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

SECOND SECTION

CASE OF BUTKEVIČIUS v. LITHUANIA

(Application no. 48297/99)

JUDGMENT

STRASBOURG

26 March 2002

FINAL

26/06/2002

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 Butkevičius v. Lithuania,

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

Mr J.-P. COSTA, *President*,
Sir Nicolas BRATZA, *appointed to sit in respect of Lithuania*,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 28 November 2000 and 12 March 2002,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 48297/99) 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, Mr Audrius Butkevičius ("the applicant"), on 10 May 1999.

2. The applicant was represented before the Court by Mr R. Andrikis, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Mr G. Švedas, Deputy Minister of Justice.

3. The applicant alleged, in particular, that his remand in custody from 30 November to 8 December 1997, and from 31 December 1997 to 8 January 1998, had been unlawful, that he had not been able to take court proceedings to contest the lawfulness of the detention, and that certain statements of the Prosecutor General and the Chairman of the Seimas (Parliament) published in the media had breached Article 6 § 2 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr Kūris, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28). The Government accordingly appointed Sir Nicolas Bratza, the judge elected in respect of the United Kingdom, to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 1).

5. By a decision of 28 November 2000, the Chamber declared the application partly admissible.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was the Minister of Defence and a Member of the Seimas (Parliament) from 1996 to 2000.

A. Criminal proceedings against the applicant

8. On 12 August 1997 the applicant was apprehended in a hotel lobby by the security intelligence and the prosecuting authorities while accepting an envelope containing 15,000 United States dollars (USD) from KK. The latter, a senior executive of a troubled oil company (hereinafter referred to as "the company"), had previously informed the intelligence authorities that the applicant had requested 300,000 USD for his assistance in obtaining the discontinuance of criminal proceedings concerning the company's vast debts. For slightly more than an hour the applicant was questioned in the hotel lobby. His explanations were recorded and he was allowed to leave the hotel.

9. On 14 August 1997 the Prosecutor General requested the Seimas to permit the institution of criminal proceedings against the applicant. On 19 August 1997 the Seimas agreed. On 20 August 1997 criminal proceedings were instituted. On 14 October 1997 the applicant was charged with attempting to cheat (obtaining property by deception).

10. On 20 October 1997 the Prosecutor General applied to the Seimas for permission to detain the applicant on remand. On 28 October 1997 permission was given. On the same day a prosecutor requested the Vilnius City Second District Court to order the applicant's detention on remand. Also that day the applicant was brought before a judge of the Vilnius City Second District Court who issued a warrant for the applicant's arrest on the grounds that he might obstruct the establishment of the truth in the case, *inter alia*, by exploiting the media and influencing witnesses. The applicant was duly detained.

11. On 30 October 1997 the judge extended the term of the applicant's detention on remand until 30 November 1997 in the presence of the parties for the same reasons as before. On 3, 5 and 7 November 1997 the applicant appealed against his detention on remand. He requested a hearing. On 11 November 1997 a judge of the Vilnius Regional Court dismissed the applicant's appeal without hearing the parties.

12. From 27 November 1997 to 5 December 1997 the applicant and his counsel had access to the case-file. On 5 December 1997 the applicant requested the prosecutor to discontinue the proceedings. On a number of occasions he also requested the prosecutor to vary the remand. These requests were rejected.

13. On 8 December 1997 a judge of the Vilnius City Second District Court extended the term of the applicant's detention on remand until 31 December 1997. On 9 December 1997 the applicant appealed. On 11 December 1997 the Regional Court informed him that no appeal lay against that decision.

14. On 29 December 1997 the Prosecutor General confirmed the bill of indictment, which was transmitted to the Vilnius Regional Court.

15. From 1 to 5 January 1998 the applicant submitted numerous applications to courts, the prison administration, the Ombudsman and the Seimas, alleging that his detention had been unlawful. On 7 January 1998 the Ombudsman concluded that from 31 December 1997 the applicant had been held in detention unlawfully.

16. On 8 January 1998 the Vilnius Regional Court committed the applicant for trial. The court also decided that the applicant's detention on remand "shall remain unchanged". No term for that detention was specified.

17. On 23 March 1998 the Vilnius Regional Court adjourned the case and ordered the prosecuting authorities to submit new evidence. In the same decision the court also decided that the applicant's detention on remand "shall remain unchanged". No term or grounds for this were specified. The applicant's counsel was present at the hearing. On 24 March 1998 the applicant appealed against the decision. On 12 May 1998 the applicant submitted a further appeal against the decision of 23 March 1998.

18. On 21 May 1998 the Court of Appeal dismissed this appeal in so far as it concerned the decision to require the prosecution to submit new evidence. The Court of Appeal held that no appeal lay against the decision of 23 March 1998 in so far as it concerned the applicant's detention. The applicant and his counsel were present at the appellate hearing.

19. On 1 July 1998 the trial before the Vilnius Regional Court was resumed. On 13 July 1998 the Vilnius Regional Court extended the term of the applicant's detention until 17 August 1998. On 23 July 1998 the detention was extended until 30 November 1998. The court referred to the strength of the evidence in the case-file and the likelihood of the applicant influencing witnesses, warranting his further remand in custody. Defence

counsel was present at the hearings. The applicant's appeals against the decisions of 13 and 23 July 1998 were dismissed by the Court of Appeal on 21 July and 12 August 1998 respectively. The applicant's counsel had been present at the appellate hearings.

20. On 5 and 19 February, 1 July, 21 October and 3 November 1998, the Vilnius Regional Court rejected the applicant's requests to lift the remand in custody. His defence counsel was present at the hearings.

21. On 18 November 1998 the Vilnius Regional Court found the applicant guilty of attempting to obtain property by deception. The court rejected the applicant's defence that he had been incited to commit an offence as a result of the conspiracy between KK and the security intelligence authorities. The court found that the applicant had himself requested KK to contact him, and that the applicant had demanded money in return for him using his authority over certain prosecutors with a view to discontinuing the criminal case involving KK's indebted company. The Regional Court found that the applicant had thereby intended to cheat. The applicant was sentenced to five years and six months' imprisonment and fined 50,000 Lithuanian litai (LTL). Half of his property was confiscated. The applicant and his counsel were present before the first instance court.

22. The applicant appealed. On 17 February 1999 the Court of Appeal rejected the appeal, finding no procedural irregularities regarding the investigation and trial. The applicant and his counsel were present at the appellate hearing.

23. The applicant lodged a cassation appeal. On 11 May 1999 the Supreme Court rejected it, finding that the lower courts had properly decided the case. The court mentioned *inter alia* that it had no competence to examine the applicant's allegations about the unlawfulness of his detention on remand. The applicant and his counsel were present before the Supreme Court.

24. On an unspecified date, an impeachment procedure was initiated against the applicant in the Seimas. On 15 June 1999 the Seimas refused to impeach the applicant or annul his mandate as a Member of Parliament ("MP").

25. On 17 March 2000 the Vilnius City Third District Court ordered the applicant's release on licence. He was released on 20 March 2000.

B. The statements concerning the applicant's case made in the media by the Prosecutor General and the Chairman of the Seimas

<Translations are given>

26. On 14 August 1997 an article entitled "MP's whitewash looks hogwash, says prosecutor" was published in the biggest national daily "Lietuvos Rytas":

"The Prosecutor General confirmed that [he had] enough sound evidence of the guilt of A. Butkevičius."

27. On 15 August 1997 an article entitled "The Chairman of the Seimas does not doubt A. Butkevičius's guilt" was published in "Lietuvos Rytas":

"When asked whether or not he doubts that A. Butkevičius accepted a bribe, the Chairman of the Seimas said: 'on the basis of the material in my possession I entertain no doubt.'"

28. The Prosecutor General was quoted in an article entitled "A. Butkevičius prepares for battle and prison" of 16 August 1997 in the daily "Respublika":

"I qualify the offence as an attempt to cheat ... ."

29. The Chairman of the Seimas, quoted in an article entitled "A. Butkevičius will be prosecuted" of 20 August 1997 in "Lietuvos Rytas":

"One or two facts were and are convincing. [The applicant] took the money while promising criminal services."

30. The Chairman of the Seimas, in an article entitled "A. Butkevičius's lawyers tag the bribery case as political" of 6 October 1998 in "Lietuvos Rytas", was quoted as saying that "the Centre and the New Union [parties] co-ordinate the defence of the bribetaker" and that these parties try to protract the proceedings and artificially "victimise" the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Arrest and detention on remand

31. The Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*):

Article 10 (in force since 21 June 1996)

"No one shall be arrested or detained save by virtue of a decision of a court or judge."

Article 52 § 2 and 58 § 2 of the Code provide that the accused and their counsel have the right to submit requests and appeal against acts and decisions of an interrogator, investigator, prosecutor or court.

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 detention on remand shall be the reasoned 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 having committed crimes provided in Articles ... [274, cheating] of the Criminal Code ... .”

Article 104-1 (in force from 21 June 1996 until 24 June 1998)

“... the arrested person shall be brought before a judge within not more than 48 hours ... . The judge must hear the person as to the grounds of the arrest. The prosecutor and counsel for the arrested person may take part in the inquiry. After having questioned the arrested person, the judge may maintain the arrest order by designating the specific term of detention, or vary or revoke the remand ... .

After the case has been transmitted to the court ... [it] can order, vary or revoke the detention on remand.”

The amended Article 104-1 (in force since 24 June 1998) provides that the prosecutor and defence counsel must take part in the first judicial inquiry of the arrested person, unless the judge decides otherwise. The amended provision also provides that the court should extend the detention on remand before its expiry.

Article 106 § 3 (in force from 21 June 1996 until 24 June 1998)

“For the purpose of extending the term of detention on remand, a judge ... must convene a hearing to which defence counsel and a prosecutor and, if necessary, the detainee shall be called. The judge decides whether or not to extend the term of detention on remand. ... .”

The Code in force since 24 June 1998 makes obligatory the attendance of the detainee at the remand hearings.

Article 109-1 (in force from 21 June 1996 until 24 June 1998)

“An arrested person or his counsel shall have the right during the pre-trial investigation to lodge [with an appellate court] an appeal against the arrest. ... . With a view to examining the appeal, there may be convened a hearing to which the arrested person and his counsel or only counsel shall be called. The presence of a prosecutor is obligatory at such a hearing.

The decision taken by the judge at appellate instance 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 on remand.”

The present Article 109-1 (in force since 24 June 1998) now provides for an appeal to a higher court and a hearing against a decision ordering or

extending the term of detention both at the stage of pre-trial investigation and trial, in the presence of the detainee and his counsel, or only his counsel.

Article 226 § 6 (in force until 24 June 1998)

"The period when the accused and his counsel have access to the case-file is not counted towards the overall term of pre-trial investigation and detention. Where there are several accused persons, the period during which all the accused and their counsel have access to the case-file is not counted towards the overall term of pre-trial investigation and detention."

Since 24 June 1998 this period is no longer relevant for remand decisions.

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 remand has been selected appropriately; ... ."

Article 250 § 1

"After having decided that there is a sufficient basis to commit the accused for trial, a judge individually or a court in a directions hearing shall determine: ...

2) the remand in respect of the accused; ... ."

Article 267 § 1

"The defendant has the right to: ... ;

3) submit requests; ...

11) appeal against the judgment and decisions of a court."

Article 277

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

Article 372 § 4 (in force until 1 January 1999)

"Decisions of courts ... ordering, varying or revoking a remand ... cannot be the subject of appeal ... ."

Pursuant to the general provision of Article 399, a first instance decision was not effective pending the time-limit for an appeal against that decision or during the appeal proceedings. Only those decisions against which no

appeal was possible, including remand decisions under the former Article 372 § 4, became effective and were executed on the date when they were taken. The present Article 104-3 § 3 (version in force from 21 December 1999) specifies that all decisions of detention on remand become effective and are executed on the date when they are taken, regardless of the fact that an appeal is possible against any such decision under the amended Article 109-1 (since 24 June 1998, see above).

B. Presumption of innocence

32. Article 31 § 1 of the Constitution reads:

> "A person shall be considered innocent until proved guilty in accordance with the law by a final judgment of the court."

Article 11 § 2 of the Code of Criminal Procedure provides:

> "No one shall be declared guilty of having committed an offence or punished by a criminal penalty save by a court judgment in accordance with the law."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

33. The applicant complained that from 30 November 1997 until 8 December 1997, and from 31 December 1997 to 8 January 1998, there was no court order authorising his detention on remand, in breach of Article 5 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "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..."

34. The Government stated that the applicant's remand in custody for these periods had been justified by the suspicion that he had committed an offence, his access to the case-file under former Article 226 § 6 of the Code of Criminal Procedure, and the fact that the case had been transmitted to the trial court.

35. The applicant argued that the circumstances mentioned by the Government could not have replaced a valid detention order for the said periods.

36. The Court recalls that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (*Jėčius v. Lithuania*, no. 34578/97, § 56, ECHR 2000-IX).

37. In the *Jėčius* case the Court found that access to the case-file under former Article 226 § 6 of the Code of Criminal Procedure or the sole fact that the case had been transmitted to the court did not constitute a "lawful" basis for detention on remand within the meaning of Article 5 § 1 of the Convention, and that they could not prolong or replace the valid detention order required by domestic law (*loc. cit.*, §§ 57-64).

38. The Court observes that from 30 November to 8 December 1997, and from 31 December 1997 until 8 January 1998, no order was made by a judge authorising the applicant's detention under Articles 10 and 104-1 of the Code of Criminal Procedure; nor was there any other "lawful" basis for the applicant's remand in custody under Article 5 § (see, *mutatis mutandis*, ibid.).

39. There has thus been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

40. The applicant claimed that he was unable to take court proceedings to contest the lawfulness of the detention, in breach of Article 5 § 4 of the Convention which provides as follows:

> "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."

41. The Government argued that domestic law afforded the applicant ample opportunity to contest the lawfulness of his detention, namely to submit requests for release which could be reviewed by the courts. In addition, the trial court on many occasions of its own motion had verified the appropriateness of the applicant's detention, and the appellate court had examined the applicant's allegations about the unlawfulness of his detention

in his appeal against the conviction, thereby affording him the guarantees of Article 5 § 4 of the Convention.

42. The applicant argued that the absence of a possibility to contest the lawfulness of his detention due to the statutory bar under the former provision of Article 372 § 4 of the Code of Criminal Procedure had violated his rights under this Convention provision.

43. The Court recalls that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest, and the legitimacy of the purpose pursued by the arrest and the ensuing detention. Article 5 § 4 guarantees no right, as such, to an appeal against decisions ordering or extending detention, but the intervention of a judicial organ at least at one instance must comply with the guarantees of Article 5 § 4 (see the *Jėčius* case cited above, § 100).

44. On the facts of the present case, the Court observes that the domestic courts, in their decisions authorising the applicant's remand in custody or rejecting his requests for release, gave no reply to his numerous complaints about the unlawfulness of his detention from 30 November to 8 December 1997, and from 31 December 1997 to 8 January 1998 (see §§ 12-16 and 33-39 above). There was thus no adequate judicial response to the applicant's complaints required by Article 5 § 4 (see, *mutatis mutandis*, the above mentioned *Jėčius* case, § 101).

45. It follows that there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

46. The applicant complained that the statements of the Prosecutor General published in the press on 14 and 16 August 1997, and the statements of the Chairman of the Seimas published on 15 and 20 August 1997 and 6 October 1998 (see §§ 26-30 above) breached Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

47. The Government argued that the impugned statements had not violated the presumption of innocence. According to the Government, account must be taken of the context in which the statements were made, namely, the fact that the applicant had been apprehended while committing an offence, and the sufficiency of evidence which might justify lifting the

applicant's parliamentary immunity and instituting criminal proceedings. The impugned statements must be interpreted as explaining to the public the need to bring criminal proceedings against the applicant, and not as declaring him guilty of an offence. Furthermore, the statement of the Chairman of the Seimas on 6 October 1998 referring to the applicant as a bribe-taker did not breach the presumption of innocence because the applicant had not been charged with an offence of bribery.

48. The applicant contested the Government's submissions, claiming that the statements at issue had violated the presumption of innocence. He noted that the Government had accepted the authenticity of the impugned statements which amounted to declarations of his guilt for offences with which he had or had not been charged. In the applicant's view, the wording of those declarations could not be justified by the need to inform the public about probable or pending criminal proceedings.

49. The Court recalls that the presumption of innocence enshrined in Article 6 § 2 of the Convention is one of the elements of a fair criminal trial guaranteed by Article 6 § 1. It will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. Moreover, the presumption of innocence may be infringed not only by a judge or court but also by other public authorities (*Daktaras v. Lithuania*, no. 42095/98, §§ 41-42, ECHR 2000-X). In the above mentioned *Daktaras* case the Court emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of an offence. Nevertheless, whether a statement of a public official is in breach of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (ibid.).

50. The Court notes that in the present case the impugned statements were made by the Prosecutor General and the Chairman of the Seimas in a context independent of the criminal proceedings themselves, i.e. by way of an interview to the national press.

The Court acknowledges that the fact that the applicant was an important political figure at the time of the alleged offence required the highest State officials, including the Prosecutor General and the Chairman of the Seimas, to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, it cannot agree with the Government's argument that this circumstance could justify any use of words chosen by the officials in their interviews with the press.

51. Furthermore, the statements at issue were made just a few days following the applicant's arrest, except one impugned statement of the Chairman of the Seimas which was made more than a year later (see § 30

above). However, it was particularly important at this initial stage, even before a criminal case had been brought against the applicant, not to make any public allegations which could have been interpreted as confirming the guilt of the applicant in the opinion of certain important public officials.

52. The applicant relies on two statements of the Prosecutor General, the first made on the day on which leave was sought from the Seimas to institute criminal proceedings against the applicant, in which the Prosecutor General confirmed that he had "enough sound evidence of the guilt" of the applicant, and the second, two days later, when he qualified the applicant's "offence as an attempt to cheat". While the statements, in particular the reference to the applicant's guilt, give some cause for concern, the Court accepts that they may be interpreted as a mere assertion by the Prosecutor General that there was sufficient evidence to support a finding of guilt by a court and, thus, to justify the application to the Seimas for permission to bring criminal proceedings.

53. Of more concern are the statements made by the Chairman of the Seimas to the effect that he entertained no doubt that the applicant had accepted a bribe, that he had taken money "while promising criminal services", and that he was a "bribe-taker". In this respect the Court has had particular regard to the fact that the Seimas had lifted the applicant's parliamentary immunity to enable criminal proceedings to be instituted against him.

The Court does not agree with the Government that all the Chairman's references to "bribery" were irrelevant to this application. It is undisputed that the facts of the offence committed by the applicant, whilst subsequently classified by the prosecutors and the courts as an attempt to cheat, had frequently been interpreted by the media and the general public, prior to the applicant's conviction, as "bribery" (see, for instance, § 30 above). It has not been contended by the Government that, by stating that the applicant was a "bribe-taker", the Chairman of the Seimas was not referring to the criminal proceedings in question. In the Court's view, this remark could therefore be interpreted as confirming the Chairman's view that the applicant had committed the offences of which he was accused.

While the impugned remarks of the Chairman of the Seimas were in each case brief and made on separate occasions, in the Court's opinion they amounted to declarations by a public official of the applicant's guilt, which served to encourage the public to believe him guilty and prejudged the assessment of the facts by the competent judicial authority.

54. There has therefore been a breach of Article 6 § 2 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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. Pecuniary damage

56. The applicant sought 26,065.80 euros (EUR) as compensation for loss of earnings and opportunities caused by the violations of Articles 5 and 6 of the Convention.

57. The Government considered these claims to be unjustified.

58. The Court is of the view that there is no causal link between the violations found and the alleged pecuniary damage (see, *mutatis mutandis*, the *Jėčius* case cited above, § 106, and *Grauslys v. Lithuania*, no. 36743/97, 10.10.2000, § 66). Consequently, it finds no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

59. The applicant sought EUR 579,240 as compensation for non-pecuniary damage as a result of the violations of Articles 5 and 6.

60. The Government considered the claim to be exorbitant.

61. The Court finds that the applicant has certainly suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation (see, *mutatis mutandis*, the aforementioned *Jėčius* (§ 109) and *Grauslys* (§ 69) cases). Making its assessment on an equitable basis, the Court awards the applicant EUR 5,700 (five thousand seven hundred euros) under this head.

C. Costs and expenses

62. The applicant also claimed EUR 4,691.84 by way of legal costs in the domestic proceedings and before the Convention organs.

63. The Government considered the claims excessive.

64. The Court recalls that in order for costs to be awarded under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and reasonable as to quantum (see the aforementioned *Grauslys* case, § 72).

65. The Court notes that a part of the lawyer's fees concerned the applicant's defence to the criminal charges against him before the domestic

authorities. These fees do not constitute necessary expenses incurred in seeking redress for the violations of the Convention which the Court has found under Articles 5 and 6 of the Convention (see, *mutatis mutandis*, ibid., § 74). Making its assessment on an equitable basis, the Court awards the applicant EUR 2,900 (two thousand nine hundred euros) for his legal costs, plus any value-added tax that may be chargeable.

D. Default interest

66. According to the information available to the Court, the statutory rate of interest applicable in Lithuania at the date of adoption of the present judgment is 7.25% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 5,700 (five thousand seven hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 2,900 (two thousand nine hundred euros) in respect of costs and expenses;
      (iii) that these sums are to be converted into the national currency on the day of payment;
   (b) that simple interest at an annual rate of 7.25% shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English, and notified in writing on 26 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President