that, during all of his conversations with D.N., he had thought that D.N. had been talking about the possibility of his working on the applicant's political campaign and that the money in question had been a campaign donation. However, the Court of Appeal observed that the applicant and D.N. had usually met in rather secluded places, without the presence of other persons, and the applicant had spoken in abstract phrases, providing only the minimum of information. That indicated that he had understood the subject of the conversations; moreover, such behaviour would

not have been logical if they had been discussing lawful matters. The court also noted that the meeting during which D.N. had left the money in the applicant's car had taken place close to the party headquarters; thus, if the money had indeed been a campaign donation, D.N. could have taken it to the headquarters for it to be included in the campaign account.

16. The Court of Appeal also addressed the reliability of D.N.'s testimony. It stated that the reason why D.N. had cooperated with the STT – his possible expectation that he would receive more favourable treatment in other criminal proceedings – did not make his actions unlawful, particularly in the absence of any indication that the STT had pressured him or that he had entrapped the applicant. Although D.N. had changed his testimony during the proceedings (see paragraph 12 above) and had returned to his initial testimony when questioned at the court hearing, the court stated that it had relied on D.N.'s testimony only to the extent that it was corroborated by other evidence.

17. On 10 October 2017 the Supreme Court upheld the decisions of the lower courts.

18. The applicant complained that he had not had a fair trial because he had been convicted of a crime which he had been incited to commit. He invoked Article 6 § 1 and Article 7 § 1 of the Convention.

THE COURT'S ASSESSMENT

19. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the present case falls to be examined solely under Article 6 § 1 of the Convention.

20. The general principles concerning the issue of entrapment have been summarised in *Ramanauskas v. Lithuania (no. 2)* (no. 55146/14, §§ 52-62, 20 February 2018, and the cases cited therein).

21. The Court accepts that the present case falls *prima facie* within the category of "entrapment cases". Accordingly, it must firstly assess whether, on the basis of the available information, it can be found with a sufficient degree of certainty that the domestic authorities investigated the applicant's activities in an essentially passive manner and did not incite him to commit an offence. If it finds that this was indeed the case, that would normally be sufficient for the Court to conclude that the subsequent use in the criminal proceedings of the evidence obtained by the undercover measure does not raise an issue under Article 6 § 1 of the Convention (ibid., § 62).

22. The Court observes that D.N. was a private individual whom the applicant knew because they were both members of the same political party. The domestic courts found, relying on the official reports of the STT and the transcripts of conversations between D.N. and the officers, that D.N. had

spoken to the officers after having discussed with the applicant the question of the public procurement process and the interests of company U. (see paragraph 14 above). Although the applicant argued that D.N. had started cooperating with the STT earlier, the domestic courts found this assertion to be unsupported by any evidence, and the Court has not been provided with any information that would lead it to question that conclusion. Accordingly, it considers that the present case does not concern undercover investigative work carried out by the authorities, but rather the acts of a private individual acting under the authorities' supervision (compare ibid., § 65).

23. During the conversations between the officers and D.N., it was the latter who presented his suspicions that the applicant might seek to receive a bribe for influencing the results of the public procurement process, whereas the officers explained to D.N. the actions which he could perform if he were authorised to simulate criminal conduct. They also instructed D.N. not to incite the applicant to take a bribe (see paragraph 7 above). The applicant argued, pointing to certain phrases taken from those conversations, that the officers had pressured D.N. to entrap him; however, having examined the transcripts of the conversations in their entirety, the Court finds the applicant's argument to be unsubstantiated. Moreover, it considers the reason why D.N. decided to cooperate with the STT irrelevant when determining whether or not he entrapped the applicant.

24. As to the meetings between the applicant and D.N., the applicant argued that any conversations regarding the public procurement process and company U. had taken place on D.N.'s initiative, and that the applicant himself had believed at that time any discussion of "prospects" and "offers", as well as the money given to him by D.N., to be related to his political campaign. However, those arguments find no support in the transcripts of the conversations. The Court observes that many of the meetings were held on the applicant's initiative. It shares the position of the Court of Appeal that the applicant's way of speaking and the circumstances in which the meetings were held demonstrated that the subject of the conversations was clear to him and that he understood his actions to be unlawful (see paragraph 15 above). Although the applicant subsequently also argued that D.N. had sought to incite him to act unlawfully in the interests of company U., the Court notes that he did not take any steps to put a stop to their meetings or to inform the authorities of them (compare ibid., § 68). Accordingly, it considers that there is no indication in the case material that D.N. incited the applicant to take a bribe or that the applicant was unaware of the purpose for which the money had been given to him.

25. Having regard to the foregoing, the Court concludes that no entrapment or incitement to commit an offence took place in the present case and that the authorities may be said to have "joined" the criminal activity rather than to have initiated it. As a result, the use of evidence obtained through the criminal conduct simulation model in criminal proceedings

against the applicant raises no issue under Article 6 § 1 of the Convention (compare ibid., § 70).

26. The applicant also raised various other complaints under Article 6 § 1 of the Convention concerning the interpretation and application of the law and the assessment of evidence by the domestic courts. However, having regard to all the material in its possession, and in so far as those complaints fall within its jurisdiction, the Court finds that there is no appearance of a violation of that provision.

27. It follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 May 2023.

Dorothee von Arnim
Deputy Registrar

Pauliine Koskelo
President