CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

Application no. 47922/99
by Deivis GANUSAUSKAS
against Lithuania

The European Court of Human Rights (Third Section) sitting on 7 September 1999 as a Chamber composed of

Sir Nicolas Bratza, *President*,
Mr J-P. Costa,
Mr L. Loucaides,
Mr P. Kūris,
Mr W. Fuhrmann,
Mrs H.S. Greve,
Mr K. Traja, *Judges*,

with Mrs S. Dollé, *Section Registrar*;

Having regard to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 29 April 1999 by Deivis Ganusauskas against Lithuania and registered on 6 May 1999 under file no. 47922/99;

Having regard to the report provided for in Rule 49 of the Rules of Court;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Lithuanian national, born in 1967. At present he is detained at the Ulonų Prison in the Alytus Region.

He is represented before the Court by Mr R. Girdziušas, a lawyer practising in Kaunas.

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

A. Particular circumstances of the case

On 16 July 1995 the applicant was detained on remand in the context of proceedings for cheating. On 13 September 1996 the Kaunas City District Court convicted the applicant of obtaining property by deception. He was sentenced to six years' imprisonment and ordered to pay compensation. On 4 March 1997 the Kaunas Regional Court dismissed the applicant's appeal against the first instance judgment. On 11 September 1997 the Court of Appeal rejected the applicant's cassation appeal.

By 16 July 1998 the applicant had completed half of his sentence in the Ulonų Prison. As he had been afforded better treatment due to his model behaviour in prison, he requested his conditional release. This was refused, whereupon the applicant brought a successful civil action against the prison administration before the Alytus District Court for a breach of his rights under Article 54-2 of the Criminal Code. On 25 September 1998 the court "required" the prison administration to request a criminal court to order the applicant's conditional release.

This was done on 28 September 1998 and on 23 October 1998 the Alytus District Court ordered the applicant's conditional release because of his model behaviour in prison. A prosecutor and a prison representative took part at the hearing of 23 October 1998. The District Court stated that the order for conditional release could be appealed within five days. On 26 October 1998 the applicant was released from the prison.

From 30 October 1998, several major newspapers printed articles criticising the law enforcement authorities for releasing the applicant on licence. The media alleged *inter alia* that the applicant had not paid the compensation ordered by the trial courts.

On 2 November 1998 the Chief Prosecutor of the Kaunas Region applied to the Alytus District Court for leave to appeal out of time against the applicant's conditional release. The prosecutor asserted that the five-day time-limit had not been observed for important reasons. He stated that the prosecutor who had been present before the court on 23 October 1998 had not informed the Regional Prosecutor's Office about the applicant's conditional release, and that on 28 October 1998 the Chief Prosecutor of the Alytus District had been in Vilnius on mission; therefore no appeal could be lodged in time.

On 2 November 1998 the Alytus District Court reinstated the time-limit by reference to Article 120 of the Code of Criminal Procedure, finding that the prosecution had missed the time-limit for "important reasons". The court also stressed that the reinstatement of the time-limit "was not contrary to the law".

On the same date the Chief Prosecutor of the Kaunas Region lodged with the Kaunas Regional Court an appeal against the applicant's conditional release, asserting *inter alia* that he had not paid the 1,944,000 Lithuanian litai (LTL) in compensation following his conviction, and that he belonged to a Kaunas criminal organisation.

On 3 November 1998 the prosecutor requested the court to suspend the execution of the order for conditional release. On the same date the Kaunas Regional Court, pursuant to Article 415-1 § 4 of the Code of Criminal Procedure, accepted the prosecutor's request without hearing the parties. The applicant was arrested in the evening of 3 November 1998.

On 4 November 1998 the Kaunas Regional Court held a hearing on the prosecution's appeal against the applicant's conditional release in the presence of the applicant and his counsel. The applicant requested the court to adjourn the hearing and release him. He also challenged the participation of two of the appeal judges. The court dismissed his applications.

On the same date the Kaunas Regional Court upheld the prosecution's appeal and quashed the conditional release order on the basis of Article 415-1 of the Code of Criminal Procedure. The Regional Court found *inter alia* that the applicant had not paid the 1,944,000 LTL in damages ordered at his trial. The court noted that the prosecutor, who had been present before the District Court on 23 October 1998, had not submitted this information, thereby misleading the first instance court. The appellate court held that domestic law did not oblige the prison administration to recommend the conditional release of a detainee. The decision of 4 November 1998 was final.

On 12 November 1998 a civil chamber of the Kaunas Regional Court, upon a cassation petition of the Acting President of the Supreme Court, quashed the decision of 25 September 1998, finding that the District Court could not "require" the prison administration to request the applicant's release on licence. The Regional Court held in this connection that Article 54-2 of the Criminal Code gave a discretionary power to the prison administration as to whether or not to request the conditional release of a detainee.

B. Relevant domestic law

Article 54-2 of the Criminal Code and Article 67 of the Prison Code allows the release on licence of a convicted person before the expiry of the term of imprisonment. The right to order conditional release rests with a court, upon the request of the prison administration. Release on licence of a person sentenced to up to ten years' imprisonment can be ordered after completion of half of the sentence.

Article 415-1 § 3 of the Code of Criminal Procedure lays down a period of five days to appeal against a court order granting or refusing conditional release. Paragraph 4 of this provision provides for the suspension of that order should such an appeal be lodged. Paragraph 9 of the provision permits no further appeal against the decision of the appellate court.

Pursuant to Article 120 § 1 of the Code of Criminal Procedure, a time-limit that was missed for an important reason can be reinstated by a court. Paragraph 2 of this provision provides that, in cases where a decision was appealed out of time, a court on the request of the person lodging the appeal can suspend its execution.

COMPLAINTS

1. Under Article 5 § 1 of the Convention the applicant complains that he was released on licence but recalled to the prison. The proceedings whereby the order for his release on licence was revoked were neither "lawful", nor "in accordance with a procedure prescribed by law" as required by that provision. He asserts in particular that on 2 November 1998 the Alytus District Court erred in fact and law in reinstating the time-limit for appeal against the conditional release order of 23 October 1998. He states that the Kaunas Regional Court lacked jurisdiction to suspend the execution of the conditional release order or to entertain the prosecution's appeal against it, and that, accordingly, the decision of 4 November 1998 ordering his return to prison was unlawful. Moreover, his re-detention was inspired by the media campaign and thus arbitrary as there were no reasons for him to be further imprisoned.

2. Under Article 5 § 4 of the Convention the applicant complains that his detention after conviction was not subject to an effective review by a court.

3. Under Article 6 of the Convention the applicant alleges various material and procedural irregularities during the proceedings in connection with his return to the prison.

THE LAW

1. The applicant alleges that his return to prison was incompatible with Article 5 § 1 of the Convention, which provides, insofar as relevant, as follows:

> "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:
>
> a. the lawful detention of a person after conviction by a competent court; … ."

The Court recalls that the Convention does not confer, as such, a right to release on licence or require that parole decisions be taken by or subject to review by a court. A penalty involving deprivation of liberty which the offender must undergo for a period specified in the court decision is justified at the outset by the original conviction and appeal proceedings (see, *mutatis mutandis*, the Van Droogenbroeck v. Belgium judgment of 24 June 1982, Series A no. 50, pp. 21-22, §§ 39-40). In the present case, the order for the applicant's conditional release did not in any way affect the validity of the trial court's judgment and the subsequent appeal procedures by which the applicant was convicted and sentenced to six years' imprisonment. Nothing indicates that the causal link between the conviction and the re-detention was broken (see, by contrast, the Weeks v. the United Kingdom judgment of 2 March 1987, Series A no. 145-A; the Thynne, Wilson and Gunnell v. the United Kingdom judgment of 25 October 1990, Series A no. 190-A; the Hussain v. the United Kingdom judgment of 21 February 1996, *Reports of Judgments and Decisions* 1996-I; the Singh v. the United Kingdom judgment of 21 February 1996, *Reports* 1996-I).

Consequently, the applicant's recall to prison before the expiry of his sentence was compatible with Article 5 § 1 (a) of the Convention. Therefore, the Court does not deem it necessary to scrutinise the revocation proceedings in the present case.

It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant also complains of being denied an effective judicial review of his detention after conviction in breach of Article 5 § 4 which provides that:

> "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 that Article 5 § 4 only applies to proceedings in which the lawfulness of detention is challenged. The necessary supervision of the lawfulness of detention "after conviction by a competent court", as in the present case, is incorporated at the outset in the applicant's original trial and the appeal procedures against the conviction and sentence (see, the De Wilde, Ooms and Versyp v. Belgium judgment of 18 June 1971, Series A no. 12, p. 40, § 76).

It follows that this part of the application is also to be rejected as being manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

3. Regarding the applicant's allegation that the proceedings whereby he was recalled to prison violated Article 6 of the Convention, the Court observes that this provision is not applicable in the present case, for the proceedings did not involve the determination of "any criminal charge against him" within the meaning of Article 6 of the Convention.

Hence, this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3. It must be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

S. Dollé
Registrar

N. Bratza
President