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

SECOND SECTION

DECISION

Application no. 10495/21
Rolandas BORISOVAS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 17 September 2024 as a Committee composed of:

Jovan Ilievski*, President*,
Diana Sârcu,
Gediminas Sagatys*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the application (no. 10495/21) 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 February 2021 by a Lithuanian national, Mr Rolandas Borisovas ("the applicant"), who was born in 1977, lives in Ramučiai and was represented by Mr V. Sirvydis, a lawyer practising in Kaunas;

the decision to give notice of the complaint concerning Article 5 § 3 of the Convention to the Lithuanian Government ("the Government"), represented by their Agent, Ms K. Bubnytė-Širmenė, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the length of the applicant's detention on remand.

2. On 17 April 2018 the Prosecutor General's Office opened a pre-trial investigation concerning an alleged organised criminal group whose members were suspected of various serious and very serious crimes. It was suspected that the group had been active since 1999, had a well-organised hierarchical structure and operated in several countries. On that same day the police arrested nineteen suspected members and leaders of the group,

including the applicant. He was officially notified that he was suspected of smuggling a large amount of drugs, unlawful possession of weapons, money-laundering and assault, as well as being one of the group's leaders. Over the course of the investigation, a total of seventy-four suspects were identified.

3. Between 17 April 2018 and 3 May 2021 the applicant was held in detention on remand. The detention was extended at regular intervals, on the following grounds: he might abscond, in view of the gravity of the offences of which he was suspected and his connections in foreign countries; he might seek to interfere with the criminal proceedings, particularly in view of the fact that the suspected criminal organisation functioned on the basis of a strict hierarchy and anyone who had disobeyed it had been severely punished; and he might commit further offences because it was suspected that criminal activity had been his main source of income and he had two previous convictions. The courts also noted that the criminal case was very complex and large-scale as it concerned criminal activity allegedly committed in several different countries and over a long period of time, and it involved numerous suspects.

4. On 3 May 2021 the Kaunas Regional Court replaced the applicant's detention with house arrest. He was prohibited from leaving his home between 10 p.m. and 6 a.m., unless he needed to participate in the criminal proceedings, see a doctor, go to work or take care of his father, who was ill. He was also prohibited from leaving the country and was ordered to pay bail of 30,000 euros (EUR).

5. The pre-trial investigation in respect of the applicant and sixteen other suspects was completed on 4 October 2019 and the case against them was referred to the Kaunas Regional Court for examination on the merits. From that date until the applicant's release from detention (see paragraph 4 above), thirty-nine hearings were scheduled but only nine were actually held (in June and July 2022). Thirteen hearings were adjourned on account of the absence or illness of some of the defendants, their lawyers or victims or because the defendants had asked for the prosecutor to be removed from the case. Seventeen other hearings were adjourned because of the nationwide lockdowns announced during the COVID-19 pandemic (from March to May 2020 and from November 2020 to April 2021), during which the courts were allowed to hold oral hearings only in cases that were considered particularly urgent, which the case at issue was not deemed to be.

6. On 29 September 2023 the Kaunas Regional Court acquitted the applicant of the charges against him. The Court has not been informed whether any appeals have been lodged against that judgment.

7. The applicant complained under Article 5 § 3 of the Convention that the length of his pre-trial detention (three years and seventeen days) had been excessive and that the authorities had failed to conduct the criminal proceedings with the required level of diligence.

THE COURT'S ASSESSMENT

8. The Government submitted that the applicant had failed to exhaust the effective domestic remedies. In particular, he could have instituted civil proceedings against the State under Article 6.272 of the Civil Code, seeking compensation for the allegedly excessive length of his detention on remand (see *Varnas v. Lithuania*, no. 42615/06, §§ 62 and 85-89, 9 July 2013). The Government submitted that according to the established case-law of the Supreme Court, when the lawfulness of measures taken during a pre-trial investigation was being assessed in civil proceedings, the courts were not bound by the fact that those measures had not been found to be unlawful in the criminal proceedings. Moreover, when assessing the lawfulness of detention on remand and its length, the courts took into account not only the requirements laid out in domestic law but also those under Article 5 of the Convention. The Government provided examples of several cases in which claimants had succeeded in obtaining compensation for unlawful or lengthy detention on remand, ranging from approximately EUR 3,000 to approximately EUR 11,000 (decisions of the Supreme Court in the following civil cases: decision of 22 October 2007 in case no. 3K-3-417/2007; decision of 8 July 2008 in case no. 3K-3-364/2008; decision of 3 July 2015 in case no. 3K-3-423-378/2015; and decision of 14 July 2015 in case no. e3K-3-412-690/2015).

9. The applicant submitted that the civil-law remedy in question could not be considered effective because such proceedings could be excessively long – he referred to civil case no. 3K-3-4/2014, decided by the Supreme Court on 5 February 2014, in which a final decision had been taken more than ten years after the unlawful detention on remand had ended. He further submitted that while in domestic civil proceedings the courts could award monetary compensation, they could not find a violation of his rights under the Convention, which only the Court was empowered to do.

10. In their reply to the applicant's observations, the Government submitted that case no. 3K-3-4/2014 had been unusual and exceptional, because it had raised complex questions of law which had required examination by the Constitutional Court.

11. The relevant general principles concerning the requirement to exhaust the effective domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, and the cases cited therein).

12. The Court reiterates that for a remedy in respect of the lawfulness of an ongoing deprivation of liberty to be effective, it must offer a prospect of release. However, where the applicant complains that he or she was detained in breach of domestic law and where the detention has come to an end, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy

which needs to be pursued if its effectiveness in practice has been convincingly established (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 207-08, 22 December 2020, and the cases cited therein).

13. In the present case, on 3 May 2021 the applicant's detention on remand was replaced with house arrest (see paragraph 4 above). The Court has previously held that house arrest, in view of its degree and intensity in the specific circumstances, amounted to deprivation of liberty within the meaning of Article 5 of the Convention (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 104-05, 5 July 2016). However, it has also had occasion to observe that conditions of house arrest under Lithuanian law differ rather significantly from those which it has assessed in other cases (see *Lisovskij v. Lithuania*, no. 36249/14, § 71, 2 May 2017). Whereas the applicants in those other cases were prohibited from leaving their place of residence save for specific exceptions indicated by the authorities (see *Nikolova v. Bulgaria (no. 2)*, no. 40896/98, § 53, 30 September 2004; *Süveges v. Hungary*, no. 50255/12, § 53, 5 January 2016; and *Buzadji*, cited above, § 42), by contrast, the applicant in the present case was allowed to leave his home for most of the day (except from 10 p.m. to 6 a.m.), he was allowed to work, and there were only limited restrictions to his social life (see paragraph 4 above). Therefore, in view of the relatively low degree and intensity of the house arrest in the present case, the Court considers that it could not be compared to deprivation of liberty within the meaning of Article 5 of the Convention (see *Lisovskij*, cited above, §§ 71-72). Accordingly, it is satisfied that from 3 May 2021 the applicant was no longer deprived of his liberty.

14. The Court has already acknowledged that Article 6.272 of the Civil Code provides for a possibility of obtaining compensation for detention on remand that was unreasonably long (see *Varnas*, cited above, § 89). That conclusion is further supported by the examples of domestic case-law provided by the Government in the present proceedings (see paragraph 8 above).

15. The applicant contended that domestic civil proceedings could be excessively lengthy and he based that argument on one example of a domestic case (see paragraph 9 above). The Court takes note of the Government's submissions regarding the exceptional nature of the case relied on by the applicant (see paragraph 10 above). It also observes that the case-law examples provided by the Government (see paragraph 8 above) do not lead it to conclude that the length of compensation proceedings is generally excessive and the remedy thus not generally effective. Accordingly, the Court finds that the applicant failed to demonstrate that proceedings for compensation under Article 6.272 of the Civil Code could not be considered effective for the purposes of Article 35 § 1 of the Convention in the particular circumstances of his case because of their length.

16. Nor is the Court persuaded that, as alleged by the applicant, the domestic courts could not find a violation of his rights under the Convention

(see paragraph 9 above). It notes that in the case-law examples provided by the Government (see paragraph 8 above), the courts either explicitly acknowledged that the claimants' rights under Article 5 § 1 or Article 5 § 3 of the Convention had been violated, or found a violation of domestic law as interpreted in the light of the provisions of the Convention. The Court considers that approach to be consistent with the domestic authorities' obligation to provide an effective remedy with regard to Convention complaints (see, *mutatis mutandis*, *P.C. v. Ireland*, no. 26922/19, § 107, 1 September 2022).

17. In the light of the foregoing, the Court is satisfied that domestic law provided for the possibility, available both in theory and in practice, of obtaining an acknowledgment of the excessive length of detention on remand and being awarded monetary compensation.

18. The Court further reiterates that an applicant's compliance with the requirement to exhaust domestic remedies is normally assessed with reference to the date on which the application was lodged with the Court. However, as the Court has held on many occasions, this rule is subject to exceptions, which may be justified by the particular circumstances of each case. The Court has previously departed from this rule notably in cases concerning remedies in respect of the length of detention (see *Girişen v. Turkey*, no. 53567/07, § 35, 13 March 2018 with further references).

19. In the present case the applicant lodged his application with the Court on 4 February 2021, while he was still detained. However, his detention came to an end two months later, while his application before the Court was pending and before its admissibility had been determined. In such circumstances, the Court considers that the above-mentioned exception should be applied and that it was incumbent on the applicant to pursue a compensatory remedy which was established under domestic law and was sufficiently certain both in theory and in practice (see *Demir v. Turkey* (dec.), no. 51770/07, § 28, 16 October 2012; *Tsonev v. Bulgaria* (dec.), no. 9662/13, §§ 56-58 and 68, 30 May 2017; and *Girişen*, cited above, §§ 33-35). By omitting to do so, he was essentially asking the Court to rule on an issue which the domestic courts had not been given an opportunity to examine, thereby disregarding the Court's subsidiary role and precluding the domestic courts from remedying the alleged violation of his rights under Article 5 § 3 of the Convention at the domestic level (see the relevant general principles in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-39, 27 November 2023, and the cases cited therein).

20. It follows that the present application must be declared inadmissible for failure to exhaust domestic remedies, in line with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 10 October 2024.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President