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

THIRD SECTION

DECISION

Application no. 27365/21
Victor LUKK
against Estonia

The European Court of Human Rights (Third Section), sitting on 2 July 2024 as a Committee composed of:

Jolien Schukking*, President*,
Peeter Roosma,
Diana Kovatcheva*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 27365/21) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 May 2021 by an Estonian national, Mr Victor Lukk ("the applicant"), who was born in 1987, lives in Tartu and was represented by Mr K. Kutsar, a lawyer practising in Valga;

the decision to give notice of the application to the Estonian Government ("the Government"), represented by their Agent, Mr T. Kolk, Representative of Estonia to the European Court of Human Rights;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the allegedly unlawful detention of the applicant and the availability of an enforceable right to compensation under Estonian law.

2. The applicant was accused and sentenced in two separate, but to a certain extent parallel, sets of criminal proceedings.

3. On 5 October 2016, following a plea bargain (*kokkuleppemenetlus*), the Tartu County Court convicted him in the first criminal case of larceny and of driving in a state of intoxication and sentenced him to one year and seven months in prison. The sentence was to be calculated as from 1 June 2015, that

is the date when the applicant had been taken into police custody and later placed in pre-trial detention. He was to be released from serving his sentence at the latest on 29 December 2016. In accordance with the judgment, the applicant's pre-trial detention was to be lifted when the judgment at hand entered into force. The parties did not indicate when this judgment entered into force.

4. On 6 October 2016 the Tartu County Court, in the context of the second set of criminal proceedings, decided to place the applicant pre-emptively in pre-trial detention pending his trial in those proceedings. As grounds for detention, the court referred to the risk of the applicant absconding as well as to the risk of his reoffending. That detention was to take effect at the time when the applicant had either served his sentence in the first criminal case or been granted early release from serving the sentence. The applicant's appeals against this decision were dismissed.

5. On 22 December 2016 the Tartu County Court convicted the applicant in the second criminal case of membership of a criminal organisation, of unlawful handling of large quantities of narcotic drugs, of robbery and of trespass on residential premises. The court sentenced him to an aggregate sentence of four years and six months' imprisonment. In doing so, the court considered the lighter sentence imposed in the first case (one year and seven months' imprisonment) to be covered by the sentence imposed in the second case (four years and six months' imprisonment). From that aggregate sentence, the court deducted the imprisonment of one year, six months and twenty-three days imposed in the first criminal case and already served. Thus, as of pronouncement of the judgment on 22 December 2016, the length of the sentence remaining to be served by the applicant was two years, eleven months and seven days. The court considered 22 December 2016 to be the starting date for serving this sentence. Against that background, the applicant's sentence should have been served and he should have been released on 29 November 2019. To secure the enforcement of the judgment, the court placed the applicant under pre-trial detention pending the outcome of the criminal proceedings in that case. The applicant appealed.

6. On 18 September 2018 the Tartu Court of Appeal, after having criticised the first-instance court for deficient analysis of evidence, for providing insufficient reasoning, and after having itself re-assessed certain evidence, partially quashed the conviction by the first-instance court in the second criminal case. The appellate court acquitted the applicant of membership of a criminal organisation, of robbery and partially (regarding some specific episodes) of unlawful handling of large quantities of narcotic drugs. In so far as the Tartu County Court's judgment was upheld, the Tartu Court of Appeal imposed a new sentence of one year's imprisonment on the applicant for the offences tried in the second criminal case. To this sentence, the court added the imprisonment of one year and seven months imposed in the first criminal case, and deemed the lighter sentence to be covered by the

harsher sentence previously imposed, thus reaching the final aggregate sentence of one year and seven months' imprisonment. Since by the time of pronouncement of the judgment the applicant had entirely served the sentence of one year and seven months' imprisonment, the whole sentence had to be considered as served. According to the judgment of the Court of Appeal, the applicant's remand in custody was terminated and he was released when the judgment was delivered on 18 September 2018.

7. The applicant did not appeal against the judgment of 18 September 2018 and it became final on 9 May 2019 when the Supreme Court refused to examine the prosecutor's appeal on points of law.

8. On 27 May 2019 the applicant lodged an application with the Southern District Prosecutor's Office under section 5(4) of the Damage Caused in Offence Proceedings Act (*süüteomenetluses tekitatud kahju hüvitamise seadus*). Under that provision, a person who has been convicted has a right to apply for compensation for damage caused by pre-trial detention (*vahistamisega tekitatud kahju*) if this detention was significantly more burdensome in comparison with the sentence that was finally imposed on that person. The applicant considered this to be his case as, although he had served his sentence by 29 December 2016, he had subsequently remained in custody until 18 September 2018, that is to say until the Tartu Court of Appeal rendered its judgment.

9. The applicant's application for damages was first dismissed by the Southern District Prosecutor's Office and then – following an appeal lodged by the applicant – partially allowed by the Office of the Prosecutor General. This decision was thereafter quashed by the Tartu County Court, which decision the Tartu Court of Appeal, in its turn, quashed. The applicant appealed again.

10. Finally, on 18 December 2020 the Supreme Court quashed the appellate court's decision. Interpreting the relevant provisions of the Damage Caused in Offence Proceedings Act, the Supreme Court found that the applicant should have lodged his application for compensation with the Tartu Court of Appeal already during the second set of criminal proceedings while his appeal was pending before that court. Since he had asked in that appeal to be acquitted, he ought to have foreseen that – if his appeal were to be allowed – he would have grounds to request compensation.

11. The applicant complained under Article 5 § 1 that he had been unlawfully deprived of his liberty between 29 December 2016 and 18 September 2018. He also complained under Article 5 § 5 that his right to obtain compensation had been violated.

THE COURT'S ASSESSMENT

A. Compliance with Article 5 § 1

12. Concerning the applicant's first complaint about the lawfulness of his detention between 29 December 2016 and 18 September 2018, the Court notes that this detention followed from the Tartu County Court's judgment of 22 December 2016 whereby that court convicted the applicant of a number of offences and ordered the applicant's pre-trial detention in order to secure the enforcement of the judgment once it became final (see paragraph 5 above).

13. In that connection the Court agrees with the Government's assertion that the Tartu County Court's earlier decision of 6 October 2016 to place the applicant in pre-trial detention (see paragraph 4 above) never produced legal effects in practice as he had neither served his sentence nor had he been granted early release prior to his conviction in the second criminal proceedings.

14. The Court observes that for the purposes of domestic law the applicant, although convicted by the judgment of the Tartu County Court of 22 December 2016, was to be considered as placed in pre-trial detention (pending the outcome of the second set of criminal proceedings). However, for the purposes of the Convention he was a person convicted by a competent court, pursuant to Article 5 § 1 (a) of the Convention (see *Ruslan Yakovenko v. Ukraine*, no. 5425/11, §§ 46-47 and 52-54, ECHR 2015; and *Meilus v. Lithuania* (dec.), no. 53161/99, 30 May 2002).

15. A period of detention is, in principle, "lawful" if it is based on a court order (see *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 134, 10 April 2018; and *Jėčius v. Lithuania*, no. 34578/97, § 68, ECHR 2000-IX). In the case at hand, the applicant did not argue, either in the domestic proceedings or before the Court, that the decision of the Tartu County Court of 22 December 2016 to place him in pre-trial detention pending the outcome of the criminal proceedings was contrary to the domestic law or that there were any flaws in this decision. He merely argued that his detention was incompatible with Article 5 § 1 (a) owing to the fact that in the appellate proceedings he was partially acquitted and sentenced to a shorter period of imprisonment than in the trial proceedings.

16. While it is true that the Tartu Court of Appeal subsequently partially quashed the applicant's conviction and terminated his pre-trial detention, this very fact did not itself render the underlying period of the applicant's detention "unlawful" within the meaning of Article 5 § 1 of the Convention (see, *inter alia*, *Tsvetkova and Others*, cited above, § 134, with further references). The applicant's contention that he was acquitted of graver offences and convicted only of offences of lesser gravity has no bearing on this conclusion.

17. Given the grounds relied on by the Tartu Court of Appeal when partially quashing the first-instance judgment, the Court does not find it established that the applicant's pre-trial detention was "unlawful", such as being tainted by a "gross and obvious irregularity" (compare and contrast *Tsvetkova and Others*, cited above, §§ 134-37). Furthermore, it does not appear that the applicant's detention was in any manner arbitrary (see *Ruslan Yakovenko,* cited above*,* §§ 59-60), for example as resulting from the proceedings being described as a flagrant denial of justice (see *Hammerton v. the United Kingdom*, no. 6287/10, §§ 98-99, 17 March 2016). Unlike the case of *Ruslan Yakovenko,* the Tartu Court of Appeal was not (at the time of convicting the applicant) faced with the situation where the applicant's pre-trial detention risked exceeding his outstanding imprisonment term (compare *Ruslan Yakovenko,* cited above*,* § 54; see also *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, §§ 143-50, 3 December 2015).

18. While the domestic law provides for an opportunity to claim compensation for damage caused by pre-trial detention (see paragraph 8 above), the Court is satisfied by the Government's explanation that this possibility provided by the legislature does not operate to the effect that the detention of a person who has subsequently been (partially or entirely) acquitted is considered "unlawful" by virtue of that law (compare and contrast *Norik Poghosyan v. Armenia*, no. 63106/12, §§ 33-36, 22 October 2020).

19. Accordingly, the Court is satisfied that although the applicant's second conviction was partially quashed on appeal, leading to the termination of his pre-trial detention, considering that he had already served the term to which he had been sentenced, his detention was nonetheless in compliance with the requirements of Article 5 § 1 (a) of the Convention. In these circumstances, the Court finds that the applicant's complaint about his detention between 29 December 2016 and 18 September 2018 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Compliance with Article 5 § 5

20. The right to compensation under Article 5 § 5 of the Convention arises only if a breach of one of its other four paragraphs – Article 5 § 1 in the present case – has been established, directly or in substance, either by the Court or by the domestic courts (see *Norik Poghosyan,* cited above, § 31).

21. In the present case, no such breach of Article 5 § 1 has been established by the domestic courts or by the Court. In view of that finding, the Court concludes that Article 5 § 5 is not applicable to the facts of the present case. It follows that the applicant's complaint under Article 5 § 5 is incompatible *ratione materiae* with the provisions of the Convention within

the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 September 2024.

Olga Chernishova Deputy Registrar	Jolien Schukking President