



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

FOURTH SECTION

CASE OF ALBRECHTAS v. LITHUANIA

(Application no. 1886/06)

JUDGMENT

STRASBOURG

19 January 2016

FINAL

19/04/2016

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

In the case of Albrechtas v. Lithuania,

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

András Sajó, *President*,

Vincent A. De Gaetano,

Boštjan M. Zupančič,

Nona Tsotsoria,

Paulo Pinto de Albuquerque,

Egidijus Kūris,

Gabriele Kucsko-Stadlmayer, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 15 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 1886/06) 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 Alvydas Albrechtas (“the applicant”), on 19 December 2005.

2. The applicant was represented by Mr R. Girdziušas, a lawyer practising in Kaunas. The Lithuanian Government (“the Government”) were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged a breach of Article 5 of the Convention, arguing that, in court proceedings for his detention on remand, he had not had access to the criminal investigation file.

4. On 13 March 2014 the complaint was communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962. According to the latest information, the applicant was released from prison in January 2015.

6. On 26 May 1995 a businessman, R.G., was killed in the heart of Vilnius, near the building that houses the Lithuanian Government, when a bomb detonated under his car. The crime received much media coverage.

7. On 15 October 1998, after being accused of having been involved in R.G.'s killing, a certain G.B. stated in his testimony that he had received the order to murder R.G. from a certain O.L., but he did not know whether it was O.L. who had wished to murder R.G., or whether the contract had been put out by someone else.

On 29 October 1998 G.B. changed his testimony, stating that the contract to murder R.G. had been put out by 'Alius from Kaunas'.

On 9 November 1998 G.B. showed the investigators the place where he claimed to have met 'Alius' in May 1995. This was near the applicant's home address in Kaunas.

8. From this point in time, the prosecutor began to suspect that the applicant, who had a previous conviction dating from 1985, had been involved in R.G.'s murder. The prosecutor gathered information about the applicant's property and obtained the applicant's telephone number, which in turn linked him to one of the suspects in R.G.'s murder.

9. By a judgment of 21 October 2001, the Vilnius Regional Court convicted twenty-one individuals who had acted together in an armed gang in Vilnius and its surroundings from 1990 to 1998. The members of this criminal organisation were convicted of 13 murders and 12 attempted murders that involved the use of firearms and explosives, as well as a number of robberies and kidnappings of businesspeople.

By the same judgment, three individuals belonging to that criminal association, G.B., I.M. and V.J., were convicted of R.G.'s murder. The court established that it had been a contract killing, ordered because an unidentified person was unwilling to repay a considerable sum of money to R.G. The court also established that the unidentified person was known under the alias "Alius". The fifth person involved in the murder, O.L., was in hiding. G.B. was sentenced to a total of 19 years' imprisonment for all the crimes concerned.

10. On 1 March 2002, on the basis of G.B.'s testimony, the prosecutor concluded that it was likely that "Alius" was in fact the applicant. G.B. also testified on unknown date that he would recognise "Alius" if he saw him. The same day the prosecutor ordered the Vilnius organised crime police to establish the applicant's place of residence, to obtain his telephone records and to examine his links with R.G.

11. On 19 March 2002 photographs of four individuals were shown to G.B., who at that time was already serving a prison sentence. G.B. identified the applicant as 'Alius from Kaunas' – the person who had put out the murder contract.

12. On 2 September 2002 the Vilnius organised crime police informed the prosecutor in writing that the applicant was not living in the apartment where he was registered in Kaunas. The police admitted that they could not locate the applicant but undertook to notify the prosecutor of the applicant's whereabouts as soon as they found him.

13. On 2 September 2002 the prosecutor concluded that there was sufficient evidence to charge the applicant with having organised R.G.'s murder and issued a decision charging the applicant with that crime (*nutarimas patraukti kaltinamuoju*). The decision gave an account of the facts as construed by the prosecutor and contained a detailed description of the crime, including the time-frame, the links between the applicant, those convicted (G.B., I.M. and V.J.) and O.L., and the sums of money paid for its execution. The decision did not contain any references to evidence against the applicant.

14. On the same day, the prosecutor instituted a search for the applicant and ordered Vilnius organised crime police to conduct it. The prosecutor also addressed a request to the Vilnius City First District Court that the applicant be detained once arrested. Taking into account the fact that the crime could attract a life sentence, and given that at that specific time the applicant could not be located, the prosecutor took the view that it was likely that the applicant had fled from justice. The evidence against the applicant was "his accomplices' testimony and his being recognised as the organiser of the crime [by the accomplices]". The same day, the Vilnius City First District Court authorised the applicant's pre-trial detention *in absentia*.

15. On 29 October 2002 the prosecutor asked Vilnius organised crime police whether the applicant had been found. From the documents before the Court it appears that the Kaunas organised crime police informed their colleagues in Vilnius on 10 December 2002 that the applicant's place of residence was not known.

16. Over two years later, on 17 January 2005, the prosecutor issued a European Arrest Warrant in respect of the applicant.

17. On 24 May 2005 Vilnius organised crime police informed the prosecutor where the applicant could be found and the prosecutor ordered the applicant's arrest.

18. The applicant was arrested on 25 May 2005 in Kaunas. The applicant's temporary arrest record (*įtariamojo laikino sulaikymo protokolas*) stated that the applicant had been arrested in the context of a criminal investigation on suspicion of having organised R.G.'s murder. The record referred to the court decision of 2 September 2002 ordering the applicant's detention, to the European Arrest Warrant, and to the applicant's prior conviction of 1985 for a property-related crime. The record also stated that the applicant had been hiding from the prosecutor for a long time. The applicant signed the record of his arrest and the prosecutor's decision of 2 September 2002 charging him with having organised R.G.'s murder (see paragraph 13 above).

19. The same day, that is to say on 25 May 2005, the prosecutor issued a notice of suspicion (*pranešimas apie įtarimą*) which repeated the prosecutor's account of the facts surrounding R.G.'s murder, as described in

the decision of 2 September 2002 charging him with the crime (see paragraph 13 above). No evidence was referred to in the notice of suspicion, which the applicant and his lawyer signed.

Later that same day the applicant was shown the prosecutor's decision charging him with R.G.'s murder of 2 September 2002 (see paragraph 13 above). The applicant was questioned. Of the four people convicted of R.G.'s murder, he admitted to knowing only O.L. The applicant denied any involvement in the car bombing and stated that he would not testify without his lawyer. The applicant then signed a record of questioning of a suspect (*įtariamąjo apklausos protokolas*).

20. According to the record of case file material shown to the lawyer (*gynėjo supažindinimo su bylos medžiaga protokolas*) dated 26 May 2005, the prosecutor provided the applicant's lawyer, at his request, with the following documents from the case file:

- 1) the applicant's temporary arrest record of 25 May 2005 (see paragraph 18 above);
- 2) the decision to charge the applicant of 2 September 2002 (see paragraph 13 above);
- 3) the notice of suspicion of 25 May 2005 (see paragraph 19 above); and
- 4) the record of questioning of a suspect of 25 May 2005 (see paragraph 19 above).

21. On 26 May 2005, the prosecutor submitted to the Vilnius City Second District Court a written request for the applicant's detention pending trial (*pareiškimas skirti suėmimą*). The request contained the prosecutor's account of the crime, as described in the decision charging the applicant and the notice of suspicion (see paragraphs 13 and 19 above). It mentioned that the evidence linking the applicant to R.G.'s murder was witnesses' and other individuals' testimony, the records of the applicant's identification (*parodymų atpažinti protokolai*), records of searches and other factual data. The document did not explain any particular piece of evidence against the applicant. As grounds for detention the prosecutor cited the fact that the applicant had been hiding from the prosecutor for two years, the European Arrest Warrant, the applicant's prior conviction, the severity of the penalty that the crime of murder could attract – which could in itself prompt the applicant to flee – and the need to carry out more investigative steps. The request did not mention the risk that the applicant might try to influence witnesses as one of the grounds for his detention.

22. On 26 May 2005, the Vilnius City Second District Court held a hearing in the presence of the prosecutor, the applicant and the applicant's lawyer.

As the record of the hearing shows, at the start thereof the applicant's lawyer asked the court to view the evidential material from the pre-trial investigation, on the basis of which his client was being detained. The lawyer admitted that he had been able to acquaint himself with the

prosecutor's request to the court for the applicant's detention (see paragraph 21 above), the record of the applicant's questioning and the notice of suspicion, but no other material had been made available to him, even though the Supreme Court's guidelines require otherwise (see paragraph 52 below). The lawyer contended that the information shown to him was not sufficient to understand what basis there was, firstly, for suspecting the applicant of R.G.'s murder and, secondly, for detaining him. The lawyer insisted that he had a right to consult the material in the case file, which the prosecutor had provided to the court for the purposes of ascertaining whether it was reasonable to detain his client.

23. In reply, the prosecutor submitted that "in this case the applicant's lawyer had been shown what was necessary (*šiuo atveju gynėjas supažindintas tiek, kiek reikia*)". Moreover, in accordance with Article 177 of the Code of Criminal Procedure, pre-trial investigation material was not to be made public. In the instant case, the applicant was not permitted to see the entire case file because doing so could have prejudiced the success of the pre-trial investigation. The grounds for detaining the applicant were that a search for him had been conducted [since 2002], and a European Arrest Warrant had been issued in respect of him. The record of the hearing also indicates that the prosecutor then submitted "to the court the pre-trial investigation file concerning the applicant and the reasonableness of his detention. The court examined the material provided by the prosecutor and, having evaluated it, decided that the lawyer's request to see the said material was to be denied, since to disclose it could be detrimental to effective investigation".

24. When questioned at the court hearing, the applicant acknowledged that he knew O.L. However, he denied knowing G.B., I.M. and V.J., the people already convicted of R.G.'s murder. The applicant also maintained that he had never had the nickname "Alius". He admitted that his wife lived in Ireland and that he was wealthy. The applicant and his lawyer contended that the applicant had never been summoned for questioning, nor had he been hiding from the investigators: after 1995 he had renewed his identity documents, had crossed the State border, had taken part in car rally competitions, winning the President's cup in 2003, and had even been elected president of the Lithuanian rally committee.

25. The Vilnius City Second District Court decided to grant the prosecutor's request for the applicant's detention. In the operative part of its ruling, having summarised the arguments put forward by the prosecutor and the defence, the court noted that the case file material showed that the applicant was suspected of a very serious crime for which life imprisonment could be imposed. The applicant's wife was living abroad and this could prompt the applicant to flee from justice. It was also pertinent that there were discrepancies in the [witnesses'] testimony given to the investigators. There was thus reason to believe that "the applicant might attempt to

influence participants in the criminal proceedings (those convicted, witnesses, others) and to destroy evidence” if left at liberty. A number of investigative steps still had to be carried out. Lastly, there was reason to believe that the applicant might commit new crimes.

26. On 7 June 2005 G.B. attended an identity parade that included the suspect and, in a three-man line-up, identified the applicant as ‘Alius’, naming him as the person who had ordered R.G.’s murder. In accordance with the requirements of the Code of Criminal Procedure, the applicant’s lawyer was present when G.B. identified his client.

27. G.B. was questioned by the prosecutor on 15 June 2005, and testified in writing that after he had identified the applicant, on 7 June 2005 he had been approached by another prisoner. Due to the relations prevailing in the prison, G.B. preferred not to name that other prisoner. G.B. stated that the other prisoner had told him that he had received a request from “the outside world (*iš laisvės*)” and from “the underworld of Kaunas (*Kauno nusiklastamo pasaulio*)” to ask G.B., in return for 200,000 Lithuanian litai (LTL), not to identify the applicant as the person who had put out the contract on R.G. To that G.B. replied that it was too late, because he had already identified the applicant. The other prisoner stated that in that case he would have to further consult those who had made the proposition.

A couple of days later, on 8 or 9 June 2015, the same prisoner had made a new proposition: G.B. should write a statement to the effect that he had been mistaken when identifying the applicant on 7 June. G.B. also was told that the applicant’s lawyers were considering challenging the lawfulness of the identity parade procedure. The sum allegedly offered to the applicant for changing his prior testimony stayed the same. At that time G.B. also stated that he had not been the target of any threats for testifying against the applicant.

28. On 13 June 2005 the applicant’s lawyer submitted an appeal to the Vilnius Regional Court against the court order of 26 May 2005 for the detention of his client. The lawyer complained that the judge had not allowed him to see the case file and maintained that the procedure had therefore not been adversarial. The lawyer acknowledged that the applicant had a prior conviction, but that had been years ago. The applicant’s lawyer also asked the court to view G.B.’s testimony in a critical light, given that the latter, as a convicted person, could have his own reasons for incriminating the applicant. Furthermore, the prosecutor had not provided any factual data endorsing his suspicion that the applicant might attempt to influence witnesses. As far as the lawyer understood it, all the witnesses with knowledge of R.G.’s murder had been isolated from society and there was no real possibility of influencing them. Furthermore, if anyone had wished to pervert the course of justice, he or she would have done it at some time during the ten years that had elapsed since the crime. Now there would be no sense in doing that. In support of his claims that it was safe to leave

the applicant at liberty, his lawyer provided the court with documents about his client's family and work situation.

29. On 27 June 2005 the Vilnius Regional Court dismissed the applicant's appeal. The prosecutor and the applicant's lawyer were present at that hearing.

The court accepted that factual material incriminating the applicant existed in the form of G.B.'s testimony, the record showing that G.B. had recognised the applicant, both from photographs and in person. The court also noted that, according to the information which had been provided to it, the search for the applicant had gone on for a long time, that he had connections abroad, and that the European Arrest Warrant had been issued in his regard. The seriousness of the crime of which he was suspected was also a factor in the establishment of grounds for detaining him.

However, the appellate court noted "the absence of any well-founded evidence (*pagristų įrodymų*) in the case file indicating that the applicant might attempt, either himself or through third parties, to influence witnesses, victims, people already convicted or other individuals, or that he would attempt to destroy evidence". Keeping him detained merely because the pre-trial investigators had not yet collected all the material necessary to build the case did not constitute valid grounds for such detention either. The existence of discrepancies in the testimonies (*byloje užfiksuotų parodymų nenuoseklumas*) could not be blamed on the applicant.

30. During a face-to-face confrontation (*akistata*) held on 24 August 2005, G.B. reaffirmed his testimony that it was the applicant who had put out the contract for R.G.'s murder.

31. The applicant's pre-trial detention was extended on 22 August 2005 and again on 20 September 2005. His lawyers and the prosecutor were present at those hearings. The courts noted that the grounds for detention were the search for the applicant, the European Arrest Warrant, his previous conviction and the fact that he had been charged with a serious crime for which a severe sentence could be imposed. In one of these two rulings the court also noted that G.B., who was one of those already convicted for the 1995 car bombing, had identified the applicant as the person who had put out the contract on R.G.

32. On 20 October 2005 the prosecutor questioned G.B.'s wife. She testified that she had known that her husband was a witness in the criminal case concerning R.G.'s murder. She stated that her husband had told her that he had received threats directed at him and his family for having given evidence, and had warned his wife to be careful. She also stated that from the second half of June she and her daughter had received telephone calls from unknown men asking if they could meet and talk, which she had refused to do. She also testified that on 8 October she had found a funeral wreath in front of the entrance door to the café she owned. She understood

this gesture to be a veiled threat to G.B.'s family should he not change his testimony.

33. On 24 November 2005 the Vilnius Regional Court further extended the applicant's detention pending trial. Having reaffirmed the aforementioned grounds for keeping the applicant detained, including the argument that he had been evading justice ever since 2002, the Vilnius Regional Court also noted evidence that the applicant had tried, through third parties, to influence the witness G.B. and his family so that G.B. would not testify against the applicant.

34. By a judgment of 25 April 2006 the Vilnius Regional Court found the applicant guilty of having put out the contract for R.G.'s murder. In finding against the applicant, the trial court relied on the testimony of G.B. Even though the applicant denied his involvement in the crime and insisted that G.B. was slandering him, the trial court observed that G.B.'s testimony to the effect that the crime had been organised by a certain "Alius" had been consistent ever since G.B. was first questioned during the pre-trial investigation in 1998. Moreover, G.B. had recognised the applicant from photographs on 19 March 2002 and during a police identity line-up on 7 June 2005. Other evidence against the applicant also included the testimony of nine further witnesses – namely the applicant's and R.G.'s former business partners, a police officer, and the brother of R.G.'s widow. Telephone records also showed that in April and May 1995 numerous conversations had taken place between the applicant, R.G., O.L. and G.B. In addition, extracts from the bank accounts of the applicant's company, customs declarations, and documents from Kaunas municipality illustrated the financial dealings between the applicant and R.G.

35. The Vilnius Regional Court noted that eleven years had passed since the crime was committed. The applicant had not been hiding during that time, even though a search for him "without reason (*nepagrįsta*)" had been called for. In all the years since 1995 the applicant had not once broken the law and there was no information in the case file indicating his involvement in organised crime. Moreover, the applicant had worked, supported his family, including two children who were minors, and had participated in public life. However, given the seriousness of the crime, the court held that the applicant still posed a danger to society. The court lastly found that because of the pre-trial investigation officers' fault the applicant was being punished only after many years had passed since the crime. To impose a very severe sentence on him would therefore be unjust. Eight years' deprivation of liberty in a correctional home would be appropriate. The time which the applicant had spent in pre-trial detention – from 25 May 2005 until 25 April 2006 was to be counted towards that period.

36. An appeal having been lodged against this verdict, on 18 May 2007 the applicant was acquitted by the Court of Appeal. The court found the testimony of G.B. – who was the main witness for the prosecution – against

the applicant, including testimony given on site in 1998, G.B.'s recognising the applicant in the police identity line-up and the testimony given the face-to-face confrontation to be inconsistent, not credible and contradictory of other evidence in the case (*nelogiški, prieštaraujantys kitiems įrodymams ir nenuoseklūs*). There was a real possibility that by giving such testimony G.B. had sought to improve his position. In this connection the Court of Appeal also noted that G.B. had attempted to diminish his own role in R.G.'s murder. It was for that reason that, on 19 June 2003, the Supreme Court had dismissed the prosecutor's and G.B.'s plea for mitigation of G.B.'s sentence on the basis of Article 41¹ of the old Criminal Code (see paragraph 54 below). The Court of Appeal also emphasised that there was not sufficient additional evidence to link the applicant to crime.

The Court of Appeal ordered the applicant's release from detention. He had to stay at his place of residence, and his travel documents were taken from him.

37. The decision to acquit the applicant was later quashed by the Supreme Court, which remitted the case for fresh examination.

38. Before the Court of Appeal the applicant reiterated his complaint that on 26 May 2005 the pre-trial investigation judge had not allowed him to see the material submitted by the prosecutor. He also noted that G.B. had not informed the prosecutor about alleged undue influence on him until a week after the alleged incident supposedly took place. In the view of the applicant, G.B. wished to incriminate him using any means possible.

39. On 13 March 2009 the Court of Appeal again acquitted the applicant, upholding its earlier finding that G.B.'s testimony against the applicant was not consistent (*nėra nuoseklūs*). It also noted that the trial court had categorised the search for the applicant as unfounded (*nepagrįsta*), without elaborating much on that issue. The Court of Appeal emphasised that the applicant had never been in hiding from the authorities, even though the prosecutor had asked the appellate court to suppress that assessment, given by the trial court (also see paragraphs 40 and 41 below).

The applicant was released from the obligation not to leave his place of residence, and his travel documents were returned to him.

40. The very same day, on the basis of Article 257 of the Code of Criminal Procedure (see paragraph 53 below), the Court of Appeal adopted a separate ruling, noting that a search for a suspect could be ordered if the suspect's place of residence was unknown to the investigators, who, if that were the case, were obliged to take steps to find him or her. In the instant case, however, the applicant had never been in hiding from the investigators. On the contrary, he had lived in his apartment in Kaunas, had taken part in car rally competitions abroad, had won the President's cup after participating in the car rally "Around Lithuania" in 2003, and in the same year had even been elected president of the car rally committee. The applicant had also crossed the Lithuanian State border both by car and as an

airline passenger at least ten times, had worked at his private company and had paid social security contributions. All those events had taken place during the time when the search for the applicant, ordered on 2 September 2002, was being conducted. The applicant had at no time been called into the prosecutor's office and none of the applicant's family members had received any inquiries about the applicant's whereabouts from the police or had ever been visited by police officers. As confirmed by the police in January 2006, no search file (*paieškos byla*) had ever been opened in respect of the applicant. Furthermore, in October 2003 he had been arrested (*sulaikytas*) in Šiauliai town for having insulted police officers but was later released.

41. In the light of the above, the Court of Appeal concluded that the prosecutor had deliberately and unnecessarily (*nepagrįstai*) ordered a search for the applicant without first having called him in for questioning or having taken any real measures to establish his whereabouts. The appellate court also found that the prosecutor had deliberately misled the courts in 2005 by providing them with clearly untrue information at a time when those courts were making their decision as to whether or not to detain the applicant. This showed that the prosecutor had other goals in view, but it was not for the Court of Appeal to determine what those other goals might have been. Nevertheless, as a consequence it was possible for the applicant to have been unlawfully detained for almost two years – from 25 May 2005 until 18 May 2007. The Court of Appeal therefore asked the Attorney General's Office to determine whether the prosecutor's actions constituted abuse of office, which is a crime under Lithuanian law. The Court of Appeal also emphasised that – as was apparent from the court decision approving the applicant's detention, on 26 May 2005, and upholding his detention on remand by court rulings adopted between 27 June 2005 and 24 November 2005 – in addition to the European Arrest Warrant issued in 2005, "the search for the applicant [announced in 2002], had been one of the main grounds for ordering his pre-trial detention and for prolonging it".

42. On 19 June 2009 the Deputy Attorney General concluded that the prosecutor had not committed any offence. On the contrary, it was the police officers who had not performed their duties properly by failing to locate the applicant (see paragraphs 10, 12 and 15 above), as a result of which it had not been possible for the prosecutor to call the applicant in for questioning. In any case, to call in for questioning a person whose accomplices had been sentenced to long years of imprisonment (see paragraph 9 above) was hardly a measure that would be considered justified in the interests of a successful pre-trial investigation. Once the police had informed the prosecutor of the applicant's possible whereabouts, the prosecutor immediately ordered the police officers to search those places and to arrest the applicant, who was charged the following day (see paragraphs 17 and 18 above). The prosecutor's actions had therefore been

based on factual circumstances and were lawful. There was no reason to conclude that he had misled the courts when they were deciding whether or not to detain the applicant.

43. In the view of the Deputy Attorney General, the fact that the prosecutor had referred to the search for the applicant and the European Arrest Warrant in his requests to the court for the applicant's detention (see paragraphs 14 and 21 above) did not constitute significant grounds for keeping him detained. On the contrary, the courts noted the applicant's connections abroad, the fact that he owned property abroad, his wealth and the gravity of the crime of which he was suspected. The applicant and his lawyer had, moreover, actively exercised their defence rights in challenging the argument that the applicant had been hiding from investigators. It followed that the applicant's right to liberty had been restricted on a lawful basis.

44. Lastly, the Deputy Attorney General established that the actions of a certain police investigator when executing the search for the applicant had been erratic. However, even though his actions could be deemed to constitute a disciplinary offence, the investigator no longer worked in the police force and could not therefore be punished.

The Deputy Attorney General therefore refused to open a pre-trial investigation on the basis of the facts mentioned in the Court of Appeal ruling of 13 March 2009. The decision was sent for inclusion in the applicant's criminal case file.

45. By a ruling of 3 November 2009 the Supreme Court again remitted the applicant's criminal case to the appellate instance for a fresh examination of evidence. The cassation court noted that G.B.'s testimony did not automatically become less credible merely because he had cooperated with the authorities when telling them of R.G.'s assassination, and for that reason the prosecutor requested mitigation of G.B.'s sentence.

46. On 25 October 2011 the Court of Appeal found the applicant guilty of having put out the contract for R.G.'s murder so that the applicant and others would not have to repay to R.G. debts amounting to between 200,000 and 280,000 US dollars (USD). The applicant was sentenced to five years' deprivation of liberty.

47. On 8 May 2012 the Supreme Court re-interpreted the domestic criminal law and upheld the trial court's verdict, sentencing the applicant to eight years' deprivation of liberty.

According to the latest information from the applicant's lawyer, in January 2015 the applicant was released from prison before time.

II. RELEVANT DOMESTIC LAW AND PRACTICE

48. Article 31 of the Constitution provides that any person charged with committing a crime has the right to a public and fair hearing of his case by an independent and impartial court.

49. The Code of Criminal Procedure in force at the relevant time provided that an accused who is at liberty must be called before the investigator by means of a written summons (*šaukimu*). The summons must be delivered against signature of receipt (*pasirašytinai*). If the accused is not at his place of residence, the summons can be given to his family members. If the accused's place of residence is unknown, the investigator may initiate a search and take measures to find him (Articles 163 and 220).

50. Under Articles 177 and 181 of the Code of Criminal Procedure, material held on a criminal investigation file is not public. A suspect or his lawyer may be permitted to see the pre-trial investigation material and make copies thereof but if the prosecutor considers that this could obstruct the success of the investigation, he may forbid the suspect or his lawyer to see all or part of the criminal file. Once the pre-trial investigation is over and the bill of indictment has been drawn up, the defence lawyer may see the entire criminal file.

51. Pursuant to the Recommendations regarding the Access of Parties to the Proceedings to Case Material during the Pre-trial Investigation, as approved by the Attorney General on 18 April 2003, the parties may be denied access to the case material if such access might undermine the investigation, for example, where it might influence the testimony of a witness.

52. The Supreme Court Senate's Ruling No. 50 "On Courts' Practice when Imposing Pre-trial Detention", adopted on 30 December 2004, provides that when a judge is deciding whether a suspect should be placed in pre-trial detention, he must establish whether there is sufficient evidence suggesting that the suspect has committed the crime. The suspect and his lawyer have a right to see that evidence.

53. Article 257 of the Code of Criminal Procedure provides that if, whilst hearing a criminal case, the court discovers that a different person might have committed a crime, the court must notify the prosecutor of that fact.

54. Article 41¹ of the old Criminal Code provided that, if a person has fully confessed to a crime and is honestly remorseful, and providing there are no aggravating circumstances, a court may impose a liberty-deprivation sentence no longer than the average penalty for the crime in question, or a punishment not related to deprivation of liberty (see paragraph 36 above).

55. Article 6.272 § 1 of the Civil Code allows a civil claim to be lodged for pecuniary and non-pecuniary damage in the event of unlawful actions by the investigating authorities or a court in the context of a criminal case.

Under the provision, compensation may be claimed for unlawful conviction, arrest or detention, the application of unlawful procedural enforcement measures, or an unlawful administrative penalty.

For the domestic case-law on civil remedies for unlawful pre-trial detention also see *Varnas v. Lithuania* (no. 42615/06, §§ 63-68, 9 July 2013).

THE LAW

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

56. The applicant complained that the proceedings of 26 May 2005 in the Vilnius City Second District Court had not been adversarial because he and his lawyer had been denied access to information concerning the grounds for placing him in pre-trial detention. He invoked Article 5 of the Convention.

57. The Court considers that the applicant's complaint falls to be examined under Article 5 § 4 of the Convention, which reads as follows:

“4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Admissibility

1. *The parties' submissions*

(a) **The Government**

58. The Government firstly argued that the complaint was inadmissible because the applicant had failed to use the civil law remedy and to claim damages against the State in respect of both the procedure whereby the pre-trial detention was imposed and also the lawfulness and reasonableness of such detention. The Government relied on Article 6.272 of the Civil Code and the domestic courts' case-law, by virtue of which the civil courts could declare pre-trial investigative actions unlawful even if those actions had been upheld by criminal courts (see paragraph 55 above). In many of those cases, the parties had successfully sought compensation for damage caused by allegedly unlawful detention – mostly for an over-lengthy duration of the pre-trial investigation, but also for other aspects of unlawful or unreasonable detention.

59. In the alternative, the Government submitted that the complaint was manifestly ill-founded.

(b) The applicant

60. The applicant emphasised that his complaint was based not on the claim that he had suffered damage due to unjustified detention, but rather on the claim that his right to adversarial proceedings had been breached when the Vilnius Second District Court ordered his pre-trial detention on 26 May 2005.

2. The Court's assessment

61. The Court considers that the crux of the applicant's complaint is his plea that during the aforementioned court hearing no "equality of arms" – as laid down under Article 5 § 4 of the Convention – was guaranteed on account of the fact that, during the proceedings concerning the applicant's detention, the court had the opportunity to examine the applicant's criminal case file, as presented by the prosecutor, but those documents were not disclosed to the applicant or his lawyer. The Court further observes that the applicant raised this particular aspect in his appeal of 13 June 2005, albeit unsuccessfully (see paragraph 28 above), thereby having made full use of the remedy provided by the criminal-law procedure. The applicant even reiterated this argument in the criminal proceedings, when the merits of his case were being decided (see paragraph 38 above).

62. The Court has held that, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a certain remedy has already been pursued, use of a different remedy which has essentially the same objective is not required (see *Jasinskis v. Latvia*, no. 45744/08, § 50, 21 December 2010). In the particular circumstances of this case, the Court also considers that the Lithuanian courts' case-law relied on by the Government focuses more on the length or the lawfulness of detention than on the specific aspect of 'equality of arms' within the criminal proceedings concerning the applicant's detention, which lies at the heart of the applicant's claim in this case. The Court thus fails to see how the civil law remedy would add any vital elements that were unavailable through the use of the criminal law remedy. Accordingly, the Government's objection regarding the need to exhaust the civil law remedy must be dismissed.

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

B. Merits

1. The parties' submissions

(a) The applicant

64. The applicant complained that during the hearing of 26 May 2005 before the Vilnius City Second District Court, he and his lawyer had been denied access to any information regarding the grounds for placing him in pre-trial detention. The applicant stated that after R.G.'s murder in 1995, he had lived in Lithuania without hiding from the authorities. Even though on 9 November 1998 G.B. had shown the investigators the applicant's place of residence in Kaunas, the applicant had never been called in for questioning. Prior to his arrest in 2005, he had renewed identity documents, paid taxes, had a job, crossed the State border a number of times, and taken part in car rally competitions. Accordingly, he was entitled to know why it had suddenly become necessary to detain him. However, at the prosecutor's request, the criminal case file material was made fully available only to the judge who, after having consulted the file, held that the applicant's detention was lawful. Given that it was only the prosecutor and the court that had seen that material, the applicant could not effectively challenge the validity of the grounds for his detention, in breach of his right to adversarial proceedings.

65. The applicant also argued that G.B. had testified against him because he wished to help the prosecutor who, in return for G.B.'s help, asked the courts to mitigate his sentence. On this point the applicant noted that G.B. had initially been sentenced to nineteen years' imprisonment. According to the applicant, the prosecutor had appealed against that verdict, asking that G.B. be given thirteen years' imprisonment. After the Court of Appeal reduced G.B.'s sentence to fifteen years, the prosecutor again appealed, arguing that the sentence was still too severe. The Supreme Court then reduced G.B.'s sentence to fourteen years, but pointed out that the prosecutor's request was inconsistent with the case file material (see paragraph 36 above).

66. The applicant therefore asked the Court to view critically G.B.'s testimony about having been threatened. As to the episode of alleged pressure exerted on witness G.B. on 7 June 2005, it was odd that G.B. had not informed the prosecutor about the alleged threat until a week later (see paragraph 27 above). In fact, to the applicant's knowledge, even though a pre-trial investigation had been started in relation to that matter, no one had been charged with attempting to influence witness G.B., and no one had been convicted. The applicant also noted that by its ruling of 27 June 2005, the Vilnius Regional Court had quashed the lower court's conclusion to the effect that the applicant might influence witnesses by way of justifying his detention (see paragraph 29 above).

67. The applicant further relied on the domestic courts' conclusion that the search for him had never actually been pursued (see paragraphs 35 and 39-41 above). It was only after the pre-trial investigation was over that it became clear how the applicant's search had been directed. This information was particularly relevant as regards the question of deciding whether or not the applicant might have been hiding from justice. Even so, at the hearing regarding the applicant's detention, the prosecutor generated the impression that the applicant had been in hiding, thus misleading the court so that it would remand him in custody. However, without knowing what information had been provided to the pre-trial judge, neither the applicant nor his lawyer had any real prospect of rebutting the prosecutor's argument that the applicant might flee if not placed in detention, and it was obvious that the prosecutor would not have been able to manipulate the pre-trial investigation material if such information had been made available to the applicant and his lawyer.

(b) The Government

68. The Government stressed that the case was in fact one involving the complex and delicate issue of balancing the interests of an effective criminal investigation against the rights of the defence. On this point they referred to the domestic law prescribing strict rules governing when access to a criminal case file can be denied (see paragraphs 50-52 above). It was evident that in every criminal case, the appropriate balance between the effectiveness of the pre-trial investigation and the rights of the defence must be carefully sought by the prosecutors and the courts.

69. The Government did not deny that during the hearing of 26 May 2005 the defence was given access to only a part of the pre-trial investigation material (see paragraph 20 above) and that the evidence revealed to the court, particularly the testimony of G.B., played a key role in the decision to approve the applicant's detention. However, the district court's decision to reject the defence lawyer's request to have access to all the material submitted to the court by the prosecutor was based on the grounds that such disclosure of that information might undermine the success of investigation. For the Government, this was clearly understandable, given the complexity of the criminal case and the high level of conspiracy between the suspects charged with the crime of contract killing in the context of the activities of one of the biggest criminal gangs that ever operated in Lithuania. It was not unlikely that revealing factual data concerning the pre-trial investigation material, such as the testimonies of key prosecution witnesses, would not only have undermined but would most probably have ruined the pre-trial investigation.

70. On this last point the Government pointed out that the risks referred to by the prosecutor had materialised on the very same day that the defence had learned the identity of the main witness for the prosecution, given that

G.B. had been invited to change his testimony in return for money. Moreover, pressure had later been exerted upon G.B.'s family members, who had received phone calls from unknown men, and a funeral wreath had been laid at the door of a cafe owned by G.B.'s wife (see paragraphs 27 and 32 above). That being so, the Government expressed their concern that the desire of the defence to be granted full access to the pre-trial investigation file, including the evidence incriminating the applicant, might actually have been based not solely upon procedural but quite probably on other interests. Taking into consideration the above, one can only conclude that the disclosure of the information requested by the defence lawyer could have resulted in the total collapse of the pre-trial investigation.

71. It was also the Government's view that the initial non-disclosure of the entire investigation file was counterbalanced by the applicant's lawyer's subsequent involvement in the case. In fact, as early as 7 June 2005, when participating in the procedural action during which G.B. identified the applicant as the organiser of the contract killing, the applicant's lawyer had learned that it was G.B. who was the main witness for the prosecution. When submitting an appeal on 13 June 2005 against the initial decision to place his client in detention, the defence lawyer had invoked arguments alleging an insufficiency of incriminating evidence and had challenged the credibility of G.B.'s testimony (see paragraph 28 above). Those defence arguments were duly reviewed and dismissed by the Vilnius Regional Court on 27 June 2005 and also later, when the courts extended the term of the applicant's pre-trial detention (see paragraphs 29, 31 and 33 above). It could thus be said that all the necessary information had been revealed to enable the applicant to challenge effectively the grounds for his detention, and these were then thoroughly examined by the domestic courts.

72. The Government lastly asserted that, contrary to the applicant's allegations, the facts that a search for him had been announced in 2002 and a European Arrest Warrant had subsequently been issued in 2005 (even though he was not hiding from the Lithuanian authorities) had been neither important nor essential grounds when the first instance court decided whether or not to detain the applicant. On the contrary, according to the Government's understanding of the Vilnius District Court's decision of 26 May 2005, the main procedural grounds for the applicant's detention were the facts that the applicant was suspected of having organised a very serious crime endangering the life of another person and that he could be sentenced to life imprisonment. The applicant's argument that this search – which represented the main reason for his detention – lacked a legal basis since he never had been in hiding, was accordingly irrelevant. This was also supported by the conclusion of the Attorney General, who held that the main grounds for holding the applicant in detention were the gravity of the crime and the possible life sentence, as well as the applicant's connections abroad (see paragraph 43 above).

2. *The Court's assessment*

(a) General principles

73. The Court reiterates that in view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5 § 4 of the Convention should in principle also meet, to the largest extent possible under the circumstances of an on-going investigation, the basic requirements of a fair trial as guaranteed by Article 6 of the Convention (see, *inter alia*, *Schöps v. Germany*, no. 25116/94, § 44, ECHR 2001-I; and *Garcia Alva v. Germany*, no. 23541/94, § 39, 13 February 2001).

74. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order effectively to challenge the lawfulness of his client's detention (see *Lamy v. Belgium*, 30 March 1989, § 29, Series A no. 151; *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II; *Fodale v. Italy*, no. 70148/01, § 41, ECHR 2006-VII; and *Piruzyan v. Armenia*, no. 33376/07, § 116, 26 June 2012).

75. The Court acknowledges the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them is to be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect's lawyer (see *Mooren v. Germany* [GC], no. 11364/03, § 124, 9 July 2009; and *Emilian-George Igna v. Romania*, no. 21249/05, § 27, 26 November 2013).

(b) Application to the present case

76. The Court observes at the outset that the applicant was arrested in 2005 in connection with a murder which took place in 1995. Given that ten years had passed since the crime was perpetrated, it considers that the facts of this case are different from those cases where the applicant was caught committing a crime (see, for example, *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 124-127, 27 January 2009). Accordingly, the Court acknowledges the applicant's argument that he all the more had a legitimate right to know what evidence linked him to that crime in order to be able to challenge its relevance when the question of the lawfulness of his detention was being decided.

77. Upon his arrest on 25 May 2005, the applicant was shown – and signed – his temporary arrest record, which indicated that his arrest was linked to R.G.'s murder. The applicant was then provided with the decision charging him with that crime and with the notice of suspicion, both of

which documents summarised the prosecutor's case against him. Lastly, the applicant was questioned the same day and signed the record of his questioning (see paragraphs 13, 18-20 above).

78. Having examined the aforementioned four documents which have been provided to it by the parties, the Court accepts that they gave a very specific outline how the crime had been planned and perpetrated. However, in the absence of a reference to a single piece of evidence in those documents, the information provided in this manner was only an account of the facts as construed by the prosecutor on the basis of all the information existing in the case file (see *Emilian-George Igna*, cited above, §§ 28-31). In the Court's view, it is hardly possible for an accused to challenge the reliability of such an account properly without being made aware of at least some concrete evidence on which the charges are based. This requires that the accused be given a sufficient opportunity to take cognisance of statements and other pieces of evidence underlying them, such as the results of the police and other investigations, irrespective of whether or not the accused is able to provide any indication as to the relevance for his defence of the pieces of evidence to which he seeks to be given access (see, *mutatis mutandis*, *Garcia Alva*, cited above, § 41).

79. During the hearing of 26 May 2005, on the occasion of the applicant's first appearance before the court, the applicant's lawyer challenged the need for detention and asked to be shown the evidence against his client. The prosecutor answered that the lawyer had been shown "what was necessary" and dismissed the lawyer's request for consultation of the criminal file on the grounds that seeing these documents would endanger the success of the investigation (see paragraph 23 above). The Government admitted that G.B.'s testimony had played a key role in decision to detain the applicant (see paragraph 69 above). The prosecutor had argued that the grounds for detaining the applicant were the search for him and the European Arrest Warrant issued in his regard (see paragraph 23 above). Accordingly, it is safe to assume that both the documentation relating to G.B.'s testimony and the documents forming the basis for the search had been duly submitted by the prosecutor to the Vilnius Second District Court, which, for its part, concluded that there was a strong suspicion that the applicant had committed the crime in question on the basis of the contents of the criminal investigation file.

80. The contents of the investigation file, and in particular G.B.'s statements, thus appear to have played a key role in the Vilnius Second District Court's decision to detain the applicant pending trial. However, while the prosecutor and the district court were familiar with the contents, their precise nature had not at that stage been brought to the applicant's or his counsel's attention. As a consequence, neither of them were able to inspect anything in the file to have an opportunity to adequately challenge the findings referred to by the prosecutor and the district court, in particular

by questioning the reliability and conclusiveness of the statements made by G.B., who had a previous conviction for the murder of R.G. At this juncture the Court observes that the testimony given by G.B. was later twice considered inconsistent, not credible and contradictory by the Court of Appeal (see paragraphs 36 and 39 above). In this context the Court reiterates that the appraisal of the need for a remand in custody and the subsequent assessment of guilt are too closely linked for access to documents to be refused in the former case when the law requires it in the latter case (see *Lamy*, cited above, § 29). Furthermore, even though it is not for the Court to resolve the question of whether G.B. acted in complicity with the prosecutor and testified against the applicant in order to improve his situation, the Court cannot turn a blind eye to the Court of Appeal's observation that the prosecutor's and G.B.'s request for mitigation of G.B.'s sentence was not in accordance with the law (see paragraph 36 above).

81. The Court is aware that the prosecutor denied the requested access to the file documents on the basis of Article 177 of the Code of Criminal Procedure, arguing that to act otherwise would entail a risk of compromising the success of the ongoing investigation, which – according to the Government – was said to be very complex and to involve a large number of other suspects. The Court does not disregard the need for criminal investigations to be conducted efficiently, which may imply that part of the information collected during them must be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice. However, this legitimate goal cannot be pursued at the expense of excessive restrictions to the rights of the defence (see paragraph 75 above). In the instant case the Court notes that three individuals had already been found guilty of R.G.'s murder by the trial court in 2002 and, as is apparent from the documents in the Court's possession, by the final decision of the Supreme Court in 2003 (see paragraphs 9 and 36 above), those convictions predating the applicant's arrest and the court hearing on the applicant's detention in 2005.

82. The Government insisted that the threat to influence witnesses against the applicant was real, given that on 7 June 2005 G.B. had already been offered a financial incentive for not identifying the applicant, of which he informed the prosecutor in writing on 15 June 2005 (see paragraphs 26 and 27 above). Be that as it may, the Court observes that, on appeal and twelve days later, the Vilnius Regional Court rejected the justification that the applicant might pervert the course of justice and, from the court decision, it does not appear that the prosecutor objected to that conclusion (see paragraph 29 above).

83. The Court next turns to the search for the applicant, which – as was pleaded by the prosecutor during the hearing of 26 May 2005 – also warranted the applicant's detention. In this connection the Court cannot reasonably see how the evidential material relating to that search, if

divulged to the defence during the court hearing, would have obstructed the pre-trial investigation. Indeed, as noted by the applicant, it was only later, when the merits of his case were being decided, that the Court of Appeal established that documents such as the summons and the search file itself had never in fact existed (see paragraph 40 above) – circumstances which the applicant was potentially prevented from pointing out to the court which had sanctioned his detention. Indeed, as confirmed by the Court of Appeal, the search for the applicant, and the European Arrest Warrant had constituted one of the main grounds for ordering his pre-trial detention and subsequently prolonging it (see paragraph 41 above). Given that the Government have not proved that the requisite access to search materials was indeed made available to the applicant, the burden of proof in this connection being incumbent on the Government (see *X.Y. v. Hungary*, no. 43888/08, § 52, 19 March 2013), the Court thus finds that this was another measure of procedural justice which the applicant was denied.

84. Lastly, it is not for the Court to dispute the domestic courts' finding that the gravity of the crime – which could attract a penalty of life imprisonment – was in itself sufficient to warrant the applicant's detention on remand (see paragraphs 25, 31 and 33 above). That notwithstanding, it considers that that ground was merely consequential to the fact that it was the applicant who was suspected of having put out the contract on R.G. As the Court has already concluded above, at the time when the matter of his detention was being decided by the Vilnius City Second District Court, no concrete elements connecting the applicant to that murder had been shown to the defence counsel, which would have enabled him to subject it to cross-examination to test the strength of the prosecutor's case.

85. In the light of the foregoing, and given the importance of the contents of the investigation case file, in particular the statements made by G.B. and the unsubstantiated search for the applicant – which could not be adequately challenged by the applicant since they had not been communicated to him – the procedure before the Vilnius City Second District Court, whereby the applicant's detention on remand was authorised, did not comply with the guarantees afforded by Article 5 § 4 of the Convention. This provision has therefore been violated.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

88. The Government disputed the above claim as unreasonable and excessive.

89. The Court considers that it is impossible to determine and thus it cannot speculate whether or not the applicant’s detention on remand would have been authorised by the Vilnius Second District Court if there had been no violation of Article 5 § 4. As to the alleged frustration suffered by the applicant on account of the absence of adequate procedural guarantees for his detention, the Court finds that, in the particular circumstances of the instant case, the finding of a violation is sufficient (see the *Nikolova*, § 76; *Garcia Alva*, § 47, both cited above; and *Lietzow v. Germany*, no. 24479/94, § 52, ECHR 2001-I).

B. Costs and expenses

90. The applicant also claimed 2,855 Lithuanian litai ((LTL), approximately EUR 826) for the costs and expenses of the proceedings before the Court. This sum included LTL 2,360 (EUR 683) for the costs of legal representation when lodging this application with the Court, and LTL 495 (EUR 143) for translation costs.

91. The Government disputed the claim.

92. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the applicant’s claim in full.

C. Default interest

93. The Court considers it appropriate that the default interest rate 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 complaint concerning the fairness of court proceedings for the review of the applicant's detention on remand admissible;
2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 826 (eight hundred and twenty-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (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 January 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

András Sajó
President