

KALLEN V. AVRYLIA

Facts

1. During the past three years Avrylia has experienced ten terrorist attacks. Bomb explosions took the lives of 10 people and injured 50 more. They also destroyed a number of historically important places and monuments in the capital city, including a five-hundred-year old building inscribed on the national and the world heritage lists. The most recent explosion occurred in late January 2016 and resulted in the death of 4 people including a famous politician. Ten more people were seriously injured. The attacks were mostly carried out by individuals or small groups not officially affiliated to any known terrorist or militant group or political party. No terrorist group has officially claimed responsibility for these attacks. On 10 May 2015, pursuant to Article 15 of the European Convention on Human Rights, Avrylia declared a state of emergency for a period of six months by decision of Parliament, approved by the President. Special emergency legislation was adopted and entered into force on 1 June 2015. The Secretary General of the Council of Europe was officially notified thereof on 1 October 2015.
2. Mr. Jeffrey Kallen is a Walentian national, born in 1980. He underwent military training in Walentia and has extensive experience in the military. An arrest warrant was issued in Walentia in the context of pending criminal investigation against him on charges of planning and preparing terrorist attacks in Walentia. Shortly afterwards, Mr. Kallen obtained a forged passport with a forged Avrylian visa and crossed the border to Avrylia on 4 April 2015. His forged documents were not detected by the authorities.
3. The Avrylian National Security Service obtained intelligence from their Walentian counterparts about the presence of Mr. Kallen on Avrylian territory. Based on information from the Walentian National Security Service relating to Mr. Kallen's suspected involvement with a terrorist organisation and his active participation in planning and conducting terrorist activities in Avrylia, Mr. Kallen was apprehended by the Avrylian National Security Service on 9 September 2015 at 5 a.m. and brought to a police station for questioning. He was advised of his rights, including the rights to remain silent and to consult a lawyer. Interpretation into Walentian was duly provided. Mr. Kallen was informed that the main reason for his apprehension was a suspicion that he had coordinated and planned several bomb attacks scheduled to take place on the following day.

4. All intelligence available to the Avrylian National Security Service suggested that Mr. Kallen, even if not directly responsible for planning of the attack, at least knew where the bombs have been planted.
5. In addition to the officially shared information, the Walentian Security Service leaked classified information to the Avrylian side. This information suggested that at least five bombs had been placed at various highly populated locations throughout the capital, including an amusement park, and their detonation was expected in the next few hours. According to this source, Mr. Kallen had himself constructed the bombs and had instructed several other persons during the organisation of the large-scale attacks.
6. The applicant was able to hire a lawyer proficient in Walentian. During questioning by national security and the police, Mr. Kallen denied knowledge of any planned terrorist attacks. He also denied involvement in any terrorist activities. At 7.30 a.m., Mr. P.K., a national security officer, informed the police officers in charge of the questioning by telephone that two bombs had been found and deactivated in the toilets of the city's two largest shopping malls. Based on the intelligence the planned attack was, however, of a much larger scale and there was credible information suggesting existence of several other bombs. The possibility of a large-scale attack resulting in many casualties was considered highly probable and imminent.
7. In the meantime, the police searched Mr. Kallen's house and seized two computers and several boxes of documents in their search for further information about the planned attacks. No ammunition or material potentially used for creation of a bomb was found.
8. A bomb exploded at a park in the city centre at 8.30 a.m. Nobody was killed, but the detonation caused severe damage to a nearby building and two people suffered minor injuries. When faced with the new developments, Mr. Kallen admitted that he knew where the bombs were but refused to provide any further information, noting that whatever was done, was done and the mission must be accomplished until the end. Further questioning lead to no results, as Mr. Kallen refused to speak.
9. At 9 a.m. two national security officers, A.M. and P.K., arrived at the police station having been notified that Mr. Kallen had admitted that he knew where bombs were. The national security officers joined the police officers and proceeded with further questioning. After Mr. Kallen's continued refusal to speak, the national security officers jointly sat Mr. Kallen in a chair, cuffed his hands and legs to the chair, and hit him twice in face. They

then threatened to proceed with “interrogations as seen in the movies when dealing with dirty pigs like you”. The threats were allegedly made while Mr. Kallen’s lawyer was out of the room, having asked for a break for consultation with his associates. After a few minutes and the return of his lawyer, Mr. Kallen disclosed the locations of the three remaining bombs, noting that they were all time-bombs set to detonate at 10 a.m.

10. The ensuing police operation managed successfully to disarm one bomb located at the amusement park, where there were several hundred people present, many of whom were children. The second bomb, planted at the entrance to a luxury hotel, detonated while an attempt was being made to disarm it. The explosion killed the bomb disposal expert and three police specialists stationed nearby. Due to a successful prior evacuation, there were no other casualties. The third bomb, which was located at the entrance to a railway station, was not found in time. The explosion killed 50 people, including 10 children, and seriously injured 100 others.

11. The Avrylian first-instance and appellate courts found the applicant guilty of participation in terrorist organisations and planning and organising terrorist activities. His complaints that his conviction was based on inadmissible evidence were dismissed as the courts found that he was convicted on the basis of other evidence, including witness statements, and audio and video tapes obtained through covert surveillance ordered in accordance with the emergency legislation. On 4 July 2016 the Supreme Court ruled that the lower courts had provided sufficient reasons for their judgments. It also concluded that Mr. Kallen’s conviction had not been based solely on his statement while in police custody, but rested also on other evidence including witness statements, which had been disclosed to the defence.

12. At the request of the Walentian authorities, proceedings for Mr. Kallen’s extradition were opened. The extradition request referred to the criminal proceedings relating to his alleged terrorist activities pending in Walentia. His request to discontinue the extradition proceedings was finally rejected on 13 August 2016. Mr. Kallen argued that his removal to Walentia would amount to ill-treatment contrary to Article 3 of the European Convention on Human Rights. However, the Avrylian courts relied on diplomatic assurances given by the Walentian authorities that Mr.Kallen would be treated in accordance with international human rights standards. The assurances were provided by the Walentian Prosecutor General and the Minister of Foreign Affairs. They specified that Mr. Kallen would not be subjected to ill-treatment, arbitrary detention and the trial against him would be conducted in full compliance with guarantees under Article 6 of the European Convention on Human Rights.

13. Criminal proceedings against the Avrylian police officers and national security officers who interrogated Mr. Kallen were officially initiated by the prosecutor's office. They were charged with ill-treatment, excessive use of force and abuse of powers. The trial court found the officers guilty as charged, noting that the methods used during interrogation were not permissible under national and international law under any circumstances. The second-instance court overturned that decision finding that the officers had acted within the applicable emergency legislative framework and the use of force was not excessive. In the circumstances of the case, the interrogation techniques were appropriate and ultimately resulted in saving hundreds of lives. The final decision of 18 March 2016 noted that the officers had hit Mr. Kallen in face but that this had been justified in the circumstance of the case, especially by the frustration of the situation, the knowledge that Mr. Kallen knew the locations of the bombs, and the imminent need to prevent deaths of a considerable number of people, including children.
14. Mr. Kallen also lodged a complaint under Article 65 of the Code of Criminal Procedure, arguing that the search and seizure of his property had not been lawful, especially in that it was only based on intelligence from the National Security Service and not subjected to any judicial review or approval. His complaint was rejected by a final decision on 28 March 2016 on the ground that Avrylia had declared the state of emergency and any restrictions of his rights were justified in line with the applicable legislation.
15. Mr. Kallen lodged an application with the European Court of Human Rights on 11 August 2016. Based on his request, an interim measure was granted, indicating to the Government of Avrylia that it should not remove Mr. Kallen to Walentia until further notice.

Law:

16. Article 82 of the Constitution of Avrylia: A state of emergency and its duration shall be declared by Parliament with a two-thirds majority when a great danger threatens the existence of the nation. The Parliament shall adopt all urgent measures needed to deal with the exigencies of the situation. The declaration of the Parliament shall be subject to approval by the President. If Parliament is unable to convene, the President shall take the above decisions.
17. The Avrylian Criminal Code punishes acts of terrorism with prison sentence of minimum 10 years. It also criminalises financing terrorist activities, forming terrorist organisations and traveling abroad for terrorist training. The sentence for these acts is between 6 and 10

years. Ill-treatment committed by officials while performing official duties is a criminal act subject to imprisonment between 2 and 5 years.

18. The Avrylian Code of Criminal Procedure stipulates that evidence obtained by means of torture may not be used in criminal proceedings and shall be excluded from the case-file. Search of premises and confiscation of property can only be carried out on the basis of a court order. In addition, everyone charged with an offence has the right to be informed promptly, in a language which he understands and in detail, of the accusation against him and to have a lawyer of his own choosing.
19. Special legislation adopted after the declaration of the state of emergency: Under the 2015 Emergency State Decree searches and confiscation of property may be carried out on the basis of an order issued by the Ministry of the Interior which need not be reasoned. The Ministry of the Interior shall also have wide powers to order covert surveillance of persons and objects. Such decisions shall not be subject to court review or appeal. Officers of national security are given wide powers and may be involved in criminal investigations, including detaining and interviewing suspects, if the seriousness of the case so requires. The authorities can also censor the press and block access to websites when necessary and without giving any explanation or prior notice. Human rights restrictions thus ordered shall be considered justified and permissible in view of the threat to the nation.
20. Avrylia and Walentia are member states of the Council of Europe. They have ratified the European Convention on Human Rights and all its Protocols as well as the Council of Europe Convention on the Prevention of Terrorism and the Convention on Extradition. They also have ratified all major United Nations human rights treaties. Avrylia is also a Member State of the European Union.
21. Avrylia and Walentia maintain close diplomatic relations and regularly grant extradition requests for the purpose of a criminal investigation on the basis of a bilateral extradition treaty, which was concluded in 1990.
22. The 2014 Concluding Observations of the UN Committee against Torture and the UN Human Rights Committee while praising Walentia for bringing its laws in line with the relevant human rights treaties, raised their deep concerns that ill-treatment remained widespread especially when national security officers were involved. Furthermore, the 2014 and 2015 Annual Reports of the notable NGO *International Human Rights Centre*

pointed to allegations of excessive use of force and ill-treatment in prisons and during interrogations, especially as regards persons suspected of terrorist activities. They also document allegations of use of evidence obtained through torture in criminal proceedings against the accused in Walentia, practiced with impunity of the officials involved. Similarly, the Walentian NGO *Themis* voiced concerns that such practices persisted in 2016 and became even more wide-spread in light of the latest events.