



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

THIRD SECTION

**CASE OF BALČIŪNAS v. LITHUANIA**

*(Application no. 17095/02)*

JUDGMENT

STRASBOURG

20 July 2010

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Balčiūnas v. Lithuania,**

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele, *appointed to sit in respect of Lithuania*,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 29 June 2010,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 17095/02) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Laimutis Balčiūnas (“the applicant”), on 10 April 2002.

2. The applicant was represented by Mr R. Andrikis, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agents, Ms D. Jočienė and Ms E. Baltutytė.

3. The applicant alleged a violation of Article 5 § 3 of the Convention in that his detention had been unlawful and excessively long. Invoking Article 6 §§ 1 and 3 (d) of the Convention, he also asserted that he could not question two witnesses in his case and that therefore he had been denied a fair trial.

4. On 21 June 2004 the Court decided to communicate the application to the Government.

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). John Hedigan, the judge elected in respect of Ireland, was appointed to sit as a national judge in this case. When John Hedigan left the Court, Ineta Ziemele, the judge elected in respect of Latvia, was appointed to sit in his place as national judge in this case (Article 27 § 2 of the Convention and Rule 29 § 1).

6. On 26 October 2005 the Court decided to communicate the case to the Government for further written observations. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1977 and lives in Šiauliai.

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

#### A. Proceedings for armed robbery

*1. The applicant's detention on remand in the context of the proceedings*

8. On 9 November 1998 the applicant was arrested on suspicion of armed robbery. While remanded in custody the applicant was held in Šiauliai Remand Prison, Šiauliai Police Detention Facility and other remand establishments.

9. On 11 November 1998 the Šiauliai City District Court authorised the applicant's remand in custody until 19 November 1998. In ordering the detention, the court referred to the nature and gravity of the charges against the applicant, and stated that “it was likely that the applicant could attempt to abscond from investigators and the trial as well as obstruct the establishment of the truth in the case”. The applicant and his defence counsel were present at the hearing.

10. On 18 November 1998 the Šiauliai City District Court extended the term of the applicant's detention until 18 January 1999 due to the fear “that he would abscond”. The applicant's lawyer was present at the hearing.

11. On 24 December 1998 the applicant appealed against that ruling.

12. Having received the appeal on 4 January 1999, on 7 January 1999 the Šiauliai Regional Court dismissed it, arguing that the applicant “had been charged with a serious crime and if released would obstruct the investigation and the establishment of the truth”. The applicant's counsel was present at the hearing.

13. On 15 January 1999 the Šiauliai City District Court extended the term of the applicant's detention until 18 March 1999. Having briefly summed up the charges against the applicant the court stated that “the applicant had been charged with a serious crime, therefore there was a reason to believe that if at liberty he could attempt to hide from investigators and the court, obstruct the establishment of the truth and commit fresh crimes”. The applicant and his lawyer were present at the hearing.

14. On 18 February 1999 the applicant appealed against the order to extend his detention. On 26 February the appeal was received by the Šiauliai Regional Court, which on 2 March 1999 dismissed the applicant's appeal, his defence counsel being present. The court again stated that “the applicant had been charged with a serious crime, therefore there was a reason to believe that if at liberty he could attempt to hide from investigators and the court and would obstruct the investigation”.

15. On 17 March 1999 the Šiauliai City District Court extended the term of the applicant's detention until 9 May 1999. Listing the charges against the applicant the court stated that “the applicant had been charged with a serious crime, therefore there was a reason to believe that if at liberty he would try to abscond from the investigators, commit fresh crimes and influence witnesses”. The applicant and his lawyer were present.

16. On 7 May 1999 the Šiauliai Regional Court extended the term of the applicant's detention until 9 July 1999 on the ground that “he had been charged with a serious crime, therefore there was a reason to believe that if at liberty he would commit fresh crimes and obstruct the establishment of the truth”. The applicant and his defence counsel were present at the hearing. The applicant appealed, stating, *inter alia*, that he had to undergo surgery.

17. The applicant's appeal was dismissed by the Court of Appeal on 25 May 1999, with his defence counsel present. The court stated that “the applicant had been charged with serious crimes, he had not confessed and his guilt was based on statements by numerous witnesses, therefore there was a reason to believe that if at liberty he would try to influence witnesses and would obstruct the establishment of the truth in this case”.

18. On 8 July 1999 the Šiauliai Regional Court extended the term of the applicant's remand in custody until 30 September 1999. The court again listed the charges against the applicant and stated that “the applicant had been charged with a serious crime. There is a reason to believe that if at liberty he would obstruct the establishment of the truth in the case and would commit fresh crimes”. The applicant and his lawyer were present at the hearing.

19. The applicant appealed, arguing that the investigation had been delayed and that the authorities had not exercised due diligence in investigating the case. The applicant also submitted that he had no criminal record and had a permanent place of residence. There was no evidence that he would try to abscond from the investigation or commit fresh crimes.

20. On 29 July 1999 the applicant's appeal against the order of 8 July 1999 was dismissed by the Court of Appeal, with the applicant's defence counsel being present. For the court, the reasons for extending the applicant's detention were that “the evidence in the case allowed the conclusion that the applicant had committed the crimes he had been charged with. Given that the applicant denied his guilt, the lower court had correctly

concluded that if released the applicant would obstruct the establishment of the truth in the case that is to say he could influence witnesses, either himself or through others. He might also abscond from the investigation or commit fresh crimes”.

21. On 29 September 1999 the Šiauliai Regional Court extended the term of the applicant's detention until 1 December 1999. Stating the charges against the applicant in three sentences, the court noted that “the applicant was accused of two crimes, one of which was serious. The data in the case file allowed the presumption that the applicant had committed those crimes. Given that the applicant denied his guilt, it was reasonable to believe that, if at liberty, he could obstruct the establishment of the truth in the case and influence witnesses and co-accused, either himself or through third parties. He might also hide from investigators or commit other crimes”. The applicant and his defence counsel were present at the hearing.

22. The applicant appealed, reiterating that he had a permanent place of residence and that there were no grounds to believe that he might abscond or obstruct the course of justice. The charges had already been presented to him. Moreover, notwithstanding the requirements of Article 104 of the Code of Criminal Procedure to demonstrate the need to keep a person in detention, the prosecutor had presented no such evidence to the court. As regards the applicant, the fact that he had not confessed to the crimes he had been charged with was not a reason to assume that he would commit fresh crimes or attempt to obstruct the establishment of the truth in his case. Lastly, he mentioned that he had no prior convictions and had a permanent place of residence, his parents' flat.

23. On 18 October 1999 the Court of Appeal dismissed the applicant's appeal, endorsing the reasons given by the lower court. The applicant's lawyer was present at the hearing.

24. The Šiauliai Regional Court further extended the term of the applicant's detention by the following orders:

- order of 29 November 1999: until 30 January 2000;
- order of 28 January 2000: until 30 March 2000;
- order of 30 March 2000: until 9 May 2000.

For that court, the reasons to keep the applicant in detention were that the applicant, if released, would “attempt to obstruct the establishment of the truth in his case”, “influence witnesses”, “hide from investigators” and “commit fresh crimes”.

25. The applicant and his defence counsel were present at all the hearings at which his detention was extended.

## *2. The applicant's trial*

26. On 28 August 2002 the prosecution approved the bill of indictment concerning the charges of armed robbery against the applicant and four other co-accused. The case was sent to court.

27. On an unknown date the Panevėžys District Court requested the Šiauliai Regional Prosecutor's Office to ensure that D.R. and M.S., two of the applicant's accomplices who had testified against him and had been released from criminal liability by the prosecutors, were brought before the court for questioning. On 11 April and 16 June 2003 the State Border Guard Service and the Šiauliai Police Commissariat informed the prosecutors that, according to the information they had gathered, D.R. and M.S. had left Lithuania and their place of residence was unknown.

28. On 3 November 2003 the Panevėžys District Court convicted the applicant of complicity in armed robbery (Articles 24 § 6 and 180 § 3 of the Criminal Code). The court based its conclusion, *inter alia*, on the evidence given by D.R. and M.S., whose statements as recorded during the pre-trial investigation were read out. The applicant was sentenced to two years' imprisonment, towards which the court counted the period from 9 November 1998 to 9 May 2000, when the applicant had been in pre-trial detention.

29. The applicant appealed, complaining that the proceedings were unreasonably long. He also alleged that the trial court should not have admitted the submissions of D.R. and M.S. in evidence, as he had not been afforded an opportunity to challenge these witnesses in open court. The applicant alleged a violation of Article 6 of the Convention.

30. Invoking Article 5 § 3 of the Convention the applicant also submitted that he had already been in pre-trial detention four years and ten months (from 9 November 1998) and argued that the detention had been extended on numerous occasions without lawful grounds. The prosecutors had joined his case to other cases and disjoined it later. During all that time he was detained, the courts would dismiss his appeals to impose another, milder remand measure. Given that on 4 September 2003 the Court of Appeal had acquitted him [in the second set of criminal proceedings] and he had been released from pre-trial detention only on that day, in its judgment of 3 November 2003 the Panevėžys District Court had wrongly assessed the time which needed to be counted towards the punishment.

31. By a ruling of 26 February 2004 the Court of Appeal ordered the Šiauliai Police Commissariat to bring D.R. and M.S. to court for questioning. However, the police informed the court that it was not possible to summon D.R. and M.S. as they had left Lithuania. Moreover, the relatives of D.R. and M.S. had moved house, therefore it was not possible to question them in order to establish where the former were living.

32. On 9 March 2004 the Court of Appeal inquired of the State Border Guard Service as to whether M.S. and D.R. had crossed the State border and whether they had returned to Lithuania. On 16 March 2004 the State Border Guard Service informed the Court of Appeal that M.S. and D.R. had left the country.

33. On 31 March 2004 the Court of Appeal upheld the conviction. It noted that the trial court had based its conclusion on various pieces of evidence, namely the submissions of the applicant's co-defendant and a witness, both of whom had been questioned at the trial. In the opinion of the appellate court, D.R. and M.S. had only provided information which was also known from other sources. Having analysed those other sources at length and in depth, alone and against each other, the Court of Appeal concluded that even without the testimony of D.R. and M.S. there was sufficient proof of the applicant's guilt.

Lastly, the Court of Appeal concluded that the trial court was impartial towards the applicant, given that it had substituted the charges against the applicant with a lesser charge, by convicting him as a person who had merely assisted in the commission of a crime and not as the organiser.

34. In contrast, the Court of Appeal agreed with the applicant's argument that all the time he had spent in pre-trial detention should be counted towards his sentence:

“The chamber notes the not entirely correct nature of the information given in the bill of indictment, to the effect that L. Balčiūnas was arrested on 9 November 1998, remanded in custody on 11 November 1998 and the detention continued only until 9 May 2000; and that afterwards detention was imposed in another criminal case, adjudicated by the Šiauliai Regional Court.

From supplementary information the Court of Appeal has received (the 1 May 2000 ruling of the Šiauliai Regional Court) it transpires that in another criminal case, in which L. Balčiūnas was convicted and acquitted (...) [paragraphs 48-50 hereinafter], new pre-trial detention has not been imposed on the applicant; it was the detention of 11 November 1998 which was being continued.”

The Court of Appeal upheld the applicant's sentence of two years' imprisonment. However, the applicant was deemed to have completed the sentence in view of the time spent remanded in custody – from 9 November 1998 to 4 September 2003.

35. The applicant lodged a cassation appeal, complaining that his conviction had been based on the submissions of witnesses who had not been questioned by him or the courts. He also alleged that the Court of Appeal had not examined the issue concerning the allegedly excessive length of the proceedings and the lawfulness of his remand in custody.

36. On 12 October 2004 the Supreme Court dismissed the applicant's cassation appeal. The cassation court noted that the evidence leading to the applicant's conviction had been properly handled and assessed by the lower courts. His guilt had been based to a substantial degree on the evidence given by a witness and two of his co-defendants, who had all been examined in open court. The trial court was entitled to refer to the submissions by D.R. and M.S., which had been recorded during the pre-trial investigation. The authorities had taken all the necessary measures to summon D.R. and M.S. to the hearing, but had failed to obtain their attendance in view of the

fact that their place of residence was unknown. The Supreme Court acknowledged that the appellate court had not answered the applicant's allegation that the investigation and his pre-trial detention had lasted an unreasonably long time. It noted however that these circumstances did not constitute sufficient grounds to find that the Court of Appeal had failed to respect the relevant procedural requirements. Lastly, the Supreme Court noted that the Court of Appeal had rectified the trial court's mistake and correctly counted the period of pre-trial detention towards the time of the punishment.

## **B. Proceedings concerning the allegation of belonging to a criminal organisation and causing explosions**

### *1. The applicant's remand in custody in the context of the proceedings*

37. On an unspecified date, another set of criminal proceedings was instituted against the applicant. In particular, it was suspected that he had been a member of a criminal organisation, and that in January 1998 he had been involved in organising two explosions in public places, causing a number of injuries to others. Five other persons were charged alongside the applicant; the charges related to events which took place in 1996-98.

38. On 19 April 2000, upon approval of the bill of indictment, the case was transmitted to the Šiauliai Regional Court.

39. On 1 May 2000 the Šiauliai Regional Court ordered the applicant's detention to be "continued" until 10 July 2000, referring to the risk that he would abscond, commit new offences and obstruct the investigation. The applicant and his defence counsel were present at the hearing.

40. The applicant appealed. However, on 18 May 2000 the Court of Appeal dismissed his appeal, referring to the gravity of the charges against the applicant. The applicant's counsel was present at the hearing.

41. Subsequently the applicant's detention was extended by court orders of 12 June, 6 September, 9 November and 7 December 2000 and of 2 May, 4 July and 4 October 2001. The applicant's lawyer was present at the hearings. The courts referred to the risk of the applicant reoffending, influencing witnesses and obstructing the investigation. All his appeals were unsuccessful.

42. On 6 February 2002 the Šiauliai Regional Court ordered the Šiauliai Regional Prosecutor's office to summon D.R. and M.S. to the hearing for questioning.

43. By the same ruling the Šiauliai Regional Court extended the term of the applicant's detention until 9 May 2002 on the ground that he might influence witnesses and commit fresh crimes. The applicant's lawyer was present at the hearing. The applicant appealed, requesting a variation of the remand. He submitted, *inter alia*, that the lengthy stay in custody had

negatively affected his health. He also alleged that the pre-trial investigation had been concluded, and that there were no grounds to believe that he might abscond from the trial or influence witnesses.

44. On 27 February 2002 the Court of Appeal dismissed his appeal, endorsing the grounds indicated in the order of 6 February 2002. The court acknowledged that the applicant had been in detention “for a long time already” and observed that after the case was transferred to court, some delays had been caused by “organisational matters of the court”. Nonetheless, in the view of the Court of Appeal, the length of the applicant's detention was justified by the complexity of the case (multiple charges against several co-defendants, numerous victims and witnesses) and a voluminous case file. The case had been adjourned several times at the request of the defence to examine certain additional evidence, or due to the failure by certain witnesses or defence lawyers to appear at the hearing. The circumstances justifying the applicant's detention persisted. The applicant and his defence counsel were present at the hearing.

45. On 9 May 2002 the Šiauliai Regional Court further extended the applicant's detention until 9 August 2002 on the same grounds. The applicant's lawyer was present at the hearing.

46. The applicant appealed, requesting a variation of the remand. He argued, *inter alia*, that the pre-trial investigation had been terminated, most of the victims and witnesses had been questioned in court, and it remained only for the court to evaluate the evidence and pass a judgment. Thus it was not likely that the applicant would influence witnesses or obstruct the establishment of the truth in the case, given that he had not done so for three and a half years.

47. On 24 May 2002 the Court of Appeal dismissed the applicant's appeal against the order of 9 May 2002. The court acknowledged that the applicant had been detained for a prolonged period. However, in view of the circumstances, such as the complexity and volume of the case and the number of charges against various co-defendants, the court concluded that the applicant's continuing detention was justified. The grounds for the applicant's detention thus continued to persist - it was necessary in order to guarantee that he would appear before the court, as well as to prevent the commission of new offences.

## 2. *The applicant's trial*

48. On 19 July 2002 the Šiauliai Regional Court convicted the applicant of being a member of a criminal organisation which possessed explosives (Article 227 § 2 of the Criminal Code), illegal possession of explosives (Article 234 § 1), attempts at aggravated murder (Articles 16 § 2, 105 §§ 2, 4, 8, 13), and destruction of property (Article 278 § 2). He was sentenced to fifteen years' imprisonment and fined, and his property was confiscated.

49. On 4 September 2003 the Court of Appeal acquitted the applicant. The court noted that the conviction was based to a decisive extent on the submissions of two witnesses, D.R. and M.S., who had not been examined in open court. The applicant was released in the courtroom.

50. On 2 March 2004 the Supreme Court dismissed an appeal by the prosecution.

### **C. The applicant's complaints about the conditions of his detention**

51. On an unknown date the applicant lodged a complaint with the Ombudsman, arguing that the conditions of his detention at the Šiauliai Remand Prison were inadequate. In particular, the applicant contended that the facility was overcrowded and that the cell he had been placed in was constantly damp, the mats were wet and a sanitary unit did not work properly.

52. In the report of 1 July 2003 the Ombudsman partly agreed with the applicant's complaints, noting that the Šiauliai Remand Prison suffered from overcrowding (760 persons were held there, the limit being 454) and from a shortage of properly set up sanitary units. In the report the Ombudsman also observed that:

“the fact that the applicant was detained for more than four and a half years could demonstrate a significant risk that a violation of his right to a trial within a reasonable time or to release pending trial, that is to say a violation of Article 5 § 3 of the Convention, would be found. It could be said that a lengthy period of detention during judicial proceedings could have a disproportionate impact on his other rights: for example, the restriction on longer visits for those in pre-trial detention, no opportunity to take exercise, and other restrictions”.

53. In the operative part of the report the Ombudsman urged the responsible authorities to resolve the problem of overcrowding and to evaluate the hygiene conditions at the Šiauliai Remand Prison.

## **II. RELEVANT DOMESTIC LAW AND PRACTICE**

### **Provisions relating to detention on remand**

54. The Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*), in force until 1 May 2003, provided as follows:

#### **Article 104**

“Detention on remand shall be used only ... in cases where a statutory penalty of at least one year's imprisonment is envisaged. ...

The grounds for the detention shall be specified. The grounds ... shall be the reasonable suspicion that the accused will:

(1) abscond from the investigation and trial;

(2) obstruct the determination of the truth in the case [influence other parties or destroy evidence];

(3) commit new offences ... whilst suspected of crimes provided in Articles ... 105 [aggravated murder], ... 227 [founding a criminal organisation], ... 278 § 2 [aggravated destruction of property] ... of the Criminal Code ... .

Where there is a reasonable risk that the accused will abscond from the investigation and trial, detention on remand may be ordered, taking into account the accused's family status, permanent place of residence, employment relations, health, criminal record, relations abroad and other circumstances. ...”.

#### **Article 104<sup>1</sup>**

“... After the case has been transmitted to the court ... [a judge] can order, vary or revoke the detention. ...”

#### **Article 106**

“Detention on remand cannot last longer than six months. A specific term of detention shall be fixed by the judge issuing the remand order; this term can be extended by the same judge or another judge of the same district court, but only for a period not exceeding six months.

In view of the particular complexity or size of a case, a judge of a regional court may extend the maximum term specified in the first paragraph of this Article for a period not exceeding three months. The extension may be repeated, but the total length of the term at the stage of the pre-trial investigation may not exceed eighteen months ...

For the purpose of extending the term of detention at the pre-trial stage ... a judge must convene a hearing to which defence counsel and the prosecutor and to which, if necessary, the detained person shall be summoned ... .”

#### **Article 109<sup>1</sup>**

“A person remanded in custody or his defence counsel shall have the right during the pre-trial investigation or trial to lodge [with an appellate court] an appeal against detention or the extension of its term ... . A judge or appellate court must examine the appeal within seven days of its receipt. With a view to examining the appeal, a hearing may be convened, to which the arrested person and his counsel or counsel alone shall be summoned. The presence of a prosecutor is obligatory at such a hearing.

The decision taken by [the appellate judge] is final and cannot be the subject of a cassation appeal ... .

A further appeal shall be determined when examining the extension of the term of the detention.”

55. Article 52 § 2 (3) and (8) and Article 58 § 2 (8) and (10) of the Code of Criminal Procedure stipulated respectively that the accused and their counsel have the right to “submit requests” and to “appeal against acts and decisions of an interrogator, investigator, prosecutor and court.” Other relevant provisions of the Code provided:

**Article 249 § 1**

“A judge, individually or a court in a directions hearing, in deciding whether to commit the accused for trial, shall determine ... (11) whether the selection of a remand measure is appropriate.”

**Article 250 § 1**

“After deciding that there is a sufficient basis to commit the accused for trial, a judge individually or a court in a directions hearing shall determine the questions ... (2) of the remand measure in respect of the accused ...”

**Article 277**

“In the course of the trial, a court may decide to order, vary or revoke a remand measure in respect of the defendant.”

56. Article 6.272 § 1 of the Civil Code allows a civil claim for pecuniary and non-pecuniary damage, in the event of unlawful actions by the investigating authorities or a court in the context of a criminal case. The provision envisages compensation for an unlawful conviction, an unlawful arrest or detention, application of unlawful procedural measures of enforcement, or an unlawful administrative penalty.

57. On 1 October 2003 the Supreme Court ruled in the civil case of M.B., who claimed to have suffered non-pecuniary damage due to his allegedly unlawful detention on remand. The Vilnius Regional Court and the Court of Appeal had earlier dismissed M.B.'s claim on the ground that a civil court had no jurisdiction to assess the lawfulness of M.B.'s detention in a criminal case. The two courts also argued that M.B. did not have a right to damages, since the orders to detain him had not been recognised as unlawful and quashed in his criminal case.

58. The Supreme Court dismissed that reasoning and noted that the Convention and, in particular, Article 5 § 3 thereof could be directly applied by the Lithuanian courts and that the lower courts, when deciding M.B.'s claim for damages, had failed to examine whether the length of his detention was reasonable, regardless of the fact that the court orders to detain him have not been quashed in criminal proceedings. The case was returned to the Court of Appeal for fresh examination.

59. By a ruling of 20 September 2004, the Court of Appeal granted M.B.'s civil claim in part and awarded him 7,000 Lithuanian litai (LTL) (approximately 2,027 euros (EUR)) for the damage he suffered due to his detention, the length of which those courts found to be unreasonable.

On 28 February 2005 the Supreme Court upheld the above ruling.

60. According to Article 16 of the Law on Pre-Trial Detention (*Kardomojo kalinimo įstatymas*), the administration of the relevant remand institution can allow detainees visits of up to two hours with family members.

61. Pursuant to Articles 73, 79-80, 85, 91 and 95 of the Code on the Execution of Punishment (*Bausmių vykdymo kodeksas*), convicted persons, except those serving their sentence in the strictest regime prisons, have a right to several long term visits a year from their close relatives. Under special circumstances, such as lack of facilities, the long visits can be replaced by shorter visits by relatives (including parents).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (c) OF THE CONVENTION

62. The applicant complained under Article 5 § 1 (c) of the Convention that his detention had been unlawful. The relevant parts of Article 5 provide:

“1. 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:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so...”

#### A. Submissions by the parties

63. The Government submitted that this complaint was manifestly ill-founded and that the whole period of the applicant's detention was covered by the orders issued by the courts in accordance with domestic criminal procedure standards.

64. The applicant maintained his complaint.

## **B. The Court's assessment**

### *Admissibility*

65. The Court reiterates that a court's decision to order and maintain a custodial measure would not breach Article 5 § 1 provided that the court had acted within its jurisdiction, had power to make an appropriate order, and had given reasons for its decision to maintain the custodial measure, for which it had also set a time-limit (see *Khudoyorov v. Russia*, no. 6847/02, §§ 152-153, ECHR 2005-X (extracts); *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006; and *Pshevecherskiy v. Russia*, no. 28957/02, §§ 41-46, 24 May 2007).

66. On the basis of the materials in the case file and the Government's observations, the Court finds it established that the entire period of the applicant's detention was authorised and extended by the domestic courts as required by Articles 104 and 104<sup>1</sup> of the Code of Criminal Procedure then in force (see, *mutatis mutandis*, *Jėčius v. Lithuania*, no. 34578/97, 31 July 2000, §§ 65-70, ECHR 2000-IX). The Lithuanian courts acted within their jurisdiction in issuing the detention orders, which at least formally appear to be valid under domestic law. It has not been claimed that those detention orders were otherwise incompatible with the requirements of Article 5 § 1, the question of the sufficiency and relevance of the grounds relied on being analysed below in the context of compliance with Article 5 § 3 of the Convention.

67. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

## **II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION**

68. The applicant complained that the length of his detention had been excessive. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

### **A. Submissions by the parties**

69. The Government submitted at the outset that the applicant had failed to bring the matter before the domestic courts. He could have sought damages, invoking Article 6.272 of the Civil Code. As an example of positive judicial practice the Government referred to the ruling of 1 March 2003, in which the Supreme Court found that pre-trial detention, if it

contravenes the requirements of Article 5 § 3 of the Convention, could not be considered lawful (see paragraphs 57-59 above). For the Government, the applicant's complaint should be dismissed for failure to exhaust domestic remedies.

70. Alternatively, the Government argued that the length of the applicant's detention had not been excessive. It did not exceed the maximum period of detention established under Lithuanian law. After the applicant's arrest on 9 November 1998, his detention was imposed on 11 November 1998 and terminated on 19 July 2002, when the Šiauliai Regional Court convicted him in the second set of criminal proceedings. The Government admitted that the detention within the context of the first set of criminal proceedings lasted eighteen months. They insisted, however, that the applicant's detention was further extended in the context of a separate, second set of criminal proceedings, where new criminal charges had been brought against the applicant, that is to say in the criminal case resolved by the Šiauliai Regional Court on 19 July 2002.

71. For the Government, the Lithuanian courts' arguments supporting the applicant's detention were "relevant" and "sufficient". In particular, the applicant was charged with robbery on a large scale, his conspirators agreed to cooperate with the authorities and therefore it was reasonable to believe that if released he might obstruct the establishment of the truth and influence witnesses and his co-conspirators. As to the length of the detention, it had been justified by the complexity of the criminal case. In sum, the applicant's complaint under Article 5 § 3 of the Convention was manifestly ill-founded.

72. The applicant argued that the length of his detention was clearly excessive. The prosecutors in charge of the investigation joined his case with other cases and disjoined it later. As a consequence he was held in pre-trial detention for almost five years. For the applicant, his situation was aggravated even more by the poor conditions in the detention facilities in which he had been held. Last but not least, he was deprived of the opportunity to communicate with his relatives, since the first time his mother could visit him was only on 9 March 2000, that is to say one and a half years after he was remanded in custody.

## **B. The Court's assessment**

### *1. Admissibility*

73. The Court recalls that the Government raised a preliminary objection as to the admissibility of the complaint on account of a failure by the applicant to exhaust domestic remedies, given that he had not instituted civil proceedings for damage he alleges he suffered due to the length of his

detention. For the reasons given below, the Court cannot agree with the Government.

74. The Court observes that in a ruling of 1 March 2003, to which the Government refers, the Supreme Court held that Article 5 § 3 of the Convention was to be taken into consideration when examining whether the length of a person's detention during judicial proceedings was reasonable, regardless of the fact that court orders to detain that person have not been quashed in criminal proceedings (see paragraphs 57-59 above).

75. The Court acknowledges the important positive nature of the above ruling. It notes, however, that that ruling was adopted on 1 March 2003, whereas the applicant lodged his application with the Court on 10 April 2002. What is more, the Court observes that, as it appears from the content of the Supreme Court ruling, in 2003 the lower courts of civil jurisdiction were rather unwilling to award damages for unacceptably long periods of detention which had been found in criminal proceedings to be lawful. In such circumstances the Court cannot hold that on 10 April 2002, when the complaint was submitted to the Court, the civil remedy concerned was effective and ought to have been exhausted by the applicant. Consequently, the Government's preliminary objection must be dismissed.

76. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## 2. Merits

### (a) General principles

77. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, p. 23, § 9; *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV). The Court also observes that the presumption is in favour of release (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X). What is more, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features (see *Jėčius*, cited above, § 93). Continued detention may be justified in a given case only if there are clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty (see *Lavents v. Latvia*, no. 58442/00, § 70, 28 November 2002).

78. The Court has previously decided that it falls in the first place to the national judicial authorities to ensure that the pre-trial detention of an accused person does not exceed a reasonable time (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 35). To this end they must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and of the matters established as fact by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Labita*, cited above, § 152).

79. The arguments for and against release must not be “general and abstract” (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX). In addition, where the law provides for a presumption in respect of factors relevant to the grounds for continued detention, the existence of the concrete facts outweighing the rule of respect for individual liberty must be convincingly demonstrated (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84 *in fine*, 26 July 2001).

80. Lastly, the Court has consistently held that the persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. The need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view. It must be examined with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding and reoffending or make it appear so slight that it cannot justify detention pending trial (see *Letellier*, cited above, § 43; *Panchenko v. Russia*, no. 45100/98, § 106, 8 February 2005; also see *Smirnova*, cited above, § 59).

**(b) Application of the general principles to the present case**

*(i) Period to be taken into consideration*

81. The Court notes at the outset that the applicant was arrested on 9 November 1998 and, in the context of the first set of criminal proceedings, held in pre-trial detention until 9 May 2000. The Government have argued that from that date a new, purportedly separate period of detention started, given that new criminal proceedings had been initiated against the applicant, and that therefore the reasonableness of those two periods should be assessed separately.

82. The Court notes that on 1 May 2000, when the prior detention order of 30 March 2000 was about to expire (see paragraphs 24 and 39 above), the Šiauliai Regional Court renewed the applicant's remand in custody. It must also be observed that the Lithuanian courts, notably the Court of Appeal and the Supreme Court, subsequently found that that further detention, even though it lasted throughout the second set of criminal proceedings, was a continuation of the initial detention of 11 November 1998 (see paragraphs 34 and 36 above). The Court nonetheless observes, that already the second period of detention, which lasted until 19 July 2002, the date of the applicant's conviction by the Šiauliai Regional Court (see paragraph 48 above), was of a rather long duration. Therefore, it is sufficient for the purposes of Article 5 § 3 of the Convention that the Court limits its examination to the period from 1 May 2000 to 19 July 2002, which amounts to two years, two months and eighteen days. It will, however, take into account in its assessment of the reasonableness of that period the fact that the applicant had already been in detention in connection with other charges for over eighteen months.

*(ii) The reasonableness of the length of detention*

83. The Court recalls that the Lithuanian courts, when ordering the applicant's detention, based their decisions on three main fears, namely that the applicant may escape, obstruct the investigation by influencing witnesses, and commit new crimes. The Court accepts that the applicant's detention may initially have been warranted by a reasonable suspicion that he was involved in organised crimes. At that stage of the proceedings those reasons were sufficient to justify keeping the applicant in custody (see *Khudoyorov*, cited above, § 176).

84. However, with the passage of time those grounds became less relevant. Taking into account the rather long period of the applicant's detention, and noting that he had already been deprived of his liberty for over eighteen months pending the first set of the criminal proceedings, only exceptional reasons could have justified the continuation of detention in the light of Article 5 § 3 of the Convention (see, *mutatis mutandis*, *Lavents*, cited above, § 73). Accordingly, the authorities were under an obligation not only to analyse the applicant's personal situation in greater detail and to give specific reasons for holding him in custody but also to conduct the criminal proceedings with particular diligence. The Court observes in that connection that the new indictment against the applicant, approved in April 2000, related to offences which had been committed in 1996-98.

85. The Court reiterates that in principle it is the judicial orders that it is called to assess in the light of Article 5 § 3 (see *Svipsta v. Latvia*, no. 66820/01, § 110, ECHR 2006-III (extracts)). As can be seen from those judicial orders, the reasons given for extending the applicant's detention were just a brief and abstract repetition of the criteria enumerated in Article

104 of the Code of Criminal Procedure, governing the grounds to maintain a person in detention, without specifying the manner in which those grounds applied to the individual case of the applicant (see *Lavents*, cited above, § 73, and, by converse implication, *Silickis and Silickienė v. Lithuania* (dec.), no. 20496/02, 10 November 2009). The Court could accept that, as submitted by the Government, the fact that the applicant was charged with serious crimes and his co-conspirators testified could have been one of the specific reasons for his continued detention. However, those grounds were not analysed in any great detail in any court order made with respect to the applicant. The reasons given in the orders remained general, theoretical and nearly identical throughout time, without examining the personal circumstances of the applicant, and therefore were clearly insufficient to satisfy the requirements of Article 5 § 3 (see paragraphs 79 and 80 above). The Court likewise notes that the applicant had no prior convictions (see, by converse implication, *Morkūnas v. Lithuania* (dec.), 29798/02, 12 April 2007).

86. Lastly, as emerges from the materials before the Court, the applicant's situation was further compounded by the inadequate conditions at the Šiauliai Remand Prison where he was held (see paragraph 52 above) and the fact that, unlike the persons convicted, during his pre-trial detention the applicant was deprived of the possibility to benefit from long duration visits from his relatives (see paragraphs 60 and 61 above).

87. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 5 § 3 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

88. The applicant complained under Article 5 § 4 of the Convention that the courts had not decided the lawfulness of his detention “speedily”. Article 5 § 4 provides:

“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...”

#### A. Submissions by the parties

89. The Government submitted that the applicant was afforded the right to speedy examination of his appeals against the orders to extend the term of his detention. In particular, as regards the order of 18 November 1998, the applicant lodged an appeal on 24 December 1998, Christmas Eve, which was followed by a holiday season and consequently involved certain delay. The Šiauliai Regional Court received the appeal on 4 January 1999 and examined it on 7 January 1999.

90. As regards the order of 15 January 1999, the applicant appealed on 18 February 1999. Having received the appeal on 26 February 1999, the Šiauliai Regional Court examined it on 2 March 1999.

91. The applicant maintained his complaint.

## **B. The Court's assessment**

### *Admissibility*

92. The Court reiterates that Article 5 § 4, in guaranteeing to persons arrested or detained a right to take proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful. Although it does not compel the Contracting States to set up a second level of jurisdiction for the examination of the lawfulness of detention, a State which institutes such a system must in principle accord to detainees the same guarantees on appeal as at first instance (see *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224). The requirement that a decision be given “speedily” is undeniably one such guarantee; while one year per level of jurisdiction may be a rough rule of thumb in Article 6 § 1 cases, Article 5 § 4, concerning issues of liberty, requires particular expedition (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 79, ECHR 2003-IV). In that context, the Court also observes that there is a special need for a swift decision determining the lawfulness of detention in cases where a trial is pending because the defendant should benefit fully from the principle of the presumption of innocence (see *Howiecki v. Poland*, no. 27504/95, § 76, 4 October 2001).

93. Having analysed the materials submitted to it the Court observes that the applicant's complaints in respect of his requests for release and appeals against detention orders were examined by the domestic courts without undue delays. In particular, the Court notes that the applicant lodged his application for release on 24 December 1998. The Šiauliai Regional Court dismissed it on 7 January 1999, fourteen days later. On 18 February 1999 the applicant made another application for release. It was dismissed by the Šiauliai Regional Court twelve days later on 2 March 1999.

94. In such circumstances the Court is not ready to find that the applications for release introduced by the applicant on 24 December 1998 and 18 February 1999 respectively were examined not “speedily”, as required by Article 5 § 4 (see, by converse implication, *Rehbock v. Slovenia*, no. 29462/95, §§ 85-86, ECHR 2000-XII).

95. Consequently, the Court holds that the applicant's complaint under Article 5 § 4 of the Convention is to be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 thereof.

#### IV. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

96. The applicant further complained that his trial was unfair and that his defence rights were not respected, given that his conviction in the first set of criminal proceedings was based on the testimony of two witnesses whom he could not examine. The applicant relied on Article 6 §§ 1 and 3 (d) of the Convention, which provide:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...”

##### **A. Submissions by the parties**

97. The applicant submitted that his conviction during the first set of criminal proceedings was based on the testimony of two witnesses, D.R. and M.S., who had not attended the trial. As a result, neither the court nor the applicant could challenge their testimonies. The applicant observed that in the second set of criminal proceedings the trial court had also convicted him on the testimony of D.R. and M.S. Nonetheless, the Court of Appeal found that relying on those statements breached his right to defence and therefore he was acquitted.

98. The Government submitted, at the outset, that the requirements of Article 6 § 3 (d) of the Convention were to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1. Consequently, the Government provided joint arguments as regards the applicant's complaints under both provisions.

99. For the Government, during the first set of criminal proceedings the applicant had received a fair trial. The domestic courts made all efforts, albeit unsuccessful, to summon witnesses D.R. and M.S. to testify in open court. Whilst admitting that D.R. and M.S. had not been questioned by the trial judge or by the applicant at the hearing, the Government argued that the

applicant's conviction during the first set of criminal proceedings was not based solely on their testimony. Quite the opposite, the domestic courts relied on other evidence, namely, testimonies of other co-accused and of persons who agreed to cooperate with the judicial authorities and were relieved from criminal liability. The Government emphasised that the probatory value of statements by D.R. and M.S. was not the same in the two sets of criminal proceedings, given that they concerned different charges and different factual circumstances. The applicant's acquittal in one criminal case could not automatically predetermine his acquittal in another criminal case. In sum, the applicant's defence rights had not been restricted to such an extent that he was not afforded a fair trial within the meaning of Article 6 §§ 1 and 3 (d) of the Convention.

## **B. The Court's assessment**

### *1. Admissibility*

100. The Court finds that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### *2. Merits*

101. As the requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1, the Court will examine the complaints under Article 6 §§ 1 and 3 (d) taken together (see, among many other authorities, *A.M. v. Italy*, no. 37019/97, § 23, ECHR 1999-IX; *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports of Judgments and Decisions* 1997-III, p. 711, § 49).

102. As regards Article 6 of the Convention, the Court reiterates that the admissibility of evidence is primarily a matter for regulation by national law and as a general rule it is for the national courts to assess the evidence before them. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see *Doorson v. the Netherlands*, judgment of 26 March 1996, § 67, *Reports* 1996-II, and *Van Mechelen and Others*, cited above, § 50).

103. The Court refers to its previous jurisprudence to the effect that all evidence must normally be produced at a public hearing, in the presence of the accused, with a view to adversarial argument. There are exceptions to this principle, but they must not infringe the rights of the defence; as a general rule, paragraphs 1 and 3 (d) of Article 6 require that the defendant

be given an adequate and proper opportunity to challenge and question a witness against him, either when he makes his statement or at a later stage (see *Lüdi v. Switzerland*, judgment of 15 June 1992, § 49, Series A no. 238). The same paragraphs, taken together, require the Contracting States to take positive steps to enable the accused to examine or have examined witnesses against him, such measures being part of the diligence the Contracting States must exercise in order to ensure that the rights guaranteed by Article 6 are enjoyed in an effective manner (see *Sadak and Others v. Turkey*, nos. 29900/96, 29901/96, 29902/96 and 29903/96, § 67, ECHR 2001-VIII).

104. However, the use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected (see *Saidi v. France*, judgment of 20 September 1993, § 43, Series A no. 261-C, and *A.M. v. Italy*, no. 37019/97, § 25, ECHR 1999-IX). If there has been no negligence on the part of the authorities, the impossibility of securing the appearance of a witness at the trial does not in itself make it necessary to halt the prosecution (see *Artner v. Austria*, judgment of 28 August 1992, Series A no. 242-A, § 21). The rights of the defence are restricted to an extent that is incompatible with the requirements of Article 6 if the conviction is based solely, or to a decisive extent, on the depositions of a witness whom the accused has had no opportunity to examine or to have examined either during the investigation or at trial (see *Delta v. France*, judgment of 19 December 1990, § 37, Series A no. 191-A, and *Isgrò v. Italy*, judgment of 19 February 1991, § 35, Series A no. 194-A).

105. The Court recalls that the applicant alleges a violation of Article 6 §§ 1 and 3 (d) of the Convention on the ground that his trial was unfair in that he had been unable to cross-examine the witnesses, D.R. and M.S., whose statements served as the basis for his conviction in the first set of criminal proceedings.

106. Having examined the materials submitted to it the Court shares the Government's view that the two sets of criminal proceedings against the applicant concerned different facts and different charges. Except for the applicant, D.R. and M.S., both cases involved different suspects. Consequently, it holds true that the applicant's acquittal in one set of criminal proceedings could not automatically entail his acquittal in the other set of proceedings.

107. Assessing further, the Court notes that the domestic courts did grant the applicant's requests that D.R. and M.S. be summoned for questioning, even though the courts' efforts were futile (see paragraphs 27, 31, 32 and 42 above). As a result, the Court cannot hold that the Lithuanian courts were insensitive towards the applicant and arbitrarily denied him the right to defend himself.

108. On the facts of the case the Court also notes the applicant had argued his inability to question D.R. and M.S. in his appeal and cassation appeal before the domestic courts, which dealt with these issues at significant length and dismissed them as unsubstantiated (see paragraphs 29, 33, 35 and 36 above). From the reading of the Court of Appeal's and the Supreme Court's decisions it emerges that they did consider the applicant's arguments in the light of Article 6 §§ 1 and 3 (d) of the Convention and gave them reasoned responses, nonetheless finding that, in view of other available evidence, there was enough proof against the applicant. The decisions of the Lithuanian courts seem to be devoid of arbitrariness. Accordingly, the Court is not ready to find that the applicant's rights of defence were restricted to such an extent that he would have had no fair trial within a meaning of Article 6 § 1 of the Convention.

109. That being so, the Court considers that in the present case there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

#### V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

110. The applicant further complained that his correspondence with his relatives had been monitored by the remand prison administration. He alleged breaches of Article 8 of the Convention in this respect.

111. The Government contested that argument and maintained that the applicant had failed to exhaust the domestic remedies.

112. The Court notes that the applicant did not raise this issue before the domestic courts. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies (see *Jankauskas v. Lithuania* (dec.), no. 59304/00, 5 December 2003).

#### VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

113. Invoking Article 3 of the Convention, the applicant complained that the general conditions of detention at the remand facilities where he was held were inadequate. For the applicant, his situation was aggravated even more, as the first time his mother could visit him was only on 9 March 2000, that is to say a year and a half after he had been placed in custody.

114. The Court finds that the applicant's complaints under the above provision cannot be dismissed as unfounded, given that the Lithuanian authorities themselves acknowledged their validity (see paragraph 52 above). It must be noted, however, that the applicant has never complained about the conditions of his detention before the domestic courts. The Court finds therefore that the applicant has failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention (see the *Jankauskas* decision

cited above). It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 thereof.

115. Invoking Article 6 § 3 (c) of the Convention, the applicant also complained that before the Court of Appeal he had only a State-appointed lawyer and that the legal representation he had received was not of good quality. The Court notes, nonetheless, that the applicant has failed to complain about the quality of his legal representation before the domestic institutions. Consequently, this complaint also must be dismissed for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

116. Lastly, the applicant submitted other complaints under Article 5 § 5 and Article 6 § 1 of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

## VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

118. The applicant claimed LTL 20,000 (approximately EUR 5,792) as compensation for loss of earnings and opportunities caused by the violations of Article 5 of the Convention. He also claimed LTL 200,000 (approximately EUR 57,920) in respect of non-pecuniary damage, which he had alleged to have sustained due to his lengthy detention.

119. The Government submitted that the applicant's claim in respect of pecuniary damage was speculative and unsubstantiated because of the lack of supporting documents. They further noted that the claim for compensation in respect of non-pecuniary damage was clearly excessive and groundless.

120. The Court shares the Government's view that there is no causal link between the violations found and the pecuniary damages claimed (see *Stašaitis v. Lithuania*, no. 47679/99, § 96, 21 March 2002). Consequently, it finds no reason to award the applicant any sum under this head.

121. The Court nonetheless notes that it has found a violation of Article 5 § 3 in the present case. In these circumstances, the Court considers that the applicant has experienced certain suffering and frustration. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage.

### **B. Costs and expenses**

122. The applicant also claimed LTL 5,000 (approximately EUR 1,450) for the costs and expenses incurred before the Court. He admitted, however, that he had not kept any documents justifying the above sum.

123. The Government contested the applicant's claim as unsubstantiated.

124. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case and in the absence of supporting documentation, the Court rejects the applicant's claim.

### **C. Default interest**

125. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* complaints under Article 5 § 3 and Article 6 §§ 1 and 3 (d) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the responded State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada  
Registrar

Josep Casadevall  
President