

LITHUANIA/EUROPEAN COURT: No violation of rights of former Soviet security officer found guilty of genocide

CASE OF DRÉLINGAS v. LITHUANIA (Application no. 28859/16)

Registrar of the Court (12.03.2019) – In today's Chamber judgment in the case of Drélingas v. Lithuania (application no. 28859/16) the European Court of Human Rights held, by five votes to two, that there had been:

no violation of Article 7 (no punishment without law) of the European Convention on Human Rights.

The case concerned the applicant's conviction for genocide for taking part in a 1956 operation to arrest two partisans who had resisted Soviet rule.

The Court concluded that Lithuania's Supreme Court had now resolved previously existing legal discrepancies in domestic practice on such genocide trials, discrepancies which had led to the Court finding a violation in the similar case of Vasiliauskas v. Lithuania in 2015.

In particular, the Supreme Court had explained why the partisans who had resisted Soviet rule could be considered as

an important part of the nation and thus be covered by international law, Article II of the Genocide Convention, at the time of the events.

The applicant had to have been aware in the 1950s that he could be prosecuted for genocide and his conviction had been foreseeable. There had therefore been no violation of the Convention.

Principal facts

The applicant, Stanislovas Drėlingas, is a Lithuanian national born in 1931 who lives in Utena (Lithuania).

Mr Drėlingas, who served in the MGB and KGB Soviet security forces, took part in an operation in 1956 to detain two partisans, Adolfas Ramanauskas (whose code name was Vanagas) and his wife Birutė Mažeikaitė (code name Vanda), who were opposed to Soviet rule in Lithuania.

The two were arrested, which led to Mr Ramanauskas being severely ill-treated in detention and then executed in 1957 while Ms Mažeikaitė had to serve eight years in a prison camp in Siberia.

In 2014, after Lithuania had regained its independence, Mr Drėlingas was charged under the Criminal Code with genocide for his role in the operation against Mr Ramanauskas and Ms Mažeikaitė and was found guilty by Kaunas Regional Court in

March 2015.

The court held that Mr Ramanauskas had been a prominent partisan who had led resistance to Soviet rule, and that the partisans were representatives of the Lithuanian nation. The aim of the arrest operation had been to eliminate part of a national group and Mr Drélingas had thus been guilty of genocide, for which there was no domestic statute of limitations.

The court rejected his arguments that he could not be held responsible for the fate of the two partisans as he had not personally arrested or sentenced them. He was given a five-year term of imprisonment. The appeal court and the Supreme Court, in April 2016, upheld his conviction, the Supreme Court reducing his sentence to five months' detention and releasing him for time served.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution. In particular, the Supreme Court examined the Strasbourg Court's 2015 Grand Chamber judgment in *Vasiliauskas v. Lithuania*, which had found a violation of Article 7 as the courts had defined partisans as a separate "political group". However, such a group was not protected by international law under the 1948 Genocide Convention and Mr Vasiliauskas's conviction had not been foreseeable.

In Mr Drėlingas's case, the Supreme Court provided an explanation for why Mr Ramanauskas and Ms Mažeikaitė had to be considered as members of a distinct national and ethnic group and so fall under the Genocide Convention. At the time of the events Mr Drėlingas therefore had to have been aware that he could face criminal liability for genocide.

In another set of proceedings in 2016 the Supreme Court also quashed Mr Vasiliauskas's domestic conviction. It noted that he had been found guilty of genocide in relation to a "separate political group", which was not a term found in the Genocide Convention but one which had been introduced into Lithuanian law after the re-establishment of independence. He had therefore been prosecuted retroactively, which was a violation of his rights.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law), Mr Drėlingas complained that his conviction for genocide had violated his rights because the national courts' broad interpretation of that crime had had no basis in international law.

The application was lodged with the European Court of Human Rights on 18 May 2016.

Decision of the Court

The applicant argued in particular that there had been no

basis in public international law for his conviction, which had been based on a retroactive application of domestic law, violating Article 7.

The Court first rejected his arguments that he could not be held liable for the fates of the two partisans as he had neither directly arrested them nor taken part in the decision-making procedure.

The Court observed that the domestic courts had examined the first part of his submission thoroughly and the Court saw no reason to question their findings. As regards the second point, the Court reiterated its finding in Vasiliauskas that even private soldiers could not show total, blind obedience to orders which infringed recognised human rights. As an officer of the security forces he must have known what would happen to the two resistance members.

The Court then examined whether the lack of clarity in domestic law on the crime of genocide, which it had identified in Vasiliauskas, had now been dispelled.

It noted that the Supreme Court judgment in Mr Drélingas's case had analysed Vasiliauskas and had drawn the conclusion that the finding of a violation of Article 7 had been due to the domestic courts' failure to substantiate their findings that the partisans had constituted a significant part of a national group and had thus come under Article II of the Genocide Convention.

In Mr Drélingas's case the Supreme Court had provided a detailed explanation of the significance of the partisans, noting, among other things, that they had played an essential role when protecting the national identity, culture and national self-awareness of the Lithuanian nation. The Supreme Court had concluded that the partisans were a significant part of a protected national and ethnic group within the meaning of both the 1948 Genocide Convention and domestic law under Article 99 of the Criminal Code.

The Supreme Court had also referred to a 2014 Constitutional Court ruling which had added to the historical context on the partisan movement and its significance for the Lithuanian nation.

Furthermore, the Supreme Court had re-opened the domestic proceedings in Mr Vasiliauskas's case and had acknowledged the Strasbourg Court's findings without reservation. It had also held that Mr Vasiliauskas could not be prosecuted for the genocide of members of a political group.

The Court concluded that the Supreme Court had in Mr Drélingas's case removed the lack of clarity which the Court had identified in Vasiliauskas, caused by the discrepancy between Article 99 of the Criminal Code and its reference to political groups and Article II of the Genocide Convention.

The Supreme Court had also clarified the scope of review of charges of genocide, including a prohibition on the retroactive prosecution for the genocide of people belonging to a political group and the need to establish intent.

Given such developments, the domestic system, based on international law in the shape of the Genocide Convention and the case-law of the Constitutional and Supreme Courts, no longer showed the shortcomings identified in Vasiliauskas. Mr Drélingas's conviction for genocide had thus been foreseeable and had not resulted in a violation of Article 7.

Separate opinions

Judges Motoc and Ranzoni expressed dissenting opinions which are annexed to the judgment.

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