



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

SECOND SECTION

CASE OF JELCOVAS v. LITHUANIA

(Application no. 16913/04)

JUDGMENT

STRASBOURG

19 July 2011

FINAL

19/10/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jelcovas v. Lithuania,

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

Françoise Tulkens, *President*,

Danutė Jočienė,

David Thór Björgvinsson,

Giorgio Malinverni,

András Sajó,

Işıl Karakaş,

Paulo Pinto de Albuquerque, *judges*,

and Françoise Elens-Passos, *Deputy Section Registrar*,

Having deliberated in private on 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 16913/04) 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 Voldemaras Jelcovas (“the applicant”), on 19 April 2004.

2. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. On 16 November 2006 the Court decided to communicate the application to the Government. 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

4. The applicant was born in 1965 and by profession is a construction worker. On 3 April 2007 he was granted conditional early release from prison. The applicant lives in Telšiai.

A. Criminal proceedings for robbery

5. On 26 April 2001 the applicant was arrested on suspicion of robbery. He alleges that during his arrest he was beaten up by the police and that,

despite his requests for a doctor to be called, no medical assistance was provided. The applicant states that he was then questioned by the police despite his poor state of health. No lawyer was present at the questioning. The applicant did not confess.

6. Between 27 April and 8 May 2001 the applicant was in custody at the Telšiai Remand Prison (*Telšių rajono policijos komisariato areštinė*). After being released on an undertaking to stay at his place of residence, the applicant fled to the Russian Federation. After being caught, the applicant was returned to Lithuania and detained there between 1 March 2002 and 26 April 2002. Afterwards the applicant was held under house arrest.

In a ruling of 1 March 2002, the Telšiai District Court noted that, given that the applicant had previously fled from investigators, it was reasonable to remand him in custody. The court confirmed that conclusion on 18 April 2002.

7. On 29 July 2002 the applicant was detained again on suspicion of murder (see paragraphs 20-28 below). The detention was upheld by court orders, the last one being that of 18 April 2003 by the Court of Appeal.

8. On 14 January 2003 the Telšiai District Court convicted the applicant of robbery and sentenced him to three years and six months' deprivation of liberty with confiscation of property in the sum of 1,000 Lithuanian litas (LTL).

9. On 6 March 2003 the Šiauliai Regional Court quashed the judgment, *inter alia* for want of substantiation, since the evidence against the applicant was contradictory and the trial court had nevertheless based the conviction on it. The appellate court also noted that the trial court had breached the applicant's defence rights, given that it had failed to guarantee that a lawyer would be present throughout the trial. In particular, the applicant's counsel was absent from the last hearing, when the applicant made his final statement. The case was returned for a fresh trial. The applicant was present at the hearing. He was represented by a lawyer, S.K.

10. On 11 June 2003 the Telšiai District Court again convicted the applicant of robbery and sentenced him to three years of deprivation of liberty, without confiscation of property. The conviction was based on the material evidence and the submissions of the victim and five witnesses, three of whom were questioned in open court. The court noted that two other witnesses, V.P. and A.M., had been summoned, but their addresses were unknown. Their submissions were read out, having been recorded during the pre-trial investigation. The applicant was present at the hearing and was assisted by a defence counsel, M.M.

11. On 21 August 2003 the Šiauliai Regional Court upheld the above judgment. The applicant was present at the hearing and was represented by defence counsel S.K. The transcript of the hearing indicates that the applicant did not object to being represented by S.K. Both the applicant and his lawyer argued that the applicant had been questioned during the pre-trial

detention without a lawyer being present. They also submitted that the victim was not telling the truth.

12. On 12 September 2003 the Chairman of the Telšiai District Court informed the applicant that the latter could lodge an appeal on points of law against the above ruling by 21 November 2003. The Chairman also indicated that, given that the lawyer S.K. had defended the applicant before the Šiauliai Regional Court, it was reasonable that she would assist the applicant to draft the appeal on points of law and that the judge would send that request to S.K.

13. On 19 September 2003 S.K. wrote to the Chairman of the Telšiai District Court that she had defended the applicant before the Šiauliai District Court only on a one-time basis, because the lawyer who had been previously involved in the applicant's defence could not come to a hearing in Šiauliai. Given that the case file was in Telšiai, S.K. was not in a position to comply with a new request and to draft an appeal on points of law. Another lawyer was necessary.

14. In a letter of 23 September 2003, the Chairman of the Telšiai District Court requested the Šiauliai Regional Bar to assign a lawyer to assist the applicant in the preparation of his appeal on points of law. The judge noted that S.K. had objected to defending the applicant before the Supreme Court and that it had been M.M. who had represented the applicant in District Court.

15. On 20 November 2003 the applicant lodged an appeal on points of law on his own, complaining that the proceedings had been unfair. He alleged in particular that his replies during the first questioning should not have been used as evidence, since they had been taken in the absence of a lawyer. He also complained that two main witnesses had not been questioned by the courts, and that the court decisions were unsubstantiated. Finally, the applicant alleged that the courts had not examined or granted his requests for leave to acquaint himself with the case materials and for free legal aid. He wrote that he had refused a lawyer for his appeal hearing before the Supreme Court, because in respect of that appeal and when the time came to write it the applicant had not received legal aid. For the applicant, if a lawyer was present before the Supreme Court it would only be a pretence of legal aid, which had never been provided. The applicant also asked the Supreme Court to decide his case in his absence, given that his transfer to the hearing would interrupt his treatment for *tuberculosis* and thus impair his health.

16. On 1 December 2003 the applicant informed the Chairman of the Telšiai District Court that he had not been provided with legal assistance to draft an appeal on points of law. The applicant referred to the court's pronouncement that the lawyer who had represented him at the trial court [M.M.] would defend him before the Supreme Court. For the applicant, this supposition had been confirmed by the lawyer S.K.

17. By a court document which the applicant received on 12 February 2004, he was notified that his appeal on points of law would be decided on 9 March. The document also informed the applicant that, pursuant to Article 375 of the Code of Criminal Procedure, he had a right to be represented by a lawyer before the Supreme Court. The applicant wrote to the Supreme Court that “he did not want a lawyer to be appointed”. The document bears the applicant’s signature.

18. On 9 March 2004 the Supreme Court determined the applicant’s appeal on points of law. The prosecutor took part in the hearing and requested that the applicant’s appeal be rejected, which was granted by the court. The applicant did not take part in the hearing, nor was he represented by a lawyer.

19. The Supreme Court found that the lower courts had carefully examined all the relevant evidence and given adequate and sufficient reasons for their decisions. It noted that during the first questioning at the pre-trial investigation stage the applicant had himself refused the assistance of a lawyer. While it was acknowledged that two of the witnesses, J.P. and A.M., had not been questioned in court because they could not be located, their submissions were not the only indication of the applicant’s guilt. The Supreme Court concluded that there was sufficient evidence for the conviction. It did not address the applicant’s plea that he had not received effective legal assistance.

B. Criminal proceedings for murder

20. On 30 April 2003 the Šiauliai Regional Court convicted the applicant of murder, sentencing him to eight years’ imprisonment. The applicant took part in the hearings before the trial court; he was also represented by officially appointed defence counsel, R.Š. The prosecutor was also present.

21. On 5 June 2003 the applicant wrote to the Šiauliai Regional Court that he did not want a lawyer at the appeal and that he would defend his interests himself. In a five-page letter the applicant argued that the lawyer I.S., who had represented him during the pre-trial investigation, was not diligent enough. The same was true of another lawyer, Z., appointed to defend him. For the applicant, only R.Š. had defended him properly, although still within the limits of the commitment that a State-appointed lawyer could dedicate to a client who did not pay him any money. In the words of the applicant, “if he was not able to prove his innocence by defending himself, no lawyer could do it for him”.

22. On 9 July 2003 the Court of Appeal upheld the judgment, the applicant being present. The officially appointed lawyer, J.S., was present at the hearing. However, the applicant refused to be defended by her, claiming that he did not know the lawyer’s views on his case. The judge offered a

ten-minute adjournment so that the applicant could discuss his case with the lawyer. The applicant refused, stating that “ten minutes were not sufficient to explain to the lawyer his position in his case and other circumstances. Consequently, he decided to defend his interests himself and to refuse to be represented by the officially appointed lawyer, to whom he could not entrust his fate”. The applicant also stated that he was aware that the remuneration of the officially appointed lawyers was low, which was reflected in the quality of their work.

23. On 6 and 9 October 2003 the applicant himself lodged two appeals on points of law, complaining that the courts had failed to examine all the relevant evidence and call certain witnesses, that the courts had been biased, and that their decisions had been arbitrary.

24. On 12 December 2003 the Chairman of the Supreme Court adopted a ruling to the effect that the applicant’s appeals on points of law met the prescribed requirements and they were to be examined by that court.

25. On 5 January 2004 the applicant was informed that his appeal on points of law would be heard by the Supreme Court on 20 January. The applicant refused the assistance of a lawyer, in writing. However, he explicitly requested to be present at the hearing.

26. On 13 January 2004 the Supreme Court wrote to the applicant to the effect that the case file did not contain an appeal on points of law drafted by an attorney. However, an appeal on points of law drafted by the applicant was in the case file.

27. On 20 January 2004 the Supreme Court dismissed the applicant’s appeal in his absence. The prosecutor was present at the hearing. Having heard the prosecutor, the Supreme Court found that all the relevant evidence had been carefully assessed by the courts, and that their decisions had been duly substantiated. No violation of the applicant’s procedural rights was detected.

28. On 17 March 2004 and in reply to the applicant’s complaint, the Chairman of the Supreme Court’s Criminal Law Division wrote that a convicted person was to be brought to a hearing before the Supreme Court only if an appeal on points of law had been lodged with a request that a more serious charge be laid against him or a heavier penalty imposed. It was also noted that under Article 375 § 1 the Supreme Court appoints a lawyer only if the convicted person asks for one.

C. Medical treatment and the conditions of detention

29. In 1995 the applicant was diagnosed with *tuberculosis*. In 1987 he was diagnosed with hepatitis C.

30. On 7 March 2002 the applicant was placed in the Šiauliai Remand Prison (*Šiaulių tardymo izoliatorius*). He complained of pain under his ribs and mentioned that in 1995 he had been ill with *tuberculosis*. A medical

examination of the applicant showed no traces of *tuberculosis*. Later on the applicant was transferred to the detention facility of a police station.

31. On 7 August 2002 the applicant was diagnosed with *tuberculosis* (TB). He was transferred to Lukiškės Remand Prison (*Lukiškių tardymo izoliatorius – kalėjimas*).

32. From 12 August 2002 until 15 October 2002, the applicant was treated in the Lukiškės prison hospital.

33. This treatment was interrupted twice by the applicant's transfer to Telšiai Remand Prison and Šiauliai Remand Prison.

34. On 15 October 2002 the applicant was returned to the Lukiškės prison hospital, where he refused further medical examinations, X-ray and further treatment, on the ground that his medical treatment had been interrupted. However, a doctor dismissed the applicant's argument as unfounded, concluding that the interruption of his treatment had been too short to make it ineffective.

35. On 28 October 2002 the doctor diagnosed the applicant with pulmonary *tuberculoma* (according to the Government, focused *tuberculosis*, which is less dangerous than the disseminated type).

36. On 5 February 2003 a doctor at Lukiškės Remand Prison examined the applicant. No changes in the applicant's state of health as regards *tuberculosis* were detected in comparison with his condition as it was on 28 October 2002. The applicant agreed to continue his anti-tuberculosis treatment.

37. In May 2003 hepatitis C antibodies were detected in the applicant's blood. The records indicated that the hepatitis C was not active.

38. On 3 July 2003 the applicant was examined by a doctor, who found that the *tuberculosis* was not active. On the same day an echoscopy of the applicant's liver was carried out; the results of the echoscopy appeared normal.

39. According to the Government, when the judgment of the Šiauliai Regional Court took effect on 16 July 2003, the applicant was transferred to the Pravieniškės Healing and Correctional Prison (*Pravieniškių gydymo ir pataisos namai*), designated for convicted persons with *tuberculosis* and post-*tuberculosis* changes.

40. In October 2003 the applicant was admitted to the Lukiškės prison hospital. The tests showed that he was not suffering from active hepatitis C, hence no treatment was necessary. His *tuberculosis* had reached the consolidation phase; anti-*tuberculosis* treatment was not necessary.

41. According to the Government, in July 2005 the applicant was transferred to Pravieniškės Third Correctional House to serve the remaining part of his sentence.

42. Following medical examinations of the applicant in May 2005 it was established that the *tuberculosis* had entered the resolution stage and medical treatment was not necessary.

D. Complaints before the Ombudsman

43. The applicant on several occasions addressed complaints to various State institutions about the conditions of detention in Telšiai Remand Prison, as well as general inadequacy of medical assistance throughout his detention.

44. On 6 August 2002, in response to the applicant's complaint, the Ombudsman issued a report, concluding that the conditions of detention in Telšiai Remand Prison were unsatisfactory. It was established, in particular, that the detainees lived in a cellar without natural light; there were not enough beds, and bed linen was not provided. The cells were not equipped with sanitary facilities, and there was no exercise yard.

45. A further report by the Ombudsman of 8 September 2003 established that irregular anti-TB treatment was a frequent practice in Lithuanian prisons. In particular, the order of the Prisons Department of 21 November 2002, addressed to prison governors, stipulated that, where it was not possible to ensure supervision (direct monitoring) of anti-TB treatment, it was not required to issue anti-TB medication to infected prisoners transferred to remand prisons for less than two months.

46. The Ombudsman noted that, in accordance with the World Health Organisation (WHO) recommendations, all anti-TB medication should have been provided under the supervision of medical personnel or specially trained supervisors. The irregular administration of such medication or the discontinuance of the treatment may have led to its reduced effectiveness and the emergence of more resistant forms of TB. It was concluded that the irregularity of the anti-TB treatment was in contravention of the WHO rules. The Ombudsman also indicated that the issue had not only arisen in the applicant's case, but was a systemic problem. It was also noted, however, that the applicant himself had contributed to the aggravation of his situation by sometimes refusing treatment.

47. On 9 December 2003 the Ombudsman wrote to the applicant that, in connection with the Ombudsman's report of 8 September 2003, the applicant's complaint that the medical treatment against *tuberculosis* he had received was inadequate could be construed as valid. Nonetheless, it was not for the Ombudsman to establish whether the interruptions of treatment due to the applicant being transferred for investigative actions and his own refusal of further treatment had had an effect on his health. The Ombudsman wrote to the applicant that the latter, if he considered that his health had suffered due to unlawful actions of the State officials, could submit a claim for damages to the administrative courts under Articles 6.271, 6.272 and 6.283 of the Civil Code (see Relevant domestic law below).

E. Complaints before the courts

48. On several occasions the applicant attempted to bring a court action for damages, alleging first that his detention during judicial proceedings had been unlawful, and second that the conditions of detention in Telšiai Remand Prison had been deplorable, and that his health had been damaged due to the inadequacy of anti-TB treatment and general medical assistance.

1. Complaints of unlawfulness of detention

49. On 3 April 2003 the applicant submitted a civil claim for damages to the Telšiai District Court, for his allegedly unlawful pre-trial detention. The court did not accept the action for examination, given that the document did not meet the prescribed procedural requirements.

50. On 26 June 2003 the Chairman of the Telšiai District Court granted the applicant's request for legal aid for the preparation of a court action. The court took account of the fact that the applicant was a prisoner and noted that preparation of a legal action was generally a complex undertaking. The lawyer M.M. was designated to provide the applicant with legal help. The court also noted that M.M. was to be paid according to the rules prescribed by the applicable legislation.

51. On 1 December 2003 the applicant wrote to the Chairman of the Telšiai District Court that months had passed since the decision to provide him with free legal aid had been taken, but that no actual legal assistance had been provided.

52. On 3 December 2003 the Telšiai District Court again invited advocate M.M. to give legal assistance to the applicant.

53. The applicant lodged a complaint with the Lithuanian Bar Association, alleging that he had received no legal assistance for the preparation of his complaint.

54. An extract from the Pravieniškės Healing and Correctional Home's Journal on Prisoner's Admission on Personal Matters indicates that on 18 February 2004 the applicant consulted the prison lawyer regarding where to obtain free legal aid. The record indicates that it was explained to the applicant to whom and with which documents he should apply for such aid.

55. On 27 February 2004 the lawyer M.M. informed the Bar Association that he had been obliged by the Telšiai District Court to provide legal assistance to the applicant. However, given that M.M. had earlier defended the applicant in a criminal trial for robbery and was well aware of all the circumstances under which pre-trial detention had been imposed on the applicant, M.M. deemed the claim for damages for alleged unlawful detention to be without prospects. Consequently, M.M. suggested that the applicant not lodge a civil claim or, in the alternative, ask that another lawyer be appointed to represent him. M.M. also wrote that his actions

would contradict the guidelines of Article 17 §§ 7 and 8 of the Lawyers' Code of Professional Ethics (see paragraph 61 below).

2. Complaints of inadequacy of medical care

56. On 6 and 12 of June 2003 the applicant requested the Vilnius City Second District Court to open civil proceedings for damages against the State of Lithuania. He alleged, *inter alia*, that the conditions of his detention at the Telšiai Remand Prison had been deplorable, and that his health had been damaged due to the inadequacy of the anti-TB and general medical assistance.

57. The Vilnius City Second District Court refused to accept the applicant's action for examination as not meeting the prescribed requirements.

58. The applicant requested the court to grant him free legal aid on the basis of Article 14 of the Law on State Guaranteed Legal Aid.

59. On 3 July 2003 the Vilnius City Second District Court informed the applicant in writing that the latter had failed to prove his eligibility for free legal aid. Certain procedures and rules were to be followed when asking for such help. The court enclosed a copy of the Law on State Guaranteed Legal Aid and a standard application form for legal aid.

II. RELEVANT DOMESTIC LAW AND PRACTICE

60. The Law on State Guaranteed Legal Aid, as in force at the material time, provided that suspects, defendants or convicted persons were entitled to free legal aid if their property and annual income did not exceed the levels established by the Government (Articles 4 and 14). Having received a person's request for free legal aid as well as documents attesting the person's entitlement to such aid, the court or a judge was to nominate a lawyer to provide it (the decision of the Minister of Justice, Minister of the Interior and Attorney General of 28 November 2002). The Law on State Guaranteed Legal Aid also stipulates that provision of free legal aid is to be terminated upon a court decision that the rights of the represented person have not been violated or that the proceedings have no prospect of success (Article 7).

61. Article 17 §§ 7 and 8 of the Code of Professional Ethics of the Bar, as effective at the material time, provided that a lawyer was entitled not to accept an assignment if the accused (convicted) required his lawyer to adopt a particular defence strategy which clearly contradicted the circumstances of the case. The lawyer was also entitled not to accept the assignment when his client required knowingly false evidence and dishonest means to be used in his defence.

62. The Code of Criminal Procedure provides that a convicted person must be represented by defence counsel before an appellate court (Article 322 § 1).

The time-limit for lodging an appeal on points of law is three months after the appellate court ruling. The time-limit may be extended if it was missed for good reasons (Article 370). When hearing an appeal on points of law the Supreme Court decides only questions of law and relies on the evidence that has been verified by the lower courts. It may convict an already convicted person of a less serious crime or impose a lighter punishment. However, a conviction for a more serious crime or imposition of a heavier penalty is possible only if an appeal to that effect has been lodged with the court (Article 376 §§ 1 and 3).

63. A combined reading of Articles 367 § 1 and 375 §§ 1 and 2 of the Code of Criminal Procedure reveals that a convicted person has a right to be present at the hearing when the Supreme Court decides an appeal on points of law if he or she so wishes. The prosecutor must always be present.

Article 375 § 3 of the Code provides that a convicted person must be brought to the Supreme Court's hearing if a cassation appeal for a heavier sentence or punishment had been submitted.

A convicted person may ask the Supreme Court to appoint a lawyer to represent him at the hearing.

64. The Civil Code provides that damage caused by unlawful acts of institutions of public authority must be compensated by the State, irrespective of the fault of a particular public servant or other employee of public authority institutions (Article 6.271). The State may also be held liable for unlawful actions of law-enforcement institutions, such as unlawful arrest or detention (Article 6.272). Where damage sustained by a natural person is bodily harm, such as when his health is impaired, the person liable for the damage caused shall be bound to compensate the aggrieved person for all the damage he has suffered, including non-pecuniary damage (Article 6.283).

65. In their observations on the admissibility and merits the Government provided three examples of domestic case-law regarding health care for prisoners. They relied on the Supreme Administrative Court ruling of 6 March 2003 in case no. A⁶-202-03, in which the applicant was beaten by another inmate and suffered facial trauma. He argued that the post-trauma treatment in prison hospital was inadequate. The first-instance court dismissed the plaintiff's claim for damages as unfounded. However, the Supreme Administrative Court found that the lower court had not properly established all the evidence, and returned the case for fresh examination.

66. As another example, the Government submitted the Supreme Administrative Court ruling of 15 September 2004 (case no. A²-743-04) concerning adequacy of medical care in a detention facility as well as conditions of detention. The court found a violation of the plaintiff's right to

use the exercise yard and awarded him LTL 500 in compensation for non-pecuniary damage. However, it dismissed as unfounded his claim that proper medical assistance had not been provided to him.

67. Lastly, the Government relied on the ruling of 20 October 2006 of the Supreme Administrative Court in case no. A⁴-1625/2006 concerning that plaintiff's claims that he had not been provided with adequate treatment for hepatitis C whilst in prison. The lower court had found that the plaintiff's transportation to the courts had interrupted his treatment, thereby damaging his health. The applicant was awarded LTL 1,000 for non-pecuniary damage he had sustained. The Supreme Court deemed, however, that there was no sufficiently conclusive evidence to prove the guilt of the prison authorities. The case was returned for fresh examination.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained that the conditions of his detention and the medical treatment he had received while detained were not adequate. The applicant relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. The parties' submissions

69. The applicant argued that due to the poor conditions of his detention he had been infected with two serious diseases - TB and hepatitis C. In addition, he was not afforded adequate medical assistance while in prison. In particular, his anti-TB treatment was discontinued due to frequent transfers from one prison to another. The applicant also complained that the conditions of detention in Telšiai Remand Prison were deplorable, which further damaged his health.

70. The Government underlined the need to test domestically whether any damage had been done to the applicant and his health by the conditions of his detention. The administrative and civil law provided remedies in which the courts would make rulings to remedy the applicant's rights under Article 3 of the Convention. In this connection, the Government advanced two arguments.

71. They submitted first that the applicant's complaints regarding the allegedly inadequate medical assistance during his detention fell within the jurisdiction of the administrative courts. Referring to the domestic case-law,

the Government observed that at the material time the administrative courts in Lithuania had already examined cases regarding health care of detainees and adopted decisions in their favour (see paragraphs 65-67 above). The Government also referred to the Court's decision in the *Jankauskas* case (see *Jankauskas v. Lithuania* (dec.), no. 59304/00, 16 December 2003), to the effect that in 2003 an action in the Lithuanian administrative courts could be considered an effective remedy capable of affording redress for a breach of Article 3 of the Convention, as regards complaints about conditions of detention. However, the applicant had never availed himself of that remedy.

72. Whilst admitting that the applicant attempted to lodge a claim concerning the conditions of his detention and the adequacy of medical assistance to the Vilnius City Second District Court, the Government underlined, without it being disputed by the applicant, that he had not fully exhausted that avenue. The court refused to accept the applicant's claim for examination for his failure to observe the established procedure and formal rules for such kinds of applications. Even so, the judge of the Vilnius City Second District Court informed the applicant that he could apply for free legal assistance and enclosed an appropriate form. Nonetheless, the applicant failed to provide the court with documents attesting to his eligibility for free legal aid and consequently did not make use of this civil-law remedy.

73. Alternatively, the Government argued that the applicant's complaint had been introduced outside the six-month period, as prescribed by Article 35 § 1 of the Convention. They drew the Court's attention to the fact that the applicant's complaint as to allegedly inadequate medical assistance was related to the period of his detention, which, in the Government's view, ended when the Court of Appeal convicted him of murder on 9 July 2003. However, the applicant had lodged his application with the Court only on 19 April 2004.

74. In a further alternative, the Government argued that the applicant had received proper medical assistance whilst detained and that his complaint was manifestly ill-founded.

B. The Court's assessment

75. Under Article 35 § 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see, most recently, *A, B and C v. Ireland* [GC], no. 25579/05, § 142, 16 December 2010).

76. In the circumstances of the present case the Court recalls its decision in the *Jankauskas* case (cited above), on which the Government relied and where the Court found an action in the Lithuanian administrative courts to be an effective remedy capable of affording redress for a breach of Article 3 on account of conditions of detention. Whilst noting that in none of the three domestic case-law examples, at least in the procedural stage as submitted by the Government, were the plaintiffs successful in obtaining damages for harm to their health which occurred when they were in detention (see paragraphs 65-67 above), the Court is not ready to conclude that such actions did not have any chances of success. In this context the Court reiterates that a mere doubt as to the prospect of success is not sufficient to exempt an applicant from submitting a complaint to the competent court (see *Muazzez Epözdemir v. Turkey* (dec.), 31 January 2002, no. 57039/00). It also observes that the applicant did not make use of this remedy, although invited to pursue it by the Ombudsman (see paragraph 47 above).

77. As to the second remedy proposed by the Government, namely a civil action, that the applicant attempted to bring before the Vilnius City Second District Court, the Court recalls that on 3 July 2003 a judge of that court wrote to the applicant about his entitlement to apply for free legal aid to facilitate the processing of his claim for damages for allegedly improper treatment, which the applicant ultimately failed to do (see paragraphs 59 and 72 above).

78. Regard being had to the above considerations, the Court holds that both administrative and civil remedies capable of affording redress for a breach of Article 3 were adequate and available to the applicant to complain about the conditions of his detention and quality of medical care in particular. As a result, the Court is prevented by the exhaustion rule under Article 35 § 1 from examining these parts of the applicant's complaints, in so far as they have not been submitted to the administrative or civil courts.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF ACCESS TO COURT

A. The parties' submissions

79. The applicant alleged that he was afforded no effective right of access to court, since he received no actual legal aid to bring a court action to complain about the lawfulness of his detention. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

"In the determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair ... hearing ... by a tribunal ..."

80. The applicant argued that he was not able to institute proceedings for damages for his allegedly unlawful detention on remand. Given the complex nature of court proceedings for damages, he could not have prepared the action himself. Although legal aid was granted by the Telšiai District Court, M.M., the lawyer assigned to represent the applicant under the free legal aid scheme, refused to lodge an action on his behalf.

81. The Government noted that Article 6 § 1 of the Convention guaranteed litigants an effective right of access to court. However, the Contracting States had a free choice as to the means to be used to that end and were not compelled to provide free legal aid, unless the assistance of a lawyer proved to be indispensable by reason of the complexity of the procedure (see *Airey v. Ireland*, 9 October 1979, § 26, Series A no. 32).

82. The Government pointed out that under the domestic legislation on the matter of free legal aid, a prisoner's difficult financial situation was a necessary precondition for him to be entitled to free legal assistance. Then again, even if an individual satisfied that condition, the provision of legal aid was to be terminated upon the finding of a court that the proceedings had no prospects of success.

83. As to the particular circumstances of the applicant, the Government noted that on 26 June 2003 the Chairman of the Telšiai District Court, without showing excessive formalism and requiring the applicant to prove his financial incapacity, granted the applicant's request for free legal aid. The Government admitted that on 1 December 2003 the applicant informed that court that M.M., the lawyer assigned to assist him, had not actually provided him with legal assistance in bringing his action. However, the domestic court intervened immediately, because two days later it encouraged the lawyer M.M. to ensure the provision of legal aid. In such circumstances one could not conclude that the District Court remained passive in response to the applicant's efforts to have a civil action lodged.

84. In connection with the above argument, the Government also submitted that it was not for the domestic court to oblige a lawyer to start civil proceedings in which the latter saw no prospect of success. The Government emphasised that the legal-aid lawyer was the same lawyer who had represented the applicant in his criminal proceedings for robbery before the trial court. Consequently, and as he indicated to the Bar Association, M.M. was well aware of the circumstances of the applicant's criminal proceedings, as well as the circumstances in which detention was imposed. In this context the Government also considered it worth noting that as the applicant had not further complained of M.M.'s lack of action, the domestic court could not have been expected to intervene.

85. Lastly, the Government noted that the applicant was given the opportunity to consult a lawyer at the Pravieniškės Healing and Correctional House, which he made use of on 18 February 2004. Nothing had prevented the applicant from seeking the assistance of the said prison lawyer in order

to repair the shortcomings of his civil claim, which, in the view of the Government, were insignificant.

86. In the light of the above, the Government considered that the applicant's complaint was manifestly ill-founded.

B. The Court's assessment

87. The question to be determined is whether the unavailability of legal assistance for civil proceedings effectively denied the applicant access to court, as ensured by Article 6 § 1 of the Convention. In this respect the Court reiterates that, unlike Article 6 § 3 (c), which expressly provides for legal aid in criminal cases where necessary, the Convention does not guarantee such a right of assistance in civil cases. The means by which a State ensures effective access to civil courts is thus within its margin of appreciation (see *Winer v. the United Kingdom*, no. 10871/84, Commission decision of 10 July 1986, Decisions and Reports (DR) 48, p. 154).

88. Even so, the Court has consistently held that despite the absence of a similar clause for civil litigation, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for effective access to court, either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case (see *Airey*, cited above, § 26).

89. In this context the Court also recalls that, according to Article 34 of the Convention, it is competent to receive petitions from any person claiming to be a victim of a violation by one of the Contracting States of the rights set out in the Convention. The responsibility of the Contracting States is incurred by the actions of their organs. A lawyer, even if he or she is officially appointed to represent an accused in court proceedings, cannot be considered as an organ of a State. It follows from the independence of the legal profession from the State that the conduct of legal assistance is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal-aid scheme or privately financed, and, as such, cannot, other than in special circumstances, incur the State's liability under the Convention (see, *mutatis mutandis*, *Rutkowski v. Poland* (dec.), no. 45995/99, § 2, ECHR 2000-XI, and the case-law cited therein). The Court has also held that the special guarantees required with regard to the defence rights in criminal proceedings are not applicable in the same way in civil proceedings (see *Tuziński v. Poland* (dec.), no. 40140/98, 30 March 1999).

90. However, there may be occasions when the State should act and not remain passive when problems with legal representation are brought to the attention of the competent authorities. It will depend on the circumstances of the case whether the relevant authorities should take action (see, although

in the context of criminal proceedings, *Daud v. Portugal*, 21 April 1998, §§ 40-42, *Reports of Judgments and Decisions* 1998-II).

91. In the present case the Court first observes that on 26 June 2003 the Telšiai District Court granted the applicant's request for free legal aid and appointed M.M., the counsel who had represented the applicant before the trial court in criminal proceedings for robbery, to assist the latter. After being put on notice by the applicant of M.M.'s inactivity, the District Court reacted quickly and urged M.M. to act (see paragraphs 50-52 above). In these circumstances, the Court cannot find that the domestic court remained inattentive in response to the applicant's efforts to have legal proceedings for damages initiated (see, by converse implication, *Daud*, cited above, § 42).

92. The Court further notes that there is no indication of M.M., as the applicant's defence lawyer in the criminal proceedings for robbery, being negligent or superficial in drawing his conclusion as to the possibility of success of the civil litigation. The conclusion of the officially appointed lawyer was earlier supported by identical decisions of the domestic courts, which, similarly having examined the case file, upheld the lawfulness of the applicant's detention (see paragraphs 6 and 7 above). The Court also observes that it is not for a domestic court to oblige a lawyer, whether appointed under a legal-aid scheme or not, to lodge any remedy contrary to his or her opinion as to the prospects of success of such a remedy, all the more so in the present case as the conclusion was clearly preceded by the lawyer's analysis of the case-file (see *Rutkowski*, cited above).

93. In the light of the foregoing considerations, the Court is not ready to hold the State responsible for the applicant's inability to start court proceedings for damages. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF EQUALITY OF ARMS

A. The parties' submissions

94. The applicant complained that he was not taken to the hearing when the Supreme Court examined his appeals on points of law in both sets of criminal proceedings against him, despite the fact that the prosecutor was present. He invoked the right to equality of arms, inherent in the above-cited Article 6 § 1 of the Convention.

95. At the outset, the Government drew the Court's attention to the special features of the proceedings before the cassation court, which could

review appealed judgments only from the point of view of the application of the law. Domestic law precluded the Supreme Court from any examination of the facts in a strict sense, such examination being solely within the competence of the lower courts.

96. As to the applicant's situation, the Government submitted that in neither of the two criminal cases against the applicant did the prosecutors lodge appeals on points of law. Given that Article 376 of the Code of Criminal Procedure provides that the Supreme Court may aggravate the position of the convicted person only if an appeal has been lodged to that effect, there were no prospects that the applicant's situation would be made worse.

97. As to the criminal proceedings for robbery, the Government argued that the applicant had a fair trial given that he was present in person and represented by lawyers in the first-instance and appellate courts, which had full jurisdiction to hear the criminal case on questions of both law and fact. In his appeal of 20 November 2003 the applicant indicated that he was not willing to be represented by a counsel before the Supreme Court. Nor did he wish to be present at the hearing himself. Even so, on 12 February 2004 the applicant was informed of his right to have a defence counsel present, to which the applicant reiterated his choice that no lawyer would represent him before the Supreme Court.

98. Turning to the criminal proceedings for murder the Government first noted that the applicant's case had been examined by courts at two levels of jurisdiction. In the trial court the applicant was present at all hearings together with officially appointed defence counsel. On appeal the applicant refused defence counsel prior to the court hearing, in which he participated in person. At both levels of jurisdiction the applicant exercised his procedural rights very actively.

99. As concerns the appeal on points of law stage of the proceedings, the Government submitted that on 5 January 2004 the applicant himself unequivocally refused to be represented by defence counsel at the forthcoming Supreme Court hearing. Two appeals on points of law were submitted by the applicant. Given that one of them was printed, the Supreme Court made the reasonable assumption that the applicant had been assisted by a lawyer in writing it. Furthermore, in none of his appeals did the applicant request to attend the Supreme Court hearing. Admittedly, the applicant had indicated such a wish, but only on 5 January 2004. However, in the view of the Government, this request was submitted far too late and was completely unsubstantiated. Accordingly, the Supreme Court decided not to ensure the applicant's presence at the hearing.

100. Lastly, the Government noted that the Supreme Court examined the applicant's case on the basis of his two appeals on points of law. Given that no appeal had been lodged by the prosecutor, the latter would have lost any opportunity to comment on the applicant's pleas had he not attended the

Supreme Court hearing. Moreover, and as it appeared from the transcript of that hearing, the prosecutor presented his position very briefly. In its ruling the Supreme Court thoroughly investigated the applicant's arguments whilst the brief argumentation by the prosecutor was not mentioned.

101. Relying on all the above, the Government submitted that in both sets of criminal proceedings the principle of equality of arms had not been breached and that the complaint was manifestly ill-founded.

B. Admissibility

102. The Court observes that the applicant's submissions relate to an alleged violation of the principle of equality of arms in two separate sets of criminal proceedings. Accordingly, the Court will examine the admissibility of this complaint separately.

1. Complaint concerning alleged breach of the equality of arms principle in the context of criminal proceedings for robbery

103. The applicant complained that neither he nor his lawyer had attended the Supreme Court hearing on 9 March 2004. The Court draws attention to the applicant's written responses to the Supreme Court (see paragraphs 15 and 17 above) to the effect that he did not want a lawyer to be appointed to represent him. Furthermore, the applicant had not expressed a wish to be brought to the hearing so that he could participate in it in person.

104. In view of the above, the Court considers that the applicant has himself waived his right to take part in the examination of his case at the cassation court. It follows that the complaint must be dismissed as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Complaint concerning alleged breach of the equality of arms principle in the context of criminal proceedings for murder

105. In the light of the parties' submissions, the Court considers that the applicant's complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

C. Merits

106. The Court has previously held that although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is

entitled to take part in the hearing (see *Sejdovic v. Italy* [GC], no. 56581/00, § 81, ECHR 2006-II). The Court also reiterates that the principle of “equality of arms” is included in the notion of fair trial mentioned in Article 6 § 1 of the Convention (see *Neumeister v. Austria*, 27 June 1968, § 22, Series A no. 8). It observes that under the principle of equality of arms each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent (see *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). In this context, importance is attached to appearances as well as to increased sensitivity to the fair administration of justice (see *Bulut v. Austria*, 22 February 1996, § 47, *Reports of Judgments and Decisions* 1996-II).

107. As to the circumstances of the criminal proceedings in which the applicant had been charged with murder, the Court notes that on 5 January 2004 the Supreme Court wrote to the applicant that it would decide his appeal on points of law on 20 January 2004. Although refusing to be represented by a lawyer, the applicant clearly requested in writing to attend the hearing. Given the fifteen-day break between the two dates, the Court cannot subscribe to the Government’s argument that the applicant expressed that wish too late.

108. The Court notes its case-law to the effect that a person charged with a criminal offence should, as a general principle based on the notion of a fair trial, be entitled to be present at the first-instance hearing. However, the personal attendance of the defendant does not necessarily take on the same significance for an appeal or nullity hearing as it does for the trial. Regard must be had in assessing this question to, *inter alia*, the special features of the proceedings involved and the manner in which the defence’s interests are presented and protected before the appellate court, particularly in the light of the issues to be decided and their importance for the applicant (see *Kucera v. Austria*, no. 40072/98, § 25, 3 October 2002). Even so, in the instant case it must be recalled that the applicant had been convicted of murder and sentenced to eight years’ imprisonment. Taking into account the gravity of what was at stake for the applicant, the Court considers that respect for the right to a fair trial, guaranteed by Article 6 § 1 of the Convention, required that the applicant be taken to the hearing at the Supreme Court, especially when the applicant had expressly requested to be present (see, in this connection, *Sejdovic*, cited above, §§ 83 *in fine* and 86).

109. The Court further notes, and this also has been admitted by the Government in their observations on the admissibility and merits of the case, that the prosecutor took part in the hearing, which enabled him to raise arguments as to the merits of the applicant’s cassation appeal. Even though the effect the prosecutor’s observations might have had on the Supreme Court’s ruling cannot be assessed, it is the Court’s view that the interests of justice required that the applicant be given the opportunity to comment on

them, which was not the case. More importantly, what was at stake here was the applicant's confidence in the workings of justice, which was based on, *inter alia*, the knowledge that an opportunity would be given to him to express views on every submission as regards his case (see, *mutatis mutandis*, *Nideröst-Huber v. Switzerland*, 18 February 1997, § 29, *Reports of Judgments and Decisions* 1997-I).

110. In the light of the foregoing considerations, the Court concludes that there was an infringement of the applicant's right to equality of arms and adversarial proceedings.

Accordingly, there has been a violation of the right to a fair hearing enshrined in Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION ON ACCOUNT OF QUALITY OF LEGAL REPRESENTATION

111. The applicant further complained about the quality of his legal representation during criminal proceedings against him. He relied on Article 6 §§ 1 and 3 (c) of the Convention, which reads as follows:

“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:

...

(c) to defend himself in person or through legal assistance of his own choosing ...”

112. As the applicant's complaints concern two different sets of criminal proceedings, the Court will examine them separately.

A. The criminal proceedings for robbery

1. *The parties' submissions*

113. The applicant complained that the legal assistance he had received within the framework of criminal proceedings for robbery was ineffective. He noted in particular that he was not provided with legal aid to prepare the appeal on points of law and alleged a breach of Article 6 § 1 read in conjunction with Article 6 § 3 (c) of the Convention.

114. The Government submitted that during the entire proceedings before the courts at the first and appellate levels the applicant had been effectively represented by officially appointed counsels. They admitted that the judgment of 14 January 2003 of the Telšiai District Court had been quashed for procedural irregularities, *inter alia* breaches of the applicant's

defence rights. However, those shortcomings had been cured by fresh trial court proceedings, even more so since the new judgment had had the effect of reducing the applicant's sentence.

115. As to the proceedings before the Supreme Court, the Government observed that the State could not be held responsible for every shortcoming on the part of counsel appointed for legal-aid purposes. They noted that the applicant had lodged an appeal on points of law himself. Admittedly, on 1 December 2003 the applicant had informed the Chairman of the Telšiai District Court that he had not been provided with legal assistance. However, this complaint had been submitted too late, since the applicant was perfectly aware that the three-month time-limit for submitting an appeal on points of law had already expired. In this context the Government also noted that, in contrast to *R.D. v. Poland* (nos. 29692/96 and 34612/97, § 50, 18 December 2001), where the applicant could have obtained access to the highest court only through a lawyer, in the present case Lithuanian law allowed the applicant to lodge an appeal on points of law by himself. The applicant's cassation appeal was found to be in compliance with procedural requirements and was accepted for examination by the Supreme Court. Accordingly, it could not be concluded that there were manifest deficiencies of representation. Neither was the Supreme Court expected to intervene, as the applicant had himself lodged the appeal on points of law on 20 November 2003, the very last day of the time-limit set by domestic law. Lastly, the Government noted that on 12 February 2004 the applicant refused to have appointed and be represented by a lawyer at the Supreme Court hearing.

116. In sum, and given that the applicant by his actions deliberately caused the situation in which the State authorities were left in obscurity in respect of the omission of the applicant's officially appointed lawyer, the applicant's complaint of inadequate legal assistance in the context of criminal proceedings for robbery was not founded.

2. The Court's assessment

(a) Admissibility

117. The Court considers, in the light of the parties' submissions, that the applicant's complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established

(b) Merits

118. The Court reiterates that 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, and therefore the applicant's complaints under paragraphs 1 and 3 of Article 6 should be examined together (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010).

119. The Court reiterates that while Article 6 § 3 (c) confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance ...", it does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Quaranta v. Switzerland*, 24 May 1991, § 30, Series A no. 205). In that connection it must be borne in mind that the Convention is intended to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that assigning counsel does not in itself ensure the effectiveness of the assistance he or she may afford an accused (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37, and *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275).

120. In this connection the Court would also observe that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal-aid scheme or privately financed. The relevant national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168).

121. Turning to the circumstances of the present case, the Court notes, and it has not been disputed by the Government that the proceedings before the Telšiai District Court fell short of the requirements of Article 6 § 3 (c) of the Convention (see paragraphs 8 and 9 above). However, the Government claimed that the authorities had done everything in their power to ensure that at the rehearing of the case the applicant received proper legal assistance. Therefore the Court will concentrate on subsequent developments in the proceedings.

122. The Court observes that the original conviction was quashed by the Šiauliai Regional Court on 6 March 2003 specifically because of the breach of the applicant's right to legal assistance. It is thus clear that for the domestic courts the case was difficult enough to require the assistance of a professional lawyer. That being so, and also in view of the Court's own assessment of the complexity of the issues raised before both appeal courts

(the applicant's inability to question two witnesses against him, his allegation that he had been questioned without a lawyer at the pre-trial investigation stage, to name a few), the Court concludes that the assistance of a lawyer was essential for the applicant in the appeal and the appeal on points of law proceedings.

123. As regards the effectiveness of the legal assistance the applicant received on appeal, the Court draws attention to the transcript of the hearing of 21 August 2003. Nothing in that document indicates that the applicant objected to the services of the lawyer S.K., or that he questioned her performance. Neither does it appear that there was any explicit disagreement between her and the applicant on the substance or strategy of his defence. Whilst it is unclear how much time the lawyer S.K. spent on the applicant's case, it may be concluded that she was *a priori* prepared to assist the applicant, and this is, without doubt, a relevant consideration. In such circumstances the Court cannot hold that the arrangements made at the appellate stage of the proceedings were insufficient and did not secure effective legal assistance to the applicant.

124. In contrast, the Court is not able to share the Government's view that the applicant left the domestic courts in ignorance of the lawyers' failure to provide him with legal aid in respect of the cassation stage of the proceedings. For the Court, the letter of 12 September 2003 by the Chairman of the Telšiai District Court had already given the applicant a reasonable expectation that a lawyer would be appointed to assist him before the Supreme Court (see paragraph 12 above). Admittedly, the Chairman of the Telšiai District Court did inquire into the manner in which the free legal aid was to be provided, given that he wrote to the applicant's previous lawyer S.K. and the Šiauliai Regional Bar (see paragraphs 13 and 14 above). However, as it appears, those efforts were to no effect, because eventually no lawyer was appointed. Whilst having been notified of the fact by the applicant on 1 December 2003, the District Court took no further steps. The circumstance that the applicant has sent the latter document after the deadline to lodge a cassation appeal had already expired is of no consequence to the Court. It is reasonable to assume that until 20 November 2003, when the applicant lodged a cassation appeal on his own and which was the last day for that procedural step, the applicant had been waiting for a lawyer to appear and to assist him with drafting.

125. Assessing further, the Court notes that in the appeal on points of law, which the applicant, being a lay person with no legal training, had himself drafted, he explicitly informed the Supreme Court of not having been provided with legal assistance for preparation thereof (see paragraph 15 above). The Court understands the applicant's distress when he had to prepare his cassation appeal and his defence strategy without any legal aid. The fact that the applicant refused a lawyer's presence at the hearing before the Supreme Court is of no significance. It is natural that the

applicant perceived as a mere formality participation at the hearing of a lawyer who had not helped him with drafting the appeal on points of law. Taking into account that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Sakhnovskiy*, cited above, § 95), the circumstances of the case required that the applicant would be provided with proper and genuine legal backing.

126. Given all these foregoing considerations, the Court finds that the applicant had put the competent authorities on notice of ineffective legal representation but the arrangements made by them were insufficient and did not secure effective legal assistance to the applicant during the appeal on points of law proceedings. The Court concludes that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) thereof.

B. The criminal proceedings for murder

1. The parties' submissions

127. The Government submitted that the complaint was not founded, given that the applicant had himself refused legal representation. Before his case was heard on appeal the applicant had expressed the wish to conduct his defence on his own and had refused to be represented by the officially appointed lawyers. Nonetheless, officially appointed defence counsel arrived at the appellate court hearing on 9 July 2003, as under the domestic law the presence of defence counsel when hearing a case on appeal was compulsory.

128. As to the proceedings before the Supreme Court, the Government noted that the applicant was not automatically entitled to legal aid for preparation of his appeal on points of law. Nevertheless, at that time the applicant was thoroughly acquainted with the formal requirements for legal aid, because he had at his disposal a standard legal aid form, sent to him by the Vilnius City Second District Court on 3 July 2003. Despite this the applicant had never submitted a request for assistance in preparation of his appeal on the points of law. Moreover, on 5 January 2004 the applicant had also refused legal assistance at the forthcoming hearing of this case by the Supreme Court.

129. The applicant contested the Government's arguments.

2. The Court's assessment

130. The Court notes that, as it transpires from the documents presented by the parties, lawyers had been asked by the Lithuanian authorities to defend the applicant during the pre-trial investigation stage, at his trial and when hearing the case on appeal (see paragraph 21 above). Turning to the

applicant's assertion that he could not have confidence in the lawyers assigned on the basis of the free legal aid scheme, the Court reiterates that the relationship between a lawyer and his client should indeed be based on mutual trust and understanding (see *Sakhnovskiy*, cited above, § 102). As concerns the present case, the Court notes that on appeal the applicant was offered only a ten-minute break to communicate with the newly-appointed lawyer and to explain his position, immediately before the start of the hearing (see paragraph 22 above). Given the complexity of the case and the seriousness of the charges against the applicant, it is the Court's view that the time allotted was clearly not sufficient for the applicant to discuss the case and make sure that J.S.'s knowledge of the case and the applicant's position were appropriate. Even so, it must be observed that the applicant had not been content with his two previous lawyers, I.S. and Z., and was merely lukewarm towards lawyer R.Š. In this context the Court draws particular attention to the fact that the applicant's criticism as to the allegedly poor quality of legal assistance was based mainly on his own theories that lawyers who were not being paid by the applicant would be less diligent and would defend him less fervently than those who would receive more pay. In other words, there was no manifest failure by legal aid counsels to provide the applicant with effective representation so that intervention would be required under Article 6 § 3 (c) (see *Kamasinski*, cited above, § 65, Series A no. 168; *Sejdovic*, cited above, § 95).

131. As to the proceedings before the Supreme Court, the Court notes that the applicant himself refused to be represented by a lawyer at that stage (see paragraph 25 above). Neither did the applicant raise with the Supreme Court the fact that no appeal on points of law had been drafted on his behalf by a lawyer. In such circumstances the Court cannot hold that the State authorities failed to act to ensure that the applicant received effective legal assistance.

In sum, the material before the Court does not warrant a finding that the applicant did not have the benefit of a practical and effective defence on account of lack of effective assistance from a counsel.

132. In view of the above, the Court considers that the applicant's complaint under this aspect of Article 6 §§ 1 and 3 (c) of the Convention is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible in accordance with Article 35 § 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

133. Under Article 5 of the Convention, the applicant complained about the unlawfulness of his pre-trial detention. The Court notes, however, that the applicant's pre-trial detention in the context of two sets of criminal proceedings had definitely ended on 11 June 2003 (see paragraph 10 above). Given that the applicant lodged this complaint with the Court only on

19 April 2004, it must be dismissed as submitted out of time, pursuant to Article 35 § 1 and 4 of the Convention.

134. Relying on Article 6 § 1 of the Convention and in the context of the criminal proceedings for robbery, the applicant also alleged a violation of his right to a fair trial. He submitted that on 26 April 2001 he was questioned while in poor health and without a lawyer. He also alleged that he was not able to participate effectively in the trial on 11 June 2003 as he was feeling tired after the transfer from the prison. He further complained that he had had no opportunity to question two witnesses, J.P. and A.M., and that the courts had refused to call additional witnesses and experts and to examine certain evidence.

135. Having regard to the facts of the case and its finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention (see paragraph 126 above), the Court considers that it has examined the main legal question raised under Article 6 of the Convention. It concludes therefore there is no need to make a separate ruling on the applicant's remaining complaints under this provision (see *Özcan Çolak v. Turkey*, no. 30235/03, §§ 51-53, 6 October 2009).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. 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

137. The applicant claimed LTL 1,000,000 (approximately 289,600 euros) in respect of pecuniary and LTL 10,000,000 in respect of non-pecuniary damage.

138. The Government considered the above claims to be unsubstantiated and excessive.

139. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. In respect of non-pecuniary damage, on equity, it awards the applicant EUR 4,800.

B. Costs and expenses

140. The applicant did not submit any claims for legal costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

141. 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* the complaints concerning equality of arms in the context of the criminal proceedings for murder and adequacy of legal aid in the context of the criminal proceedings for robbery admissible and the remainder of the application inadmissible;
2. *Holds* there has been a violation of Article 6 § 1 of the Convention on account of failure to allow the applicant to take part in the Supreme Court hearing in the context of the criminal proceedings for murder;
3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 of the Convention on account of failure to provide the applicant with legal assistance to prepare his appeal on the points of law, in the context of the criminal proceedings for robbery;
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 4,800 (four thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Lithuanian litas at the rate applicable on 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 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Deputy Registrar

Françoise Tulkens
President