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

SECOND SECTION

DECISION

Application no. 19644/08
Valdas MAZĖTIS
against Lithuania

The European Court of Human Rights (Second Section), sitting on 16 December 2014 as a Committee composed of:

Helen Keller, *President,*
Egidijus Kūris,
Jon Fridrik Kjølbro, *judges,*
and Abel Campos, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 March 2008,

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

The applicant, Mr Valdas Mazėtis, is a Lithuanian national, who was born in 1972 and lives in Alytus. His application was lodged on 18 March 2008.

The Lithuanian Government ("the Government") were initially represented by their former Agent, Ms E. Baltutytė, and subsequently by their Acting Agent, Ms K. Bubnytė.

A. The circumstances of the case

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

On 6 July 1998 the applicant was arrested on suspicion of the murder of D.M. in Merkinė, Alytus Region. The next day he was charged with an intentional murder and subsequently his detention was ordered until

6 November 1998. Several forensic examinations were ordered and witnesses were questioned.

On 2 November 1998 the prosecutors discontinued the pre-trial investigation in respect of the applicant due to the lack of evidence to support the charges.

On 6 December 1998 the proceedings were suspended until new circumstances come to light.

The proceedings were reopened in August 1999 but were then suspended on 20 September 1999.

In 2003 the applicant moved to live in the United Kingdom.

The decision of 2 November 1998 had been annulled by the prosecutors after new evidence had been collected and on 5 May 2004 the applicant was again charged with the murder and his search was ordered.

He was arrested in the United Kingdom in April 2005 and on 4 May 2005 transferred to Lithuania, and notified of the charges.

On 13 July 2005 a bill of indictment was issued.

On 6 March 2006 the Vilnius Regional Court convicted the applicant of the murder. That judgment was upheld by the Court of Appeal on 23 February 2007 and, later, by the Supreme Court on 25 September 2007.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention about the length of the proceedings, arbitrariness of the domestic courts and the assessment of evidence by the latter. Under Article 4 of Protocol No. 7 to the Convention the applicant complained that he was tried twice for the same offence he had been once acquitted.

THE LAW

The applicant complained that the proceedings were unreasonably lengthy, in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention.

The Government disagreed and asserted that the length of the criminal proceedings had not been unreasonable, because from the day of the applicant's apprehension in the United Kingdom until the adoption of the final court decision the proceedings lasted less than three years at three levels of jurisdiction. Moreover, the applicant has not exhausted all effective domestic remedies available to him by not submitting a civil claim for damages against the State in view of the delays in the criminal proceedings.

The Court considers that it is not necessary to examine the issue of the lengthy proceedings because this complaint is inadmissible for the following reasons.

The Court reiterates that the purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court.

Turning to the applicant's complaint under Article 6 § 1 concerning the excessive length of the criminal proceedings the Court refers to its finding in the *Savickas* case (see *Savickas and others v. Lithuania* ((dec.) no. 66365/09, 15 October 2013) where it concluded that an effective domestic remedy capable of providing adequate redress for violation of the right to a hearing within a reasonable time existed in Lithuania as of 6 August 2007. Accordingly, as concerns the applications lodged after that date the applicants should have first made claims for damages against the State before the Lithuanian courts on the basis of Article 6.272 of the Civil Code (ibid., §§ 86-88).

Having regard to the foregoing and the fact that the present application was lodged with the Court on 18 March 2008, that is, at a date when the effective remedy in view of the excessive length of the proceedings already existed, this complaint must be declared inadmissible for failure to exhaust domestic remedies in accordance with Article 35 §§ 1 and 4 of the Convention.

The applicant also complained under Article 4 of Protocol No. 7 to the Convention that he was prosecuted and later sentenced after he had been already once acquitted of the crime by the domestic authorities. The Court observes that no final judgment acquitting the applicant had been adopted before the criminal proceedings were reopened in 2004 due to the new evidence and that such a situation is not incompatible with Article 4 §§ 1 and 2 of Protocol No. 7. It must be noted that in any case the applicant failed to raise that complaint before the national courts as required by Article 35 § 1 of the Convention.

The applicant further asserted impartiality of the appellate court alleging that the victim was the relative of one of the judges working at that court. It must be noted that that argument has never been raised by the applicant before the domestic courts, nor was there an attempt to withdraw the judges from his case. As a result, the above-mentioned complaints must be declared inadmissible for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

The applicant lastly complained about arbitrariness of the courts in view of assessment of circumstances surrounding the incident by the national courts. The Court reiterates that it is not a court of appeal for the decisions of domestic courts and that, as a general rule, it is for those courts to interpret domestic law and assess the evidence before them (see *Kern*

v. Austria, no. 4206/02, § 61, 4 February 2005, and *Wittek v. Germany*, no. 37290/97, § 49, ECHR 2000-XI). On the basis of the material in its possession, the Court observes that the complaint at hand is essentially of a "fourth instance" nature. As a result, this part of the application must be declared inadmissible as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Abel Campos
Deputy Registrar

Helen Keller
President