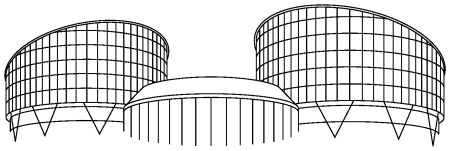

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 51760/10
Raisa ŠARKIENĖ
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 27 June 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Georges Ravarani,
Péter Paczolay, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having regard to the above application lodged on 13 August 2010,

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, Ms Raisa Šarkienė, is a Lithuanian national who was born in 1956 and lives in Vilnius. She had been granted legal aid and was represented before the Court by Mr R. Burda, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

A. The circumstances of the case

1. Pre-trial investigation

2. On 6 May 2008 the applicant, together with her friend A. and A.'s minor son L., attended a recording of the weekly television show "Celebrity Duets" (*Žvaigždžių duetai*). The show was a singing competition in which celebrity duets were assessed by a three-member judging panel. The head judge was a well-known opera singer, V.J. The panel also included another musician, D.K.

3. That evening after the show, V.J. received a message on his personal mobile telephone with the following text:

> "I want to tell you this right now! You didn't have problems – you will now! We have warned you!!! Don't you think that you live and have protection, moron! I repeat, this is your last warning! I'll give you time to enjoy your life, if you want to have a family and not coffins, this is not a joke, Mr Soloist! Godmother!!! We have warned you! We are watching you! Good luck. Until the next time, if you're still alive."
>
> *("Staigiai noriu pasakyti! neturėjot problemu ju bus! mes gi jus ispejom!!! ar jums neatrodo, kad gyvenat, apsauga turi glusai! kartoju paskutinis buvo ispejimas! duodu laiko dziaugtis gyvenimu jei nori tureti seima o ne karstus cia nejuokai ponas soliste! kriksto mama!!! perspejom! mes jus stebim! sekmes. iki kito karto jei gyvas dar busit.")*

4. V.J. informed the police that he had been threatened and the police opened a pre-trial investigation. It was discovered that the mobile telephone from which the message had been sent belonged to L. (see paragraph 2 above). On an unspecified date his mother A. was questioned as a witness and stated that L. had lost his mobile telephone sometime around 6 May 2008.

5. On 22 May 2008 the applicant was questioned as a witness. She stated that she had attended several recordings of "Celebrity Duets" but could not remember the exact dates. She confirmed that she had gone there once with A. and L. and that L. had had a mobile telephone with him, but the applicant had not paid attention to where L. had left it. She stated that she had not taken the telephone or sent any text messages from it. The applicant also said that she had heard from A. that a text message had been sent to V.J. from L.'s telephone; however, the applicant stated that she did not have V.J.'s telephone number and had never called or texted him.

6. On an unspecified later date L.'s telephone was found in the possession of another individual, V. He told the police that the telephone had been given to him by the applicant, who was his friend.

7. On 10 July 2008 the applicant was taken to a police station and served with an official notice (*pranešimas apie įtarimą*) stating that she was suspected of threatening to kill or seriously injure V.J., under Article 145 § 1 of the Criminal Code (see paragraph 21 below). The notice

listed the suspect's rights under the Code of Criminal Procedure, including the right to a lawyer. The applicant signed the notice to confirm that she had received it and that her rights had been explained to her. She also signed another notice which reiterated her right to a lawyer (*teisės turėti gynėją išaiškinimo protokolas*), on which she wrote that she did not need a lawyer during questioning. She also signed a notice confirming her decision to refuse a lawyer (*protokolas dėl gynėjo atsisakymo*), on which she also wrote that she did not need a lawyer during questioning. The latter notice indicated that the refusal did not prevent the applicant from requesting a lawyer at any later stage in the proceedings (see Relevant domestic law in paragraph 20 below).

8. On the same day the applicant was questioned by the police and confessed to having sent the aforementioned text message to V.J. She stated that she was a fan of the singer R., a participant in "Celebrity Duets". On 6 May 2008 V.J., as the head judge, had given negative feedback about R.'s performance. The applicant claimed that she had felt insulted and upset by V.J.'s comments, so she had taken an unknown mobile telephone from her table and sent him the text message. She had known V.J.'s telephone number from before, although she could not remember how she had obtained it. The applicant stated that she had not known whose mobile telephone it had been, but she had put it in her purse and forgotten about it until much later, when she had found it again and given it to her friend V. She also said that she had thrown away the SIM card at some point. The applicant stated that during her previous questioning she had given a different statement because she had understood that she had done wrong and had been scared to admit it. She was sorry for the incident and wanted to apologise to V.J.

The applicant also provided a handwritten confession in which she reiterated the essential details of her statement.

9. On 20 August 2008 the applicant was served with a revised notice stating that she was suspected of threatening to kill or seriously injure V.J., under Article 145 § 1 of the Criminal Code. She requested a lawyer and the police called for a State-appointed lawyer to represent her. She was then questioned in the presence of that lawyer. The applicant withdrew the statement and confession she had given on 10 July 2008 (see paragraph 8 above), stating that she had confessed because of "the instructions and persuasion of [police] officers" (*pareigūnų nurodymu ir įkalbinėjimais*). She stated that the statement she had given on 22 May 2008 was the correct one (see paragraph 5 above) and that she would give further evidence at trial.

10. On 9 September 2008 the applicant was charged with threatening to kill or seriously injure V.J., under Article 145 § 1 of the Criminal Code. The case was transferred to the Vilnius City First District Court for examination on the merits.

2. Court proceedings

11. The applicant was represented by a State-appointed lawyer at all levels of court.

12. On 15 January 2009 the Vilnius City First District Court held an oral hearing. When questioned by the court, the applicant denied having sent the text message to V.J. She stated that she was a fan of the singer R. and that on 6 May 2008 she and her friend A. had been invited to attend the recording of "Celebrity Duets" by D.K., another member of the judging panel on the show (see paragraph 2 above). The applicant stated that A.'s son L. had had a mobile telephone, which at one point he had left on the table where she and A. had been sitting. The applicant stated that she had not touched the telephone, but an unknown man had approached them and asked to use a telephone; they had allowed him to use L.'s telephone and the man had written a text message on it. The applicant submitted that she had later taken L.'s telephone from A. and given it to V., because she and A. had thought that L. might have sent the text message to V.J. The applicant further stated that on 10 July 2008 (see paragraph 8 above) she had confessed because police officers had threatened her. She submitted that her statement of 22 May 2008 (see paragraph 5 above) was correct, with the clarification that L.'s telephone had been used by the unknown man.

13. The court heard evidence from several other witnesses. The applicant's friend A. essentially corroborated the applicant's statements (see paragraph 12 above). The applicant's friend V. repeated that the applicant had given him L.'s telephone sometime back in May 2008 (see paragraph 6 above). The musician and member of the judging panel D.K. stated that he knew A. because she was his dentist and that he had seen the applicant in A.'s office a few times. He stated that A. had previously asked him to give better scores to the singer R. and that he had passed that request on to V.J., although the latter could not be persuaded. D.K. believed that A. and R. were friends, also stating that he had once seen R. with the applicant.

14. The court also heard evidence from three police officers who had been present at different stages of the applicant's questioning. They stated that the applicant had been duly informed of her rights, including the right to a lawyer, but that she had not requested one until 20 August 2008 (see paragraphs 7 and 9 above). The officers denied having put any pressure on the applicant to confess or to give any particular evidence.

15. On 17 April 2009 the Vilnius City First District Court found the applicant guilty of threatening to kill or seriously injure V.J., under Article 145 § 1 of the Criminal Code. The court noted that during the pre-trial investigation and trial the applicant had changed her version of events several times, and that her latest version including an unknown man could not be confirmed "by any evidence" (*byloje nėra jokių įrodymų apie tokios situacijos buvimą*). The court considered that there were no grounds

for doubting the accuracy of her confession (see paragraph 8 above) because her claims of pressure by police officers had not been proven.

The applicant was ordered to stay at home from 10 p.m. to 6 a.m. for six months and to find a job or register at an employment office. The court also awarded V.J. 10,000 Lithuanian litai (LTL, approximately 2,900 euros (EUR)) in non-pecuniary damages.

16. The applicant appealed against the judgment, arguing that she had not committed the criminal offence and that the text message had been sent by an unknown man (see paragraph 12 above). However, on 22 July 2009 the Vilnius Regional Court dismissed her appeal and upheld the conviction. The court referred, in particular, to D.K.'s testimony concerning the connection between the singer R. and the applicant's friend A., and emphasised the fact that the mobile telephone had been disabled immediately after the message had been sent – it considered that these circumstances demonstrated a direct intent to threaten V.J. after the recording of the show. The court also held that witness testimony and other material in the case file sufficiently proved the applicant's guilt. However, it reduced the amount of non-pecuniary damages to LTL 5,000 (approximately EUR 1,450), having regard to the nature of the criminal offence and the applicant's financial situation.

The Vilnius Regional Court did not address the question of whether the applicant had been pressured by police officers to refuse a lawyer and to confess; it appears from the judgment that the applicant did not raise that question in her appeal.

17. The applicant submitted an appeal on points of law to the Supreme Court, in which she alleged, *inter alia*, that her defence rights had been violated. On 9 December 2009 she was informed that the court would examine her appeal on 18 January 2010 and would pronounce its judgment on 2 February 2010.

18. On that date the Supreme Court dismissed the applicant's appeal on points of law. In respect of her complaint concerning her defence rights, the court noted that the case file contained written documents with the applicant's signatures, which had been drawn up in line with the relevant domestic law (see paragraph 20 below). This showed that the applicant had been informed of her right to a lawyer and had decided not to exercise it. The court also noted that the applicant had availed herself of her right to a lawyer during questioning on 20 August 2008 and at all subsequent stages of court proceedings (see paragraphs 9 and 11 above). Accordingly, it considered that there were no grounds for finding that the applicant's right to a lawyer had been restricted at any point.

The applicant did not attend the pronouncement of the judgment. She submitted that she had received a copy of it sometime after 15 February 2010.

B. Relevant domestic law

19. The relevant part of Article 31 of the Constitution of the Republic of Lithuania reads:

Article 31

"...

It shall be prohibited to compel anyone to give evidence against himself, or his family members or close relatives.

...

A person suspected of committing a crime, as well as the accused, shall be guaranteed, from the moment of his apprehension or first interrogation, the right to defence, as well as the right to an advocate."

20. At the material time, the relevant provisions of the Code of Criminal Procedure read:

Article 10. The suspected, accused or convicted person's defence rights

"1. A suspected, accused or convicted person has defence rights, [which] shall be ensured from the moment of their detention or first questioning.

2. The court, prosecutor or investigating officer must ensure that the suspected, accused or convicted person has the opportunity to defend him or herself by the means prescribed by law ..."

Article 51. Obligatory presence of a lawyer

"1. A lawyer must be present in the following situations:

1) where the suspect or the accused is a minor;

2) where the case concerns a person who is blind or deaf, or because of a physical or mental impairment cannot exercise his or her defence rights;

3) where the case concerns a person who does not understand the language of the proceedings;

4) where there are conflicts of interest between different suspects or the accused and at least one of them has a lawyer;

5) where the case concerns a crime for which a life sentence may be given;

6) where the case is being examined in the absence of the accused, as provided for by Chapter XXXII of this Code;

7) where the suspect or the accused is in detention;

8) where a decision is to be taken whether to extradite a person or transfer him or her to the International Criminal Court or [another State] under a European Arrest Warrant;

9) where the case is being examined by way of accelerated procedure."

Article 52. Waiving the right to a lawyer

"1. A suspect or an accused can waive his or her right to a lawyer at any stage of the proceedings ... The right to a lawyer may only be waived at the initiative of the suspected or accused person. The waiver of the right to a lawyer must be recorded in a written report.

2. The investigating officer, prosecutor or court is not bound by the waiver of the right to a lawyer where [it] has been submitted by a minor or by a person who cannot exercise his or her defence rights because of a physical or mental impairment, by a person who does not understand the language of the proceedings, or by a person who is suspected or accused of committing a serious or very serious crime and the case is complex or large-scale, or there are any other reasons raising doubts as to his or her ability to defend him or herself.

3. Waiving the right to a lawyer does not preclude the suspected, accused or convicted person from having a lawyer at any later stage of the proceedings."

21. At the material time, Article 145 § 1 of the Criminal Code read:

Article 145. Threatening to kill or seriously injure another person or terrorising another person

"1. Anyone who threatens to kill or seriously injure another person, where there is sufficient basis for believing that the threat may be carried out, shall be punished by community service, a fine, restriction of liberty, detention or imprisonment of up to two years.

..."

22. At the material time, Article 385 of the Code of Criminal Procedure provided that all judgments of the Supreme Court must be served on the parties to the proceedings.

COMPLAINT

23. The applicant complained under Article 6 §§ 1 and 3 (c) of the Convention that police officers had pressured her to waive her right to a lawyer and, in the absence of lawyer, to falsely confess to a criminal offence she had not committed.

THE LAW

A. Compliance with the six-month time-limit

24. The Government submitted that the application had been lodged outside of the six-month time-limit. They drew the Court's attention to the fact that the final domestic judgment in the applicant's case had been

adopted on 2 February 2009 (see paragraph 18 above), whereas she had lodged her application with the Court on 13 August 2010. The Government submitted that the applicant had been notified that the Supreme Court's judgment would be publicly pronounced on 2 February 2009 (see paragraph 17 above) and thus she had had the opportunity to get acquainted with the judgment on that day, but had made no effort to do so. Furthermore, they submitted that the judgment had become available at the Supreme Court's registry and online on the day of its pronouncement, and the applicant had thus been able to access it.

25. The Government further submitted that on 3 February 2009 a copy of the Supreme Court's judgment had been sent by registered letter to the applicant's home address, so she must have received it within a few days – there was no indication that it had not been delivered. However, the Government did not provide any documents showing the exact date on which a copy of the judgment had been delivered to the applicant.

26. The applicant submitted that she had received a copy of the Supreme Court's judgment sometime after 15 February 2009, but did not provide any supporting documents. She did not comment on the Government's submissions.

27. The Court reiterates that the six-month period starts running from the date on which the applicant and/or his or her representative has sufficient knowledge of the final domestic decision. Where under domestic law the final decision has to be served in writing, the six-month time-limit has to be calculated from the date of service, whether or not the court has read out the relevant decision either in full or in part (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 53, 29 June 2012, and the cases cited therein). In the present case, domestic law at the material time provided that Supreme Court judgments had to be served on the parties (see paragraph 22 above). It follows that the six-month time-limit has to be calculated from the date on which the applicant was served with the Supreme Court's judgment of 2 February 2009, and, contrary to the Government's submissions (see paragraph 24 above), it is immaterial that she could have attended its pronouncement or accessed the judgment at the court's registry or online.

28. The Court observes that neither the applicant nor the Government were able to show the exact date on which the Supreme Court's judgment was served on the applicant. In this connection it reiterates that it is for the State relying on the failure to comply with the six-month time-limit to establish the date on which the applicant became aware of the final domestic decision (see *Mugoša v. Montenegro*, no. 76522/12, § 43, 21 June 2016, and the cases cited therein). In such circumstances, the Court considers that the uncertainty as to the exact date of service must be resolved in the applicant's favour and the present application cannot be declared inadmissible as being lodged outside of the six-month time-limit. It therefore dismisses the Government's objection.

B. Complaint under Article 6 §§ 1 and 3 (c) of the Convention

1. The parties' submissions

29. The applicant submitted that during questioning on 10 July 2008 police officers by way of verbal threats had pressured her to waive her right to a lawyer and to confess to a criminal offence she had not committed. She argued that her conviction had been based on a false confession given in the absence of a lawyer, thereby breaching her defence rights under Article 6 §§ 1 and 3 (c) of the Convention.

30. The Government submitted that, under domestic law, the presence of a lawyer during the questioning of the applicant had not been obligatory (see paragraph 20 above). They submitted that the right to a lawyer had been properly explained to the applicant before each questioning, and she had confirmed with her signature that she had understood it (see paragraphs 7 and 9 above). The applicant's refusal of a lawyer during questioning on 10 July 2008 had also been properly recorded, as required by domestic law (see paragraphs 7 and 20 above). The Government submitted that during questioning on 20 August 2008 the applicant had been provided with a State-appointed lawyer as soon as she had requested one, so there were no grounds for believing that she would have been denied legal assistance on 10 July 2008 had she requested it.

31. The Government further submitted that the domestic courts had thoroughly examined the applicant's allegations of undue pressure by the police and dismissed them as unfounded. The Government argued that the applicant's complaint essentially concerned the assessment of evidence by the domestic courts and was therefore of a "fourth-instance" nature.

32. The applicant did not comment on the Government's submissions.

2. The Court's assessment

33. The relevant general principles concerning the right to legal assistance in criminal proceedings are summarised in *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08 and 3 others, §§ 249-55 and 266-73, ECHR 2016), and *Simeonovi v. Bulgaria* ([GC], no. 21980/04, §§ 112-20, 12 May 2017).

34. The Court also reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his or her own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. That also applies to the right to legal assistance. However, if it is to be effective for Convention purposes, such a waiver must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance (see *Simeonovi*, cited above, § 115, and the cases cited therein). A waiver of the right, once invoked, must not only be voluntary, but must also constitute a knowing and intelligent relinquishment

of a right (see *Pishchalnikov v. Russia*, no. 7025/04, § 77, 24 September 2009, and the cases cited therein).

35. Turning to the circumstances of the present case, the Court firstly observes that on 10 July 2008 the applicant was served with the official notice that she was a suspect, and that her procedural rights were listed on that notice, which she signed (see paragraph 7 above). The applicant did not allege either before the domestic courts or the Court that she had not been properly informed of her right to a lawyer. The Court also notes that the waiver signed by the applicant had been explicit, unequivocal and drawn up in accordance with domestic law (see paragraph 20 above; compare and contrast *Volkov and Adamskiy v. Russia*, nos. 7614/09 and 30863/10, § 58, 26 March 2015).

36. The Court further observes that the overall circumstances in which the applicant signed the waiver do not, in and of themselves, raise doubts as to the applicant's free will, nor does it appear that the applicant was in a particularly vulnerable situation when signing the waiver (compare and contrast *Tarasov v. Ukraine*, no. 17416/03, § 94, 31 October 2013, and *Ogorodnik v. Ukraine*, no. 29644/10, § 108, 5 February 2015).

37. The domestic courts dismissed the applicant's allegations that the police officers had pressured her to waive her right to a lawyer (see paragraphs 15 and 18 above; it appears that she did not raise such allegations before the court of the appellate instance – see paragraph 16 above). The applicant's credibility was questioned in view of the fact that during the proceedings she had changed her version of events several times and had presented a version which could not be confirmed "by any evidence" (see paragraph 15 above). Having examined the material submitted to it, the Court also notes that the applicant provided only abstract and vague allegations of "instructions and persuasion" by police officers, without any concrete details of the alleged threats or other verbal pressure, whereas the three officers gave consistent statements denying allegations of any such pressure (compare and contrast *Gedrimas v. Lithuania*, no. 21048/12, § 82, 12 July 2016). In such circumstances, the Court sees no reason to substitute its own assessment for that of the domestic courts. It has therefore no basis on which to conclude that in waiving her right to legal representation during her first questioning as a suspect the applicant was misled, coerced or that she did not understand the consequences of her actions (see *Zinchenko v. Ukraine*, no. 63763/11, § 89, 13 March 2014).

38. Having dismissed that allegation, the Court does not see any grounds for doubting the overall fairness of the criminal proceedings against the applicant.

39. In view of the foregoing considerations, the Court concludes that the applicant's complaint under Article 6 §§ 1 and 3 (c) of the Convention is manifestly ill-founded. It must therefore be dismissed in accordance with 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 20 July 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President