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

SECOND SECTION

DECISION

Application no. 8365/16
Edgar SAVISAAR
against Estonia

The European Court of Human Rights (Second Section), sitting on 8 November 2016 as a Chamber composed of:

Işıl Karakaş, *President,*
Nebojša Vučinić,
Paul Lemmens,
Valeriu Griţco,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Georges Ravarani, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 February 2016,

Having deliberated, decides as follows:

# THE FACTS

1. The applicant, Mr Edgar Savisaar, is an Estonian national who was born in 1950 and lives in Lääne-Virumaa. He is represented before the Court by Mr Oliver Nääs, a lawyer practising in Tallinn.

## A. The circumstances of the case

2. The facts of the case, as submitted by the applicant and as they appear from the material before the Court, may be summarised as follows.

3. The applicant, who had been the mayor of Tallinn since 9 April 2007, was re-elected to the Tallinn city council on 20 October 2013 and on 14 November 2013 the city council re-elected him as mayor. On the same date the city council confirmed the appointment to office of the members of

the municipal government, thereby giving the applicant the authority to exercise his mayoral powers.

4. On 22 September 2015 the applicant was arrested on suspicion of accepting substantial bribes. On 23 September 2015 the applicant was prohibited from leaving his place of residence as a preventive measure. It does not appear from the materials before the Court how long those measures were in force.

5. On 23 September 2015 the State Prosecutor's Office petitioned the Harju County Court to suspend him from office as a precautionary measure. The petition detailed numerous acts which had been investigated and which were deemed to constitute a criminal offence. It was noted in the petition that all the acts in question related to the applicant's service as mayor of Tallinn and the issuing of instructions to persons employed by the Tallinn city government in abuse of his office. The State Prosecutor's Office found that there was reasonable suspicion that he had committed a criminal offence and that if he continued to serve as mayor he might i) destroy or conceal documentary evidence, or ii) create new evidence seeking to justify the said acts, or iii) influence officials of the Tallinn municipal government to give witness testimony that would be favourable to him.

6. On 23 September 2015 a hearing was held in Harju County Court to ensure the applicant's rights of defence. This hearing was postponed to 24 September 2015 in order to allow the State Prosecutor's Office to provide the applicant with a copy of its petition.

7. On 30 September 2015 the Harju County Court adopted a decision suspending the applicant from the office of mayor of Tallinn for the duration of the criminal proceedings. The first-instance court determined that there was sufficient evidence to warrant reasonable suspicion that the applicant had committed the crime of repeatedly accepting bribes for his own benefit and also for the benefit of his political party. In arriving at this conclusion, the court examined all the evidence in the case as provided by the State Prosecutor's Office. This body of evidence consisted of surveillance reports and extracts from bank statements. The first-instance court did not agree that there was a risk that the applicant might destroy or conceal documentary evidence, as all such evidence had been seized by the authorities during the search of his home and his cars. Nor did it agree that the applicant might create new evidence to justify the said acts. The court did agree, however, that there was a risk that the applicant might influence municipal officials to give favourable witness testimony if he were to continue to serve as mayor. The court found this suspicion substantiated by surveillance reports providing evidence of the applicant issuing instructions to municipal officials to engineer favourable resolutions to the problems of people who had promised him certain benefits. In the light of the specific nature of the alleged crimes and the manner in which the crimes were committed, the court held that there was reason to believe that the applicant

might commit offences impeding the administration of justice and thus hamper the effective conduct of proceedings. Given the importance of preventing any such obstruction of justice, the court deemed this risk sufficient to justify the applicant's suspension from office.

8. The applicant's suspension from office entailed the temporary loss of his remuneration as mayor.

9. On 12 October 2015 the applicant filed an appeal against the decision of the Harju County Court, requesting that the decision of the first-instance court be quashed. The applicant argued that the decision did not contain sufficient reasons explaining how he could influence witnesses if he were to continue to serve as mayor. He further argued that the suspension from office was a disproportionate measure for the purposes of achieving the State Prosecutor's Office's objective.

10. On 22 October 2015 an oral hearing was held in the Tallinn Court of Appeal. The State Prosecutor's Office submitted to the appellate court all gathered evidence forming the basis for a reasonable suspicion of a criminal offence. At the hearing the applicant's defence counsel submitted a request for permission to examine this evidence, since in his opinion the Convention guaranteed defence counsel the right to examine such material. The Court of Appeal noted that in his appeal the applicant had not challenged the existence of reasonable suspicion and held that this request was therefore beyond the scope of the appeal. The defence counsel further stated that he wanted to examine the evidence forming the basis for the prosecutor's belief that the applicant would influence witnesses. The prosecutor argued that the defence counsel had not made any such request in the first-instance court, even though the latter was aware that the first-instance court had also examined all the evidence gathered in the case. The request was therefore not admissible in the appeal proceedings. The prosecutor also argued that the defence counsel's right to examine evidence could be restricted in these proceedings, which concerned only the applicant's suspension from the office of mayor. He further submitted that the court's task was to determine whether sufficient evidence had been gathered in support of his suspension from office.

11. The court of appeal dismissed as premature the request for access to all the evidence on the grounds that it was not until the end of the investigation in the criminal case that the applicant was legally entitled to be acquainted with all the evidence gathered in the case. It also held that the applicant's counsel was in a position to defend him in the proceedings concerning his suspension from office.

12. On 23 October 2015 the Tallinn Court of Appeal upheld the first-instance court's decision to suspend the applicant from office. The appeal court noted that the first-instance court had based its assessment of the risk that the applicant might influence witnesses on the evidence presented in the surveillance reports. It had also considered the substantial

power and influence that the office of mayor gave him over his subordinates, the specific nature of the offences, and the manner in which they had allegedly been committed. This included evidence of the applicant issuing instructions to certain witnesses to secure the benefits promised to various individuals in return for bribes. The appellate court noted that it was not possible to give a detailed account of the circumstances described in the surveillance reports as this might prejudice the criminal proceedings. The appellate court found that, based on the information in those reports, the suspect might have influenced witnesses and the testimony they were going to give in court. The Court of Appeal also stated that it had examined the evidence contained in the surveillance reports and agreed with the first-instance court's assessment that the evidence was indicative of the applicant's behaviour in the past and thus allowed the applicant's future behaviour to be predicted. It concluded that the risk that the applicant would prejudice the proceedings and continue to commit offences against the administration of justice had been sufficiently demonstrated and that suspension from office was a proportionate measure.

13. On 2 November 2015 the applicant filed an appeal with the Supreme Court against the decision of the Tallinn Court of Appeal. In addition to the arguments in the first appeal, the applicant argued that the proceedings to suspend him from office had not been adversarial and fair, thereby breaching the civil limb of Article 6 § 1 of the Convention. The applicant had asked the Court of Appeal to allow him to examine the evidence forming the basis for the belief that the applicant might influence witnesses, but that request had been rejected.

14. On 1 December 2015 the Supreme Court declined to examine the appeal.

15. At the time of submission of the present application the pre-trial proceedings were still ongoing.

## B. Relevant domestic law

16. Under section 28 (3) of the Local Government Organisation Act a city or rural municipality mayor acquires the authority prescribed by law and in the by-laws of the respective rural municipality or city with effect from the date on which the appointment of the government to office is confirmed.

17. Article 141 (1) of the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) provides:

**§ 141. Suspension from office of a suspect or an accused**

"(1) A suspect or accused shall be suspended from office at the request of a prosecutor's office and on the basis of an order of a preliminary investigation judge or on the basis of a court order if:

1) he or she may continue to commit criminal offences if he or she remains in office;

2) his or her remaining in office may prejudice the criminal proceedings."

18. Article $141^2$ of the Code of Criminal Procedure provides in its relevant parts:

**§ $141^2$ Review of reasons for suspension from office or temporary restraining order**

"(1) A suspect or accused or his or her counsel may, upon the expiry of four months from the suspension from office or application of a temporary restraining order, submit a request to a preliminary investigation judge or court to review the reasons for the suspension from office or application of a temporary restraining order or to amend the conditions of application of such a temporary restraining order. A new request may be submitted four months after the review of a previous request.

...

(2) A preliminary investigation judge or court shall review such a request within five days of the receipt thereof. The prosecutor, suspect or accused and, at the request of the suspect or accused, his or her counsel shall be summoned before the preliminary investigation judge or court. ...

...

(3) Such a request shall be adjudicated by a court ruling. A ruling made in the context of reviewing such a request is not amenable to appeal ..."

19. In its judgment of 15 January 2016 in constitutional review case no. 3-4-1-30-15 the Supreme Court ruled that a city or rural municipality mayor who has been suspended from office continues to be the holder of the office of mayor during the period of suspension but is not authorised to exercise any mayoral powers.

## COMPLAINT

20. The applicant complained under the civil limb of Article 6 § 1 that his right to a fair trial had been violated by the courts' refusal to allow him to examine the evidence forming the basis for the assumption that he might influence witnesses and therefore had to be suspended from office.

## THE LAW

21. The applicant complained that in the court proceedings related to his suspension from office he was not allowed to examine all the evidence submitted to the court and alleged a breach of Article 6 § 1 of the Convention, which reads in its relevant part as follows :

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...)
>
> (...)"

22. The Court observes at the outset − and the applicant himself did not contest − that the criminal limb of Article 6 § 1 of the Convention does not apply to the proceedings in question because they were not concerned with the determination of any criminal charge against the applicant (see *Buterlevičiūtė v. Lithuania*, no. 42139/08, §§ 12 and 33, 12 January 2016, which concerned suspension from a post under circumstances similar to those in the present case).

23. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "right" which can be said – at least on arguable grounds – to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious, it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise and, finally, the result of the proceedings must be directly decisive as regards the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among other authorities, *Baka v. Hungary* [GC], no. 20261/12, § 100, 23 June 2016). Lastly, the right must be a "civil" right.

24. In the present case the Court observes that the applicant acquired the right to exercise mayoral powers by virtue of his election as mayor and the subsequent confirmation of the appointment of the members of the city government (see paragraphs 3 and 16 above). The Court has no reason to doubt that the dispute over the question of whether the applicant should be suspended from office and thus suspended from the exercise of his mayoral powers was genuine and serious. It also notes that the court proceedings were directly decisive as regards the question of whether the applicant could continue to exercise those powers.

25. What remains to be assessed is the matter of whether the right in question can be categorised as "civil" within the meaning of Article 6 § 1 of the Convention. In this connection the Court reiterates that whether or not a right is to be regarded as civil within the meaning of that term in the Convention must be determined by reference not only to its legal classification but also to its substantive content and effects under the domestic law of the State concerned (see *Perez v. France* [GC], no. 47287/99, § 57, ECHR 2004-I).

26. The Court observes that the dispute in the present case concerned the applicant's right to continue to exercise his mayoral powers. The Court also observes that this right was conferred upon the applicant by the city council, who elected him as mayor and subsequently confirmed the appointment of the city government (see paragraphs 3 and 16 above). The city council is

itself an elected representative body to which the applicant had been elected by the voters of the city of Tallinn. The right in question therefore concerns the exercise of political power gained through elections and is thus a political one and not a "civil" one within the meaning of Article 6 § 1. The Court therefore considers that disputes relating to the exercise of this right lie outside the scope of the civil limb of Article 6 § 1 (see *Hoon v. the United Kingdom* (dec.), no. 14832/11, §§ 28-30, 13 November 2014; see, *mutatis mutandis*, *Pierre-Bloch v. France*, 21 October 1997, § 50, *Reports of Judgments and Decisions* 1997-VI, which concerned, *inter alia*, proceedings affecting the right of an elected member of a representative body to keep his seat).

27. The Court notes that in the proceedings in question the applicant's pecuniary interests were also at stake (see paragraph 8 above). This economic aspect of the proceedings in issue does not, however, make them "civil" within the meaning of Article 6 § 1 (see, *mutatis mutandis*, *Ferrazzini v. Italy* [GC], no. 44759/98, § 25, ECHR 2001-VII; *Papon v. France* (dec.), no. 344/04, ECHR 2005-XI). The right to receive remuneration is in the present case simply a corollary of the right to serve as a mayor. The core of the dispute in the proceedings at hand concerned the question of whether, by serving as mayor, the applicant might continue to exercise political power gained through elections. In addition, the applicant did not complain that the temporary loss of his salary had caused any hardship as regards his personal situation.

28. In the light of the above considerations, the Court finds that Article 6 of the Convention was not applicable to the proceedings in question. It follows that the applicant's complaint is incompatible *ratione materiae* with Article 6 § 1 of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4.

For these reasons, the Court by a majority

*Declares* the application inadmissible.

Done in English and notified in writing on 1 December 2016.

Hasan Bakırcı
Deputy Registrar

Işıl Karakaş
President