

# **CASE OF KUDREVI IUS AND OTHERS v. LITHUANIA**

## **Application no. 37553/05 (2013)**

In the Chamber's judgment in the case of **KUDREVI IUS AND OTHERS v. LITHUANIA** (26.11.2013) the European Court of Human Rights held, by a majority, that there had been:

**- a violation of the article 11 of the Convention (Freedom of assembly and association)**

### **I. Principal facts**

The applicants, Arnas Kudrevičius, Bronius Markauskas, Artūras Pilota, Kęstutis Miliauskas, and Virginijus Mykolaitis are Lithuanian nationals.

In May 2003 the Lithuanian authorities issued farmers with permits to hold peaceful assemblies in selected areas. The farmers held a peaceful demonstration, but after it dispersed it caused major traffic disruptions on three main roads.

After a successful settlement with the Government, the protest ended on 23 May 2003. However, criminal charges of rioting were brought against the applicants, and they were all convicted in September 2004.

They were each given a sixty-day custodial sentence, suspended for one year, and ordered not to leave their places of residence for more than seven days during that period without the authorities' prior agreement.

They appealed against the convictions, but they were unsuccessful, and the Supreme Court dismissed their final appeal in October 2005.

### **II. Complaints and procedure**

Relying in particular on Article 11 (freedom of assembly and association), the applicants complained that their criminal convictions for participating in peaceful protests had been excessive.

The applicants also submitted that the demonstrations were peaceful and no incidents took place: public order had not been breached, nor had there been destruction of property belonging to others or damage caused to a person's health.

During the demonstrations the farmers had acted calmly and had taken no actions that would require police special units or the army to intervene to restrain them.

### **III. Decision of the Court**

The Court noted that an interference with freedom of assembly will constitute a breach of Article 11 if it was not prescribed by law, did not pursue a legitimate aim and was not necessary in a democratic society for the achievement of that aim. It considered that, even assuming that the applicants' punishment had been

administered lawfully in the pursuit of the legitimate aim of preventing public disorder or protecting the rights and freedoms of others, the main issue was whether their punishment had been a proportionate way of achieving those aims.

The Court accepted that the demonstration had caused major disruption. However, it stated that the authorities had to show a degree of tolerance towards disruptions during protests, in order for the right of freedom of assembly to be upheld.

In this case, the applicants had permits to hold peaceful protests, the demonstration had not been violent, and negotiations between the farmers and the Government, carried out in good faith, had been underway at the relevant time. They had also acted reasonably by allowing passenger and dangerous goods vehicles to pass during the blockade. As punishment, the Lithuanian authorities had imposed the ordeal of criminal proceedings, convictions and custodial sentences, which – although suspended – had involved a 12-month restriction on the applicants leaving their place of residence.

The Court therefore held that the applicants' conviction had not been a necessary and proportionate measure in order to achieve the legitimate aim of preventing disorder, in violation of Article 11.

#### **IV. Just satisfaction**

The court held that Lithuania was to pay the applicants 2000 euros (EUR) each in respect of non-pecuniary damage.

#### **V. Dissenting Opinion**

The dissent argued that when analysing the lawfulness aspect, the Supreme Court of Lithuania, in its judgment provided clear legal explanation of the substance of the criminal offence "riot" and the reason for its application in the applicants' case.

The facts of the present case, constitute a clear example of the "gathering of persons", organised in breach of valid administrative permits and police orders and with chaotic impact on social life and public order. It was not a spontaneous, but an organised demonstration which set out, and managed, to cause as much public disorder as possible.

The applicant were not punished for their participation in the demonstrations, but for their particular behavior in the course of those demonstrations.

The dissent noted that the criminal sanctions imposed on the applicants were lenient custodial sentences, which were proportionate to the gravity of their conduct. Furthermore, none of the applicants even had to serve their respective sentences, because the trial judge considered that the aims of punishment could be achieved by suspending the execution of the sentence.