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

SECOND SECTION

DECISION

Application no. 5862/19
Oleg STEPANOV
against Lithuania

The European Court of Human Rights (Second Section), sitting on 22 June 2021 as a Committee composed of:

Carlo Ranzoni, *President,*
Egidijus Kūris,
Pauliine Koskelo, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 January 2019,

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 was born in 1981. He is detained in the United Kingdom (see paragraph 22 below). The applicant was represented by Mr R. Mikulskas, a lawyer practising in Vilnius.

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

A. The circumstances of the case

3. By a judgment of 23 February 2012 the Vilnius Regional Court found the applicant guilty of burglary, and sentenced him to one year's imprisonment. The court added that sentence to the applicant's prior conviction of 2005, and set the final sentence to two years' imprisonment, to be served in a correctional home. The judgment became effective on 23 February 2012.

4. On 11 April 2012 the Vilnius City First District Court sent the judgment of conviction to the police authorities for execution.

5. On 9 May 2012 the applicant's search was announced by the police, who informed the Vilnius City First District Court about it.

6. On 7 May 2012 the applicant appealed against the judgment of 23 February 2012, and also asked the Supreme Court to suspend the execution of his sentence. The Supreme Court granted the request, and the execution of the sentence was suspended until the Supreme Court dismissed the applicant's appeal on points of law on 30 October 2012.

7. It transpires from the minutes of the Supreme Court's hearing of 25 September 2012 that both the applicant and his lawyer were present at that hearing. The minutes of that hearing also state that the Supreme Court was to announce its verdict on 30 October 2012.

8. On 7 November 2012 the Vilnius City First District Court sent the Supreme Court's ruling to the police for the execution of the sentence.

9. On 23 November 2012 the applicant and his wife asked the court to suspend the execution of the applicant's sentence, referring to family related reasons, namely the fact that he had ten and thirteen years' old children. The request was first dismissed by the Vilnius City District Court on 4 January 2013, in the presence of the applicant, and then by the Vilnius Regional Court, which took the final decision on 23 January 2013, and pointed out that the applicant was convicted for a heavy crime and therefore did not qualify for suspension. The latter court also held that reasons advanced by the applicant were not exceptional, moreover, those reasons did not prevent the applicant, who had prior conviction, from re-offending. The applicant was not present at the proceedings before the Vilnius Regional Court, but was represented by a lawyer.

10. Similarly, in May 2013 the applicant asked a prosecutor to re-open the criminal proceedings, claiming newly discovered circumstances. His request was dismissed by the prosecutor, who held that the request was not supported by any factual evidence but instead it was an attempt to avoid criminal liability. The prosecutor's decision was upheld by a regional court and finally, on 18 July 2013, by the Court of Appeal. The applicant was not present at the hearing held by the Court of Appeal, but he was represented by a lawyer.

11. Subsequently, having received the Vilnius City First District Court's request of 17 February 2014 regarding execution of the applicant's sentence, the police authority in Vilnius informed that court that the applicant's search had already been announced, but that they had been unable to locate him. On 24 September 2014 the district court reiterated the query and received a similar answer from the police.

12. As submitted by the Government, after announcing the applicant's search for the second time and opening a new search file on 17 April 2014, the police checked the data registries and sent inquiries to a number of medical institutions, which replied that the applicant was not treated in any of them. Afterwards, the police periodically checked the applicant's

declared place of residence, as well as his relatives' and his wife's addresses to locate him without success.

13. On 6 March 2015 the police officer who had been conducting the applicant's search informed his superiors that the applicant had left Lithuania for the United Kingdom, where his spouse and children lived. On 4 April 2015 the police asked the court to issue a European Arrest Warrant for the applicant.

14. On 22 April 2015 the Vilnius City District Court issued the European Arrest Warrant for the applicant. The warrant indicated that the applicant's sentence had not been executed because he went into hiding. It was noted in the warrant that the applicant's search had been announced as early as on 9 May 2012 (see paragraph 5 above).

15. In November 2015 several addresses where the applicant could be found were checked. The persons who lived at those addresses informed the police that the applicant and his family lived in the United Kingdom. In November 2016 the data registries were checked, and in September 2017 an official report was sent to the police regarding the applicant's possible appearance at the Lithuanian embassy in London in order to obtain new personal identity documents. In March 2018 several addresses where the applicant used to reside in Vilnius were checked. The tenants at those addresses as well as neighbours explained to the authorities that the applicant had lived in the United Kingdom and that they had last seen him some three years ago.

16. On 8 February 2016 the applicant's lawyer asked the Information Technology and Telecommunications Department (*Informatikos ir ryšių departamentas*) whether his client was being searched. On 11 February 2016 the department replied that the applicant has been searched as of 17 April 2014, and that the search was being conducted by the Vilnius police .

17. Between 11 August 2017 and 5 September 2017 the applicant's lawyer wrote several letters to the Vilnius police, requesting information whether and when the applicant's search had been announced, and to provide proof. In reply, the police wrote that the applicant's search had been announced once the judgment became effective, and that on 16 April 2012 the Vilnius police authority received a court order regarding the execution of the sentence. After the dismissal of the applicant's appeal on points of law on 30 October 2012, the judgment of conviction became effective, and was executable. The police informed the applicant's lawyer that he, as the lawyer who had represented the applicant in the criminal proceedings, must have known about the sentence becoming effective, as well as the fact that the applicant's appeal on points of law had been dismissed. The lawyer was also aware of the content of the applicant's criminal case file, and of the fact that the applicant had been hiding. The police underscored that it was not the announcement of the search which presupposed the convicted person's

obligation to serve the sentence, but rather the judgment of conviction which had become effective.

18. In September 2017, in reply to another query by the applicant's lawyer, the Vilnius police authority replied that it could not provide information regarding the specific actions or tactics that had been undertaken by the police to locate the applicant, given that divulging such data was against the law. Conversely, information which could be made public – such as the documents regarding the starting point of the applicant's search, had been provided to the lawyer by the police authority and the Information Technology and Telecommunications Department. Lastly, the police noted that the applicant's lawyer, if unsatisfied with the fact that more information could not be revealed due to legal regulation, retained the right to appeal against the police refusal to provide more information to court.

19. On 11 December 2017 the applicant asked the court for his release from the obligation to serve his sentence, on the ground that under Article 96 § 1 (1) b of the Criminal Code (see paragraph 23 below), the sentence of two years' imprisonment had to be enforced within three years from the date of its pronouncement. He claimed that he had not been hiding from the law enforcement authorities or trying to avoid serving his sentence. Having learned about his search entirely accidentally, he asked the authorities to provide such information (see paragraphs 16-18 above), for he could not comprehend how and when he should start serving the sentence after the lapse of a long time. He also asseverated that the search had been only formal. In that connection the applicant referred to certain actions that he himself had underwent in Lithuania, such as in November 2014 completing paperwork at the State institution Regitra and at the notary's office. The applicant also pleaded that he had been leading active social life in Lithuania until 6 November 2014, when he temporarily left for the United Kingdom, wherefrom he had returned to Lithuania on 3 March 2015 to stay there until 17 April 2015, when he left for the United Kingdom.

20. By a ruling of 13 June 2018 the Vilnius City District Court rejected the applicant's request. The court referred to the testimony of the police officer, who was questioned in court and stated that the attempts to locate the applicant, including regular checks at his and his family's known addresses, and requests to the State institutions to provide any relevant information, had been undertaken. As noted by the court, according to the latest information held by the police, the applicant was hiding in the United Kingdom, and the police were looking for him. Even so, no concrete actions could be revealed in order not to risk the success of the operation. The district court further pointed out that when the criminal case was decided by the Supreme Court (see paragraph 6 above), when the applicant's requests for suspension of his sentence (see paragraph 9 above), and for reopening of criminal proceedings (see paragraph 10 above) were examined the applicant

was absent, but his interests were represented by his lawyers. Accordingly, those court decisions and their consequences, including the fact that there remained no obstacles to execute the sentence, had been known to the applicant, who had no ground to consider that the sentence would not be executed and that he would be relieved from the obligation to serve it. Even if the applicant had performed certain administrative actions in November 2014, this was before the European Arrest Warrant was issued in April 2015. The court considered that although the applicant had twice left for the United Kingdom and had performed those administrative actions and had still had not been arrested, this did not mean that the applicant was not searched. On the contrary, these facts merely demonstrated the negligence of the authorities who had been searching the applicant.

The hearing was held in the applicant's absence, since he could not be found.

21. By a final ruling of 24 July 2018 the Vilnius Regional Court rejected the applicant's appeal. The court referred to the documents showing that, after his conviction and the two other sets of proceedings (see paragraphs 3, 6, 9 and 10 above), the police started the applicant's search on 17 April 2014. The applicant's and his family's addresses had been searched; yet he could not be found. The court also noted that as of 6 February 2012 the applicant had no official workplace in Lithuania; at the time of the court proceedings in question he did not have any valid identity document issued by the Lithuanian authorities. The court referred to the information that the applicant had been hiding in the United Kingdom and that the police had been putting effort so that he could be apprehended in that country. The applicant also had not shown up in the district court when his request for release from serving the sentence was examined (see paragraph 20 above). It followed that the applicant had been evading justice.

22. On 10 September 2020 the Government informed the Court that on the basis of the European Arrest Warrant, the applicant was arrested in the United Kingdom on 22 April 2020. On 17 August 2020 the applicant's extradition to Lithuania was ordered. However, the applicant appealed against the extradition decision. To the Government's knowledge, those proceedings were pending.

B. Relevant domestic law

23. The Criminal Code reads:

Article 96. Statute of Limitations for the Execution of a Judgment of Conviction

"1. A judgment of conviction shall not be executed where:

1) it was not executed:

...

b) within three years following imposition of ... a custodial sentence for a term not exceeding two years; ...

2) during the period specified in point 1 of paragraph 1 of this Article the convict did not evade the serving of the sentence ...

2. The statute of limitations for execution of a judgment of conviction shall run from the coming into effect of the judgment until the commencement of execution of the judgment.

3. Where, after a judgment becomes effective, the convict evades the serving of the sentence, the statute of limitations shall stop running. In this case, the period shall resume running from the day when the convict arrives to serve the sentence or is arrested ..."

COMPLAINT

The applicant complained that he had been unlawfully and arbitrarily deprived of his liberty.

THE LAW

24. The applicant complained that he had been unlawfully and arbitrarily deprived of his liberty. He averred that he had never avoided obligation to serve his sentence, but that the Lithuanian authorities simply failed to take steps to enforce it. The applicant relied on Articles 5 § 1 and 13 of the Convention.

25. The Court considers that this complaint falls to be examined solely under Article 5 § 1 (a) of the Convention, the relevant part of which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court ..."

A. The parties' submissions

1. The Government

26. At the outset, the Government referred to the settled case-law of the domestic courts, pursuant to which actions, such as changing the place of residence, systematic relocation, going abroad or living without personal identity documents, were considered as intentional actions of a person who avoids serving a sentence. Were it to be established that after the judgment of conviction became effective the convicted person had been avoiding sentence, the statute of limitations would stop running, as stated in Article 96 of the Criminal Code (see paragraph 23 above). This was precisely the applicant's situation, where, despite the authorities' efforts, he

could not be found since he had hidden abroad. Had the applicant continued to reside in Lithuania, or informed the relevant authorities before going abroad, the outcome of the proceedings regarding his request to be released from serving sentence would have been different.

27. The Government further pointed to the fact that the applicant had not taken part, in person, in the three sets of proceedings which he had initiated in 2012 and 2013, or even those in 2018 (see paragraphs 9, 10 and 19 above). They also underscored that this had not been the applicant's first conviction, and that therefore, upon his conviction in 2012 (see paragraphs 3 and 6 above), the applicant should have clearly understood the essence of the imprisonment sentence imposed by the court and the procedure of its execution. The Government further argued that by making numerous inquiries, through his lawyer, for information about his search the applicant intentionally sought to create illusion that he had not been hiding and had taken active interest in the execution of his sentence. Such tactics did not mean that the applicant was not hiding.

28. Regarding the Lithuanian authorities' actions, they had been prompt and requisite diligence had been shown to execute the applicant's sentence. The applicant was searched not only in Lithuania, but also abroad. Numerous measures had been taken, although without success, only because the applicant had fled. As a result, the police in Lithuania, for objective reasons, had limited possibilities to conduct active search.

2. The applicant

29. The applicant submitted that he had never attempted to avoid serving the sentence. Neither had he hidden from the authorities. This was proven by the fact that during his search he had performed certain administrative actions in Lithuania. Likewise, he travelled from Lithuania to the United Kingdom and back, yet the Lithuanian authorities failed to act and had not had him arrested. The applicant also considered that issuing a European Arrest Warrant for him did not automatically mean that he had been hiding.

30. The applicant also referred to the fact that his lawyer had made several inquiries with the Lithuanian authorities, asking for information regarding the applicant's search. In his view, the way those authorities responded demonstrated lack of actions on their part so that the applicant would be apprehended.

B. The Court's assessment

31. The relevant principles have been summarised in *Saadi v. the United Kingdom* ([GC], no. 13229/03, § 67, ECHR 2008) and *Ladent v. Poland* (no. 11036/03, §§ 45-48, 18 March 2008).

32. In the instant case, the Court will consider whether the applicant's detention was "lawful" and effected "in accordance with a procedure prescribed by law", as required by Article 5 § 1 of the Convention.

33. It notes that on 23 February 2012 the applicant was sentenced to two years' imprisonment (see paragraph 3 above). On 30 October 2012 that verdict was upheld by the Supreme Court. Both the applicant and his lawyer were present at the Supreme Court when the applicant's appeal on points of law had been examined (see paragraph 6 above). Accordingly, the applicant should have been aware of his conviction becoming effective. This has also been pointed out by the police (see paragraph 17 above), and underscored by the Vilnius City District Court (see paragraph 20 above).

34. The Court also observes that after his conviction the applicant initiated two sets of new court proceedings: firstly, for suspension of the execution of his sentence, and, secondly, for the re-opening of his criminal case. As it transpires from the prosecutor's and the courts' decisions, both of those attempts were without basis, and were considered essentially the applicant's attempts to avoid criminal liability (see paragraphs 9 and 10 above).

35. The Court further observes that the applicant left Lithuania on 6 November 2014, to return four months later, and then again on 17 April 2015 (see paragraph 19 *in fine* above). Given that the applicant's conviction in 2012 was not his first (see paragraph 3 above), the Court does not find it credible that when leaving Lithuania he had no knowledge of his obligation to serve his sentence. Similarly, the Court gives weight to the Government's argument that the applicant's lawyer's inquiries regarding the applicant's search had been aimed at creating illusion of the applicant abiding by his duty to serve his sentence (see paragraphs 16-18 above).

36. Turning to the actions of the Lithuanian authorities, the Court observes that the applicant's first search had been announced soon after his conviction, namely on 9 May 2012 (see paragraphs 3-5 above). However, the authorities had to postpone the search, for he had lodged an appeal on points of law, and pursued two other sets of court proceedings (see paragraphs 6-10 above). Afterwards, the Vilnius City District Court followed up on the applicant's conviction (see paragraph 11 above). In particular, the authorities searched the applicant at his and his family's addresses, and made inquiries regarding his possible whereabouts (see paragraphs 12 and 15 above). Given the applicant's departure for the United Kingdom (see paragraph 19 above) and the fact that the police had been informed about it by the applicant's neighbours and tenants in Lithuania (see paragraph 15 above), the Court finds the Lithuanian authorities' inability to locate the applicant in Lithuania explainable. Even admitting that, as it was held by the Vilnius City District Court, those authorities' inability to arrest the applicant when he twice crossed Lithuanian border amounted to negligence on their part (see paragraph 20 above), the Court

does not consider that this omission, in and of itself, is a testament to the lack of any efforts on the part of the Lithuanian authorities to bring the applicant to justice. Indeed, the police pursued the applicant's search, a European Arrest Warrant had been issued, and, as a result of international cooperation, eventually he had been arrested in the United Kingdom (see paragraphs 13, 14 and 22 above). Lastly, if the applicant had been dissatisfied with the refusal of the police to divulge specific criminal intelligence actions aimed at his apprehension, he did not lodge an appeal against it with the court (see paragraph 18 *in fine* above).

37. Having regard to the foregoing, the Court concludes that the domestic courts' decisions to refuse to release the applicant from serving his sentence, based on the fact that conditions provided by Article 96 § 1 (1) (b) of the Criminal Code had not been met, had been free from arbitrariness (see paragraphs 20 and 21 above; see also paragraph 26 above). Accordingly, the applicant's detention, emanating from his conviction of 23 February 2012, should he be extradited to Lithuania (see paragraph 22 above), would therefore be "in accordance with a procedure prescribed by law" and "lawful" for the purposes of Article 5 § 1 (a) of the Convention.

38. In the light of the foregoing, the Court concludes that the applicant's complaint under Article 5 § 1 (a) of the Convention must be rejected as being manifestly ill-founded, 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 15 July 2021.

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Hasan Bakırcı	Carlo Ranzoni
Deputy Registrar	President