CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 30789/04
by Bislan BATALOV
against Lithuania

The European Court of Human Rights (Second Section), sitting on 15 November 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,

and Mrs S. DOLLÉ, *Section Registrar,*

Having regard to the above application lodged on 14 August 2004,

Having regard to the urgent notification of the application under Rule 40 of the Rules of Court,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Bislan Batalov, is a Russian national of the Chechen ethnic origin, born in 1979. He is represented before the Court by Mr L. Biekša, a lawyer practising in Vilnius.

## A. The circumstances of the case

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

### *1. Proceedings determining the applicant's status in Lithuania*

The applicant entered Lithuania illegally on an unspecified date in 2001. He immediately claimed asylum on the ground that he had allegedly taken part in various hostilities against the Russian military forces and that he feared persecution if returned to Russia. He alleged that he had been previously detained by Russian military officers, that he had been beaten and tortured during that detention, and that he had only been released after his relatives had "paid a ransom".

On 14 May 2004 the immigration authorities refused asylum and applied to a court for the applicant's deportation to Russia. In reaching their conclusion, the immigration authorities referred to the "danger to national security" which the applicant represented. No factual elements were specified to support that statement, the immigration authorities having reached the conclusion on the basis of a letter sent to them by the State Security Department. The decision of 14 May 2004 mentioned that the applicant had the right of appeal to a court within seven days of the notification of the decision, pursuant to Article 138 of the Aliens Act.

The decision of 14 May 2004 was translated into Russian and given to the applicant on 14 June 2004, as confirmed by his signature on a copy of the decision submitted to the Court.

On 10 June 2004 the Vilnius Regional Administrative Court accepted the immigration authorities' request to deport the applicant to Russia on the basis of his presenting a danger to national security.

On 16 June 2004 the applicant was accommodated at the Aliens Registration Centre (ARC) pending the final determination of his legal status in Lithuania.

On 23 June 2004 the applicant applied to a court, claiming asylum and alleging persecution in Russia.

On 30 June 2004 the Vilnius Regional Administrative Court dismissed the application on the ground that the applicant had missed the seven day time-limit for the submission of an appeal, laid down in Article 138 of the Aliens Act. In this regard it was noted that the applicant had sent his application by post only on 23 June 2004. The court also noted that the applicant had not specified whether his application was an appeal against the immigration authorities' decision of 14 May 2004, or against the court decision of 10 June 2004. In either event, the applicant had submitted his appeal out of time. It was further noted that he had not requested an extension of the time-limit for appeal.

On 7 July 2004 the applicant received the court decision of 30 June 2004. On 8 July 2004 he consulted a lawyer, who helped him to draft a further appeal against the immigration authorities' decision of 14 May 2004. In that appeal, dated 9 July 2004, the applicant stated that he had only taken cognisance of the impugned decision on 14 June 2004, and that he had appealed against it on 23 June 2004. Since he did not have a lawyer until 8 July 2004, the applicant requested the reinstatement of the time-limit for appealing against the decision of 14 May 2004. In his appeal, the applicant argued that the authorities' conclusions on his alleged "danger to national security" were not supported by any evidence. He claimed that he would be subjected to persecution if returned to Russia.

On 14 July 2004 the Vilnius Regional Administrative Court dismissed the applicant's request to reinstate the time-limit. The court held that the time-limit mentioned in Article 138 of the Aliens Act could only be reinstated in cases where it had been missed as a result of circumstances independent of the applicant's will. However, the court observed that the applicant had not invoked any circumstances which could show that he was not in a position to submit his appeal before 23 June 2004.

On 27 July 2004 the applicant filed an appeal against the decision of 14 July 2004. The applicant stated that from 14 June 2004, after having taken cognisance of the decision of 14 May 2004, he had been unable to submit his appeal within the seven-day period since he did not know the Lithuanian language or legislation and, moreover, had no postage stamps or envelopes to send an appeal. According to the applicant, on 22 June 2004 he had given his appeal, which had been written in Russian, to a representative of the United Nations High Commissioner for Refugees (UNHCR), who in turn sent the appeal to the court. The applicant also stated that the UNHCR representative had promised the applicant that he would inform certain immigration lawyers about his situation. As a result, the applicant had been able to meet a lawyer for the first time on 8 July 2004, and to draft a properly motivated appeal on 9 July 2004.

On 9 September 2004 the Supreme Administrative Court dismissed the applicant's appeal against the decision of 14 July 2004. The court reiterated that the applicant's first appeal against the decision of 14 May 2004 had only been sent on 23 June 2004, i.e. more than seven days after the applicant had familiarised himself with the decision (of 14 June 2004). The court observed that the fact that the applicant had access to a lawyer for the first time only on 8 July 2004 did not constitute a circumstance absolving him from the obligation to comply with the time-limit. The court also stated that the other allegations relied on by the applicant (i.e. ignorance of language and laws, and no stationery) could not be reviewed on appeal as these facts had not been alleged before the first-instance court on 14 July 2004. That decision was final.

On 22 November 2004 the European Court of Human Rights communicated the applicant's complaints about his imminent expulsion from Lithuania to Russia under Article 3 of the Convention.

On 17 December 2004 the Vilnius Regional Administrative Court suspended the execution of the expulsion order of 10 June 2004.

On 14 January 2005 the immigration authorities authorised the applicant's stay in Lithuania on humanitarian grounds.

On 25 March 2005 the President of the Supreme Administrative Court petitioned the Supreme Administrative Court to resume the proceedings concerning the applicant's expulsion. On 29 March 2005 the Supreme Administrative Court accepted the President's petition. The case was transmitted for a fresh examination by the Vilnius Regional Administrative Court.

On 19 April 2005 the Vilnius Regional Administrative Court quashed the expulsion order of 10 June 2004 *inter alia* because of a risk of the applicant's possible persecution if deported to Russia.

On 5 July 2005 the immigration authorities issued the applicant with a temporary residence permit on humanitarian grounds.

In his letter of 19 July 2005, the applicant stated that, in view of the regularisation of his stay in Lithuania, he no longer wished to pursue his complaints under Article 3 of the Convention.

*2. The applicant's detention*

The applicant had not been arrested or detained upon his entry into Lithuania in 2001 or immediately thereafter. In early 2004 he lived at an address in Kaunas.

On 28 May 2004 the immigration authorities informed the Vilnius Regional Administrative Court that the applicant had not been found at his permanent place of residence, and that as a result he not been acquainted with the decision of 14 May 2004 refusing asylum.

On 13 June 2004 the applicant was arrested by the Kaunas police in view of the expulsion order of 10 June 2004.

On 14 June 2004 the applicant's detention (*sulaikymas*) and placement (*apgyvendinimas*) at the ARC were authorised by the Kaunas City District Court to ensure the applicant's eventual expulsion from Lithuania on the basis of Article 113 of the Aliens Act (see the "Relevant domestic law and practice" part below). Detention was authorised until 14 September 2004.

On the same date the applicant escaped from the police. A search for him was launched. On 16 June 2004 he was again arrested, brought to and accommodated at the ARC.

On 14 September, 14 October 2004 and 13 December 2004, the Švenčionys District Court extended the term of the applicant's detention, by the latter decision until 15 March 2005.

On 3 January 2005 the Švenčionys District Court refused to order the applicant's release.

On 31 January 2005 the Supreme Administrative Court dismissed his appeal against the decision of 3 January 2005. In this connection the appeal court noted that the decision on the applicant's expulsion had not been quashed, although its execution had been suspended by the Vilnius Regional Administrative Court on 17 December 2004. It held that the applicant's continuing detention was compatible with Article 113 §§ 5 and 7 of the Aliens Act (see the "Relevant domestic law and practice" part below).

On 14 February 2005 the Švenčionys District Court refused to order the applicant's release. On 14 March 2005 the Švenčionys District Court further authorised the applicant's detention at the ARC until 15 June 2005. The court noted that on 14 January 2005 the immigration authorities had decided to authorise the applicant's stay in the country on humanitarian grounds, and that, as a result, the ground specified in Article 113 § 2 of the Aliens Act, namely the unlawfulness of his stay in the country, could no longer justify his detention. However, the court observed that the continuing validity of the expulsion order of 10 June 2004 warranted his detention in accordance with Article 113 §§ 5 and 7 of the Aliens Act.

On 18 March 2005 the Supreme Administrative Court rejected the applicant's appeal against the decision of 14 February 2005.

On 19 April 2005 the Vilnius Regional Administrative Court quashed the expulsion order of 10 June 2004 *inter alia* because of a risk of the applicant's possible persecution if deported to Russia.

In view of this decision, on 6 May 2005 the Supreme Administrative Court decided that there were no longer any grounds for the applicant's detention under Article 113 of the Aliens Act. The decision of 14 March 2005 was accordingly quashed.

On 9 May 2005, upon the applicant's request, his further stay at the ARC was authorised by the immigration authorities under a different regime, namely without any restrictions on his liberty of movement.

Following the decision of 5 July 2005 to issue the applicant with a temporary residence permit, he left his accommodation at the ARC on an unspecified date in July 2005. It appears that he now lives in a place of his own choice in Lithuania.

### B. Relevant domestic law and practice

According to Article 267 of the Code of Administrative Offences and Article 114 of the Aliens Act of 30 April 2004, an alien can be arrested (*sulaikytas*) by the police and held for up to 48 hours, in order to determine the legality of his stay in the country. The alien can thereafter be deprived of his liberty only on the basis of a court order.

Pursuant to Article 113 of the Aliens Act, an alien may be detained (*sulaikytas*) if his stay in the country is illegal (Article 113 § 2 of the Act), where a decision has been taken to expel him (Article 113 § 5), or when he presents a danger to public safety and national security (Article 113 § 7).

According to Article 116 of the Act, the immigration authorities shall apply to a court for a detention order if one of the grounds specified in Article 113 exists.

## COMPLAINTS

1. In the original application form submitted on 4 November 2004, the applicant complained under Article 3 of the Convention that his expulsion to Russia would have breached Article 3 of the Convention. However, by a letter of 19 July 2005 he renounced these complaints in view of the regularisation of his stay in Lithuania.

2. In the application form submitted on 30 March 2005, the applicant complained under Article 5 § 1 (f) of the Convention about the unlawfulness of his detention in the context of the proceedings concerning the legality of his stay in Lithuania. In particular, he alleged that the detention had been arbitrary, the deprivation of liberty being based on national security grounds unknown to the applicant. He further complained that the detention had been incompatible with the domestic law, at least from the moment when the execution of the expulsion order had been suspended (17 December 2004) and his temporary stay had been authorised (14 January 2005). The applicant further alleged that Article 5 §§ 2 and 4 of the Convention had been violated in that he had not been informed in detail about the reasons for his detention, namely why he was considered to be a danger to the national security of Lithuania.

## THE LAW

1. To the extent that the applicant has complained under Article 3 of the Convention about his possible expulsion from Lithuania to Russia, the Court notes that the applicant's stay in Lithuania has now been regularised, and that he wishes to withdraw this complaint. Consequently, the Court does not consider it necessary to examine the matter further.

2. The applicant also alleged a violation 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: ... ;

> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. ... .
>
> 4. 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. ... ."

The Court notes first that the applicant submitted these complaints on 30 March 2005, while still in detention, and that he submitted no further complaints about his detention after that date. It follows that the object of the Court's examination under Article 5 of the Convention is the applicant's detention from the moment of his arrest on 13 June 2004 until 30 March 2005.

The Court recalls that any period of detention is, in principle, compatible with Article 5 § 1 of the Convention if it is based on a court order. Even flaws in the detention order do not necessarily render the detention itself unlawful within the meaning of this provision (see, *Jėčius v. Lithuania*, no. 34578/97, 31.7.2000, § 68, ECHR 2000-IX).

Furthermore, Article 5 § 1 (f) does not afford a detained alien the right to contest the "proportionality" of the detention order, unlike other Convention issues, for example under Article 8 § 2 of the Convention. Article 5 § 1 (f) only requires that "action is being taken with a view to deportation". However, any deprivation of liberty under Article 5 § 1 (f) will only be justified for as long as deportation proceedings are in progress. If such proceedings are not pursued with due diligence, the detention will cease to be permissible under Article 5 § 1 (f) of the Convention (see, *mutatis mutandis*, *Chahal v. the United Kingdom*, judgment of 15 November 1996, ECHR 1996-V, §§ 112-13; see also *Slivenko v. Latvia* [GC], no. 48321/99, 9.10.2003, ECHR 2003-X, § 146).

The applicant's principal complaint was that his detention had been arbitrary, having been based on the expulsion order of 10 June 2004 issued on national security grounds, the details of which he had not been given. The Court notes that the applicant had access to courts, by way of separate legal proceedings, to contest the expulsion order and its reasons. While the applicant's actions in this respect had initially been unsuccessful, the proceedings were subsequently renewed and the impugned expulsion order was quashed. Moreover, it cannot be said that these proceedings were not pursued with due diligence by the authorities because, between 13 June 2004 and 30 March 2005, the domestic authorities had taken numerous decisions on the applicant's appeals concerning his legal status in the country (see the "Facts" part above).

There remains the question whether the detention was "lawful" and "in accordance with a procedure prescribed by law". In this connection, the Convention refers essentially to the obligation of the authorities to conform to the substantive and procedural rules of national law, but it requires in addition that any deprivation of liberty should be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Chahal*, cited above, § 118).

It is undisputed that the applicant's arrest on 13 June 2004 and his remand in police custody until 14 June 2004 was authorised by Article 267 of the Code of Administrative Offences and Article 114 of the Aliens Act 2004. The applicant's detention was thereafter duly authorised and extended by court orders taken on 14 June, 14 September, 14 October, 13 December 2004 and 14 March 2005, pursuant to Article 113 of the Aliens Act (see the "Facts" and the "Relevant domestic law and practice" part below).

The applicant alleged that the domestic law required his release at least from the moment when the execution of the expulsion order had been suspended on 17 December 2004 and his temporary stay in Lithuania had been authorised on 14 January 2005. However, the Court observes that the illegal stay of an alien on the territory of the State (paragraph 2 of Article 113 of the Aliens Act) was only one of the statutory grounds on which the applicant's detention was ordered on 14 June 2004 or thereafter extended. The Court is satisfied with the findings of the domestic courts that, even after the temporary regularisation of the applicant's situation on 14 January 2005, his detention continued to be justified under paragraphs 5 and 7 of Article 113 of the Aliens Act, because the expulsion order of 10 June 2004 had not yet been quashed (see the "Facts" part above).

The Court observes that the impugned period of the applicant's detention was covered by the court orders issued in accordance with the applicable domestic legislation, and that adequate reasons were given for that detention, as provided for by statute. The Court considers that the applicant was thus given a satisfactory level of procedural protection in the context of his detention. Moreover, there is no evidence that the courts acted in bad faith or arbitrarily. Finally, the eventual annulment of the expulsion order on 19 April 2005 on humanitarian grounds does not, as such, retroactively affect the validity of the applicant's detention prior to that date (see, *mutatis mutandis*, the *Jėčius* case cited above, *ibid*; *Benham v. the United Kingdom*, judgment of 10 June 1996, ECHR 1996-III, §§ 42-47; *Visockas v. Lithuania* (dec.), no. 49107/99, 6.1.2000; *Kamantauskas v. Lithuania* (dec.), no. 45012/98, 29.2.2000).

It follows that the applicant's detention from 13 June 2004 until 30 March 2005 was authorised "in accordance with a procedure prescribed by law" and that it was "lawful" within the meaning of Article 5 § 1 (f) of the Convention. These complaints are thus manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

To the extent that the applicant has complained under Article 5 § 2 of the Convention, it is undisputed that the applicant knew that the reason for his arrest on 13 June 2004, and subsequent detention, was the deportation proceedings instituted on the basis of the expulsion order of 10 June 2004. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

To the extent that the applicant has complained under Article 5 § 4 of the Convention, it is also undisputed that the applicant had access to a court to appeal against every order authorising and extending the term of his detention. As a result, the lawfulness of the applicant's detention was reviewed by the domestic courts almost every month (see the "Facts" part above). The Court notes that the applicant does not allege any procedural restrictions or lack of adversarial proceedings in the context of those judicial proceedings. He is essentially dissatisfied that the courts did not annul the expulsion order, or verify the authorities' national security argument.

However, the Court does not deem it important, in the context of the applicant's complaints under Article 5 of the Convention, that the domestic courts competent for authorising and determining the lawfulness of his detention under Article 5 § 1 (f) were not empowered to reassess the reasons for the expulsion order (see the *Chahal* and *Slivenko* cases cited above, *ibid.*). The Court is satisfied that the domestic courts established the relevant facts of the case and gave adequate reasons to justify the applicant's detention under domestic law (see the 'Facts' part above). The Court considers that the judicial review of the applicant's detention was thus compatible with the requirements of Article 5 § 4 of the Convention. It follows that this part of the application is also manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President