CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

**CASE OF GRAUSLYS v. LITHUANIA**

(Application no. 36743/97)

JUDGMENT

STRASBOURG

10 October 2000

**FINAL**

*10/01/2001*

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

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

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

Mr J.-P. COSTA, *President*,
Mr L. LOUCAIDES,
Mr P. KŪRIS,
Mrs F. TULKENS,
Mr K. JUNGWIERT,
Sir NICOLAS BRATZA,
Mrs H.S. GREVE, *Judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 14 September 1999 and 19 September 2000,

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

# PROCEDURE

1. The case originated in an application (no. 36743/97) against the Republic of Lithuania lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Algis Grauslys ("the applicant"), on 2 April 1997.

2. 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.

3. The applicant alleged, in particular, violations of Articles 5 §§ 1, 3, 4 and 6 § 1 of the Convention insofar as his detention in remand was unlawful, he was not brought promptly before a judge or other officer, he was not able to take proceedings to contest the lawfulness of his detention, and the length of the criminal proceedings against him was excessive.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

6. By a decision of 14 September 1999 the Chamber declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, the commercial director of a private company ("the company"), was suspected of fraud. On 4 October 1995 a criminal case was instituted against him.

9. The applicant was arrested on 25 March 1996. His detention on remand was authorised by a prosecutor on 26 March 1996.

10. On 1 April 1996 the applicant was charged with suppressing documents. On 16 May 1996 the applicant was charged with unlawfully obtaining the property of another.

11. On 24 May 1996, by the authorisation of the Deputy Prosecutor General, the term of the applicant's detention on remand was extended to 30 July 1996.

12. The Klaipėda District Court extended the term of the applicant's detention on remand twice: on 24 July 1996 to 25 August 1996 and on 19 August 1996 to 25 September 1996. On 23 September 1996 the Klaipėda Regional Court extended the term of the applicant's detention on remand to 9 October 1996.

13. The pre-trial investigation in the case was concluded on 27 September 1996. The applicant had access to the case-file from 3 to 31 October 1996, while the other three co-accused were given access from 27 September to 7 November 1996.

14. In a communication of 27 September 1996, the prosecution informed the prison administration that the pre-trial investigation had been concluded and access to the case-file had commenced.

15. On 30 October 1996 the applicant applied to the prosecution for bail, contesting the lawfulness of his detention after 9 October 1996. On 8 November 1996 a prosecutor informed the applicant that there were no reasons to vary the remand. The prosecutor stated *inter alia*, "the access by the accused and their counsel to the case-file was completed on 7 November 1996. On 8 November 1996 the criminal case was transmitted for the confirmation of the bill of indictment. The validity of the term of the applicant's detention was not breached". No remand decision was taken.

16. On 12 November 1996 a prosecutor informed the prison administration that access to the case-file had been completed on 7 November 1996, and that the case had been transmitted to the Klaipėda

Chief Regional Prosecutor to confirm the bill of indictment. On the same date a prosecutor informed the prison administration that the bill of indictment had been confirmed, and that the case had been transmitted to the Klaipėda Regional Court. No remand decision was taken.

17. On 19 November 1996 the Klaipėda Regional Court forwarded the case to the Kretinga District Court. No formal decision on the applicant's detention was taken. On the same date the applicant applied to the Minister of Justice, claiming that his detention had been unlawful since 9 October 1996.

18. On 4 December 1996 the applicant applied to the Kretinga District Court for bail. On 5 December 1996 a judge of the Klaipėda District Court committed the applicant to trial. In his decision the judge also decided that the applicant's "remand shall remain unchanged". The decision did not refer to other aspects regarding the lawfulness of the applicant's detention. The judge also set 13 January 1997 as the date of the first trial hearing.

19. The hearing took place on 13 January 1997. On the same date the applicant again applied for bail.

20. On 15 January 1997 the judge of the Kretinga District Court, in the presence of the applicant's counsel, ordered further investigations in the case. The judge noted *inter alia* that the prosecution had alleged that financial damage to the company and its shareholders had been caused by the applicant and the co-accused. However, no victims had been established and questioned. In addition, the company's audit had not been properly carried out. The judge held that the trial could not continue until these procedural requirements were met.

21. By the same decision the judge also dismissed the applicant's request for bail and extended the term of his detention on remand for three months. The dangers of the applicant absconding and "obstructing the establishment of the truth" in the case were mentioned as reasons for this decision. The judge did not mention the applicant's allegations about the unlawfulness of his detention since 9 October 1996.

22. On the same date the applicant appealed to the Klaipėda Regional Court, claiming that he had been unlawfully kept in detention after 9 October 1996. On 20 January 1997 the applicant lodged with the Klaipėda Regional Court a further appeal against the decisions of the Kretinga District Court of 5 December 1996 and 15 January 1997. He stated *inter alia* that Article 5 of the Convention had been breached to his detriment.

23. On 28 January 1997 the applicant submitted a complaint to the Ombudsman, alleging that the term of his detention had expired on 9 October 1996, and that thereafter the prison administration had kept him in custody unlawfully.

24. On 17 February 1997 the Klaipėda Regional Court held an appeal hearing in the presence of the applicant's counsel. The Regional Court

dismissed the appeal insofar as it concerned "the substance of the decision of the Kretinga District Court of 15 January 1997", pursuant to Article 372 § 4 of the Code of Criminal Procedure as then in force. No aspects concerning the alleged unlawfulness of the applicant's detention were mentioned in the appellate decision. The Regional Court nonetheless ordered the applicant's release on bail, without giving reasons. He was immediately released from prison.

25. On 20 February 1997 the Ombudsman drew the attention of the Minister of Interior and the prison authorities to the fact that from 7 November to 5 December 1996 the applicant had been remanded in custody in breach of Article 5 § 1 (c) of the Convention.

26. On 23 June 1997 the additional investigation was concluded. On 17 July 1997 the case was again transmitted to the Kretinga District Court. On 21 July 1997 a judge of the Kretinga District Court committed the applicant to trial.

27. On 6 October 1997 the judge again decided to order further investigations. He noted that the investigating authorities had breached domestic criminal procedure in its conduct of the pre-trial investigation and the collection of additional evidence. The judge held *inter alia* that the company's audit had been defective and that the prosecution had not established or questioned victims in connection with the damage suffered by the company.

28. Upon the prosecution's appeal against the above decision, on 17 November 1997 the Klaipėda Regional Court quashed the decision of 6 October 1997. The Regional Court held that no breaches of domestic criminal procedure had been specified by the District Court, which might warrant the collection of additional evidence. The appellate court stated *inter alia* that the District Court could itself establish and summon victims in connection with the company's losses, without returning the case back to the prosecution for further investigations.

29. On 17 December 1997 a judge of the Kretinga District Court joined the case against the applicant and the three co-accused with a case against another defendant. The judge withdrew from the case on the ground *inter alia* that he had taken decisions on the applicant's detention on 5 December 1996 and 15 January 1997.

30. On an unspecified date, jurisdiction was transferred from the Kretinga District Court to the Skuodas District Court. On 2 April 1998 a judge of the Skuodas District Court committed the applicant to trial. On 12 June 1998 the judge adjourned the case until 12 September 1998 and ordered further investigations, particularly on the ground that the company's audit had been defective. In this respect, the court requested the Ministry of Finance to carry out a fresh audit.

31. On an unspecified date, the applicant's trial was resumed. To date no first instance judgment has been pronounced.

## II. RELEVANT DOMESTIC LAW

<Translations are given>

32. Relevant provisions of the Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija*):

Article 20 § 3:

> "A person arrested when committing an offence must, within 48 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 court."

33. Relevant provisions of the previous Code of Criminal Procedure (*Baudžiamojo proceso kodeksas*):

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 … ."

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

Article 104 (under the 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, order of a judge, or the authorisation of a prosecutor in cases where a statutory penalty of at least one year of imprisonment is envisaged … .
>
> In cases pertaining to offences provided in Articles … 105 [murder in aggravating circumstances] … of the Criminal Code, detention as a remand measure may be used 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 when 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 48 hours ... The judge must hear the person as to the grounds of the arrest. The prosecutor and counsel for the arrested person may take part in the inquiry. After having questioned the arrested person, the judge may maintain the arrest order by designating the term of detention, or may vary or revoke the remand measure. …
>
> After the case has been transmitted to the court ... [it] can order, vary or revoke the detention on remand."

The amended Article 104-1 (in force since 24 June 1998) provides that the prosecutor and defence counsel must take part in the first judicial inquiry of the arrested person, unless the judge decides otherwise. The amended provision also permits the court to extend the 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 and the prosecutor and, if necessary, the detained person shall be called."

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

Article 109-1 (in force from 21 June 1996 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, there may be convened a hearing, to which the arrested person and his counsel or only counsel shall be called. The presence of a prosecutor is obligatory at such a hearing.
>
> The decision taken by [the appellate judge] is final and cannot be the subject of a cassation appeal.
>
> A further appeal shall be determined when examining the extension of the term of the detention on remand."

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

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

> "The period when the accused and his counsel have access to the case-file is not counted towards the overall term of pre-trial investigation and

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

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

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

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

34. Other relevant provisions of the present Code of Criminal Procedure:

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 and court."

Article 249 § 1:

"A judge individually or a court in a directions hearing, in deciding whether to commit the accused for trial, shall determine ...

11) whether the remand measure has been selected appropriately."

Article 250 § 1:

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

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

Article 267 § 1:

"The defendant has the right to ... 3) submit requests; ...

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

Article 277:

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

35. The law amending and supplementing the Code of Criminal Procedure (*Baudžiamojo proceso kodekso pakeitimų ir papildymų*

*įstatymas*) of 21 June 1996 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. LITHUANIAN RESERVATION

36. The Lithuanian reservation to 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. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

#### *1. Detention on remand from 9 October to 5 December 1996*

37. The applicant complained that from 9 October until 5 December 1996 there had been no valid domestic decision or other lawful basis for his detention on remand in breach of Article 5 of the Convention, the relevant part of which provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: …
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; … ."

38. The Government argued that the applicant's detention on remand for this period had been justified by the suspicion that the applicant had committed an offence, the applicant's and his co-accused's access to the case-file under the former Article 226 § 6 of the Code of Criminal

Procedure and the fact that the case had been transmitted to the Klaipėda Regional Court.

39. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see *Jėčius v. Lithuania*, no. 34578/97, 31.7.2000, § 56).

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

40. The Court observes that from 9 October to 5 December 1996 no order was made by a judge authorising the applicant's detention under Articles 10 and 104-1 of the Code of Criminal Procedure; nor was there any other "lawful" basis for the applicant's remand in custody under Article 5 § 1 (see, *mutatis mutandis*, *ibid.*).

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

*2. Detention on remand from 5 December 1996*

42. The applicant also alleged a violation of Article 5 § 1 in that on 5 December 1996 the Kretinga District Court erred in domestic law when it decided that his "remand shall remain unchanged". In the applicant's opinion, the term of his detention on remand had expired on 9 October 1996, and the District Court failed to order a new remand measure or to specify what type of remand it purported to authorise.

43. The Government argued that, by the decision of 5 December 1996, the District Court had authorised the applicant's detention on remand in accordance with domestic requirements.

44. The Court recalls that Article 5 § 1 of the Convention requires *inter alia* that the detention is compatible with domestic law. While it is normally in the first place for the domestic 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 compliance with national law.

A period of detention is, in principle, "lawful" within the meaning of Article 5 § 1 if it is based on a court order. Even flaws in the detention order do not necessarily render the underlying period of detention unlawful (see the Jėčius case cited above, § 68).

45. The Court observes that the applicant did not dispute that on 5 December 1996 the District Court acted within its jurisdiction insofar 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 further observed that the domestic law (Articles 249 § 1 and 250 § 1 of the Code) left it to the discretion of the District Court to decide whether or not there was a need to convene a directions hearing with a view *inter alia* to deciding on the applicant's remand.

The District Court used its statutory discretion to issue an order for the applicant's remand in accordance with domestic law. It is true that in its decision the District Court did not say that it "ordered" a new remand measure, nor did it specify which type of remand "shall remain unchanged", regardless of the fact that the term of the applicant's detention had expired since 9 October 1996. However, given the context, the meaning of the court's decision – i.e., that the applicant was to remain in custody - must have been clear to the applicant.

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

Therefore, it has not been established that the detention order of 5 December 1996 was invalid in domestic law, or that the ensuing detention was unlawful within the meaning of Article 5 § 1 (see, *mutatis mutandis*, *ibid.*, § 69).

46. There has thus been no breach of Article 5 § 1 of the Convention as regards the applicant's remand in custody from 5 December 1996.

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

47. The applicant further complained that throughout the whole period of his detention, from 25 March 1996 to 17 February 1997, he was never brought before a judge or other officer, in breach of Article 5 § 3 of the Convention, which provides 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."

48. The Government argued that the applicant had no right to be brought promptly before a proper officer while the Lithuanian reservation to Article 5 § 3 applied, and that he did not obtain any such right following the expiry of the reservation on 21 June 1996.

49. By reference to the above mentioned Jėčius case (§§ 77-87), the Court concludes that during the initial period of the applicant's detention from 25 March to 21 June 1996 Lithuania was under no obligation to bring the applicant promptly before a proper officer as a result of the Lithuanian reservation to Article 5 § 3 (see paragraph 36 above), and that during the subsequent period of the applicant's detention no new obligation on the State arose in regard to the above provision of the Convention.

50. There has thus been no violation of Article 5 § 3 of the Convention.

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

51. The applicant complained that the statutory bar to appeal against decisions authorising detention under former Article 372 § 4 of the Code of Criminal Procedure deprived him of the right to contest the lawfulness of his detention since 9 October 1996. In this regard he alleged a breach of Article 5 § 4 of the Convention, which provides as follows:

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

52. The Government argued that through the decisions of 5 December 1996, 15 January and 17 February 1997 the domestic courts did afford the applicant a proper review of his detention in accordance with Article 5 § 4.

53. The Court recalls that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention.

Article 5 § 4 guarantees no right, as such, to an appeal against decisions ordering or extending detention, but the intervention of a judicial organ at least at one instance must comply with the guarantees of Article 5 § 4 (see the Jėčius case cited above, § 100).

54. On the facts of the present case, the Court observes that the decisions of the domestic courts mentioned by the Government included no reference to the applicant's numerous appeals about the unlawfulness of his detention

since 9 October 1996 (see paragraphs 18 and 21-24 above). Even in its decision to release the applicant, the Regional Court refused to examine the applicant's allegations of breaches of domestic law and the Convention because of the bar created by Article 372 § 4 of the Code of Criminal Procedure then in force, and did not specify any reasons for the applicant's release (see paragraph 24 above). The release order could thus be interpreted as an acknowledgement that the lawfulness of the applicant's remand was open to question, but it did not constitute an adequate judicial response for the purposes of Article 5 § 4 (see, *mutatis mutandis*, *ibid.*, § 101).

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

## IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

56. The applicant further complained that the length of the criminal proceedings against him breached Article 6 § 1 of the Convention, the relevant part of which provides as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

57. The Government stated that the fraud proceedings were particularly complex, owing specifically to the fact that the case-file consisted of fifteen volumes. In the present case four charges were brought against the four co-defendants regarding various criminal activities from 1993 to 1995. During the course of the proceedings twelve expert examinations were carried out and 67 witnesses questioned. The Government stated that no delay could be attributed to the authorities, and that the length of the proceedings was compatible with the "reasonable time" requirement of Article 6 § 1.

### A. Period to be taken into consideration

58. The period to be taken into consideration began on 4 October 1995, when the criminal case was instituted against the applicant.

No first instance judgment has been pronounced in the case to date.

59. It follows that the proceedings have so far lasted five years.

### B. Reasonableness of the length of the proceedings

60. According to the Court's case-law, the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances

of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case (see, as a recent authority, *Starace v. Italy*, no. 34081/96, 27.4.2000, § 24).

61. Turning to the facts of the present case, the Court considers that the fraud case may be regarded as complex, owing *inter alia* to the nature of the financial charges against the applicant and his co-defendants. However, the Court notes that the domestic authorities have shown neither diligence nor rigour in the handling of the present case: up until 12 June 1998 the trial was adjourned or discontinued three times because the competent authorities had not carried out a proper audit of the company concerned, and they failed to establish and question the victims of the alleged wrongdoing (see paragraphs 20, 27, 28 and 30 above). Furthermore, the Government have not provided any explanation as to what procedural steps have been taken since 12 June 1998 which might warrant the prolongation of the trial for another two years.

Against the above background, even if the applicant may be considered to be responsible for some of the delays, this cannot justify the time wasted by the repeated failures to carry out a proper audit and to establish and question victims; nor does it justify the overall length of these first instance proceedings which are still pending (see, *mutatis mutandis*, *ibid.*, §§ 25-27). In such circumstances, the Court finds that the length of the proceedings to date has been excessive and does not satisfy the "reasonable time" requirement.

62. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant sought 20,350 Lithuanian litai (LTL) as compensation for loss of earnings and opportunities caused by his detention and the length of the proceedings against him. He also claimed 16,000 LTL spent on supplementary food and 2,000 LTL incurred for additional medication and vitamins while in prison.

65. The Government considered these claims to be unjustified.

66. The Court is of the view that there is no causal link between the violations found and the alleged pecuniary damage (see, *mutatis mutandis*, the above mentioned Jėčius case, § 106, and the Starace case, § 31). Consequently, it finds no reason to award the applicant any sum under this head.

### B. Non-pecuniary damage

67. The applicant further requested the Court to make an award for moral and physical suffering while in prison and as a result of the excessive length of the criminal proceedings. The applicant left it to the Court to determine the amount of such an award.

68. The Government considered the applicant's claim unjustified.

69. The Court finds that the applicant has certainly suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation (see, *mutatis mutandis*, the above mentioned Jėčius case, § 109; *Dewicka v. Poland*, no. 38670/97, 4.4.2000, § 32). Making its assessment on an equitable basis, the Court awards the applicant 40,000 LTL under this head.

### C. Costs and expenses

70. The applicant further claimed 72,600 LTL by way of legal costs in domestic proceedings and before the Convention organs, and 4,000 LTL for his travel expenses during the domestic proceedings.

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

72. The Court recalls 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 reasonable as to quantum (see the above mentioned Jėčius case, § 112).

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

74. In connection with the lawyers' fees claimed, the Court notes that a considerable part of these fees concerned the applicant's defence to the criminal charges against him before the domestic authorities and his complaint about the length of his detention which was declared inadmissible by the Court. These fees do not constitute necessary expenses incurred in seeking redress for the violations of the Convention which the Court has found under Article 5 §§ 1 and 4 and Article 6 § 1 of the Convention (see, *mutatis mutandis*, *ibid.*, § 114). Making its assessment on an equitable basis, the Court awards the applicant 20,000 LTL for his legal costs, plus any value-added tax that may be chargeable.

### D. Default interest

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

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the applicant's detention on remand from 9 October to 5 December 1996;
2. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the applicant's detention on remand from 5 December 1996;
3. *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;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
6. *Holds*:
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
   (i) 40,000 (forty thousand) Lithuanian litai in respect of non-pecuniary damage;
   (ii) 20,000 (twenty thousand) Lithuanian litai for legal costs and expenses, plus any value-added tax that may be chargeable;
   (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;
7. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 10 October 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President