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

SECOND SECTION

# DECISION

Application no. 28345/18
Arūnas VALANČIUS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 15 December 2020 as a Committee composed of:

Aleš Pejchal, *President,*
Egidijus Kūris,
Carlo Ranzoni, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to the above application lodged on 7 June 2018,

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 Arūnas Valančius, is a Lithuanian national who was born in 1967 and lives in Palanga. He was represented before the Court by Mr D. Žiedas, a lawyer practising in Klaipėda.

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

### A. The circumstances of the case

#### *1. Pre-trial investigation*

3. The applicant was a member of the board of directors of the Palanga Credit Union (hereinafter "the PCU").

4. Between 2009 and 2011 Lietuvos bankas, the central bank of Lithuania (hereinafter "the Bank of Lithuania"), issued several decisions in which it held that the PCU had breached the law concerning the activities of credit unions.

5. In November 2011 the Economic Crimes Division of the Klaipėda Regional Police Department (hereinafter "the Klaipėda police") opened a pre-trial investigation concerning allegations of appropriation of property of high value and falsification of documents at the PCU. It was suspected that the PCU, on the basis of false information, had granted loans to several individuals and that its board members had appropriated the money loaned.

6. On 6 January 2012 the Bank of Lithuania issued a decision, finding that the managers of the PCU had failed to ensure responsible and stable management of the credit union. It ordered the PCU to call a general meeting of its members which would decide on the removal of certain managers and the appointment of replacements.

7. On 6 January 2012 the applicant was taken by police officers to the PCU headquarters, where two employees of the Bank of Lithuania were present (see paragraph 19 below). He was handed the minutes of a board meeting of the PCU, dated that same day, which stated that the board had decided to accept the resignation of the managing director of the PCU and to appoint a replacement. The applicant signed the minutes to confirm that he had taken part in the meeting and agreed with the decision.

8. On 19 June 2012 the applicant was questioned as a witness in the pre-trial investigation and stated that he had not been aware of any unlawful activities allegedly carried out by the PCU.

9. On 28 November 2012 the applicant was officially notified that he was suspected of falsifying documents. It was alleged that between September 2010 and January 2012 he had signed the minutes of several board meetings of the PCU, in which it had been decided to grant loans to individuals on the basis of false information.

10. On the same day the applicant was informed of his rights as a suspect, including the right to have a lawyer present and to lodge complaints about the actions of pre-trial investigation officers and prosecutors. He stated that he did not need a lawyer at that moment and refused to answer any questions.

11. On 6 December 2012 the applicant hired a lawyer. That same day he was questioned, in the presence of his lawyer, and denied committing any unlawful acts.

12. A written record was taken of the two interviews with the applicant (see paragraphs 8 and 11 above). The records did not include any statements or complaints relating to the applicant's apprehension by the police on 6 January 2012 (see paragraph 7 above). On both occasions the applicant signed the records to confirm that they were accurate (see paragraph 29 below); the record was also signed by his lawyer on the second occasion.

13. In February 2013 the applicant was informed that he had the right to access the case file and to submit requests for additional investigative measures. The applicant and his lawyer accessed the file but did not submit any requests.

14. The pre-trial investigation was completed in April 2013 and the case was transferred to the Plungė District Court for examination.

*2. Court proceedings*

15. During a hearing held in April 2017, the applicant complained to the court that the prosecutor was applying double standards because the applicant had been accused of falsifying minutes of board meetings, but when he had been brought in and asked to sign pre-prepared minutes (see paragraph 7 above), that had not been considered falsification.

16. In May 2017 the Plungė District Court found the applicant guilty of falsification of documents and gave him a fine.

17. In June 2017 the applicant lodged an appeal against his conviction. He submitted, *inter alia*, that on 6 January 2012 he had been taken to the PCU headquarters against his will and forced to sign minutes (see paragraphs 7 above and 19 below). He stated that he intended to lodge a complaint concerning the events of that day because physical and psychological force had been used against him.

18. On 12 January 2018 the Klaipėda Regional Court dismissed the applicant's appeal and upheld the conviction. On 20 December 2018 the Supreme Court quashed that judgment and remitted the case to the appellate court for fresh examination. According to the most recent information submitted to the Court on 17 July 2020, the case was pending before the appellate court.

*3. The applicant's complaint against the police*

19. On 14 August 2017 the applicant asked the Prosecutor General's Office to open a pre-trial investigation against officers of the Klaipėda police concerning their actions on 6 January 2012 (see paragraph 7 above). He submitted that on that day, at around 2 p.m., two officers had arrived at his workplace in Klaipėda and told him to go with them. When he asked them to explain why and where they were going, the officers had told him that everything would be explained later and that they would have to use force against him if he resisted. They had taken away his mobile phone and searched his pockets, and had then driven him to a police station in Palanga (a town approximately 30 km from Klaipėda). He had been taken to the PCU headquarters, where two officials from the Bank of Lithuania were present. After informing him that the PCU had serious problems because some of its members had been implicated in criminal acts, the two officials had handed him the minutes of the PCU's board meeting of 6 January 2012 and told him to sign them. The applicant had signed the minutes because he felt threatened. The police officers had taken him back to Klaipėda at around 6.30 p.m.

20. The applicant asked the Prosecutor General to open a pre-trial investigation into violations of his rights protected by the Constitution and Article 5 § 1 of the Convention. He stated that during his questioning as a suspect he had complained orally about the officers' actions, but the investigator had not included it in the written record (see paragraph 12 above). He also stated that, during the criminal proceedings against him, he had complained orally to the prosecutor and the judge of the first-instance court (see paragraph 15 above), but they had likewise ignored his complaints.

21. The Immunity Division of the Klaipėda police started a preliminary inquiry in order to determine whether a pre-trial investigation should be opened concerning abuse of office within the meaning of Article 228 of the Criminal Code (see paragraph 30 below).

22. On 1 September 2017 the police refused to open a pre-trial investigation against any officers. It found no record of the applicant having been subjected to provisional arrest or any other coercive measures during the criminal proceedings. Since he had lodged his complaint with the police more than five years after the events in question, it was difficult to establish all the circumstances and there was no information to support his allegations of unlawful deprivation of liberty. Furthermore, abuse of office within the meaning of Article 228 of the Criminal Code was committed if a civil servant used his or her office contrary to the interests of the civil service, or overstepped his or her remit – that is to say, carried out actions which he or she was not entitled to carry out (see paragraph 30 below). However, in accordance with the law, police officers had the right to issue mandatory orders to other persons, and there were no grounds to find that they had used excessive coercion against the applicant. Lastly, there was no indication that the applicant had complained of unlawful actions on the part of the police during the pre-trial investigation. It was pointed out that the inquiry being conducted could not assess the tactical or procedural measures taken by the police during pre-trial investigations because complaints concerning such measures had to be lodged in accordance with Articles 62 and 63 of the Code of Criminal Procedure (hereinafter "the CCP" – see paragraph 26 below).

23. The applicant lodged a complaint against that decision, in which he submitted, *inter alia*, that he had previously raised his complaints with several officials but those complaints had been ignored (see paragraph 20 above).

24. On 10 October 2017 the Klaipėda Regional Prosecutor's Office upheld the decision. In particular, it stated that during the pre-trial investigation the applicant had had the right to lodge complaints, either in writing or orally, against actions of the police officers (see paragraphs 26 and 27 below) but he had not done so.

25. On 30 October 2017 that decision was upheld by the Klaipėda District Court and on 13 December 2017 by the Klaipėda Regional Court.

## B. Relevant domestic law and practice

### *1. Code of Criminal Procedure*

26. Article 62 § 1 of the CCP provides that during the pre-trial investigation, parties to the proceedings or any individuals who have been subjected to coercive measures may lodge complaints with the prosecutor against those measures. In accordance with Article 63 § 1 of the CCP, in the event that the prosecutor dismisses the complaint, that decision may be appealed against to the senior prosecutor and subsequently to the pre-trial investigation judge.

27. Under Article 62 § 2 and Article 63 § 2 of the CCP, the above-mentioned complaints may be lodged in writing or orally. If a complaint is lodged orally, the pre-trial investigation officer or the prosecutor must record it in writing and that record must be signed by the officer or prosecutor in question and the individual who lodged the complaint.

28. Article 257 § 2 of the CCP, in force since 14 July 2016, provides that when a court which is examining a criminal case finds that serious breaches of the CCP were committed during the pre-trial investigation, it must notify the Prosecutor General's Office.

29. In accordance with Article 179 §§ 1 and 3 of the CCP, measures taken during a pre-trial investigation are to be recorded in writing. The written record has to be signed by all persons who were present during that investigative measure, with note being taken in the record of anyone refusing to sign, as is their right.

### *2. Criminal Code and related case-law*

30. Under Article 228 § 1 of the Criminal Code, a civil servant or an individual of equivalent status who has abused his or her office or overstepped his or her remit and thereby caused significant damage to the State, the European Union, a public international organisation, a legal entity or an individual is liable to punishment by a fine, detention, or imprisonment of up to five years.

31. In a decision of 5 July 2011 in criminal case no. 2K-302/2011, the Supreme Court held:

> "Abuse of office [within the meaning of Article 228 of the Criminal Code] is the use of, or the omission to use, the lawful rights, obligations and powers of a civil servant ... contrary to the interests of the civil service, its principles, essence and substance ... Abuse of office may be committed by direct or indirect intent.
>
> ...

> Damage, under Article 228 of the Criminal Code, is understood as pecuniary or ... physical, moral, organisational and other non-pecuniary damage to non-material values protected by law (such as health, honour and dignity of an individual, reputation of a legal entity, authority of the civil service, and others) ... [T]he damage ... must be found to be significant. That is the criterion which distinguishes the criminal offence of abuse of office from a disciplinary violation. Significant damage is a value criterion and it must be established according to the particular circumstances of each case ... Violations of the rights and freedoms enshrined in the Constitution which diminish the reputation of the authority of the civil service and have other grossly negative consequences are usually considered to constitute significant damage not only to the civil service or an individual, but to the State as well ..."

### *3. Other legal instruments*

32. For the legal provisions and case-law concerning the State's civil liability for unlawful detention, see *Venskutė v. Lithuania* (no. 10645/08, §§ 49-51, 11 December 2012).

## COMPLAINT

33. The applicant complained under Article 5 of the Convention that on 6 January 2012 he had been unlawfully and arbitrarily detained by the police for approximately five hours, without being informed of the reasons for his arrest.

## THE LAW

34. The applicant complained that he had been detained unlawfully and arbitrarily and that he had not been informed of the reasons for his arrest. He relied on Article 5 of the Convention, the relevant parts of which read 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:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> ..."

## A. The parties' submissions

### *1. The Government*

35. The Government submitted that the applicant had failed to exhaust the effective domestic remedies.

36. Firstly, he could have instituted civil proceedings against the State, under Article 6.272 of the Civil Code, claiming compensation in respect of non-pecuniary damage caused by the allegedly unlawful deprivation of liberty (see the case-law cited in paragraph 32 above). The Government referred to examples of the case-law of domestic courts in civil proceedings, showing that they assessed the lawfulness of the actions of State authorities independently of whether any such actions had been declared unlawful in the context of criminal proceedings.

37. Secondly, the applicant had had the possibility of complaining, in accordance with Articles 62 and 63 of the CCP, about the allegedly unlawful detention to the prosecutor, the senior prosecutor and the pre-trial investigation judge (see paragraph 26 above). Such complaints could be lodged orally – in such cases they had to be recorded in writing by a pre-trial investigation officer or a prosecutor (see paragraph 27 above). If the applicant had indeed raised oral complaints during any of his interviews with the authorities and they had omitted to include them in the written records, as he had claimed (see paragraph 20 above), he could have refused to sign those records (see paragraph 29 above). However, on each occasion when he had been interviewed, he had confirmed that the record had been accurate (see paragraph 12 above).

38. Moreover, the Government submitted that the remedy which the applicant had chosen to pursue could not be considered effective in the circumstances. The purpose of the criminal proceedings which he had attempted to institute against police officers had been to determine whether the officers had committed the specific criminal offence under Article 228 of the Criminal Code – that is to say, whether all the elements of the crime of abuse of office were present. Those proceedings were not aimed at determining whether there had been lawful grounds for the deprivation of liberty. The actions of officers needed to attain a certain level of dangerousness in order to constitute abuse of office, and violations of procedural norms of the CCP were insufficient to incur criminal liability. The Government also pointed out that criminal proceedings were considered an *ultima ratio* measure by domestic courts.

### *2. The applicant*

39. The applicant submitted that the remedies indicated by the Government were not effective. He firstly argued that instituting any other civil or criminal proceedings would have been futile because all the

authorities to which he had complained had found that the actions in question of the police officers had been lawful (see paragraphs 22, 24 and 25 above).

40. He further submitted that he could not have lodged a complaint under Articles 62 and 63 of the CCP because at the time when he had been deprived of his liberty he had not been a party to the pre-trial investigation. In addition, he had never been presented with a decision to arrest him or informed of his right to appeal against such a decision – in fact, it appeared that there had not been any official decision to apply coercive measures against him (see paragraph 22 above).

41. Lastly, the applicant argued that a request to open a pre-trial investigation concerning abuse of office had been the most appropriate remedy in his situation because there had been no lawful grounds for his detention and his constitutional right to liberty had been violated by police officers acting outside their remit.

## B. The Court's assessment

### *1. General principles*

42. The general principles concerning the obligation to exhaust domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-77, 25 March 2014).

### *2. Whether the remedy pursued by the applicant was effective in the circumstances*

43. In the present case, the remedy which the applicant chose to pursue was asking the authorities to open a pre-trial investigation in respect of the police officers who had allegedly unlawfully deprived him of his liberty (see paragraphs 19 and 20 above). The Court must therefore firstly examine whether that remedy satisfied the requirements of Article 35 § 1 of the Convention in the circumstances of the present case.

44. The Court takes note of the elements of the criminal offence of abuse of office under the domestic law, such as the need to establish that the officers had acted contrary to the interests of their service or had overstepped their remit and had thereby caused significant damage to any of the subjects listed in the Criminal Code (see paragraphs 30 and 31 above). It also takes note of the case-law of the Supreme Court, which provides that acts which may amount to a disciplinary violation do not necessarily constitute the criminal offence of abuse of office (see paragraph 31 above).

45. In the Court's view, it is particularly relevant that the authorities which dismissed the applicant's request to institute criminal proceedings explicitly held that they were not entitled to assess procedural measures

taken by police officers against the applicant during a pre-trial investigation and that complaints about those measures had to be lodged in accordance with the CCP (see paragraph 22 above). The applicant did not provide any examples of domestic case-law that would contradict that position.

46. In such circumstances, the Court is unable to find that the criminal proceedings which the applicant sought to institute against police officers would have been capable of assessing the lawfulness of his deprivation of liberty in the light of the domestic law or the Convention (see *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012, and *Oravec v. Croatia*, no. 51249/11, § 33, 11 July 2017).

47. Accordingly, the Court finds that the avenue pursued by the applicant was not capable of providing redress in respect of his complaint under Article 5 § 1 of the Convention. It therefore cannot be said that by using that avenue he dispensed with the requirement under Article 35 § 1 of the Convention to exhaust the effective domestic remedies.

*3. Whether effective remedies were available to the applicant*

48. The Court will next examine whether there were other domestic remedies which the applicant was required to exhaust.

49. It has previously acknowledged that the criminal-law remedy under Articles 62 and 63 of the CCP and the civil-law remedy under Article 6.272 of the Civil Code could both, in principle, be considered effective in cases concerning unlawful deprivation of liberty (see *Venskutė v. Lithuania*, no. 10645/08, § 69, 11 December 2012, and *Imbras v. Lithuania* (dec.), no. 22740/10, §§ 50-52, 10 July 2018). It therefore has to assess whether those remedies were for some reason inadequate and ineffective in the particular circumstances of the case, or whether there existed special circumstances absolving the applicant from the requirement to exhaust them (see *Vučković and Others*, cited above, § 77, and the cases cited therein).

50. The Court firstly turns to the remedy under criminal law (see paragraph 26 above).

51. The applicant submitted that on 6 January 2012 he had been apprehended by the police without being informed of the reasons for his arrest, that a decision to arrest him had never been presented to him and that he had not been informed of how to complain about such a decision (see paragraph 40 above). The Government did not dispute these claims, and there is nothing in the case file that could lead the Court to doubt the applicant's submissions in this regard. Accordingly, it is able to accept that, at least initially, the applicant may not have been aware of his right to complain about the actions of the police officers or of the proper avenue for lodging such complaints.

52. However, on 28 November 2012 he was officially notified of the suspicions against him and informed of his rights as a suspect, including the right to lodge complaints about the actions of pre-trial investigation officers

(see paragraphs 9 and 10 above). Furthermore, from 6 December 2012 he was represented by a lawyer (see paragraph 11 above). Therefore, the Court is satisfied that, starting from that date, there was nothing precluding the applicant from lodging a complaint concerning his allegedly unlawful detention, in accordance with Articles 62 and 63 of the CCP.

53. In the domestic proceedings, the applicant contended that he had raised that complaint orally before several officers, including during his interview as a suspect (see paragraph 20 above). However, that claim is not supported by the documents in the Court's possession – none of the written records of the applicant's interviews contain any such complaints (see paragraph 12 above). Moreover, the applicant signed all those records, confirming that their contents were accurate, even though he had the right not to sign them if he considered them to be incorrect (see paragraph 29 above). In such circumstances, the Court finds that it has not been demonstrated that the applicant raised his complaints orally during the pre-trial investigation.

54. It notes that during the court proceedings in the criminal case against him, the applicant stated that on 6 January 2012 he had been taken to the headquarters of the PCU and forced to sign the minutes of the board meeting, and that physical and psychological force had been used against him (see paragraphs 15 and 17 above). The Court considers that those statements were not sufficiently specific to constitute a complaint of unlawful deprivation of liberty. Be that as it may, deprivation of the applicant's liberty was not the principal subject matter and focus of his criminal trial, which was aimed at establishing whether he was guilty of falsification of documents (see paragraph 9 above; see also *Imbras*, cited above, § 51). Therefore, raising complaints about unlawful detention during the trial could not have exempted him from raising those complaints in accordance with Articles 62 and 63 of the CCP.

55. Accordingly, the Court finds that the applicant did not make use of the effective domestic remedy under criminal law.

56. Having failed to avail himself of the criminal-law remedy, he had the possibility of pursuing a remedy under civil law (see paragraph 36 above; see also *Imbras*, cited above, § 52). However, he did not pursue that avenue either.

57. The applicant argued that neither the criminal-law nor the civil-law remedy would have been effective in his case, in view of the fact that all the domestic authorities to which he had complained had found that the police officers had acted lawfully (see paragraph 39 above). However, the Court does not share this view. It has already held that the criminal proceedings which he attempted to institute against the police officers were not aimed at determining the lawfulness of his deprivation of liberty (see paragraphs 44-46 above).

58. Furthermore, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Vučković and Others*, cited above, § 74, and the cases cited therein). The Court considers that neither of the remedies suggested by the Government in the present case were obviously futile, in particular taking into account its findings concerning those remedies in previous cases (see *Venskutė*, § 69, and *Imbras*, §§ 50-52, both cited above).

59. In the light of the foregoing, the Court concludes that the applicant did not exhaust the effective domestic remedies. It follows that the present application must be declared inadmissible, in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 21 January 2021.

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| Hasan Bakırcı | Aleš Pejchal |
| Deputy Registrar | President |