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

SECOND SECTION

DECISION

Application no. 41738/19
Rinat NASYROV
against Lithuania

The European Court of Human Rights (Second Section), sitting on 12 March 2024 as a Committee composed of:

Pauliine Koskelo*, President*,
Egidijus Kūris,
Frédéric Krenc*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 41738/19) 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 23 July 2019 by a Russian national, Mr Rinat Nasyrov ("the applicant"), who was born in 1960 and lives in the Russian Federation and who was represented by Mr L. Belevičius, a lawyer practising in Vilnius;

the decision to give notice of the application to the Lithuanian Government ("the Government"), represented by their Agent, Ms K. Bubnytė-Širmenė,

the parties' observations;

the indication by the Russian Government that they did not wish to exercise their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaint under Article 2 of Protocol No. 4 to the Convention that the authorities unfairly refused to allow him to leave Lithuania during criminal proceedings in which he was suspected of trading in influence in order to obtain a Lithuanian multiple-entry visa.

2. On 1 April 2019 the authorities opened a pre-trial investigation under Article 226 of the Criminal Code (trading in influence), on suspicion that the

applicant, a Russian citizen, had sought to acquire a Lithuanian multiple-entry visa for three years for himself and his family members through intermediaries, namely Lithuanian citizens A.B. and R.Š. (the latter being the former Ambassador of the Republic of Lithuania to the Russian Federation), and that in March 2019 he had offered and agreed to give a bribe of 10,000 euros (EUR) to the Ambassador of the Republic of Lithuania to the Russian Federation, R.M.

3. The applicant was arrested in Lithuania on 7 April 2019, and two days later a district court authorised his remand in detention until 20 April 2019. When questioned as a suspect on 16 April, he pleaded not guilty.

4. On 18 April 2019 the Vilnius Regional Court dismissed an appeal by the applicant and upheld his detention. The suspicion regarding the applicant was based on recordings of telephone conversations of 18 March 2019 and 27 March 2019 between the applicant and A.B. and R.Š, when they had discussed coordinating with persons who would be able to arrange the issue of visas to the applicant and his family, about how long the visas would be valid for and how much would be paid for them, using such phrases as "a little bribe will be necessary", "I will tell you the figure later ", and "ten will be needed".

5. The paramount criteria when deciding to remand the applicant in detention were his (lack of) connection to Lithuania and the need to ensure that he would remain in Lithuania throughout the proceedings. The applicant was a foreign citizen and he had no social or economic connection to Lithuania except for the EU visa he had obtained and because of which he was a suspect. There was a possibility that the applicant would abscond – he was married, he worked, and he had his permanent place of residence in the Russian Federation. Even though an apartment in Lithuania had been rented for the applicant, the rent agreement did not ensure that the suspect would not abscond and go into hiding in Russia or in another country. The court essentially agreed that, if the case went to trial, it was very likely that the applicant would be given a fine, as sentence. Even so, the court did not agree that setting bail at EUR 30,000, as proposed by the applicant's lawyer, would be an appropriate condition, since if the applicant absconded the interests of the State would not be satisfied, as those interests were not in receiving financial benefits but rather ensuring the due administration of justice. Similarly, if the applicant absconded, Lithuania could issue a European Arrest Warrant: however, it would be a costly and lengthy process and again would not meet the State's primary interest of ensuring the due administration of justice. The court also did not consider that setting bail at EUR 30,000, in combination with other, less severe remand measures, could guarantee the effectiveness of the criminal proceedings, because the loss of such a sum of money would not be significant to the applicant. The grounds for detention on remand listed in Articles 119 and 122 of the Code of Criminal Procedure – that the applicant, as a suspect, could attempt to flee justice if not detained

– and thus the aims of the remand measure, i.e. to guarantee his participation in the criminal proceedings, and that those proceedings would be unhindered by the applicant's absence, remained valid.

6. On 19 April 2019 the prosecutor decided to release the applicant from detention and to impose other restrictive measures: the applicant was required to surrender his identity documents, including his Russian passport, and to provide a written undertaking not to leave his place of residence in Vilnius and to lodge EUR 30,000 as security for bail.

7. On 29 April 2019 the prosecutor allowed the applicant to temporarily leave Lithuania from 30 April 2019 to 6 May 2019 in order to participate in a shareholders' meeting in Russia. That decision was cancelled by a higher prosecutor on 30 April 2019, but, as transpires from the parties' observations, the applicant had already left Lithuania at 10:33 a.m. that day. He returned to Lithuania at 7:39 p.m. on 5 May 2019, and, as noted by the Government, he was informed about the higher prosecutor's decision the following day.

8. On 17 and 20 May 2019 a pre-trial judge questioned the applicant.

9. Following the applicant's request that, in return for a higher bail, the other remand measures would be annulled, on 27 May 2019 the prosecutor set the applicant's bail at EUR 80,000, of which EUR 50,000 would be paid by the applicant's friend I.D. The prosecutor stated that there were no grounds to annul the other remand measures: the applicant had strong social ties in Russia, where his residence, business, property and family were. Should the remand measures be lifted and the applicant leave for Russia, it was "very probable" that he would not return to Lithuania to continue to participate in the proceedings. The payment of a large sum of money (EUR 50,000) as a condition of bail demonstrated the applicant's good financial position and the insignificance to him of transferring that amount to Lithuania. The applicant's need to take part in business meetings in Russia could be satisfied via teleconference.

10. The applicant's appeal was dismissed on 7 June 2019 by a higher prosecutor, who agreed that the likelihood that the applicant would not return to Lithuania should the remand measures be cancelled was "extremely high". Besides, under Article 7 § 1 of the 1959 European Convention on Extradition, to which Lithuania and Russia are party, a State may refuse an extradition request if the offence is treated under its law as having been committed in whole or in part in its own territory, as would be the situation in the applicant's case.

11. On 21 June 2019 the Vilnius City District Court dismissed the applicant's complaint against the higher prosecutor's decision of 7 June 2019, noting that the most severe restrictive measure – remand in detention – had been cancelled. Nevertheless, as there was a possibility that the applicant might obstruct the proceedings or try to influence other individuals, other, more lenient restrictive measures had been imposed. The applicant's lack of social connections in Lithuania, and his interests being located in Russia,

remained unchanged. Besides, a person who had committed a crime which also breached international treaties could not reasonably expect to enjoy the same extent of rights as those who abide by the law. The applicant's argument that the increase in the sum set for bail had been detrimental to him was not valid: it had been the applicant's friend, who, at the suggestion of the applicant's lawyer, had transferred the additional EUR 50,000 to the account of the Office of the Prosecutor General. The court noted that the applicant could have asked the prosecutor to set bail at EUR 30,000 so that he could return the EUR 50,000 to I.D.; however, the applicant had not availed himself of that opportunity.

12. On 28 June 2019 the prosecutor granted a request by the applicant for his passport to be returned to him for one day so that he could authorise a third person to represent the applicant's business interests in Russia.

13. On 23 July 2019 the pre-trial investigation was declared to have been completed and the parties could get acquainted with the investigation material.

14. On 19 August 2019 the prosecutor received notification from the applicant's lawyer that the applicant would reside temporarily in the resort town of Palanga between 19 and 25 August 2019.

15. On 23 August 2019 the prosecutor declined a request by the applicant to be allowed to go temporarily to Russia between 5 and 27 September 2019 in order to take part in a bank shareholders' meeting, where the applicant wished to represent his interests in person: the grounds for the remand measures remained unchanged, the documents the applicant provided did not show any urgent need for him to travel to Russia, and the business issues could be resolved via teleconference or by authorising other individuals to act on his behalf. At that point the indictment was being drawn up, and it would have to be served on the applicant.

16. That decision was upheld on 29 August 2019 by the higher prosecutor, who found a sufficient likelihood that the applicant would not return to Lithuania.

17. On 29 August 2019 the indictment was drawn up.

18. On 10 September 2019 the Vilnius City District Court declined a request by the applicant to be permitted to leave Lithuania to go to Russia for the period between 12 and 27 September 2019, having noted that the applicant had been accused of a crime of medium severity and could be imprisoned for up to four years. He was a Russian citizen, had no strong social ties in Lithuania, and his business and family were in the Russian Federation. To the court, it was obvious that the applicant would only return to Lithuania if he decided that it was beneficial to continue to participate in the criminal proceedings. Although the applicant had previously gone to Russia and returned, at that time the prosecutor's permission had been given while the applicant was still a suspect. Currently his status had changed to that of an accused person, the case had already been transferred to court, and the

applicant's legal situation was therefore more complicated. The applicant was wealthy, and bail of EUR 80,000 was not such a large sum as to ensure the applicant's participation in the court proceedings. The applicant's participation in business activities in Russia did not take precedence over the provisions Article 119 of the Code of Criminal Procedure, which were designed to ensure an accused person's participation in court proceedings.

19. On 1 October 2019 the court granted a request by the applicant to be allowed to temporarily reside in Palanga for two weeks.

20. On 22 October 2019 the Vilnius City District Court granted a request by the applicant for the return to him of his passport for one day so that he could give an authorisation at the Russian embassy to a third person to act on his behalf.

21. The court also granted a further request of the applicant and changed the existing remand measures – an undertaking not to leave his place of residence and the surrender of his passport – to bail of EUR 300,000. The applicant was ordered to pay the remaining sum of EUR 220,000, which he did, and on 24 October 2019 his Russian Federation passport was returned to him.

22. For the court, although the prior remand measures had been justified given the applicant's procedural status as the accused and the fact that he was wealthy, it was equally the case that without being able to leave Lithuania he could not take care of his business interests in Russia. A request had also been made in the criminal case for certain matters regarding the Law on Intelligence to be referred to the Constitutional Court, which could result in those criminal proceedings being protracted for objective reasons. The applicant himself proposed that bail be set at EUR 300,000; this particularly high sum was sufficient to ensure that the applicant would take part in the criminal proceedings in Lithuania.

23. The applicant's case was subsequently transferred to the Vilnius City District Court for trial. Seven hearings were held between 21 October 2019 and 2 October 2020 with the applicant's participation, including remotely in the last hearing, when he refused to give evidence. The applicant had been away from Lithuania for several periods of varying length between 25 October 2019 and 3 March 2020, when he left Lithuania and had not returned (according to the applicant because of restrictions related to the global Covid-19 pandemic). According to the latest information submitted by the Government, the proceedings appear to be still pending in the Vilnius City District Court.

24. Under Article 2 of Protocol No. 4 to the Convention the applicant complained that he had been unable to leave Lithuania during the criminal proceedings, even though he had family in the Russian Federation and also business interests there which occasionally required his presence in that country.

THE COURT'S ASSESSMENT

25. The Court reiterates that Article 2 of Protocol No. 4 to the Convention guarantees to any person a right to liberty of movement, including the right to leave any country for such other country of the person's choice to which he or she may be admitted. Any measure restricting that right must be lawful, pursue one of the legitimate aims referred to in the third paragraph of the above-mentioned Convention provision and strike a fair balance between the public interest and the individual's rights (see *Baumann v. France*, no. 33592/96, § 61, ECHR 2001-V, and *Riener v. Bulgaria*, no. 46343/99, § 109, 23 May 2006).

26. The Court notes that the applicant was prohibited from leaving Lithuanian territory for the first time on 19 April 2019 and that that measure was lifted on 22 October 2019 (see paragraphs 6 and 20 above). It therefore remained in force for six months. It was not disputed by the parties that there had been an interference with the rights conferred on the applicant by Article 2 of Protocol No. 4.

27. The Court sees no reason to question the domestic courts' finding that requiring the applicant to give an undertaking not to leave his place of residence in Lithuania and obliging him to surrender his Russian passport was compatible with domestic law – Articles 119 and 122 of the Code of Criminal Procedure (see paragraphs 5 *in fine* and 18 *in fine* above; see also, *mutatis mutandis*, *Antonenkov and Others v. Ukraine*, no. 14183/02, §§ 55-57, 22 November 2005).

28. The Court equally finds that the disputed measures pursued the legitimate aim of securing the applicant's availability for trial, and hence the maintenance of public order (compare also *Popoviciu v. Romania*, no. 52942/09, § 87, 1 March 2016).

29. With regard to the proportionality of the restriction, the Court first notes that the applicant was charged with a criminal offence punishable by imprisonment (see paragraph 18 above). It reiterates that the Convention permits States, in certain circumstances, to apply preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution. An obligation not to leave an area of residence may be a proportionate restriction on an accused's liberty (see *Antonenkov and Others*, cited above, §§ 59-61). Nevertheless, even were it justified at the outset, a measure restricting an individual's freedom of movement may become disproportionate and breach that individual's rights if it is automatically extended over a long period (see *Gochev v. Bulgaria*, no. 34383/03, §§ 49 and 50, 26 November 2009, with further references).

30. In determining whether the measures restricting the applicant's rights struck a fair balance between the public interest and the applicant's rights the Court observes at the outset that these measures were imposed by a court in the course of proceedings which provided all the appropriate procedural

safeguards. The applicant had the opportunity to challenge those measures in the courts, pleading that they prevented him from pursuing his business, which involved travel abroad (compare *Popoviciu*, cited above, § 92). The prosecutors and courts examined his complaint thoroughly and found that the restriction on the applicant's freedom of movement was justified by specific circumstances – a reasonable likelihood that the applicant would flee from justice in Lithuania on account of his lack of strong social ties in the country (see paragraphs 9, 10 and 18 above). The Lithuanian authorities further referred to the nature of the criminal offence of which the applicant had been suspected and later accused (see paragraphs 11 and 18 above). The Court therefore finds that the imposition and maintenance of the restrictions – requiring that the applicant surrender his identity documents and give an undertaking not to leave his place of residence in Lithuania – was repeatedly reassessed and weighty specific reasons relating to the proper administration of justice were given. The Lithuanian authorities were not insensitive to the applicant's arguments that he had business interests in the Russian Federation; however, they found that those could be managed by teleconference or by proxies (see paragraphs 9 *in fine* and 12 above).

31. The measures restricting the applicant's freedom to leave Lithuania lasted for approximately six months (see paragraph 26 above; compare and contrast *Prescher v. Bulgaria*, no. 6767/04, § 47, 7 June 2011; *Riener*, cited above, § 106), and during that time he was able to temporarily change his place of residence from Vilnius to Palanga several times (see paragraphs 14 and 19 above), and he once left the country before returning (see paragraph 7 above). On this last point the Court finds that although the permission to leave for the Russian Federation was revoked by a higher prosecutor and the applicant was not informed about that decision before leaving Lithuania, contrary to the applicant's assertion the law enforcement authorities did not base their later decisions on that point (see paragraphs 7 and 9 et seq. above). The Court also notes that one of the grounds for maintaining the restrictive measures was the applicant's wealth, the court having considered that the sum at which bail was set was not sufficient to ensure his participation in the criminal proceedings (see paragraph 18 above). Furthermore, whilst acknowledging that the restriction on the applicant's freedom to leave Lithuania had implications on the applicant's family life, the Court nevertheless takes into account the relatively short duration of the measure.

32. The Court also does not overlook that the domestic court lifted the restrictive measures as soon as it considered that they were no longer necessary for the proper administration of justice, because they could otherwise have imposed a disproportionate burden on the applicant, although the criminal proceedings against him were still pending (see paragraph 20 above).

33. In view of the foregoing, the Court cannot find that the applicant was subjected to measures applied automatically, with no limitation as to their

scope or duration (contrast *Gochev*, cited above, §§ 55-57). It concludes that the Lithuanian authorities struck a fair balance between the public interest in a proper conduct of the criminal proceedings and the applicant's personal interest in enjoying freedom of movement in the circumstances of his case. Those authorities have thus not failed in their obligation under Article 2 of Protocol No. 4 to the Convention to ensure that any interference with an individual's right to leave a country is, from the outset and throughout its duration, justified and proportionate in the light of the circumstances.

34. Accordingly, this complaint must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 April 2024.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President