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

FOURTH SECTION

DECISION

Application no. 55109/15
Mindaugas RAGULSKIS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 3 July 2018 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Motoc, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 27 October 2015,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mindaugas Ragulskis, is a Lithuanian national, who was born in 1973 and serves his sentence in Pravieniškės Correctional Facility. He was represented before the Court by Ms E. Rybelienė, a lawyer practising in Kaunas.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė-Širmenė.

A. The circumstances of the case

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

4. The applicant was held in pre-trial detention in Kaunas Remand Prison from 23 May 2009 until 15 December 2011.

5. On 14 January 2014 he lodged a complaint with the Kaunas Regional Administrative Court and complained, among other issues, about not being able to receive long-term visits from his wife.

6. On 13 May 2014 the Kaunas Regional Administrative Court dismissed the applicant's complaint about the lack of long-term visits, stating that, in accordance with domestic law, remand prisoners could not receive them.

7. The applicant appealed and on 12 March 2015 the Supreme Administrative Court decided to re-examine the case.

8. On 10 July 2015 the Supreme Administrative Court stated that remand prisoners did not have a right to long-term visits, and that this restriction was reasonable.

9. Between 23 May 2009 and 15 December 2011, the applicant was granted ninety-five short-term visits, out of which forty-seven were with his spouse.

10. According to the information available to the Court, the applicant never requested to the prison authorities permission to receive long-term visits from his wife.

B. Relevant domestic law and practice

11. For relevant domestic law regarding visits, see *Čiapas v. Lithuania* ((dec.) no. 62564/13, §§ 10-14 and 16, 4 July 2017).

12. In a case unrelated to that of the applicant, the Supreme Administrative Court held that the refusal of long-term visits had breached Article 8 of the Convention, and awarded the claimant in that case 2,000 euros (EUR) in compensation (decision of 19 April 2016, no. A-618-552/2016).

13. In cases unrelated to that of the applicant, the Supreme Administrative Court held that direct application of the Convention meant that its provisions could be invoked directly before the courts of the Republic of Lithuania and that the Convention should prevail over domestic law conflicting with it (decisions of 14 April 2008, no. A-575-164/08 and of 18 April 2008, no. A-248-58/08).

COMPLAINTS

14. The applicant complained under Article 8 of the Convention about his inability to receive long-term visits from his spouse while detained on remand in Kaunas Remand Prison. He also complained under Article 14, taken in conjunction with Article 8, that he had been discriminated against *vis-à-vis* convicted inmates, who had the right to receive such visits.

THE LAW

15. The applicant complained under Article 8 that not being allowed conjugal visits from his former spouse during his pre-trial detention had caused him intolerable mental and physical suffering. He also complained under Article 14, taken in conjunction with Article 8, that his entitlement in that respect had been restricted more than that of a convicted inmate.

In so far as relevant, Articles 8 and 14 read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The parties' submissions

16. The Government maintained that the applicant had failed to lodge a complaint with the domestic courts and claim compensation regarding his complaints. They further submitted that after the Court's judgment in *Varnas v. Lithuania* (no. 42615/06, 9 July 2013), the provisions of the Convention and of domestic law had started to conflict with each other. As indicated by domestic case-law (see paragraph 13 above), the applicant could have invoked the provisions of the Convention directly before the domestic courts.

17. The Government also argued that the domestic courts had established an effective domestic compensatory remedy, namely that the Supreme Administrative Court had taken account of differences in treatment between remand detainees and convicted people when it came to long-term visits, had found violations and awarded compensation (see *Čiapas v. Lithuania* (dec.), no. 62564/13, § 16, 4 July 2017 and paragraph 12 above).

18. Finally, the Government stated that the applicant had never asked the prison administration to grant him long-term visits. He had only raised this hypothetical issue before the domestic courts, omitting to formulate a plea of discrimination.

19. The applicant argued that he could only maintain his ties with his family during short-term visits and that due to the lack of long-term visits, his family had almost broken. He further claimed that long-term visits were necessary to maintain a social and physical connection with his wife, and that there were no reasons, why long-term visits should be denied.

20. Finally, the applicant submitted that he had addressed the Kaunas Remand Prison administration both orally and in writing and asked for long-term visits but that it was explained to him that such visits were not available to persons detained on remand.

B. The Court's assessment

21. The Court finds that it is not necessary to address all the issues raised by the parties because the application is in any event inadmissible for the following reasons.

22. The Court reiterates that in order to rely on Article 34 of the Convention an applicant must meet two conditions: he or she must fall into one of the categories of applicants mentioned in Article 34 and must be able to make out a case that he or she is the victim of a violation of the Convention. According to the Court's established case-law, the concept of "victim" must be interpreted autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 35, ECHR 2004-III). The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts)).

23. In the present case, the Court notes that the applicant never explicitly requested any long-term visits from his wife (see paragraphs 10 and 18 above). He was granted a number of short-term visits (see paragraph 9 above). The Court observes that the applicant neither claimed to have encountered any difficulties in exercising his right to short-term visits nor had he applied for long-term visits while in Kaunas Remand Prison.

24. The applicant therefore cannot be said to have suffered from the lack of long-term visits. It follows that the applicant cannot claim to be a victim of the alleged violation of Article 8 of the Convention in so far as he complained about the lack of long-term visits from his wife (see, *mutatis mutandis*, *Kazlauskas v. Lithuania* (dec.), no. 13394/13, § 34, 11 July 2017).

25. Having regard to the above, the Court finds that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

26. The Court lastly notes that the applicant's complaint about his alleged discrimination is closely linked to his complaint under Article 8

examined above. Consequently, taking into account its findings above, the Court considers that the applicant cannot claim to be victim, within the meaning of the Convention, of a violation of his rights guaranteed by Article 14. Therefore this part of the application is likewise incompatible *ratione personae* with the provisions of the Convention and must be dismissed pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 July 2018.

Andrea Tamietti
Deputy Registrar

Paulo Pinto de Albuquerque
President