

OPINION No. 24/2000 (LITHUANIA)

Communication addressed to the Government on 13 January 2000

Concerning Pedro Katunda Kambangu

The State is a party to the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1999/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information in good time.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
 - (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
 - (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. In the context of the allegations made by the source and the response of the Government, the matter at issue is the legality of the alleged detention of Pedro Katunda Kambangu in the Foreigners Registration Centre of Pabrade beginning on 12 March 1998. The Government has informed the Working Group that Pedro Katunda Kambangu appealed to the Embassy of Angola in Moscow, and that an Angolan passport was issued to him. He then applied to the Embassy of Belarus in Lithuania and a visa for Belarus was issued to him. Thereafter, according to the

Government, Pedro Katunda Kambangu departed from the Republic of Lithuania on 21 January 2000. On this basis, the period during which Pedro Katunda Kambangu was allegedly “detained” at the Foreigners Registration Centre at Pabrade was from 12 March 1998 to 21 January 2000. It is the legality of such alleged detention that is in question.

6. Pedro Katunda Kambangu arrived legally in Lithuania on 2 March 1998 on a transit visa issued by the Embassy of Lithuania in France, which expired on 3 March 1998. On 4 March 1998 the police at Vilnius ordered him to leave Lithuania by 9 March 1998. It is alleged by the source that because of the theft of his handbag and passport on 8/9 March 1998, Mr. Katunda Kambangu could not leave by 9 March. When on 10 March 1998 he tried to leave Lithuania for Belarus, he was refused entry into Belarus by the border police. He was then arrested by the Lithuanian transport police and transferred to the Foreigners Registration Centre. The source states that he was accommodated at the Centre without the approval or decision of the Centre’s Director. This has been denied by the Government.

7. On 22 June 1998, Mr. Katunda Kambangu requested asylum in Lithuania. On 12 August 1998, the Migration Department adopted a decision in terms of which, pending consideration of a grant of temporary asylum, he was allowed to continue to reside in the Foreigners Registration Centre.

8. On 6 October 1998 the Migration Department refused to grant temporary asylum to Mr. Katunda Kambangu. On 19 October 1998, the Department decided to expel him from Lithuania. Mr. Katunda Kambangu appealed to the Vilnius District Court, which declared both decisions of the Department unlawful.

9. On 14 June 1999, the Migration Department again refused to grant asylum to Mr. Katunda Kambangu, who then challenged his detention at the Pabrade Centre before the Higher Administrative Court, with no success. On 11 October 1999, the Court held that his imprisonment at the Centre was not contrary to article 20, Part 2, of the Lithuanian Constitution; that it was also not contrary to article 5 (1) and (4) of the European Convention on Human Rights; and that confinement at the Foreigners Registration Centre could not be considered a deprivation of liberty. Mr. Katunda Kambangu appealed, and the Court of Appeal of Lithuania upheld the decision of the Higher Administrative Court.

10. Meanwhile, on 9 December 1999, the Higher Administrative Court cancelled the decision of the Migration Department to refuse the applicant temporary asylum in Lithuania. The Court, however, did not set any new time limit for a new decision to be adopted by the Department.

11. Mr. Katunda Kambangu contends that confinement at the Foreigners Registration Centre at Pabrade, is in effect consistent with the regime of ordinary detention since the Centre is a closed area, fenced with barbed wire, and that:

(a) Asylum-seekers must comply with a 24-hour regime and working hours are subject to administrative control;

(b) Violations of the Centre’s regulations lead to the imposition of disciplinary measures;

- (c) Residents enjoy limited rights;
- (d) Military guards are empowered to use special measures.

12. It is also alleged by the source that the duration of confinement of asylum-seekers to the Foreigners Registration Centre is regulated only by the Instruction of Investigation of Foreigners' Applications for granting refugee status in the Republic of Lithuania, as approved by Ministerial Order No. 391 of 1992, and the Regulations of Pabrade Centre, approved on 10 June 1999 by the Commissioner General of the Police Department. None of these documents is allegedly published in the official State Gazette though, under the Ministerial Instruction, the Migration Department must adopt a decision on asylum matters within two days from the time of registration of the foreigner's application. In practice, the time taken is more than 60 days.

13. It is also contended that the Law on the Legal Status of Foreigners stipulates that a foreigner is sent to the Foreigners Registration Centre only on the basis of a court decision (art. 45, Part 2). This law allegedly discriminates against asylum-seekers. Firstly, the law allegedly applies only to those foreigners who do not seek asylum. Secondly, it does not cover asylum-seekers who were detained before 1 July 1999. Thirdly, those already at Pabrade are never brought before a court. The source therefore contends that open-ended, prolonged detention of asylum-seekers is unreasonable. The source also contends that there is an absence of procedural principles based on which the court should adjudicate the issue of whether the foreigner should be detained at Pabrade or not. Such a decision is not subject to appeal. In the absence of a maximum time limit for detention of asylum-seekers, and in the absence of periodic reviews of continuing detention, the source contends that the detention of Mr. Katunda Kambangu for more than 22 months was arbitrary and falls short of the requirements set out in article 9 (1) of the International Covenant on Civil and Political Rights and article 5 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. The Government, on the other hand, contends that Mr. Katunda Kambangu's detention was justified. The police are entitled to detain a person violating the regime governing admittance to the territory of the Republic of Lithuania. At the time of his detention, Mr. Katunda Kambangu possessed no documents certifying his identity, thereby entitling the Lithuanian police to detain him. He was alleged to have violated the "Regulations of foreigners' arrival, stay in the Republic of Lithuania and transit through it". Regarding confinement at the Foreigners Registration Centre, the Government alleges that Mr. Katunda Kambangu presented himself and acquiesced in being placed there. Regarding the requirement of a court order before confining Mr. Katunda Kambangu, the Government notes that until 1 July 1999, no judicial decision was required for a foreigner's accommodation at the Centre. The Government also contends that an asylum-seeker may be transferred from the Foreigners Registration Centre to the Refugees Reception Centre when temporary asylum in Lithuania is granted to him. Since Mr. Katunda Kambangu never received asylum, he could not have been transferred from Pabrade. Besides, the court investigating Mr. Katunda Kambangu's refugee status commented that the "claimant misled the officers", gave contradictory and false information and did not always fully cooperate with the officers. The Government justifies his confinement in the absence of his being able to establish his identity.

15. The Government states that asylum-seekers who arrive legally in the Republic of Lithuania are not accommodated at Pabrade. It contends that the Migration Department has in several instances allowed persons who entered Lithuania illegally to reside in places of their own choosing if they are in possession of identity documents and possess sufficient means of subsistence in the country. Mr. Katunda Kambangu, according to the Government, was neither able to establish his identity nor to satisfy the authorities that he had enough money to support himself in the country. Other allegations made by the source relating to the manner of functioning of the court have also been denied by the Government.

16. Finally, the Government contends that the non-applicability of procedural guarantees relating to the deprivation of liberty would not automatically lead to the deprivation of liberty being arbitrary.

17. The Working Group has noted the allegations of the source and the exhaustive reply of the Government. Mr. Katunda Kambangu was confined to the Foreigners Registration Centre from 12 March 1998 to 21 January 2000, when he voluntarily departed from the Republic of Lithuania. During this period, Mr. Katunda Kambangu challenged the negative decisions of the Migration Department under the authority of the Ministry of the Interior on several occasions. He also filed appeals which were disposed of, on occasions in his favour. He also sought declarations from courts of law, contending that his detention was illegal and unreasonable, in violation of the Lithuanian Constitution and the European Convention on Human Rights.

18. Article 20 of the Lithuanian Constitution stipulates that personal freedom shall be inviolable. It further stipulates that no person shall be arbitrarily detained. Under the Constitution, a person cannot be deprived of his freedom except in accordance with procedures established by law. The Working Group must consider the application of article 20 to the facts and circumstances in which Mr. Katunda Kambangu came to be detained at the Foreigners Registration Centre. In the absence of documents establishing his identity, the authorities confined him in Pabrade. There is nothing to suggest that legal remedies were not available to him to vindicate his rights. Indeed, on occasions relief was granted to him by local courts which directed the authorities to consider his application for temporary asylum. There exist legal procedures which can be used by persons in a similar situation to Mr. Katunda Kambangu. It is difficult to hold that article 20 of the Lithuanian Constitution was contravened in the case of Mr. Katunda Kambangu's confinement at Pabrade.

19. The Law on the Legal Status of Foreigners, effective 1 July 1999, stipulates that it is not applicable to foreigners seeking political asylum in the Republic of Lithuania. Under article 45, the police have a right to detain a foreigner if he refuses to or cannot prove his identity. If there are grounds to believe that the foreigner is illegally in the territory of the Republic of Lithuania and cannot establish the legality of his presence, such a person, on the basis of a court's decision, is sent to the Foreigners Registration Centre.

20. Since Mr. Katunda Kambangu was detained prior to the entry into force of the Law on Legal Status of Foreigners, a court decision was not required before he could be sent to the Foreigners Registration Centre. It is, however, clear from the facts as submitted and the response of the Government that Mr. Katunda Kambangu was unable to establish his identity by valid documentation and that, when apprehended, he was in Lithuania illegally. His endeavours

to be granted temporary asylum were unsuccessful, despite judicial proceedings. No procedural arbitrariness has been established by which the Group could conclude that Mr. Katunda Kambangu's detention was arbitrary.

21. Deliberation No. 5 on the situation regarding immigrants and asylum-seekers adopted by the Working Group sets forth the immigration principles accepted as guarantees for persons held in custody and guarantees concerning detention. The Working Group urges the Government to ensure that these principles are adhered to by the Lithuanian authorities when effectively directing the detention of asylum-seekers, and during the detention of such individuals. The facts clearly establish that the law applicable in Lithuania does not set forth a maximum period beyond which custody of an asylum-seeker should not be permitted. This is in contravention of principle 7 of Deliberation No. 5. Open-ended detention, without specifying any time limit, and the absence of periodic reviews might render the detention arbitrary.

22. Having opined as above, the Working Group is unable to hold that the detention of Pedro Katunda Kambangu is in violation of article 9 (1) of the International Covenant on Civil and Political Rights and article 5 (1) of the European Convention on Human Rights.

23. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Pedro Katunda Kambangu is not arbitrary.

Adopted on 14 September 2000