



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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 59619/00  
by Pedro Katunda KAMBANGU  
against Lithuania

The European Court of Human Rights (Third Section), sitting on 17 March 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,  
Mr J. HEDIGAN,  
Mr C. BÎRSAN,  
Mrs M. TSATSA-NIKOLOVSKA,  
Ms R. JAEGER,  
Mr E. MYJER,  
Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 28 April 2000,

Having regard to the partial decision of 17 June 2004,

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, Pedro Katunda Kambangu, is an Angolan national who was born in 1968. At present he lives in Moscow, Russia. He is represented before the Court by Mr M. Urbelis, a lawyer practising in Vilnius. The respondent Government were represented by Mr G. Švedas, of the Ministry of Justice, and Mrs D. Jočienė, of the Ministry of Justice.

### A. The circumstances of the case

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

The applicant arrived in Lithuania on 2 March 1998 with a transit visa valid until 4 March 1998. On the above date the immigration police ordered the applicant to leave Lithuania by 9 March 1998.

On 10 March 1998 the applicant was arrested while trying to cross the Lithuanian-Belarus border without a passport. He alleged that his passport had been stolen, and that he had intended to go to the Embassy of Angola in Moscow to obtain a new passport. The applicant was arrested for violating the Lithuanian immigration rules requiring possession of a valid passport for foreign travel. From 10 to 12 March 1998 he was held in police custody in Vilnius.

According to the Government, the applicant was not arrested or detained from 10 to 12 March 1998, but only held by the competent authorities as a result of his failure to carry any valid documents while travelling.

According to the applicant, on 12 March 1998 he was moved from Vilnius to the Pabradė Aliens Registration Centre (“ARC”) on the ground that he was staying in Lithuania illegally.

The Government state that on 12 March 1998 the applicant arrived at the ARC and requested residence there of his own free will.

On 22 June 1998 the applicant submitted an application for asylum in Lithuania.

By decision of 12 August 1998 the Migration Department of the Ministry of Interior (“MDMI”) stated that the applicant was “allowed to stay in the Republic of Lithuania until it is established whether there are reasons preventing the person from enjoying temporary asylum in the Republic of Lithuania.” The decision also stated that the applicant was “allowed to continue living at the ARC.”

On 6 October 1998 the MDMI refused the applicant's asylum application. On 19 October 1998 an expulsion order was issued against him. The applicant appealed against these decisions.

On 27 November 1998 the Vilnius Regional Court upheld the appeal, finding that the immigration authorities' refusal to grant asylum had been

unlawful in that they had failed to properly investigate the applicant's arguments about the risks that he allegedly faced in Angola.

On 17 December 1998 the MDMI revoked the expulsion order.

On 14 June 1999 the MDMI again refused the applicant's asylum request. The applicant appealed against the decision.

At the same time, the applicant challenged his continued stay at the ARC, claiming that it amounted to unlawful detention. On 11 October 1999 the Higher Administrative Court rejected the applicant's complaint, finding that the ARC was not a place of deprivation of liberty, but that the applicant was being held there in accordance with the governmental regulations of 17 April 1997.

The court noted that the applicant had himself requested to be accommodated at the ARC. In any event, the court held that there would have been no breach of domestic law even if the applicant had not expressed his will to come to the ARC. In this respect the court held, *inter alia*:

“Pursuant to the regulations [of 17 April 1997], aliens shall be kept (*laikomi*) at [the ARC] until the emergence of special conditions allowing them to leave it, i.e. until they are granted the temporary asylum status (*laikinasis teritorinis prieglobstis*) and they are accordingly moved to a refugees reception centre, or deported or leave Lithuania, or until another decision is taken on their legal status ... .

On 14 July 1998 Pedro Katunda Kambangu submitted an application for asylum in Lithuania (*prašymą prieglobsčiui gauti*). Article 11 of the Refugees Act of the Republic of Lithuania provides that, pending the examination of a request for a refugee status or until [the person concerned] obtains a permission to enter another country, the alien shall be granted the temporary asylum status and be issued with an appropriate document, having established that there are no grounds under Article 4 of the Act preventing the alien from enjoying asylum in Lithuania. ... .

As follows from the material evidence and as confirmed by the parties, the procedure for granting the applicant the temporary asylum status has not been concluded.

After the applicant having submitted the request (for asylum), the [ARC] officials ... sought to determine the applicant's identity and other circumstances pertaining to his arrival to Lithuania, his life in other foreign countries.

By decision of 12 August 1998 the [immigration authorities] allowed the applicant to stay in Lithuania until it was established whether there were reasons preventing the person from enjoying the temporary asylum status in Lithuania, and allowed the applicant to continue living at the [ARC] ... .

After an additional investigation, on 6 October 1998 decision was taken to refuse the applicant the temporary asylum status in the Republic of Lithuania, discontinue the examination of his request to grant the refugee status, and prepare the documents to expel him from Lithuania ... .

The applicant appealed to a court against the decisions.

By decision of 27 November 1998 the Vilnius Regional Court quashed the decisions  
....

By conclusion of 17 December 1998 the decision on applicant's expulsion ... was quashed, and he was allowed to continue living at the [ARC]. The question of granting the refugee status and the temporary asylum status was returned for a fresh examination ... .

Upon application by the [ARC], on 14 June 1999 the [immigrations authorities] adopted a decision to refuse the temporary asylum status. This decision was appealed against to a court [with a suspensive effect]. From all this follows that the procedure for granting the temporary asylum status, and accordingly the refugee status, has not yet been finalised[;] thus there is no reason to move the applicant to a refugees reception centre or order the Ministry of Interior to release (*išleisti*) him from the [ARC]. The applicant has no other place of residence, and there is no guarantee to ensure that he finds another safe place to live in Lithuania, pending the determination of [the question of] granting him the refugee status or another question pertaining to his legal status.”

The court concluded that the applicant's stay at the ARC amounted neither to administrative detention, nor to “a deprivation of liberty of any other kind.”

The applicant's appeal against the decision of 11 October 1999 was rejected by the Court of Appeal on 7 December 1999 on the ground that there had been no deprivation of liberty of the applicant at the ARC within the meaning of the domestic law or the European Convention on Human Rights. In this respect the court held *inter alia*:

“ ... Pedro Katunda Kambangu was accommodated at the [ARC] on 12 March 1998.

The regulations of 17 April 1997 were effective at the time of the placement (*patalpinimo metu*). Points 2, 7 (2), 7 (4) of the regulations provide that the Centre shall accommodate temporarily aliens requesting asylum in the Republic of Lithuania, and aliens who have arrived and are staying in the Republic of Lithuania illegally, until their legal situation is determined in accordance with the [law] ... . Aliens shall be accommodated at the Centre until the temporary asylum is granted ... or [until] they are deported from or leave the Republic of Lithuania (points 10 (1) and 10 (2) of the regulations). There is no basis to claim that [the applicant] was deprived of his liberty (*atimta laisvė*).

....

[Article 5 § 4 of the Convention] was not breached as the applicant was not arrested or detained.

As Pedro Katunda Kambangu was neither arrested by way of administrative arrest nor subjected to any other deprivation of liberty, there is no basis to claim that there had been a breach of Article 5 §§ 1 and 4 of the Convention.”

On 9 December 1999 the Higher Administrative Court found that the MDMI had failed to properly investigate the asylum request, quashing the decision to refuse the asylum.

Having obtained a new passport from the Embassy of Angola in Moscow, the applicant left the ARC on 21 January 2000. It appears that he brought no further proceedings regarding the legality of his stay in Lithuania, and voluntarily left the country on 21 January 2000.

On 13 January 2000 the United Nations Working Group on Arbitrary Detention rejected the applicant's complaint about his placement at the ARC. According to the applicant, his complaints to the above international authority had no relation to his application under the European Convention on Human Rights.

### **B. Relevant domestic law and practice**

The ARC was established by a governmental decree of 30 September 1996. The governmental regulations on the ARC were adopted on 17 April 1997, and supplemented on 10 June 1999 (see above for the relevant provisions of the regulations quoted in the decision of the Higher Administrative Court of 11 October 1999 and the Court of Appeal of 7 December 1999).

The relevant provisions of the Refugees Act have also been interpreted by the Higher Administrative Court in its decision of 11 October 1999.

Pursuant to Articles 8 and 15 of the State Border Act 1992 and the governmental regulations on the border zone regime of 22 July 1996, the fact of an alien having no valid travel documents and the Lithuanian visa could be considered as an administrative offence.

Point 2 (6) of the instruction of the Interior Minister on asylum seekers of 9 July 1997 provides that the police can arrest and accommodate at the police station an alien who has no documents justifying his stay in the country. The alien can be kept at the police station until a decision on his legal status is taken, but not for more than 10 days. If the police have no facilities to accommodate the alien for 10, the alien shall be transferred to the Aliens Registration Centre. Point 2 (10) of the instruction provides that an asylum seeker who stays legally on the territory of the country shall inform the immigration authorities of his place of residence in Lithuania.

Article 4 of the Governmental Decree on the status of asylum seekers of 3 April 1996 provides that an alien who has arrived in Lithuania illegally and who has applied for asylum “may be sent” (*gali būti nusiųstas*) to the Aliens Registration Centre by decision of the immigration authorities, “in order to establish whether there are circumstances preventing the alien from enjoying asylum in the Republic of Lithuania.” The stay of the alien at the ARC does not as such grant the alien a temporary asylum or a legal status.

## COMPLAINTS

1. The applicant complained under Article 5 § 1 of the Convention that on 12 March 1998 he had been unlawfully transferred and held at the ARC until 21 January 2000, there being no domestic legal basis for that deprivation of liberty.

3. The applicant further complains under Article 5 § 4 of the Convention about the inability to obtain a court review of that deprivation of liberty.

## THE LAW

1. Under Article 5 of the Convention the applicant complained that from 12 March 1998 until 21 January 2000 he had been unlawfully transferred and held at the ARC, in breach of Article 5 § 1 of the Convention which provides, insofar as relevant, as follows:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

The Government stated that the applicant had been detained from 10 to 12 March 1998 as he had breached the relevant domestic requirements to have valid travel documents and a visa. Thereafter he had arrived at the ARC of his own will, as confirmed by the court decision of 11 October 1999. There had accordingly been no deprivation of liberty of the applicant. In any event, there had been a proper domestic legal basis for the applicant's stay at the ARC as he had been kept there on the basis of the governmental decree of 30 September 1996 and the regulations of 17 April 1997. In this respect the Government submitted that even from the moment of the applicant having submitted his asylum application his status in Lithuania had been unlawful, and that he had thus been obliged to live at the ARC, in accordance with the said governmental provisions. The Government concluded that there had been no violation of Article 5 § 1 of the Convention.

The applicant contested the Government's conclusions. He stated in particular that the national law had been very ambiguous as to the legality of his status in Lithuania or indeed the need for his being kept at the ARC, and that the national courts had given no unequivocal answer as to the applicant's grievances about his being unlawfully detained at the ARC.

In the light of the parties' observations, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. It cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant further complained that he had no court review available of the deprivation of liberty from 12 March 1998 until 21 January 2000, in breach of Article 5 § 4 of the Convention, which reads:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

The Government submitted that Article 5 did not apply to the applicant's stay at the ARC (also see above). They submitted that in any event the domestic courts had reviewed the applicant's grievances on various occasions, having discussed in detail the factual and legal basis of the applicant's situation. Accordingly, there had been no breach of the above provision.

The applicant disagreed, claiming that he had obtained no clear answer from the domestic courts as to the factual or legal aspects of his stay at the ARC.

In the light of the parties' observations, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. It cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

*Declares* the remainder of the application admissible, without prejudging the merits of the case.

Vincent BERGER  
Registrar

President

BOŠTJAN M. ZUPANČIČ