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. 70659/01
by Regina JUOZAITIENĖ
against Lithuania

Application no. 74371/01
by Jonas BIKULČIUS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 19 May 2005 as a Chamber composed of:

Mr A.B. BAKA, *President*,
Mr J.-P. COSTA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Mr D. POPOVIĆ, *judges*,
and Mr S. NAISMITH, *Deputy Section Registrar*,

Having regard to the above applications lodged, respectively, on 12 and 13 April 2001,

Having regard to the decision of 13 March 2003 to join the proceedings in these applications,

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

Having regard to the fact that Mrs D. Jočiene, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28) and that the respondent Government appointed Mr J-P. Costa, the judge elected in respect of France, to sit in her place (Article 27§2 of the Convention and Rule 29§1),

Having deliberated, decides as follows:

THE FACTS

The first applicant, Mrs Regina Juozaitienė, is a Lithuanian national who was born in 1940 and lives in Kaunas. She is represented before the Court by Mr A. Liutvinskas, a lawyer practising in Vilnius. The second applicant, Mr Jonas Bikulčius, is a Lithuanian national, who was born in 1935 and lives in Kaunas. He is represented before the Court by Mr J. Valašinas, of the Lithuanian Organisation for the Protection of Human Rights and Social Guarantees. The respondent Government were represented by their Agent, Mrs D. Jočienė, of the Ministry of Justice.

A. The circumstances of the case

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

In the late evening of 24 July 1998 the first applicant's son, Dalius Juozaitis, and the second applicant's son, Darius Bikulčius, were found dead in a car with single gunshot wounds in their backs. The deaths occurred as the police tried to chase a Ford Escort (hereinafter “the car”) driven by a private person, RM, the applicants' sons being the passengers of the car. RM was not killed during the incident.

On 25 July 1998 a criminal case was instituted against RM for manslaughter in regard to the deaths of the applicants' sons (Article 109 of the Criminal Code as then in force) and resisting the orders of the police (Article 201). The applicants submitted their civil claims and were recognised as complainants in those proceedings.

On 15 March 1999 the Kaunas City District Court convicted RM of an offence under Article 201 of the Criminal Code.

It was established that, at about 11 p.m. on 24 July 1998, the police officers RZ, SG and JM received an order by radio to stop a car driving in the streets of Kaunas in breach of various road-traffic regulations. The police officers spotted the car half an hour later. They approached it from behind in a police vehicle, switching on the police alarm signs and demanding that it stop. Instead, the speed of the car increased to more than 100 kilometres per hour. During the subsequent chase, the policemen fired a few warning shots in the air. A moment later, the driver of the car lost control of the vehicle, hitting the fence of a building and bringing the car to a halt. The police vehicle approached the car and stopped a few metres away. The policemen had left their vehicle when the car suddenly started moving backwards, damaging the police vehicle and slightly hitting one of the policemen, RZ. The car then changed direction, driving away from the policemen and their vehicle. The police officers were unable to identify the number of persons in the car, its windows being tinted. RZ fired a few shots towards the car as it was driving away, hitting *inter alia* the car's radiator.

SG fired a number of shots towards the fleeing car. The third policeman, JM did not use firearms during the incident.

The court also established that two other policemen, NB and EP, had pursued the suspect car in another police vehicle, just behind the first. That second police vehicle had also stopped after the car had hit the fence. Immediately after RZ had been touched by the car, NB had fired one shot towards its wheels. EP had not used firearms during the incident.

Soon after, the car had been forced to stop in another area of Kaunas as a result of a leak of the cooling liquid from the radiator damaged by RZ's shots. Two other police officers, AR and AM, arrested RM while he was trying to flee. In the car the policemen found the bodies of the applicants' sons, whose deaths were instantly confirmed on the arrival of a medical team.

RM was found to have been drunk with none of the relevant documents permitting him to drive the car. The court concluded that he had resisted the lawful orders of the police, an offence under Article 201 of the Criminal Code.

The court did not specify how many shots had been fired by SG, even though it noted that two of his shots had caused the deaths of the applicants' sons. The court took account of SG's statements that he had suspected that one of the passengers of the car had a weapon, and that he had fired only after having heard a first shot (in fact fired by his colleague RZ), and having no idea where that shot had come from. The court also noted that no firearms or other weapons had been found in the car. RM was acquitted of the offence of manslaughter, the court having noted that the deaths had been caused not by his acts, but by the "lawful actions of a third person who had used an official weapon."

The applicants' civil claims against RM were not examined. The court nonetheless noted that it was open to the applicants to bring a civil action against RM.

RM was sentenced to six years' imprisonment.

On 18 May 1999 the Kaunas Regional Court upheld the judgment. On the same date the court instituted criminal proceedings against SG for the manslaughter of the applicants' sons (Article 109 of the Criminal Code as then in force) and for exceeding his authority (Article 287).

On 12 October 1999 the Supreme Court upheld the judgment of 18 May 1999.

On 27 December 1999 a prosecutor discontinued the criminal proceedings against SG.

On 19 April 2000 the Kaunas City District Court quashed the prosecutor's decision to discontinue the case against SG. The court noted *inter alia* that the prosecutors had made a detailed assessment of the way in which SG had used the gun from the point of view of the relevant domestic legal provisions.

On 9 June 2000 the prosecutor again discontinued the investigation. It was found that one shot had been fired at the car by NB, seven by RZ (all

fired after his being hit by the car), and four by SG. The prosecutor found that two of SG's shots had hit the applicants' sons, causing their deaths. It was noted however that SG had directed the shots at the wheels of the moving car from a distance of 11.4 metres (the first shot) up to 27.5 metres (the fourth shot). There had been no significant obstacles to visibility, such as inadequate lighting or dust. However, the fact that the car had moved in sudden and swerving directions was emphasised as a cause of the deaths, rather than any lack of experience on the part of SG in using firearms. In view of these circumstances, and given that SG had a valid reason to use the gun as a last resort in order to discontinue a breach of the law, pursuant to Article 42 of the Police Act, the prosecutor concluded that there was no evidence that he had committed a crime.

On 17 October 2000 the Kaunas City District Court rejected the applicants' appeals against the prosecutor's decision. The court mentioned that SG had been shooting at the moving car during a very a short period of time, the car moving within a perimeter of about 20 metres. The court held that SG had used the firearm lawfully, the shots being directed at the wheels of the car, not at the people sitting in the car. It was found that the car had been moving in swerving directions, two shots having, as a result, hit the persons sitting in the car. SG had thus not been able to foresee the consequences of his actions. At the same time, the court held that, even though the incident had taken place at about midnight, the street and the car had been well lit. The court also stated that there had been no reasonable link between the actions of SG and the impugned consequences, i.e. the death of the applicants' sons. It was concluded that manslaughter had not occurred as a result of the actions of SG, and that he had not exceeded the requirements of the relevant legal provisions in using his gun.

B. Relevant domestic law and practice

Article 109 of the Criminal Code, as then in force, punished acts of manslaughter (*nužudymas dėl neatsargumo*). Article 287 of the Code punished acts in excess of official duties (*tarnybos pareigų viršijimas*).

Article 228 of the new Criminal Code, which entered into force on 1 May 2003, punishes the acts of abuse of office (*piktnaudžiavimas*).

According to Article 34 of the Police Act as applicable at the material time (in force from 9 June 1998 until 9 October 2000), a police officer was entitled to use force, including by way of firearms. Article 41 of the Act regulated the use of firearms. Pursuant to the second paragraph of that Article, guns could be used to discontinue an unlawful act or with a view to effect an arrest. Under the third paragraph, police officers had to try to avoid serious consequences while using firearms. Pursuant to the fourth paragraph, guns could only be used where all other means had been exhausted, or where there was no time left to use other forms of force. Article 42 of the Act stipulated that firearms could be used against persons

as well as vehicles. Article 42 § 2 set out that a gun could be used against a person in order to counter an attempt threatening the life and health of a police officer (subparagraph 1), or to pursue a person suspected of having committed an offence threatening the life and health of others (subparagraph 4). Article 42 paragraph 5 also stated that a police officer could use a firearm against a moving car if the driver did not submit to an order to stop, where the continued driving thereof could endanger the traffic or other persons.

COMPLAINTS

Under Articles 2, 3 and 6 of the Convention, the applicants complained that the police had unjustly deprived their sons of their lives, and that they had been afforded no adequate legal remedy to obtain redress in this respect.

THE LAW

The applicants alleged a violation of Articles 2, 3 and 6 of the Convention.

Article 2 reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 6 reads, insofar as relevant, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

The Government stated that the second applicant had failed to comply with the six-months' time-limit as his application form had arrived at the Court on 10 July 2001, that is more than six months from the decision of the

Kaunas City District Court to discontinue the criminal proceedings against SG (17 October 2000). In any event, in the Government's view, there had been no violation of Article 2 in the present case. The Government emphasised the circumstances found by the domestic courts, in particular that the applicants' sons had been shot as a consequence of the police officers' efforts to stop the car driven by RM, the latter having attempted to resist the lawful orders of the police and having posed a threat to the traffic and other persons when driving while drunk. There had been no intent on the part of the police to kill or indeed shoot at the applicants' sons; the officers had only tried to stop the vehicle, the windows of which had been tinted. Furthermore, various other attempts, such as the chase as well as the firing of warning shots, had been made before the policemen had shot towards the car. The firing of the shots had thus been absolutely necessary in the circumstances of the case, and the death of the applicants' sons inevitable.

As to the effectiveness of the investigation, the Government noted that the applicants had been afforded access to a court to claim the responsibility of RM for alleged manslaughter, and that they had also been able to institute criminal proceedings against the police officer SG. It was true that RM had been subsequently acquitted and the proceedings against SG had been discontinued. However, those facts did not mean that the applicants had not been afforded adequate procedural remedies to obtain a quick and comprehensive investigation into the deaths. Nor had there been a violation of Articles 3 and 6 of the Convention in this respect.

The applicants disagreed, stating that their sons had lost their lives as a result of reckless shooting by the police, there being no adequate remedies to obtain redress in this connection. The domestic courts had wrongly established the facts of the case, having taken no account of the various contradictions in the statements of the policemen. In particular, the applicants alleged that the chase had in fact been very brief, a matter not mentioned in the findings of the domestic courts. In this respect the applicants point out that the police had tried to stop the car for the first time at 11:41 p.m., while the doctors had confirmed the death of the applicants' sons by 11:56 p.m. The courts had not therefore taken into account that the police had had recourse to shooting without exhausting other possibilities to stop the car. The applicants also alleged that SG had fired the shots towards the car not from the distance of approximately 10-30 metres, but from 2-3 metres, as stated by RM during the proceedings against him. The applicants alleged that the same shooting distance could also have been implied from the results of the medico-ballistic examination. The fact that the shots had been misfired should therefore weigh heavily against the authorities.

The domestic court had also drawn an inadequate conclusion in its decision to discontinue the investigation against SG, stating that there had been no reasonable link between SG's actions and the deaths. However, that connection had clearly been acknowledged by the court itself, when ruling that the applicants' sons had died from the shots fired by SG. The impugned

proceedings had thus served only to vindicate the police, who had been guilty of recklessly depriving the young men of their lives. There had also been a violation of Articles 3 and 6 of the Convention in this respect.

As regards the Government's contention concerning the six month time-limit under Article 35 § 1 of the Convention, the Court notes that the final decision regarding the criminal proceedings against SG was taken on 17 October 2000, while the second applicant's application was introduced on 13 April 2001. His complaints cannot therefore be rejected as being out of time.

In the light of the parties' observations under Article 2 of the Convention, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. It cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

To the extent that the applicants have also raised the complaint about the alleged ineffectiveness of the investigation into their sons' death under Articles 3 and 6 of the Convention, the Court notes that they essentially repeat their claim submitted under Article 2. The Court finds nothing in the applicant's submissions necessitating a separate examination of the matter under Articles 3 and 6 of the Convention.

For these reasons, the Court unanimously

Declares the applications admissible, without prejudging the merits of the case, insofar as the applicants complain under Article 2 of the Convention.

S. NAISMITH
Deputy Registrar

A.B. BAKA
President