

CASE OF JUOZAITIEN AND BIKUL IUS v. LITHUANIA - Applications nos. 70659/01 and 74371/01 (2008).

In the Chamber's judgment in the case of **JUOZAITIEN AND BIKUL IUS v. LITHUANIA** the European Court of Human Rights held, unanimously, that there had been:

- **a violation of Article 2 of the Convention (right to life).**

I. Principal facts

The Applicants, Mrs Regina Juozaitien (1st Applicant) and Mr Jonas Bikul ius (2nd Applicant), are Lithuanian nationals. The case concerns the criminal proceedings against the driver and the police officer.

In the evening of Friday 24 July 1998 the first Applicant's son, Dalius Juozaitis, and the second Applicant's son, Darius Bikul ius, were found dead in a car with single gunshot wounds to their backs. The deaths had occurred as their sons were passengers in a car which was involved in a chase by the police.

On 25 July 1998 criminal proceedings were instituted against RM (the driver) for manslaughter in regard to the deaths of the Applicants' sons. Mrs Regina Juozaitien and Mr Jonas Bikul ius submitted their civil claims and were recognised as complainants in those proceedings.

On 24 July 1998 the police received a telephone call informing about a car driving dangerously, thus officers AM and AR had followed the car. After some time other policemen joined them, including officer SG. During the chase, the car tried to escape, attempting to push the police cars off the road. One of the officers tried two warning shots into the air. A moment later, the driver of the car lost control of the vehicle and hit a fence. The police vehicle also has stopped trying to block the car's way. Then the car has suddenly changed the direction damaging police's vehicle and hitting one of the officers. Policemen shot at the car several times towards its wheels, seats and windows and hitting its tyres. The car was forced to stop and the driver, who was drunk and trying to flee, was arrested. The Applicants' sons were found dead inside the car, each with a gunshot wound in the back. It was specified then that two of SG's shots caused death of the Mrs Juozaitien 's and Mr Bikul ius' sons. The driver of the car was acquitted of the offence of manslaughter and the court noted that "the deaths had been caused not by his acts, but by the "lawful actions of a third person who had used an official weapon." The Applicants' civil claims for damages against the police were not examined. The court sentenced the driver (RM) to six years' imprisonment for resisting the lawful orders of the police. On 18 May 1999 the Kaunas Regional Court upheld the judgment. It was also decided to institute criminal proceedings against SG (one of the policemen) for the manslaughter of the Applicants' sons and for exceeding his authority. On 12 October 1999 the Supreme Court upheld the judgment of 18 May 1999.

The criminal proceedings which were opened against one of the police officers, holding him responsible for the deaths, were discontinued by the prosecutor, emphasising that the swerving movements of the car had been the cause of the deaths. The prosecution found no indication of any crime in the actions of officer SG. The Applicants appealed against the decision to discontinue the investigation, however the District court rejected their appeals, concluding that the police officer had not exceeded the requirements of the relevant legal provisions in using his

gun and “SG had used the firearm lawfully, the shots being directed at the wheels of the car, not at the people sitting in it”. As the consequence the court upheld the decision of the prosecution.

II. Complaints and procedure

Relying on Article 2, the Applicants alleged that their sons were unjustifiably killed by the police and that there was no effective investigation into the circumstances of their deaths. The circumstances of the incident were examined first by the courts in the context of the proceedings against the driver, and then by the prosecution and the Kaunas City District Court.

III. Decision of the Court

Decision whether the Applicants’ sons were deprived of their lives in violation of Article 2 of the Convention:

Concerning its previous judgments the Court reminded that “the use of lethal force by police officers may be justified in certain circumstances. However, any use of force must be no more than “absolutely necessary”, that is to say be strictly proportionate in the circumstances”.

Moreover, the Court submitted that “there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the loss of an opportunity to arrest the fugitive”.

Taking into account all the facts in the case, the Court found that the victims were killed by shots fired by SG, whose aim was to stop the car and arrest the driver.

On the basis of the submitted material, the Court neither confirmed, nor dispelled the doubts concerning the fact if the use of force was “absolutely necessary”. By directing fire at the Ford Escort in a sustained and somewhat erratic manner, the officers were running a very high risk of killing the passengers and should have reasonably foreseen that risk. In addition, no eyewitnesses to the chase were identified during the investigation. The Court therefore did not find that the escaping driver posed an obvious danger to the public. In any event, the Court did not consider that the level of the threat required that he had to be stopped immediately by gunfire. The Court considered that their actions indicated a lack of caution in the use of firearms, contrary to what should be expected from law-enforcement professionals. “In such circumstances, the Court concluded that the deaths of the Applicants’ sons resulted from the use of force which was more than absolutely necessary in order to effect a lawful arrest within the meaning of Article 2 § 2 (b) of the Convention”.

Decision whether the inquiry into the death of the applicants’ sons was effective:

The Court emphasized that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the Article 1, also requires that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. The Court noted that the investigation into the lawfulness of the shooting was not opened until almost 10 months after the incident. Moreover, those taken proceedings only dealt with the responsibility of the driver and made no assessment as to the circumstances and lawfulness of the use of force by SG. There had not therefore been a prompt investigation, as required by Article 2. Other claims concerned the exact timing and duration of the chase. The Court further noted that the domestic authorities had concentrated their inquiry on one version only - that presented by the police - without discussing any further hypotheses, such as those raised by the applicants.

The Applicants' doubts also had not been scrutinised. Moreover, no evidence had been submitted to the Court to show that the only possible account of events was that given by the police (e.g. expert opinions). The Court therefore concluded that there had been a violation of Article 2 concerning the failure to carry out an effective investigation into the deprivation of life.

IV. Just satisfaction

The Court awarded each of the Applicants the overall sum of EUR 30,000 for all forms of damage (pecuniary and non-pecuniary) suffered.