

CASE OF BAL I NAS v. LITHUANIA - Application no._17095/02 (2010)

In the Chamber's judgment in the case **Bal i nas v. Lithuania**, the European Court of Human Rights held, unanimously, that there had been:

- **a violation of Article 5 § 3 (right to liberty and security) of the Convention;**
- **no violation of Article 6 §§ 1 and 3 (d) (right to a fair trial) of the Convention;**

I. Principal Facts

The applicant, Laimutis Bal i nas, is a Lithuanian national. He was arrested in 1998 on charges of armed robbery and, still in pre-trial detention, had another set of criminal proceedings brought against him in May 2000 on suspicion of being a member of a criminal organisation involved in explosions in public places. He was released in September 2003, on being acquitted in the second set of proceedings, and convicted as charged in October 2004, in the first set of proceedings, and sentenced to two years' imprisonment.

II. Complaints and Procedure

Relying on Article 5 (right to liberty and security) of the Convention, he complained about the unlawfulness and excessive length of his detention with regard to the two sets of proceedings against him. He also complained that the proceedings against him for robbery had been unfair as he had not been able to challenge two witnesses whose testimony had been used to convict him, in breach of Article 6 §§ 1 and 3 (d) (right to a fair trial).

III. Decision of the Court

Article 5 § 3

The Court noted that the Lithuanian courts, when ordering the applicant's detention, based their decisions on three main fears, namely that the applicant may escape, obstruct the investigation by influencing witnesses, and commit new crimes. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he was involved in organised crimes. At that stage of the proceedings those reasons were sufficient to justify keeping the applicant in custody. However, with the passage of time those grounds became less relevant. Taking into account the rather long period of the applicant's detention, and noting that he had already been deprived of his liberty for over eighteen months pending the first set of the criminal proceedings, only exceptional reasons could have justified the continuation of detention in the light of Article 5 § 3 of the Convention.

The Court further noted that the reasons given for extending the applicant's detention were just a brief and abstract repetition of the criteria enumerated in Article 104 of the Code of Criminal Procedure, governing the grounds to maintain a person in detention, without specifying the manner in which those grounds applied to the individual case of the applicant.

The Court could accept that, as submitted by the Government, the fact that the applicant was charged with serious crimes and his co-conspirators testified could have been one of the specific reasons for his continued detention. However, those grounds were not analysed in any great detail in any court order made with respect to the applicant. The reasons given in the orders remained general, theoretical and nearly identical throughout time, without examining the personal circumstances of the applicant, and therefore were clearly insufficient to satisfy the requirements of Article 5 § 3.

Lastly, as emerges from the materials before the Court, the applicant's situation was further compounded by the inadequate conditions at the Šiauliai Remand Prison where he was held and the fact that, unlike the persons convicted, during his pre-trial detention the applicant was deprived of the possibility to benefit from long duration visits from his relatives. Consequently the Court concludes that there has been a violation of Article 5 § 3 of the Convention.

Article 6 §§ 1 and 3 (d)

The Court notes that the domestic courts did grant the applicant's requests that D.R. and M.S. be summoned for questioning, even though the courts' efforts were futile. As a result, the Court cannot hold that the Lithuanian courts were insensitive towards the applicant and arbitrarily denied him the right to defend himself. On the facts of the case the Court also notes the applicant had argued his inability to question D.R. and M.S. in his appeal and cassation appeal before the domestic courts, which dealt with these issues at significant length and dismissed them as unsubstantiated.

From the reading of the Court of Appeal's and the Supreme Court's decisions it emerges that they did consider the applicant's arguments in the light of Article 6 §§ 1 and 3 (d) of the Convention and gave them reasoned responses, nonetheless finding that, in view of other available evidence, there was enough proof against the applicant. The decisions of the Lithuanian courts seem to be devoid of arbitrariness. Accordingly, the Court is not ready to find that the applicant's rights of defence were restricted to such an extent that he would have had no fair trial within a meaning of Article 6 § 1 of the Convention. That being so, the Court considers that in the present case there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

IV. Just satisfaction

The Court held that Lithuania was to pay to the applicant 6,000 (EUR) in respect of non-pecuniary damage.