

IMMIGRATION APPEAL TRIBUNAL

LB (Sufficiency of Protection – Communism) Lithuania CG [2001] UKIAT 00005

Date heard: 19/03/2001
Date notified: 09/04/2001

Before:
Mr D K Allen (Chair)
Mrs J Jordan
Dr A U Chaudhry

Liama BAGUZIENE
Appellant

The Secretary of State for the Home Department
Respondents

Determination and Reasons

1. The Appellant is a citizen of Lithuania who has been granted leave to appeal to the Tribunal against the determination of an Adjudicator, Mr P Brenells, in which he dismissed her appeal against the Respondent's decision of the 10th April 2000 refusing to grant her asylum.
2. The hearing before us took place on the 19th March 2001. Mr M Jones for Purcell Brown & co., appeared on behalf of the Appellant, and Mr J W Harper of the Home Office Presenting Officers' Unit appeared on behalf of the Respondent.
3. Mr Jones reminded us that leave had been granted on the basis that Dr Vesna Popovski, whose report had been relied on by the Appellant, was to be called to justify that report orally in connection with the question of whether persecution of members of the Communist Party occurs in Lithuania.
4. Dr Vesna Popovski, who gave her address as Flat 3, 66 Constantine Road, London NW3 gave evidence. She had re-read her report which was in the bundle at pages 38 to 39. She referred to the Pazyma which she had described in her report, the untranslated copy of which was at page 18 of the bundle. The word Pazyma meant health certificate. The suggestion that the Appellant had been beaten up was contained in the certificate, rather than being a surmise of Dr Popovski's.
5. As regards her status as an expert, she had a Doctorate on National Minorities and Citizenship Rights in Lithuania, having studied for this between 1988 and 1993 in the Department of Geography at the University of Cambridge. At present she was a lecturer in the Politics of Ethnicity at the University College London, in the School of Slavonic and Eastern European Studies. She was from the former Yugoslavia, Croatia. As regards Lithuania, she kept up to date reading the literature on Lithuania and was in touch with scholars and every year a scholar from Lithuania came to her School. She used the internet to keep in touch with colleagues and she had colleagues in Lithuania. She had prepared around 15 reports on Lithuania and had published a

book entitled National Minorities and Citizenship Rights in Lithuania. There were few other experts on Lithuania in the United Kingdom.

6. The Communist Party in Lithuania was banned, having been banned after the January 1991 events, in August of that year. Comsumol, the Youth Communist Party had been banned at the same time.

7. The state made efforts to discourage membership as for example when demonstrations were organised the police tried to deal with the people. There had been an event in 1998 and she imagined there were later examples also of the police trying to catch and arrest people. This was a Baltic Times Report that she was referring to. They tried to catch them as they were Pro-Communists who were demonstrating.

8. She was asked whether she knew whether this went beyond capture and arrest. She said that knew the people were not taken to Court and were not prosecuted, and issues could happen in prison and that was what people talked about. There was no factual evidence and as she said in her report, she relied on conversations and interviews with people. She gathered that in certain cases people could be beaten up.

9. She was asked whether it followed that the more active one was in a demonstration the more likely such consequences would be. She said that she would think so, if people repeatedly demonstrated and the police would get to know them.

10. It was not a crime to be a member of the Communist Party and they were not prosecuted as members. She referred to the last paragraph of her report where the former President of Lithuania Mr Landsbergis had pushed through a declaration asking for the former high up Communists not to be given posts or that they were to be screened in advance. She was asked whether she knew what the official government reaction was to police action while people were in detention. She said that the government would argue that such actions should not occur and by this she meant beatings up. She was asked whether they did anything about it in practice and she said it was very hard to get evidence. She said the government said it was aware of the police especially locally who were involved in activities contrary to Lithuanian law. This was referred to in the Home Office and State Department Reports. They were trying to prosecute these officers. She was asked whether there was any official policy towards communist party members and said not to her knowledge, just the declaration that she had mentioned.

11. She was asked whether given her history as an active party member the Appellant could live elsewhere safely without being harmed. She said that it would be rather difficult. It was a small country. Members of the Communist Party especially if they were active would be known to the police. It was necessary to bear in mind that the numbers were as few as 200 or so party members according to the last figure she had come across in 1998. It would not be difficult for the police to keep their names.

12. When cross-examined by Mr Harper, Dr Popovski agreed that the Landsbergis declaration was meant to be connected to high up party members and also people who would be eligible for higher posts in the present Lithuania but as far as she knew the Appellant had not been a senior member but had said she was rank and file. The

declaration could be used against her in every day life but as a matter of law it was quite right to say that it would not apply to her.

13. She was asked why she said the Appellant could have problems on return given that she was only a low level party member. She said that the issue was that the police would know who the members were especially in local areas and she could be discriminated against. The legislation should protect her but the reality was every day life. It would be discrimination and she could be arrested and detained for 24 hours.

14. She was referred to page 5 of the U.S. State Department Report to the reference to the exercise of the freedom of peaceful assembly and she was asked why if this was the case did she think the Appellant would be at risk of arrest and ill-treatment. She said that it was the case that as in reality for example in the 1998 demonstrations, people were captured and despite the theory they were detained. There was no problem with the legislation in Lithuania but rather how it was put sometimes into practice. It was sometimes very difficult for Lithuanians to come to terms with Lithuanian nationals supporting communist ideology as it had been perceived as an occupied country.

15. She was referred to page 1 of the U.S. State Department Report and of six people found guilty of complicity in the January 1991 coup attempt. She said that this was top leaders. Lithuanian law said members should not be prosecuted but in this case it was because of crimes against humanity. After 1991 there were people who were party members who had problems and again after August 1991 but it was different now. She agreed that to her knowledge it was true as stated at page 2 of the report that there were no reports of politically motivated disappearances. She herself had been to Lithuania but not recently, but she had spent six months there in 1992 to 1993.

16. In his submissions Mr Jones referred to paragraph 4.11 of the Home Office report. It was clear that the Communist Party was banned, with activity on its behalf being illegal and this presupposed that there were sanctions. Demonstrating attracted arrest and detention as the Court had heard. He also took us to paragraph 4.28 of the Country Assessment and the references there to misbehaviour by the police. There was no openness concerning the situation at all and this was an exception to the normal co-operation. There was an atmosphere of impunity as could be seen from the second paragraph under C and page 2 of the State Department Report. It was getting worse and the police were not being dealt with. Therefore although membership of the Communist Party was not illegal the security forces discouraged activity which was illegal and arrested and detained people and this had been done to the Appellant on three occasions.

17. She had gone to the authorities who had dismissed her story. She had also suffered threatening telephone calls up to the time when she left. If she was credible she had been targeted because of her active party membership and she was arrested and beaten. The Adjudicator's adverse credibility findings were flawed. There was no real difference between sexual assault and rape particularly since the evidence had showed that she had suffered a miscarriage as a consequence of the sexual assault. In addition the report of Dr Steadman went a lot further than the Adjudicator had thought. The Adjudicator had failed to make findings on his conclusions about the state of the Appellant. The Adjudicator had not considered whether it would be unduly harsh to

return her. The approach to credibility was wrong. The gaps in the objective evidence before the Adjudicator had been filled out before the Tribunal today. There was a clear Convention reason and the appeal should be allowed.

18. In his submissions Mr Harper noted that the Adjudicator had not had the benefit of the health certificate which had now been in effect translated. He understood the Tribunal's concerns about whether or not the Adjudicator's findings on the difference between sexual assault and rape were valid, but the Tribunal should also look to paragraph 17, in the background evidence showing that there were cases but the matter was not systematic in Lithuania and the question was whether what had happened to the Appellant was persecution. It was argued not. Dr Popovski's evidence was helpful but there was no further documentary evidence to support what she said and it did not go much beyond the written evidence. There was nothing to show that an ordinary Communist Party member would come into conflict with the government. The evidence today did not suggest that there was a problem today but it was references to up to 1998. It was accepted that the U.S. State Department indicated that police misbehaviour had increased but it was not linked to matters concerning Communist Party members. The determination should be upheld and the appeal dismissed.

19. By way of reply Mr Jones argued that paragraph 17 of the determination was not a finding on persecution but was more relevant to credibility. It was not just a question of membership of the Communist Party but it was activity and the question of whether a person had a freedom to exercise their political opinion and it was clear that they did not as she had been arrested and mistreated. Activities on behalf of the Communist Party were illegal. There was no reason to believe that things had changed since 1998 but quite the reverse bearing in mind the Appellant's evidence.

20. We stated that we would reserve our determination.

21. We have considered carefully the submissions of the representatives together with the grounds of appeal, the objective evidence and the Adjudicator's determination. In addition we have had the benefit of hearing oral evidence from Dr Popovski which supplements her earlier written report.

22. The Adjudicator helpfully set out in his determination what facts were disputed and what facts were undisputed. He therefore accepted that the Appellant became a member of the Communist Youth Organisation in 1986 and joined the Lithuanian Communist Party in 1998. She was an active member of the Communist Party and provided details of her actual participation. The Lithuanian Communist Party had been declared illegal by the Lithuanian government in 1991. She received anonymous threatening telephone calls in October 1999 which she did not report to the police. She was arrested, detained briefly and interrogated on the 10th November and the 15th December 1999 and again on the 4th January 2000. On the 7th January 2000 she complained to a senior police official about these arrests and her complaint was treated with contempt. On 25th January 2000 she travelled to the United Kingdom and was given permission to remain for six months and five weeks thereafter she applied for asylum.

23. The Adjudicator does not appear to have accepted that the Appellant had been raped as she claimed. On the forms dated the 16th March 2000 which she submitted some two months after her arrival in the United Kingdom she said that on the 4th January 2000 she was "beaten and sexually assaulted". She stated that as a result of this ill-treatment she suffered a miscarriage and lost her baby. Subsequently in a statement dated the 24th August 2000 she said that she had been raped. A document entitled Pazyma which Dr Popovski told us is to be translated as "health certificate" was before the Adjudicator, but unfortunately no translation of this had been provided. Dr Popovski commented on it at the top of page 39 of the Appellant's bundle in her report as follows. "The medical evidence provided in Lithuanian, Pazyma -Health Certificate, points out that Ms Baguziene suffered miscarriage and her body was covered in marks which suggest that she was beaten up." Before us she was able to clarify that the suggestion that the Appellant had been beaten up was not an inference drawn by Dr Popovski from the certificate but was actually stated on that certificate. We accept Dr Popovski's evidence on this point. It bears out the contention the Appellant made in her SEF. We do not think that there is any significant distinction between a claim to have been sexually assaulted which resulted in a miscarriage and a rape. We do not consider that the Appellant's credibility is in any way diminished by the fact that she did not specifically refer to having been raped in the SEF form.

24. In addition the Adjudicator did not find the report provided by Dr Steadman helpful since all he could say was that the Appellant's symptoms would be consistent with what she had told him. Mr Jones argued that the Adjudicator had failed to make findings on such matters as Dr Steadman's statement at page 36 of the bundle that the Appellant appeared from her symptomatology to indicate both the past and present syndrome of depression and post traumatic stress disorder which would be consistent with the history she gave. We agree that Dr Steadman's report does not ultimately take matters much further, but it would have been appropriate for the Adjudicator to make fuller findings on this.

25. The other issue which the Adjudicator resolved against the Appellant was his conclusion that she had failed to show that there was no other area in Lithuania where it would be safe for her to live since in answer to the questions when this was put to her she said she did not know. It was pointed out in the grounds of appeal at paragraph 3.2 that the Adjudicator failed to apply the proper tests considering whether in any event it would be unduly harsh to return her to Lithuania. We note also that he regarded as damaging to her credibility her failure to seek asylum for some five weeks after her arrival in the United Kingdom. This was not a matter that was raised directly before us, but we note that in her statement at paragraph 13 the Appellant said that she was very traumatised after her arrival in the United Kingdom as a result of her experiences in Lithuania, her son was ill and she had no understanding of the mechanics of the asylum process. We consider that this reflects no more than in a very minor extent upon her credibility.

26. Accordingly in essence we consider the Appellant has given a credible account. We also found helpful the evidence of Dr Popovski before us which provided further detail in connection with the written report she has already provided. We have taken this into account, together with the objective evidence, in particular the State Department Report and the Home Office Country Assessment.

27. As we understood Dr Popovski's evidence, in essence she was saying that from the point of view of the government, matters such as the events that occurred to the Appellant should not happen and that they were trying to prosecute officers for offences of this kind. This is confirmed by the objective evidence elsewhere. For example it is stated at paragraph 4.28 of the Country Assessment for October 2000 that police sometimes beat or otherwise physically mistreat detainees. The local press have reported that incidents of police brutality are becoming more common. In many instances, the victims reportedly are reluctant to bring charges against police officers for fear of reprisals. A total of 79 officers were dismissed for illegal or fraudulent activities in the first six months of 1998 for a variety of offences, compared with 182 for all of 1997. During the first six months of 1999 four police officers were charged with abuse of power and one officer was sentenced. The Ministry of the Interior stated that the district police and inspectors are the most negligent in the force. To strengthen the integrity of the police the Inspectorate General of the Ministry of the Interior was given administrative autonomy in May 1997. It is said at page 2 of the State Department Report that in 1999 the Inspectorate General was re-organised into an office of the Inspector General, and some functions of the inspectorate were delegated to the Internal Investigations Division of the police department. The Inspector General cannot investigate abuses on his own authority but can act only on the order of the Minister. Mr Jones referred us to the fact that at 5.9 of the Country Assessment it is said that a key exception to the normal co-operation of government authorities local NGOs is the Ministry of Interior, which has continually refused to release information on police brutality and statistics on corruption based incidents. However the most recent State Department Report notes at page 6 that a key exception in the past of this co-operation was the Ministry of Interior which continually refused to release information on police brutality and statistics on corruption related incidents. It says however that the Ministry is more willing to share such information however it has released few statistics or reports. We note also the association of the defence of human rights in Lithuania, an umbrella organisation for several small human rights groups all of which operate without government restriction.

28. Given that we have accepted as credible the Appellant's evidence, it follows that we must accept that what she says happened to her in Lithuania did in fact occur. Dr Popovski's evidence was that it would be rather difficult for her to live elsewhere given that Lithuania is a small country and active members would be known to the police and there were only 200 or so members and it would not be difficult for the police to keep their names. On the only occasion which the Appellant did appeal to higher authorities she was effectively brushed aside.

29. Although we were not addressed on this point specifically, it seems to us that it is impossible to consider this case without referring to the decision of the House of Lords in *Horvath v Secretary of State for the Home Department* which is reported at [1999] INLR 7 (the IAT hearing) at [2000] INLR 15 in the Court of Appeal, and [2000] 3WLR 379 in the House of Lords. It is clear from this judgement that in considering the ability of the state or its willingness to protect, it is a pre-requisite that the state must have in place a general system of criminal law enforcement for its citizens from which by its terms, the asylum applicant or the class to which he belongs is not excluded. This requirement is met by considering whether the duty to its citizens at large is met by the provisions made. It is clear from our review of the

objective evidence in this case that, albeit underground activity by the Communist Party is considered illegal, there is no suggestion that the Lithuanian legal system and in particular its general system of law enforcement is not available for most communists and non-communists. Dr Popovski made it clear that the authorities would say that activities such as happened to the Appellant in this case should not occur and that it is aware of the fact that local police were involved in activities which are contrary to Lithuanian law and they are trying to prosecute these officers. There is evidence before us which we have described above of prosecutions taking place albeit that there are difficulties and sometimes people are concerned about reprisals. Nevertheless, even bearing in mind what happened to the Appellant in Lithuania, we consider that the system in place is one which offers her sufficiency of protection. Internal flight would not appear to be a possibility, but we do consider that the machinery is there for her to take action and to report and seek the prosecution of any police officer who does not treat her in accordance with the provisions of the law in Lithuania, and we consider that as a consequence she has not made out her claim to be in need of international protection.

30. This appeal is accordingly dismissed.

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