AS TO THE ADMISSIBILITY OF

Application No. 41090/98
by Liucija BAŠKAUSKAITĖ
against Lithuania

The European Commission of Human Rights (Second Chamber) sitting in private on 21 October 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

Ms M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 8 March 1998 by Liucija BAŠKAUSKAITĖ against Lithuania and registered on 4 May 1998 under file No. 41090/98;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant was born in 1942 in Marijampolė, Lithuania. At present she lives in Santa Monica, the U.S.A. She has Lithuanian and the U.S.A. nationality. The applicant is represented before the Commission by Mr U. Haiberger, professor of law at the Vytautas Magnus University in Kaunas.

The facts of the case as submitted by the applicant

On 2 October 1997, the applicant applied to the Lithuanian Central Electoral Registry (Vyriausioji rinkimų komisija) (hereinafter referred to as the CER) to be registered as a prospective candidate in the Lithuanian presidential elections. On the same date she paid to the CER the election deposit of 4,205 Lithuanian litas (~ 6,000 FF).

On 5 October 1997, the CER found that the applicant was bound by the oath of allegiance she had made to a foreign state (the U.S.A.), that she had not subsequently renounced the oath and did not intend to do so. The CER therefore held that the applicant could not be elected to the office of the President of the Republic pursuant to Articles 56 and 78 of the Lithuanian Constitution. She was thus deprived of the possibility to stand as a candidate in the presidential election.

On 8 October 1997, on the applicant's appeal, the Vilnius Regional Court (apygardos teismas) upheld the decision of the CER of 5 October 1997. The court ruled that, under Article 12 of the Lithuanian Constitution, the applicant was entitled to have dual nationality; that provision did not, however, imply that there could be no other restrictions imposed in respect of those dual nationals aspiring to be candidates for the office of the President of the Republic. The court dismissed the appeal, holding that the applicant, in refusing to renounce her oath to the U.S.A., had failed to satisfy the relevant requirement laid down by Article 56 of the Lithuanian Constitution. The court concluded that the CER had properly decided to exclude her from the presidential election.

On 9 October 1997, the applicant requested the CER to return the election deposit. On the same date the CER refused her request and transferred the money to the state account. The applicant did not appeal to a court against that decision.

COMPLAINTS

1. Under Article 3 of Protocol No. 1 to the Convention the applicant complains that she was deprived of the possibility of being a candidate in the elections to the office of the President of the Republic of Lithuania, who has legislative functions in that he signs and issues laws, and who also has the right to propose new legislation, and to decline to sign a law and to remit it back to the Seimas (Parliament) for re-consideration. The

applicant asserts that the Vilnius Regional Court, in its decision of 8 October 1997, came to a wrong and unfair conclusion since it confirmed the allegedly invalid requirement to renounce her oath of allegiance to the U.S.A. with the view to being allowed to run for the Lithuanian presidency.

2. Under Article 8 of the Convention the applicant asserts that the fact that one cannot stand as a candidate in the presidential election has an impact on one's relations with other persons and on one's professional activities. Thus the decisions of Lithuanian authorities depriving her of the possibility to stand as a candidate in the elections to the office of the President of the Republic allegedly constituted an interference with her private life unjustified under the second paragraph of the above provision of the Convention.

3. Under Article 10 of the Convention the applicant complains that, being excluded from the presidential election, she was not able to declare to society her political opinion. She asserts that the presidential candidates, given in particular the attention devoted to the elections by the media, have more effective possibilities to state their views to the public. She also alleges that "she was not able to vote for herself" in order to voice her own opinion that she was the most appropriate candidate for this office. The applicant argues that thus she was deprived of the right to freedom of expression contrary to the above provision of the Convention.

4. Under Article 14 of the Convention, taken together with Article 3 of Protocol No. 1 to the Convention, and Articles 8 and 10 of the Convention, the applicant complains about discrimination by the Lithuanian authorities against her because of her refusal to renounce her oath of allegiance to the U.S.A. She states that two other dual nationals of Lithuania and the U.S.A. were allowed to run for the presidency, one of them being eventually elected to the office, only because they had renounced the oath, whereas the applicant had refused to do so.

5. Under Article 1 of Protocol No. 1 to the Convention the applicant complains about the refusal of the CER to return the election deposit. She alleges that the action of the CER had no legal basis in domestic law. The applicant acknowledges that it was open to her to appeal against the CER's decision of 9 October 1997 to the Vilnius Regional Court. She suggests however that she deemed the said remedy ineffective as, given the decision of the same court excluding her from the presidential election on the previous day, the appeal in respect of the election deposit would have had no prospects of success. The applicant therefore declined to appeal against the decision of the CER of 9 October 1997.

THE LAW

1. Under Article 3 of Protocol No. 1 to the Convention the applicant complains that she was deprived of the possibility to stand as a candidate in the elections to the office of the President of the Republic of Lithuania.

Article 3 of Protocol No. 1 to the Convention states as follows:

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

However, the Commission recalls that the above provision of the Convention concerns "the choice of the legislature" but it is not applicable to the election of a Head of State (No. 15344/89, Habsburg-Lothringen v. Austria, Dec. 14.12.89, D.R. 64, p. 211). There is no indication that the powers of the President of Lithuania could be construed as "legislature" within the meaning of Article 3 of Protocol No. 1 to the Convention.

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 thereof.

2. Under Article 8 of the Convention the applicant alleges that the decisions of Lithuanian authorities depriving her of the possibility to stand as a candidate in the presidential election had an impact on her relations with other people and on her professional activities, therefore constituting an unjustified interference with her private life.

Article 8 of the Convention, insofar as relevant, provides as follows:

"1. Everyone has the right to respect for his private and family life ...

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 in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission notes the applicant's argument that her exclusion from the presidential election had an impact on her professional activities and relations with other persons. On the facts of the case, however, the Commission is unable to detect what concrete restrictions were imposed on or impediments were suffered by the applicant in this respect, or what other obligations Lithuanian authorities failed to meet, in depriving her of the possibility to run in the presidential election, which could have encroached upon the applicant's privacy.

It follows that there was no interference with the applicant's privacy within the meaning of Article 8 of the Convention. Therefore, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

3. Under Article 10 of the Convention the applicant complains that she was deprived of the right to freedom of expression.

Article 10 of the Convention, insofar as relevant, provides as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Commission notes the applicant's argument that she was deprived of the right to freedom of expression as, being excluded from the presidential election, she could not benefit from various means to state publicly her opinion on an equal footing with the presidential candidates. However, the Commission recalls that the provision of Article 10 of the Convention does not include a general and unfettered right for a private citizen or organisation to have access to broadcasting time on radio or television in order to forward an opinion (No. 25060/94, Haider v. Austria, Dec. 18.10.95, D.R. 83, p. 66).

In respect to the complaint that she "was not able to vote for herself" and was thus also deprived of the right guaranteed by Article 10 of the Convention, the Commission recalls that Article 10 does not guarantee the right to vote as such (No. 6573/74, Dec. 19.12.74, D.R. 1, p. 87). And the applicant does not argue that there were no other means available to her to publicly express her ideas or convey information.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

4. Under Article 14 of the Convention, read in conjunction with Article 3 of Protocol No. 1 to the Convention, and Articles 8 and 10 of the Convention, the applicant complains about discrimination by Lithuanian authorities against her because of the refusal to renounce the oath of allegiance to the U.S.A.

Article 14 of the Convention reads as follows:

"The enjoyment of rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it

has effect solely in relation to the rights and freedoms safeguarded by those provisions. There can be no room for application of Article 14 unless the facts of the case fall within the ambit of one or more of such provisions (Eur. Court. HR, Inze v. Austria judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

Having regard to the applicant's submissions and all the material before it, the Commission finds that the applicant failed to show that she had any right within the meaning of Article 3 of Protocol No. 1 to the Convention, or that there was an interference with her privacy within the meaning of Article 8 of the Convention, or an interference with the right to freedom of expression under Article 10 of the Convention. There could accordingly be no discrimination against her under Article 14 of the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

5. Under Article 1 of Protocol No. 1 to the Convention the applicant complains about the refusal of the CER to return the election deposit.

Article 1 of Protocol No. 1 to the Convention provides as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission is of the opinion that it is not required to decide whether or not the facts alleged by the applicant disclose any appearance of a violation of this Article as, under Article 26 of the Convention, it "may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law", whereas the applicant failed to appeal to a court against the decision of the CER of 9 October 1997 refusing to return the amount paid by her as the election deposit.

The Commission acknowledges the applicant's argument that she was upset by the decision taken only on the previous day by the Vilnius Regional Court, excluding her from the presidential election. It cannot agree however that the said situation would have prevented her from effectively complaining to a court concerning a separate problem of the alleged deprivation of her possessions by the Central Electoral Registry, in particular

given the claim that the latter's refusal to return the election deposit was null and void as it allegedly had no legal basis in Lithuanian law.

It follows in respect of this part of the application that the applicant has not complied with the conditions as to the exhaustion of domestic remedies laid down by Article 26 of the Convention, and the above complaint must therefore be rejected under Article 27 para. 3 thereof.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber