



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

THIRD SECTION

CASE OF JĖČIUS v. LITHUANIA

(Application no. 34578/97)

JUDGMENT

STRASBOURG

31 July 2000

In the case of Jėčius v. Lithuania,

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

Mr J.-P. COSTA, *President*,

Mr W. FUHRMANN,

Mr P. KĖRIS,

Mrs F. TULKENS,

Mr K. JUNGWIERT,

Mr K. TRAJA,

Mr M. UGREKHELIDZE, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 11 July 2000,

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

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 25 October 1999, within the three-month period laid down by former Articles 32 § 1 and 47 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). It originated in an application (no. 34578/97) against the Republic of Lithuania lodged with the Commission under former Article 25 by a Lithuanian national, Mr Juozas Jėčius ("the applicant"), on 30 December 1996.

The applicant complained about the unlawfulness of his preventive detention and detention on remand, the authorities' failure to bring him promptly before a judge or other officer, the length of his detention and the inability to take proceedings to contest the lawfulness of his detention. He relied on Article 5 §§ 1, 3 and 4 of the Convention.

2. The Commission declared the application partly admissible on 1 December 1997.

The applicant died on 9 April 1999. In a letter of 14 April 1999 the applicant's widow expressed the wish to pursue the application.

In its report of 11 September 1999 (former Article 31 of the Convention)¹, the Commission expressed the opinion that there had been a violation of Article 5 § 1 as regards the applicant's preventive detention (by twenty-seven votes to two), that there had been a violation of Article 5 § 1 as regards the applicant's detention on remand from 4 June to 31 July 1996 (unanimously), that there had been no violation of Article 5 § 1 as regards the applicant's detention on remand from 31 July to 16 October 1996 (unanimously), that there has been no violation of Article 5 § 3 as regards

1. *Note by the Registry*. The report is obtainable from the Registry.

the alleged failure to bring the applicant promptly before a judge or other officer (by twenty-seven votes to two), that there had been a violation of Article 5 § 3 as regards the length of the applicant's detention on remand (unanimously) and that there had been a violation of Article 5 § 4 (unanimously).

3. In accordance with Article 5 § 4 of Protocol No. 11 to the Convention, read in conjunction with Rules 100 § 1 and 24 § 6 of the Rules of Court, a panel of the Grand Chamber decided on 13 December 1999 that the case should be dealt with by a Chamber constituted within one of the Sections of the Court. Subsequently the President of the Court, acting under Rule 52 § 1, assigned the case to the Third Section.

4. On 18 January 2000 the President of the Third Section constituted the Chamber in accordance with Article 27 § 1 of the Convention and Rule 26 § 1.

5. The applicant was represented by Mr K. Stungys, a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Mr G. Švedas, Deputy Minister of Justice.

6. Having consulted the parties, the Court decided to dispense with a hearing in the case.

7. On 21 March, 23 March, 29 March, 12 May and 17 May 2000 the parties variously produced a number of documents, either at the Court's request or of their own accord.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, a hotel director, was suspected of a murder committed in 1994. In 1995 the murder case was struck out for lack of evidence.

9. The applicant was arrested on 8 February 1996. On the same date the Chief Police Commissioner ordered the applicant's “preventive detention” (*prevencinis sulaikymas*) for sixty days on the authorisation of the Deputy Prosecutor General. On 9 February 1996 a judge of the Vilnius Regional Court confirmed the preventive detention order. The order referred to a general provision of Article 50-1 of the Code of Criminal Procedure then in force which permitted preventive detention in connection with banditry, criminal association and intimidation. The applicant appealed against his arrest, claiming, *inter alia*, that he had not been informed of the reason for his detention or of any charge against him. On 19 February 1996 a judge of the Vilnius Regional Court dismissed the appeal. No specific charge was

brought against the applicant in the above decision. No investigation was carried out in connection with his preventive detention.

10. On 8 March 1996 the murder case was reopened. The applicant was charged, as a principal offender, with murder with aggravating circumstances. He was accused of organising the unlawful punishment of the alleged thief of his car, who had died as a result. Among the five accused persons in the case were three police officers who had allegedly handed over the arrested victim to the applicant.

11. On 14 March 1996 the Deputy Prosecutor General, by reference to Article 104 of the Code of Criminal Procedure, authorised the applicant's detention on remand on suspicion of murder. His detention was authorised until 4 June 1996.

12. On 27 March 1996 the applicant was questioned. On 22 April 1996 he submitted an application to the prosecution, claiming that there was no evidence to suspect him of having committed or prepared an offence, and that his preventive detention and subsequent detention on remand were incompatible with domestic criminal procedure and Article 5 of the Convention. On 24 April 1996 the Chief Prosecutor of Panevėžys Region dismissed the application on the ground that the applicant's detention could be justified merely by the gravity of the alleged offence.

13. On 17 May 1996 the applicant submitted an application to the Prosecutor General, again arguing that there was no reasonable suspicion against him, and that his detention infringed his rights under Article 5 of the Convention. On 21 May 1996 a regional prosecutor dismissed the application. On 4 June 1996 a renewed application by the applicant's representative was rejected by the Chief Prosecutor of the Panevėžys Region.

14. The pre-trial investigation was concluded on 29 May 1996. From 30 May to 10 June 1996 the applicant and his counsel were given access to the case file. The other defendants in the case had access to the file until 14 June 1996.

15. The applicant, after consulting the case file, submitted an application to the prosecution, arguing that the charge and detention were ill-founded. On 11 June 1996 a prosecutor of the Panevėžys Regional Prosecutor's Office dismissed the application, stating that the case file as a whole contained sufficient evidence of the applicant's guilt.

16. On 13 June 1996 the prosecutor informed the authorities of the prison in which the applicant was remanded that his detention was "automatically extended until 14 June 1996" pursuant to former Article 226 § 6 of the Code of Criminal Procedure, and that the case had been transmitted to the Chief Prosecutor of the Panevėžys Region to confirm the bill of indictment. No decision on the applicant's detention on remand was taken.

17. On 24 June 1996 the Chief Prosecutor of the Panevėžys Region wrote to the prison authorities, informing them that the murder case had been transmitted to the Panevėžys Regional Court, and that the applicant's detention had been valid. No decision as to the detention was taken.

18. On 1 July 1996 the Panevėžys Regional Court informed the prison authorities that a court hearing would be held on 31 July 1996 and that directions for the trial of the applicant and his co-accused would be given. No formal order as to the applicant's detention on remand was issued.

19. On 31 July 1996, at the directions hearing, a judge of the Panevėžys Regional Court decided that the applicant's detention on remand "should remain unchanged". The judge did not mention any other aspects concerning the lawfulness of the applicant's detention. The applicant's counsel was present at the hearing.

20. The trial started before the Panevėžys Regional Court on 3 September 1996. On 9 September the examination of the case was adjourned in order to collect further material evidence.

21. From 14 to 16 October 1996 the Regional Court heard the case in the presence of the applicant and his lawyer. On 16 October 1996 the court decided that the applicant was to remain in custody. No other aspects of the lawfulness of the applicant's detention on remand were mentioned in the decision. The term of the applicant's detention was extended to 15 February 1997. The court also ordered additional investigative measures.

22. On 28 October 1996 the applicant appealed against that decision to the Court of Appeal. He also lodged applications with the Prosecutor General, the prison authorities, and the Ombudsman. The applicant claimed that the Regional Court's decision to detain him had not been valid, because it had simply prolonged a non-existent decision on detention which had expired on 4 June 1996. The applicant stated, *inter alia*, that Article 20 of the Lithuanian Constitution and Article 5 of the Convention had been infringed to his detriment.

23. On 21 November 1996 the Ombudsman drew the attention of the Minister of the Interior, the Prosecutor General, the Director of the Prison Department and the prison governor to the fact that, in his view, the applicant "had been remanded in custody unlawfully from 14 June 1996 until 31 July 1996, in breach of Article 20 of the Constitution ... and Article 5 § 1 (c) of the Convention".

24. On 25 November 1996 the applicant renewed his appeal against his detention.

25. On 27 November 1996 the Court of Appeal disallowed the appeal by reference to Article 372 § 4 of the Code of Criminal Procedure as it was worded at the time. In its letter to the applicant, the Court of Appeal admitted that the lower judges had "possibly" erred in law in deciding the question of his detention, but it noted that no appeal lay against their decisions.

26. On the same date, on appeal by the prosecution against the Panevėžys Regional Court's decision of 16 October 1996, the Court of Appeal quashed the decision to order additional investigative measures in the case. The applicant appealed.

27. On 30 November 1996 the applicant lodged an application against his detention with the President of the Supreme Court. On 30 December 1996 the President of the Criminal Division of the Supreme Court informed the applicant that the application could not be examined. He admitted that the applicant “was remanded in custody from 4 June 1996 to 31 July 1996 without the remand measure being extended”. He emphasised, however, that the “ground of appeal cannot overturn the provision of law according to which a decision ordering, varying or extending a remand measure (Article 372 § 4 of the Code of Criminal Procedure) ... cannot be the subject of an appeal”.

28. On 14 January 1997 the Supreme Court amended the Court of Appeal's decision of 27 November 1996 quashing the Panevėžys Regional Court's decision of 16 October 1996 to order additional investigative measures. The Supreme Court also decided that a bench of three judges rather than a single judge should consider the merits of the murder case.

29. The applicant instituted civil proceedings against the prison authorities for keeping him in detention without any formal order. On 26 February 1997 a judge of the Šiauliai District Court dismissed the action. The judge held that the prison's actions had been based on “the authorisation of the prosecutor, and letters containing information about the extension of the detention, and decisions of the judge and court”. On 28 April 1997 the Šiauliai Regional Court upheld the decision of the District Court.

30. The applicant applied for bail on health grounds. On 17 March 1997 the Panevėžys Regional Court dismissed the application. The trial was again adjourned and additional investigations ordered until 28 April 1997, when the case was referred back to court. The trial resumed on 26 May 1997.

31. On 9 June 1997 the Panevėžys Regional Court acquitted the applicant on all charges for lack of evidence. He was released from custody.

32. The prosecution and the other defendants in the case appealed against the first-instance judgment. On 27 August 1997 the Court of Appeal quashed the judgment of the Regional Court. The case was referred back to the prosecution for further investigation.

33. On 22 October 1997 a prosecutor of the Panevėžys Regional Prosecutor's Office informed the applicant that the criminal proceedings against him had been discontinued by a decision of 21 October 1997.

II. RELEVANT DOMESTIC LAW

34. The following provisions of the Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*) are relevant:

Article 20 § 3

“A person arrested when committing an offence must, within forty-eight hours, be brought to court for the purpose of determining, in the presence of the detainee, whether detention is appropriate. If the court does not order the detention of the arrested person, he shall be released immediately.”

Article 30 § 1

“A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.”

35. Relevant provisions of the former Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*) are:

Article 10 (in force until 21 June 1996)

“No one shall be arrested save by virtue of a decision of a court, or an order of a judge or the authorisation of a prosecutor ...”

Article 50-1 [preventive detention] (in force until 30 June 1997)

“... [H]aving sufficient reasons to suspect that a person may commit a dangerous act, the elements of which are set out in Articles 75 [banditry], 227-1 [criminal association] and 227-2 [intimidation] of the Criminal Code of the Republic of Lithuania, and with a view to preventing the commission of such an act, a chief of police ... may, by a reasoned decision, with the authorisation [of a prosecutor] ... order the arrest of the person ...

Within forty-eight hours, in the presence of the police officer who took the decision to arrest and the prosecutor who authorised it ... a president of a district court, a judge of a regional court or a president of a division of a regional court shall decide on the lawfulness of the arrest.

The judge, in determining whether the arrest was lawful, may of his own motion bring the arrested person before him; however, the judge may also decide in the absence of the arrested person ...

The arrested person ... may appeal against the decision to a higher judge.

... [T]he decision of the higher judge shall be final and cannot be the subject of an appeal ...

... [A] person detained on the authorisation of a prosecutor and whose detention is confirmed by a judge may be so detained for no longer than two months ...”

Since 21 June 1996 arrest may only be ordered by a court or judge.

Article 104**(Law no. I-551 of 19 July 1994, in force until 21 June 1996)**

“Detention as a remand measure shall be used only where based on the decision of a court, the order of a judge or the authorisation of a prosecutor in the case of offences carrying a statutory penalty of at least one year of imprisonment ...

In the case of offences specified in [Article] ... 105 [murder with aggravating circumstances] ... of the Criminal Code, detention as a remand measure may be ordered on the ground of the gravity of the offence alone ...

In deciding whether to authorise the detention, a prosecutor ... shall personally hear the suspect or defendant where necessary ...”

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

“... [T]he arrested person shall be brought before a judge within not more than forty-eight hours ... The judge must hear the person as to the grounds of the arrest. The prosecutor and counsel for the arrested person may take part in the hearing. After having questioned the arrested person, the judge may maintain the arrest order by designating the term of detention, or may vary or revoke the remand measure. ...

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

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

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

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

The version of the Code in force since 24 June 1998 makes it compulsory for the detainee to attend the remand hearings.

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

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

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

A further appeal shall be heard when the extension of the term of detention on remand is examined.”

The present Article 109-1 (in force since 24 June 1998) now provides for an appeal to a higher court and a hearing in the presence of the detainee and his counsel, or his counsel alone.

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

“The period when the accused and his counsel have access to the case file shall not be counted as part of the overall term of pre-trial investigation and detention. Where there are several accused persons, the period during which all the accused and their counsel have access to the case file shall not be counted as part of the overall term of pre-trial investigation and detention.”

Since 24 June 1998 this period has ceased to be relevant for remand decisions.

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

“Decisions of courts ... ordering, varying or revoking a remand measure ... cannot be the subject of an appeal ...”

36. A number of provisions of the present Code of Criminal Procedure are relevant.

Article 52 § 2 (3) and (8) and Article 58 § 2 (8) and (10) provide, respectively, that the accused and their counsel have the right to “submit requests” and to “appeal against acts and decisions of an interrogator, investigator, prosecutor or court”.

Article 249 § 1

“In deciding whether to commit the accused for trial, a judge individually, or a court at a directions hearing, shall determine

...

(11) whether the remand measure has been selected appropriately.”

Article 250 § 1

“After deciding that there is a sufficient basis to commit the accused for trial, a judge individually, or a court at a directions hearing, shall determine issues concerning

...

(2) the remand measure in respect of the accused ...”

Article 267 § 1

“The defendant shall have the right to

...

(3) submit requests;

...

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

Article 277

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

37. The law of 21 June 1996 amending and supplementing the Code of Criminal Procedure (*Baudžiamojo proceso kodekso pakeitimų ir papildymų įstatymas*) stated that detention authorised by a prosecutor prior to 21 June 1996 could thereafter be extended by a court in accordance with the new procedure governing remand in custody.

III. RESERVATION BY LITHUANIA

38. The reservation entered by Lithuania in respect of Article 5 § 3 of the Convention was in force until 21 June 1996 and provided as follows:

“The provisions of Article 5, paragraph 3, of the Convention shall not affect the operation of Article 104 of the Code of Criminal Procedure of the Republic of Lithuania (amended version No. I-551, July 19 1994) which provides that a decision to detain in custody any persons suspected of having committed a crime may also, by decision of a prosecutor, be so detained. This reservation shall be effective for one year after the Convention comes into force in respect of the Republic of Lithuania.”

THE LAW

I. THE APPLICANT'S DEATH

39. The Court notes the fact of the applicant's death, and the wish of his widow to pursue the proceedings he initiated.

40. The Commission held that the applicant's widow had a legitimate interest in pursuing the proceedings on the applicant's behalf.

41. The Court reiterates that, where an applicant dies during the examination of a case concerning the unlawfulness of his detention, his heirs or next of kin may in principle pursue the application on his behalf (see, among other authorities, *Krempovskij v. Lithuania* (dec.), no. 37193/97, 20 April 1999, unreported). The Court considers, like the

Commission, that the applicant's widow has a legitimate interest in pursuing the application in his stead.

II. THE GOVERNMENT'S PRELIMINARY OBJECTION

42. The Government argued that the Court was prevented by the six-month rule in Article 35 § 1 of the Convention from examining the applicant's complaint concerning his preventive detention. They submitted that the applicant's preventive detention had served different purposes from his detention on remand. Furthermore, the preventive detention had been authorised under a different domestic procedure from the one under which he had subsequently been remanded in custody. As the preventive detention had ended on 14 March 1996 and the application had been introduced on 30 December 1996, that aspect of the case had been submitted out of time.

43. The Commission considered that, while the applicant's preventive detention and his detention on remand had been ordered on different grounds in domestic terms, there had been no visible signs of a change of the applicant's status when his preventive detention had been replaced with detention on remand. The Commission considered that the overall period of the applicant's detention should be taken as a whole for the purpose of applying Article 35 § 1 of the Convention, and that the applicant's complaint about his preventive detention could not be rejected for non-compliance with the six-month rule.

44. The Court agrees with the Commission's conclusion. In respect of a complaint about the absence of a remedy for a continuing situation, such as a period of detention, the six-month time-limit under Article 35 § 1 starts running from the end of that situation – for example, when an applicant is released from custody (see, *mutatis mutandis*, the decision of 1 December 1997 as to the admissibility of the present application). In addition, in applying Article 35 § 1 of the Convention the Court often looks behind mere appearances, without excessive formalism (see, among other authorities, the *Guzzardi v. Italy* judgment of 6 November 1980, Series A no. 39, pp. 26-27, § 72).

Although on 14 March 1996 the applicant's preventive detention under Article 50-1 of the Code of Criminal Procedure was formally replaced by detention on remand under Article 104 of the Code, this change of legal basis did not affect the applicant's situation for he was neither moved to another cell or prison, nor brought before a competent legal authority to be informed of the change. The Court therefore considers that the overall period of the applicant's detention must be taken as a whole for the purpose of applying the six-month rule in this case.

As the applicant was still remanded in custody on 30 December 1996, when he lodged the present application relating to that period of detention, the case cannot be dismissed as being out of time.

45. The Court therefore dismisses the Government's preliminary objection.

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

46. The applicant complained that his detention breached Article 5 § 1 of the Convention, the relevant part of which provides:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

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

...”

1. Preventive detention

47. The applicant complained that his preventive detention from 8 February to 14 March 1996 was incompatible with Article 5 § 1 of the Convention. In particular, there had been no grounds for such custody as no criminal proceedings had been pending against him at that time. Moreover, there were no crimes which he should have been prevented from committing.

48. The Government stated that the applicant's preventive detention was compatible with Article 5 § 1 (c) of the Convention as the former provision of Article 50-1 of the Code of Criminal Procedure had permitted detention with a view to preventing the commission of banditry, criminal association and intimidation.

49. The Commission was of the opinion that the applicant's preventive detention had fallen outside the permissible exceptions to the right to liberty, in breach of Article 5 § 1 of the Convention.

50. The Court observes that a person may be deprived of his liberty only for the purposes specified in Article 5 § 1. A person may be detained within the meaning of Article 5 § 1 (c) only in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on suspicion of his having committed an offence (see, *mutatis mutandis*, the *Lawless v. Ireland* judgment of 1 July 1961, Series A no. 3, pp. 51-52, § 14, and the *Ciulla v. Italy* judgment of 22 February 1989, Series A no. 148, pp. 16-18, §§ 38-41).

51. The Court therefore considers that preventive detention of the kind found in the present case is not permitted by Article 5 § 1 (c), Article 50-1 of the Code of Criminal Procedure finding no reflection in any provision of Article 5 § 1.

52. There has thus been a breach of Article 5 § 1 of the Convention in this respect.

2. Detention on remand from 4 June to 31 July 1996

53. The applicant further complained that from 4 June until 31 July 1996 there had been no valid domestic decision or other lawful basis for his detention on remand, in breach of Article 5 § 1 of the Convention.

54. The Government argued that the applicant's detention on remand for that period had been justified under Article 5 § 1 because there was a reasonable suspicion that he had committed murder. No domestic decision had been required to validate that period of detention, during which the applicant and his co-accused had been given access to the case file, in accordance with Article 226 § 6 of the Code of Criminal Procedure then in force. In the Government's view, that provision had permitted the applicant's remand in custody until 21 June 1996. The Government further submitted that Lithuanian law only required a specific term of detention to be fixed at the stage of pre-trial investigation, and that during the trial the court could only order, vary or revoke detention on remand (Articles 104-1, 249 § 1 and 250 § 1 of the Code of Criminal Procedure then in force). Therefore, the applicant's detention from 24 June 1996 had been justified by the fact that the case had been transmitted to the Panevėžys Regional Court, which had subsequently not been required to extend the term of the applicant's detention or otherwise validate it.

55. The Commission considered that the applicant's detention from 4 June to 31 July 1996 had not been authorised by any valid domestic decision or other "lawful" basis, in breach of Article 5 § 1 of the Convention.

56. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof.

However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion.

The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein. On this last point, the Court stresses that, where deprivation of liberty is concerned, it is particularly important that the

general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to allow the person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Baranowski v. Poland*, no. 28358/95, §§ 50-52, ECHR 2000-III).

57. Turning to the circumstances of the present case, the Court notes that the parties agreed that from 4 June to 31 July 1996 no order was made by a judge or prosecutor authorising the applicant's detention. It would seem, therefore, that the applicant's detention during that period was incompatible with the domestic law then in force (Articles 10 and 104 of the Code of Criminal Procedure until 21 June 1996, and Articles 10 and 104-1 of the Code after 21 June 1996).

58. The Government contended, however, that for part of that period the applicant had been kept in detention pursuant to former Article 226 § 6 of the Code of Criminal Procedure whilst he and his co-accused had access to the case file.

59. The Court notes that the prosecutor's letter of 13 June 1996 (see paragraph 16 above), the Ombudsman's decision of 21 November 1996 (see paragraph 23 above), the letter of the President of the Criminal Division of the Supreme Court dated 30 December 1996 (see paragraph 27 above) and the Government's submissions to the Court (see paragraph 54 above) present three different answers to the question as to which part of the applicant's detention was covered by former Article 226 § 6 of the Code of Criminal Procedure, with the result that the applicant's detention could purportedly be justified by that provision until 4, 14 or 21 June 1996. The Court does not deem it necessary to resolve this discrepancy as to the practical effects of former Article 226 § 6 of the Code of Criminal Procedure, because it has been shown to have been vague enough to cause confusion even amongst the competent State authorities. It was therefore incompatible with the requirements of “lawfulness” under Article 5 § 1 of the Convention. Furthermore, the above provision permitted detention by reference to matters wholly extraneous to Article 5 § 1.

It follows that the applicant's deprivation of liberty on the basis of former Article 226 § 6 of the Code of the Criminal Procedure was not prescribed by law within the meaning of Article 5 § 1 of the Convention.

60. The Government further submitted that from 24 June 1996 the applicant's detention had been justified by the sole fact that the case had been transferred to the Regional Court. According to the Government's interpretation of the domestic law applicable at the material time, after that date the court had not been required to extend the time-limit of the applicant's detention or otherwise validate it.

61. The Court considers, however, that the Government's argument does not override the requirement that the applicant's detention had to be based on a valid detention order, but that no such order existed for the period from 4 June to 31 July 1996.

62. Furthermore, the Court reiterates that a practice of keeping a person in detention without a specific legal basis, but because of a lack of clear rules governing the detainee's situation, with the result that a person may be deprived of his liberty for an unlimited period without judicial authorisation, is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Baranowski* cited above, §§ 54-57).

63. The Court observes that the fact that the case was transmitted to the Regional Court on 24 June 1996 did not clarify the question whether – and, if so, under what conditions – the applicant's detention, which had been ordered for a limited period at the investigation stage, could be continued during the trial.

It follows that the applicant's detention on the sole ground that the case had been transmitted to the court did not constitute a “lawful” basis, within the meaning of Article 5 § 1 of the Convention, for the applicant's continued detention on remand.

In sum, during the period from 4 June to 31 July 1996 there was no valid domestic decision or other “lawful” basis for the applicant's detention on remand.

64. There has thus been a violation of Article 5 § 1 of the Convention in respect of this period.

3. Detention on remand from 31 July to 16 October 1996

65. The applicant also complained that, at the directions hearing of 31 July 1996, the Regional Court had erred in its application of Article 104-1 of the Code of Criminal Procedure in deciding that the applicant's detention on remand “should remain unchanged”. In the applicant's opinion, the term of his detention on remand had expired on 4 June 1996, and the Regional Court had failed to order a new remand measure or to specify what type of remand it purported to authorise. In the applicant's opinion, he had been remanded by a lawful court order only on 16 October 1996, when the Regional Court specified that the applicant was to remain in custody. Thus, from 31 July until 16 October 1996 he had been deprived of his liberty contrary to a procedure prescribed by domestic law.

66. The Government argued that, in its decision of 31 July 1996 the Regional Court had authorised the applicant's detention on remand in accordance with domestic requirements.

67. The Commission considered that the applicant's detention from 31 July to 16 October 1996 had been authorised in accordance with a

procedure prescribed by law, in compliance with Article 5 § 1 of the Convention.

68. The Court reiterates that Article 5 § 1 requires, *inter alia*, that detention be compatible with domestic law. As the Court stated in *Baranowski* cited above (§ 50), “while it is normally in the first place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed”.

A period of detention is, in principle, “lawful” if it is based on a court order. Even flaws in the detention order do not necessarily render the underlying period of detention unlawful within the meaning of Article 5 § 1 (see the *Benham v. the United Kingdom* judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, pp. 753-54, §§ 42-47; *Visockas v. Lithuania* (dec.), no. 49107/99, 6 January 2000, unreported; and *Kamantauskas v. Lithuania* (dec.), no. 45012/98, 29 February 2000, unreported).

69. The Court observes that the applicant did not dispute that during the directions hearing of 31 July 1996 the Regional Court had acted within its jurisdiction in so far as it had power to make an appropriate order in respect of the applicant's detention under Articles 10, 104-1, 249 § 1 and 250 § 1 of the Code of Criminal Procedure.

It is true that in its decision the Regional Court did not say that it had “ordered” a new remand measure, nor did it specify which type of remand should “remain unchanged”, regardless of the fact that the term of the applicant's detention had expired on 4 June 1996. However, given the context, the meaning of the Regional Court's decision – that is, that the applicant was to remain in custody – must have been clear to all present on 31 July 1996, including the applicant's lawyer.

The Court does not find that the Regional Court acted in bad faith or that it failed to apply the relevant domestic legislation correctly.

Therefore, it has not been established that the detention order of 31 July 1996 was invalid in domestic law, or that the ensuing detention was unlawful within the meaning of Article 5 § 1.

70. There has thus been no breach of Article 5 § 1 of the Convention in respect of the applicant's detention on remand for the period from 31 July to 16 October 1996.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

71. The applicant alleged a violation of Article 5 § 3 of the Convention, which reads as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

1. Being brought promptly before a judge or other officer

72. The applicant claimed that he had not been brought before an appropriate officer from the moment of his arrest on 8 February until 14 October 1996. He asserted that during the initial period of his detention, from 8 February 1996 to 21 June 1996, he had not been brought before a judge or prosecutor, and that after 21 June 1996, when the amended Code of Criminal Procedure came into force, he had not been brought promptly before a judge. In the applicant's view, Lithuania's reservation in respect of Article 5 § 3 was invalid and did not affect his right to be brought promptly before an appropriate officer.

73. The Government argued that Lithuania's reservation in respect of Article 5 § 3 had effectively removed the applicant's right to be brought promptly before an appropriate officer before its expiry on 21 June 1996, and that after that date his right under Article 5 § 3 no longer existed as its application was limited to the initial deprivation of liberty.

74. The Commission essentially agreed with the Government, finding no violation of Article 5 § 3.

75. The Court first notes that, from the moment of his arrest on 8 February until 14 March 1996, the applicant was held in preventive detention, to which Article 5 § 1 (c) of the Convention did not apply (see paragraphs 51-52 above). Consequently, the guarantee for the applicant to be brought promptly before an appropriate officer under Article 5 § 3 was not applicable to his period in preventive detention.

76. The applicant's detention on remand for the purpose of Article 5 § 1 (c) of the Convention was authorised on 14 March 1996. Accordingly, the Court will examine the complaint from that date.

77. Secondly, the Court notes that from 14 March to 14 October 1996 the applicant remained in custody without being brought before an officer within the meaning of Article 5 § 3 of the Convention. Consequently, the effect of Lithuania's reservation for this period requires scrutiny.

78. The Court refers to Article 57 of the Convention, which reads as follows:

“1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.

2. Any reservation made under this Article shall contain a brief statement of the law concerned.”

79. The Court reiterates that the aim of the prohibition on reservations “of a general character” is to ensure that they are not couched in terms that are too vague or broad for it to be possible to determine their exact meaning and scope (see the *Belilos v. Switzerland* judgment of 29 April 1988, Series A no. 132, p. 26, § 55).

80. The reservation in question by Lithuania was in force until 21 June 1996 and stated in respect of Article 5 § 3 of the Convention that a prosecutor could authorise a person's detention on remand pursuant to Article 104 of the Code of Criminal Procedure in the version applicable at the time (see paragraph 38 above).

81. The Court observes, like the Commission, that the linguistic flaws in the reservation did not render it impossible to determine its meaning and scope. The reservation referred with sufficient clarity to Article 5 § 3 of the Convention and to the pertinent domestic law permitting a prosecutor's decision. The Court concludes that the reservation was sufficiently clear and precise to fulfil the requirements of Article 57 of the Convention.

82. Accordingly, the fact that the applicant was not brought before an appropriate officer when his detention on remand was ordered could not constitute a violation of Article 5 § 3 of the Convention as long as the reservation was in force.

83. It remains to be examined whether the applicant became entitled to be brought promptly before an appropriate officer after the reservation had expired on 21 June 1996.

84. The Court considers that the wording “brought promptly” in Article 5 § 3 implies that the right to be brought before an appropriate officer relates to the time when a person is first deprived of his liberty under Article 5 § 1 (c). The obligation on Contracting States under Article 5 § 3 is therefore limited to bringing the detainee promptly before an appropriate officer at that initial stage, although Article 5 § 4 of the Convention may in certain cases require that the person be subsequently brought before a judge for the purpose of effectively contesting the lawfulness of his detention when it lasts for a long time (see, *mutatis mutandis*, *Trzaska v. Poland*, application no. 25792/94, Commission's report of 19 May 1998, §§ 71-81, unpublished).

85. A reservation under Article 57 of the Convention would be devoid of purpose if, upon its expiry, the State were required to enforce the right retroactively for the period covered by the reservation.

86. As regards the facts of the present case, the reservation in respect of Article 5 § 3 expired on 21 June 1996. At that moment, the applicant had been held in detention on remand since 14 March 1996 – that is, for more than three months. Accordingly, by 21 June 1996 any notion of “promptness” had already been exceeded (see, *mutatis mutandis*, the *Assenov and Others v. Bulgaria* judgment of 28 October 1998, *Reports* 1998-VIII, p. 3299, § 147).

It follows that when the reservation expired Lithuania was no longer under an obligation to bring the applicant promptly before an appropriate officer. Consequently, there was no scope under Article 5 § 3 for a renewed obligation after the expiry of the reservation.

87. There has thus been no violation of Article 5 § 3 of the Convention in this respect.

2. Length of the detention

88. The applicant also alleged a violation of Article 5 § 3 of the Convention in that the overall length of his detention – sixteen months and one day – had been excessive. He claimed, in particular, that no appropriate procedural steps had been taken by the authorities during his preventive detention. He further claimed that the authorities had been too slow during the pre-trial investigation and trial, which had involved unnecessary procedural disputes and stoppages for additional investigations. The applicant concluded that the length of his detention could not be justified under Article 5 § 3 of the Convention.

89. The Government argued that the period to be taken into account had begun on 14 March 1996 and ended on 9 June 1997. They observed that the applicant had thus been detained within the meaning of Article 5 § 3 of the Convention for fourteen months and twenty-six days. The Government stressed that the proceedings in question had related to a charge of murder with aggravating circumstances, and that three policemen had been accused in the case together with the applicant. The fact that the case had been factually and legally complex had been confirmed by the need to adjourn the trial on two occasions for further evidence to be gathered. In the Government's view, the applicant's detention had been authorised not only on the basis of the strength of evidence in the case file and the gravity of the offence, but also because of the danger of the applicant “obstructing the establishment of the truth”. The Government considered that the overall term of his detention on remand had not exceeded the “reasonable time” referred to in Article 5 § 3 of the Convention.

90. The Commission was of the opinion that there had been a violation of Article 5 § 3 in connection with the above complaint on account of the lack of relevant and sufficient reasons adduced by the authorities in sanctioning the applicant's remand in custody.

91. The Court must first determine the period to be taken into consideration. It has concluded that the applicant's preventive detention from 8 February to 14 March 1996 did not fall within the scope of Article 5 § 1 (c), and that Article 5 § 3 was not applicable to the above period (see paragraphs 51, 52 and 75 above). The Court is nonetheless able, in order to assess whether the duration of a period of detention is reasonable, to take account of a part thereof which falls, as such, outside its competence (see *Mitap and Müftüoğlu v. Turkey*, applications nos. 15530/89 and 15531/89,

Commission decision of 10 October 1991, Decisions and Reports 72, p. 169).

92. The applicant's detention on remand lasted from 14 March 1996 to 9 June 1997, that is, fourteen months and twenty-six days. The Court will therefore assess the reasonableness of the length of the applicant's detention on the basis of that period. It will also take into account that, by the time the applicant's detention on remand was authorised, he had been held in custody for over a month since 8 February 1996.

93. The Court reiterates that the reasonableness of the length of detention must be assessed in each case according to its special features. Continued detention may be justified in a given case only if there are clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty.

It falls in the first place to the national judicial authorities to examine the circumstances for or against the existence of such an imperative interest, and to set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions, and of the facts established by the applicant in his appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention.

The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The Court must then establish whether the other grounds given by the judicial authorities were “relevant” and “sufficient” to continue to justify the deprivation of liberty (see, among other authorities, *Punzelt v. the Czech Republic*, no. 31315/96, § 73, 25 April 2000, unreported).

94. In the instant case the only reasons given by the prosecuting authorities for the applicant's detention on remand were the gravity of the offence (see paragraph 12 above) and the strength of evidence against him in the case file (see paragraph 15 above). The Regional Court gave no reasons justifying his continued detention (see paragraphs 19 and 21 above).

The Court considers that the suspicion that the applicant had committed murder may initially have justified his detention, but it could not constitute a “relevant and sufficient” ground for his being held in custody for almost fifteen months, particularly when that suspicion was proved unsubstantiated by the trial court which acquitted the applicant. It follows that the length of the applicant's detention was excessive.

95. There has thus been a breach of Article 5 § 3 of the Convention in this regard.

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

96. The applicant also alleged a violation of Article 5 § 4 of the Convention, which provides:

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

97. The applicant complained that he was unable to contest the lawfulness of his detention on remand in view of the statutory bar on appeals against court decisions authorising detention on remand.

98. The Government argued that the domestic law in question afforded the applicant ample opportunity to contest the lawfulness of his detention, which was reviewed by the Regional Court at its hearings on 31 July and 14 to 16 October 1996.

99. The Commission was of the opinion that the applicant had, in breach of Article 5 § 4, been denied the opportunity to contest the compatibility of his detention on remand with the substantive and procedural provisions of domestic law.

100. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the “lawfulness”, in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see the *Brogan and Others v. the United Kingdom* judgment of 29 November 1988, Series A no. 145-B, pp. 34-35, § 65).

Article 5 § 4 guarantees no right, as such, to an appeal against decisions ordering or extending detention, as the provision speaks of “proceedings” and not of appeals. In principle, the intervention of one organ satisfies Article 5 § 4, on condition that the procedure followed has a judicial character and gives to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question (see, *mutatis mutandis*, the *De Wilde, Ooms and Versyp v. Belgium* judgment of 18 June 1971, Series A no. 12, pp. 40-41, § 76).

101. The Court notes that the Regional Court, in its decisions authorising the applicant's detention on remand, made no reference to his grievances about the unlawfulness of his detention (see paragraphs 19 and 21 above). Furthermore, the Court of Appeal and the President of the Criminal Division of the Supreme Court acknowledged that the lawfulness of the applicant's detention was open to question, but failed to examine the applicant's complaints on account of the statutory bar as then in force (see paragraphs 25 and 27 above).

The civil proceedings brought by the applicant against the prison authorities were not relevant for the purpose of Article 5 § 4 as the civil courts were not competent to order the applicant's release, as may be required by that provision. In any event, in entertaining the applicant's civil action the courts confined themselves to examining whether there had been any formal orders authorising his detention, without assessing the underlying lawfulness of his detention on the basis of those orders (see paragraph 29 above).

It follows that the applicant was denied the right to contest the procedural and substantive conditions essential for the "lawfulness" of his detention on remand.

102. There has thus been a breach of Article 5 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

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

A. Pecuniary damage

104. The applicant sought 256,878 litai (LTL) as compensation for loss of earnings and opportunities caused by his detention. He also claimed LTL 8,600 spent on supplementary food and LTL 1,500 incurred for additional medication and vitamins while in prison.

105. The Government considered these claims to be unjustified.

106. The Court is of the view that there is no causal link between the violations found and the alleged pecuniary damage (see, *mutatis mutandis*, *Baranowski* cited above, § 81, and *Punzelt* cited above, § 103). Consequently, it sees no reason to award the applicant any sum under this head.

B. Non-pecuniary damage

107. The applicant further claimed LTL 191,600 for mental and physical suffering while in prison.

108. The Government considered that the sum in question was exorbitant.

109. The Court finds that the applicant has certainly suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a

violation. Making its assessment on an equitable basis, the Court awards the applicant LTL 60,000 under this head.

C. Costs and expenses

110. The applicant also claimed LTL 85,800 for legal costs in domestic proceedings and before the Convention institutions, and LTL 9,052 for his travel expenses during the domestic proceedings.

111. The Government considered that the above claims were excessive.

112. The Court reiterates that, in order for costs to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred, and are reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

113. The Court considers that the applicant's travel expenses during the domestic proceedings were not incurred in connection with his Convention claims. It therefore declines to award any sum for these expenses.

114. In connection with the lawyers' fees claimed, the Court notes that a considerable part of those fees concerned the applicant's defence in respect of the criminal charges against him and his complaints about their alleged unfairness, which were declared inadmissible by the Commission. Those fees do not constitute necessary expenses incurred in seeking redress for the violations which the Court has found under Article 5 §§ 1, 3 and 4 of the Convention. Making its assessment on an equitable basis, the Court awards the applicant LTL 40,000 for legal costs, together with any value-added tax that may be chargeable.

D. Default interest

115. According to the information available to the Court, the statutory rate of interest applicable in Lithuania at the date of adoption of the present judgment is 9.5% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the applicant's widow has standing to continue the present proceedings in his stead;
2. *Dismisses* the Government's preliminary objection;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's preventive detention;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's detention on remand from 4 June to 31 July 1996;
5. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the applicant's detention on remand from 31 July to 16 October 1996;
6. *Holds* that there has been no violation of Article 5 § 3 of the Convention as regards the alleged failure to bring the applicant promptly before a judge or other officer;
7. *Holds* that there has been a violation of Article 5 § 3 of the Convention as regards the length of the applicant's detention on remand;
8. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
9. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months, the following amounts:
 - (i) LTL 60,000 (sixty thousand litai) in respect of non-pecuniary damage;
 - (ii) LTL 40,000 (forty thousand litai), together with any value-added tax that may be chargeable, for costs and expenses;
 - (b) that simple interest at an annual rate of 9.5% shall be payable from the expiry of the above-mentioned three months until settlement;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 July 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President