



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

THIRD SECTION

CASE OF STAŠAITIS v. LITHUANIA

(Application no. 47679/99)

JUDGMENT

STRASBOURG

21 March 2002

FINAL

21/06/2002

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Stašaitis v. Lithuania,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TÜRMEŃ,
Mr J. HEDIGAN,
Mrs H.S. GREVE, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 28 February 2002,

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

PROCEDURE

1. The case originated in an application (no. 47679/99) 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, Arvydas Stašaitis (“the applicant”), on 24 June 1998.

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

3. The applicant alleged, in particular, the unlawfulness of his remand in custody from 21 September 1996 to 3 January 1997, from 23 September 1997 to 15 October 1998, and from 30 September 1999 to 8 February 2000 in breach of Article 5 § 1 of the Convention, the length of his detention on remand in violation of Article 5 § 3, and the inability to take court proceedings to contest the lawfulness of the detention in breach of Article 5 § 4.

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 28 November 2000, the Chamber declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was the owner and director of several holding companies which defaulted on their financial obligations. On 8 January 1993 criminal proceedings were instituted against him on suspicion that he had concealed his income. On 30 July 1993 the applicant was charged with cheating. On 2 August 1993 the case was transferred to the Vilnius First City District Court. On the same date the applicant was granted bail. On 25 July 1994 the applicant failed to attend a court hearing, and the court ordered his detention on remand.

9. On 25 October 1994 another criminal case was instituted against the applicant concerning irregular operations with currency and securities. On the same date, a prosecutor authorised the applicant's detention on remand in the context of that case.

10. Meanwhile, the applicant was suspected of hiding in Russia. On 25 October 1994 the Prosecutor General requested the Russian authorities to extradite him on suspicion of having engaged in irregular operations with currency and securities. On 29 October 1994 the applicant was arrested in Moscow. On 1 November 1994 he was extradited to Lithuania and remanded in custody.

11. On 9 November 1994 he was charged with irregular operations with currency and securities. On 10 November 1994 the prosecutor's decision of 25 October 1994 to authorise the applicant's detention on remand was revoked on the ground that there had already been the court order regarding the applicant's detention of 25 July 1994.

12. On 27 December 1994 the judge of the Vilnius City First District Court decided that the applicant should remain in custody. No term was specified.

13. On 20 March 1995 the Prosecutor General authorised the applicant's detention in the criminal case concerning the operations with currency and securities. The Prosecutor General noted that the applicant had previously breached his bail, and that the reasons for his detention were the dangers of absconding and obstructing the establishment of the truth in the case. No term of detention was specified.

14. On 21 March 1995 the Vilnius Regional Court revoked the detention order of 25 July 1994.

15. On an unspecified date the criminal cases against the applicant were joined. From 18 May 1995 until 21 August 1996 the term of the applicant's detention was extended every two months by the Prosecutor General, for fear of the applicant's absconding.

16. On 14 August 1996 the applicant was indicted on nine counts, including cheating, misappropriating the property of another, and irregular operations with currency and securities. There were four other co-accused persons in the case. On the same date the Prosecutor General extended the term of the pre-trial investigation until 21 September 1996.

17. On 20 August 1996 a judge of the Vilnius Regional Court examined the prosecution's application to extend the term of the applicant's detention until 21 September 1996 given the risks of absconding and obstructing the establishment of the truth in the case. The prosecutors' application was granted. The applicant's defence counsel was present at the hearing.

18. On 10 September 1996 the pre-trial investigation was concluded. From 10 September 1996 until 14 November 1996 all the accused had access to the case-file.

19. On 18 November 1996 the Deputy Prosecutor General confirmed the bill of indictment whereby the applicant was charged on nine counts, including cheating (Article 274 of the Criminal Code), embezzlement (Article 275), and irregular operations with currency and securities (Article 329).

20. On 20 November 1996 the case was transmitted to the Kaunas City District Court. On 29 November 1996 the applicant submitted an application to the Kaunas City District Court, complaining that the term of his detention on remand had expired. He requested his release. The court did not examine this application.

21. On 3 January 1997 a judge of the Kaunas City District Court, without hearing the parties, took a decision to commit the applicant and his co-accused for trial. The judge noted no fundamental procedural irregularities in the case. The judge also decided that the applicant's detention on remand "shall remain unchanged". No term or grounds for that detention were specified.

22. The applicant submitted a request to vary the remand, alleging that he had been seriously ill. On 3 March 1997 the judge of the Kaunas City District Court dismissed the request. The reasons for the dismissal were that the applicant had been accused of having committed serious offences, that he had already tried to avoid trial, and that he could therefore abscond and obstruct the establishment of the truth in the case. The applicant's defence counsel was present at the hearing.

23. On 23 May 1997 the judge ordered further investigations in the case and returned the case-file to the investigators. In the same decision the judge extended the term of the applicant's detention for four months. No grounds for the detention were specified. The applicant's defence counsel was present at the hearing.

24. The prosecution appealed, complaining that there was no need for further investigation and that the trial could proceed. The applicant's detention on remand was not mentioned in the prosecution's appeal.

25. On 26 August 1997 the Kaunas Regional Court rejected the prosecution's appeal, holding that further investigation measures were required. The applicant's defence counsel was present at the hearing. The Regional Court amended the decision of 23 May 1997 insofar as the District Court had decided to return the case-file to the investigators. It ordered the return of the case-file to the Prosecutor General. The applicant's detention on remand was not mentioned in the decision of 26 August 1997.

26. On 26 September 1997 the Prosecutor General lodged a cassation appeal against the decisions of 23 May 1997 and 26 August 1997, stating that there was no need for further investigation and that the trial should resume.

27. On 29 December 1997 the applicant submitted an application to the Court of Appeal, complaining that the term of his detention had ended on 23 September 1997 and that it had not been extended thereafter. He renewed the complaint on 8 and 21 January 1998. These applications were not examined.

28. On 29 January 1998 the Court of Appeal examined the prosecuting authorities' cassation appeal. The court quashed the decisions of 23 May 1997 and 26 August 1997, deciding that the trial could be resumed. It transmitted the case to the Kaunas City District Court for a new examination. The court concluded that, "although the decision to order further investigations is quashed, the decision to commit the accused persons for trial [of 3 January 1997], whereby the question of the remand measures in respect of the accused has been properly decided, remains effective". The applicant's defence counsel was present at the hearing.

29. The applicant applied to the Ombudsman, complaining that his detention had been unlawful. The prison administration stated in reply that, pursuant to Article 106 § 5 of the Code of Criminal Procedure at that time, the applicant could be lawfully detained on remand for more than six years.

30. Having examined the applicant's complaint and the observations of the prison administration, on 18 February 1998 the Ombudsman held that Article 20 of the Lithuanian Constitution, Articles 96 and 106 of the Code of Criminal Procedure and Article 9 of the Detention on Remand Act provided that a person could only be remanded in custody pursuant to an appropriate order, specifying the term of detention. He observed that a detainee ought to be released from prison if the term of detention was not extended by a court. On the basis of the above observations, the Ombudsman concluded that certain periods of the applicant's detention had been unlawful under the domestic criminal procedure. The Ombudsman rejected the prison administration's arguments that there had been valid court decisions during the overall period of the applicant's detention and that Article 106 § 5 of the Code of Criminal Procedure authorised the

applicant's continued remand in custody for more than six years, given that the maximum sentence for the most serious offence with which the applicant was charged was 10 years' imprisonment. The Ombudsman emphasised that this legal provision was incompatible with the right to be brought to trial within a reasonable time guaranteed by Article 5 § 3 of the Convention. The Ombudsman also drew the attention of the Prosecutor General and the Court of Appeal to the fact that the length of the applicant's remand in custody had been excessive. Finally he addressed the Parliamentary Committee on Legal Affairs, stating that the provisions of the Code of Criminal Procedure "regulating the terms of detention on remand are not clear or logical [because] calculating the terms depends on various circumstances, including access to the case-file and dates when a particular decision becomes effective". As such circumstances were not foreseeable and could be interpreted in different ways, the Ombudsman suggested amendments to the Code of Criminal Procedure.

31. At a trial hearing before the judge of the Kaunas City District Court on 4 May 1998, the applicant stated that he had been unlawfully detained. He requested the judge to order his release. The applicant also claimed access to additional material held in the case-file. In a decision of 4 May 1998, the judge stated that a court would establish whether or not the applicant's detention on remand had been unlawful when delivering the judgment on the merits of the case. The applicant's request to vary the remand was rejected on the ground that he might abscond. The judge allowed the applicant to have access to additional material held in the case-file at a time when there are no trial hearings.

At a trial hearing on 14 May 1998, the applicant repeated his request for bail, complaining about the lawfulness and conditions of his detention. The judge of the Kaunas City District Court noted that the medical experts had not yet submitted their conclusions as to the applicant's state of health. The judge refused to vary the remand, as there was no guarantee that the applicant would not abscond.

32. The applicant repeatedly applied to the Ombudsman, alleging in particular that the court decision of 20 August 1996 had not been included in the case-file, and that the prison administration could not know that his detention on remand had been prolonged from 20 August 1996 to 21 September 1996.

33. On 12 June 1998 the Ombudsman amended his conclusions of 18 February 1998 insofar as they concerned one period of the unlawful detention of the applicant.

34. On 13 July 1998 the applicant complained to the Kaunas Regional Court that he had requested the Kaunas City District Court to discontinue the unlawful detention, not that the court vary the remand. The applicant referred to the amended provision of Article 109-1 of the Code of Criminal Procedure, which had come into force on 24 June 1998. The applicant requested the Regional Court to quash the decisions of the Kaunas City

District Court of 3 January 1997 and 14 May 1998. He stated that he could not remain in custody because of his health, and that the length of the detention had been excessive, in breach of Article 5 § 3 of the Convention. He also requested the Regional Court to hear him in person when examining the appeal. On 21 July 1998 the applicant announced a hunger strike in connection with his detention.

35. On 28 July 1998 a judge of the Kaunas Regional Court informed the applicant that his challenge to the decisions of 3 January 1997 and 14 May 1998 was not subject to appeal, pursuant to the then Article 372 § 4 of the Code of Criminal Procedure.

36. On 9 September 1998 the applicant submitted a request to the judge of the Kaunas City District Court to be released. On 10 September 1998 the judge dismissed the request on the ground that the applicant might abscond.

37. On 15 October 1998 the judge of the Kaunas City District Court found the applicant guilty of the nine charges against him, the applicant and his defence counsel being present. The judge established that the applicant had unlawfully appropriated various assets of a total worth of several million litai. He was sentenced to seven years' imprisonment and his property was confiscated. No allegations of the unlawfulness of the remand were mentioned by the court.

38. On 2 November 1998 the applicant appealed against his conviction, alleging various procedural irregularities, including breaches of his rights to legal representation, to examine witnesses, and to have unconditional access to the case-file. He stated *inter alia* that the latest extension of the term of his detention on remand was that made by the Vilnius Regional Court on 20 August 1996, and that his remand in custody from 21 September 1996 had been unlawful. He claimed that his detention had been excessively long. On 30 November 1998 the applicant supplemented the appeal, submitting *inter alia* that Articles 3, 5, 6 and 7 of the Convention had been breached, and that he had been unable to challenge judges and prosecutors who had allegedly fabricated the case against him.

39. On 22 March 1999 the Kaunas Regional Court amended the applicant's conviction as regards the count concerning irregular operations with currency and securities. In this respect the court reclassified the charge under Article 329 of the Criminal Code with that under former Article 87 of the Criminal Code which had been applicable at the time when the crime was committed. The applicant and his defence counsel were present at the appellate hearing. The Regional Court considered that no procedural irregularities had occurred during the pre-trial investigation and trial, noting *inter alia* that the applicant had had several defence counsel throughout the proceedings, he had had full access to the case-file, experts had been consulted and witnesses had been questioned. The Regional Court did not change the applicant's sentence. On 14 June 1999 the applicant lodged a cassation appeal, pleading *inter alia* that his detention had been unlawful.

40. On 30 September 1999 the Supreme Court quashed the conviction and the appellate decision because of numerous breaches of domestic criminal procedure, including violations of the applicant's defence rights. The court ruled *inter alia* that the applicant could only have been prosecuted on one count of irregular operations with currency and securities under former Article 87 of the Criminal Code, by reference to which he had been extradited from Russia. It held that the other eight counts could not stand unless the appropriate permission from Russia had been obtained. The court also stated that it had no competence to examine the applicant's allegations of unlawful detention during the pre-trial investigation. It did not decide on the applicant's remand, but it ordered the release on bail of his co-accused. The case was returned to the Kaunas City District Court for a new examination to be carried out. The applicant remained in prison.

41. On 30 September 1999 the applicant wrote letters to the Prosecutor General, the Minister of the Interior, the Minister of Justice and the President of the Kaunas City District Court, stating that his detention from 30 September 1999 had been unlawful in that, *inter alia*, the Supreme Court had not decided the question of his remand.

42. By letter of 1 October 1999 a Supreme Court judge informed the Kaunas City District Court and the Prisons Department that the detention order of 3 January 1997 had constituted a valid basis for the applicant's continued detention on remand because the order of 23 May 1997 had been quashed by the Court of Appeal on 29 January 1998.

43. On 11 and 13 October 1999 the applicant requested the Kaunas City District Court to release him on the ground that his detention had been unlawful. The applicant pleaded *inter alia* that the question of the lawfulness of his detention remained unclear, as was shown by the necessity of the aforementioned letter of 1 October 1999.

44. On 25 October 1999 a judge of the Kaunas City District Court returned the case to the prosecution for further investigations to be carried out. The court also extended the term of the applicant's detention on remand for two months, given the gravity of the nine offences for which he could be convicted if the appropriate permission from Russia were obtained.

45. On 30 October 1999 the applicant appealed, which appeal was dismissed by the Kaunas Regional Court on 14 December 1999. The court referred to the danger of the applicant absconding as warranting his remand in custody on suspicion of his having committed the nine possible offences. The Regional Court noted that although Russia's permission to press these charges had not yet been granted, the prosecuting authorities had enough time to apply to the Russian Federation for that authorisation.

46. On 24 December 1999 the applicant applied to the Kaunas City District Court for release. He stated, *inter alia*, that he could only be prosecuted for the one offence of irregular operations with currency and securities. He noted that no permission had been obtained from Russia to

prosecute him on other charges, and that the courts' reference to those charges as warranting his remand in custody had been unlawful.

47. On 24 December 1999 a judge of the Kaunas City District Court rejected the prosecution's application to extend the term of the applicant's remand in custody. By reference to Article 399 of the Code of Criminal Procedure, the judge held that the order of 25 October 1999 had become effective on the date when the appeal had been decided, and that the two months' time-limit for the applicant's remand in custody had therefore started on 14 December 1999. The applicant remained in prison.

48. Both the applicant and the prosecution appealed against the decision of 24 December 1999, rejected respectively by the Kaunas Regional Court on 10 and 20 January 2000. The Kaunas Regional Court referred the question of the applicant's detention to the Vilnius Regional Court.

49. On 8 February 2000 the Vilnius Regional Court refused the prosecution's application to extend the applicant's remand in custody. The court held that the term of the applicant's detention designated on 25 October 1999 had expired on 25 December 1999, and that his remand in custody after that date had been unlawful. The Vilnius Regional Court also held that the applicant could only be prosecuted on one charge of irregular operations with currency and securities, for which he risked a maximum sentence of five years' imprisonment. However, the applicant had completed those five years on 29 October 1999. The Regional Court further noted that on 17 January 2000 Russia had given permission to prosecute the applicant on the other charges, but that at the material time the applicant was not charged with any other offence, and could not be deprived of his liberty on that basis. The court concluded that the applicant's release was warranted. The applicant was released in the courtroom.

50. The applicant has not been remanded in custody since. It appears that the proceedings are still pending at first instance.

II. RELEVANT DOMESTIC LAW AND PRACTICE

51. 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."

52. The previous and amended 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 deciding whether to authorise the detention, a prosecutor ... shall personally hear the suspect or defendant when necessary”

Article 104 (in force from 21 June 1996):

“Detention on remand shall be used only ... in cases where a statutory penalty of at least one year’s imprisonment is envisaged.

The grounds for detention on remand shall be the reasoned suspicion that the accused will:

- (1) abscond from the investigation and trial;
- (2) obstruct the determination of the truth in the case [influence other parties or destroy evidence];
- (3) commit new offences ... whilst suspected of having committed crimes provided in Articles ... [274] [cheating,] 275 [embezzlement] of the Criminal Code”

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

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

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

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

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

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

Pursuant to the general provision of Article 399, a first instance decision was not effective pending the time-limit for an appeal against that decision or during the appeal proceedings. Only those decisions against which no appeal was possible, including remand decisions under the former Article 372 § 4, became effective and were executed on the date when they were taken. The present Article 104-3 § 3 (version in force from 21 December 1999) specifies that all decisions of detention on remand become effective and are executed on the date when they are taken, regardless of the fact that an appeal is possible against any such decision under the amended Article 109-1 (since 24 June 1998, see above).

53. Other relevant provisions of the 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.”

54. 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.

THE LAW

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

1. Detention on remand from 21 September 1996 to 3 January 1997

55. The applicant complained that during the period from 21 September 1996 until 3 January 1997 there was no court order authorising his remand in custody, in breach of Article 5 § 1 of the Convention, which provides, insofar as relevant, as follows:

“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;”

56. According to the Government, the applicant’s detention on remand for this period was justified by the suspicion that he had committed an

offence, the applicant's and his co-accused's access to the case-file under former Article 226 § 6 of the Code of Criminal Procedure, and the fact that the case had been transmitted to the Kaunas City District Court.

57. The applicant argued that none of the circumstances mentioned by the Government could have replaced a valid detention order during this period, in breach of the domestic law and Article 5 § 1 of the Convention.

58. The Court recalls that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (*Jėčius v. Lithuania*, no. 34578/97, 31.7.2000, § 56, ECHR 2000-IX).

59. In the *Jėčius* case the Court found that access to the case-file under former Article 226 § 6 of the Code of Criminal Procedure or the sole fact that the case had been transmitted to the court did not constitute a "lawful" basis for detention on remand within the meaning of Article 5 § 1 of the Convention, and that they could not prolong or replace the valid detention order required by domestic law (*loc. cit.*, §§ 56-64).

60. The Court observes that from 21 September 1996 until 3 January 1997 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.*).

61. There has thus been a violation of Article 5 § 1 of the Convention as regards this period.

2. Detention on remand from 23 September 1997 to 15 October 1998

62. The applicant further complained under this provision that from 23 September 1997 until 15 October 1998 there had been no apparent court order or other "lawful" basis authorising his remand in custody. In this respect he stated that on 23 May 1997 the court had extended the term of his detention for four months. However, after four months, the applicant had not been released from prison. Furthermore, the Court of Appeal had not been competent to decide on his detention on remand at "cassation level" as no appeal lay against remand decisions at the material time. The dismissal of his numerous applications to vary the remand had not constituted proper orders authorising detention. Therefore, for more than a year, from 23 September 1997 until the date of his conviction on 15 October 1998, he

had been held in custody without a proper domestic decision, in breach of Article 5 § 1 of the Convention.

63. The Government stated that the decision of the Court of Appeal of 29 January 1998, whereby the validity of the detention order of 3 January 1997 had been reinstated, and the first instance decisions of 4 and 14 May and 10 September 1998 dismissing the applicant's requests to vary remand and obtain release on bail, had constituted valid orders for his remand in custody under the domestic criminal procedure. The Government contended therefore that the applicant's detention at that stage had been compatible with Article 5 § 1 of the Convention.

64. On the facts of the present case, the Court notes that on 23 May 1997 the first instance court extended the term of the applicant's detention for four months, that is until 23 September 1997. Thereafter at least until 29 January 1998 no court order was made authorising the applicant's detention on remand. It follows that the period of the applicant's detention from 23 September 1997 until 29 January 1998 was clearly incompatible with Article 5 § 1 of the Convention (also see §§ 58-61 above).

65. As regards the situation from 29 January 1998, the Court notes that by the decision of 23 May 1997 the first instance court not only authorised the applicant's detention, but also ordered further investigations in the case. While part of the decision, insofar as it concerned the remand in custody, could not be contested by way of an appeal due to the statutory bar as then applicable (former Article 372 § 4 of the Code of Criminal Procedure), the decision was open to appeal insofar as it concerned the order for further investigations. The prosecutors availed of their right to appeal the latter part of the decision, but were unsuccessful at the appellate level (decision of 26 August 1997). They brought a further appeal to the Court of Appeal which executed its jurisdiction at "cassation level". On 29 January 1998 the Court of Appeal purported to quash the decisions of 23 May 1997 and 26 August 1997, including the part of the decision of 23 May 1997 concerning the applicant's detention. The Court of Appeal retroactively reinstated the decision of 3 January 1997, mentioning that the question of the applicant's "remand had been properly decided" in that decision.

66. The Court considers that the Court of Appeal had no apparent authority to decide on the applicant's detention at "cassation level", in accordance with Articles 10 and 104-1 of the Code of Criminal Procedure, given that the Court of Appeal could not, and was not asked by the parties to, rule on the remand matter (Article 372 § 4 as then in force). The conclusion that a "cassation level" court lacks jurisdiction to decide detention matters appears to be confirmed by the fact that the Supreme Court, while subsequently quashing the applicant's conviction, noted that it was not competent to resolve questions pertaining to the lawfulness of the applicant's detention (see § 40 above).

67. The Court further recalls that Article 5 § 1 requires 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 the *Jėčius* judgment cited above, § 56). Although a period of detention is, in principle, lawful if it is based on a valid court order (*loc. cit.*, § 68), the Court considers that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1.

68. The Court observes that uncertainty was created by the judicial authorities by merging detention decisions with other procedural acts, resulting in a lack of clarity regarding the lawfulness of the applicant’s detention in view of the different regulation and remedies provided by domestic law in connection with those procedural acts. Furthermore, it remains unclear why did the Court of Appeal consider it necessary to quash the order of 23 May 1997 and to reinstate retroactively the order of 3 January 1997 insofar as both these decisions had authorised the applicants’ remand in custody. The Court of Appeal gave no reasons for its decision in this respect and, by reinstating the detention order issued more than a year before, it took no account of the applicant’s current situation. This failure was even more regrettable given that the orders of 3 January and 23 May 1997 had not referred to any reasons for the applicant’s remand in custody, with the result that no ground for the applicant’s detention had been mentioned in a valid detention order since 20 August 1996 (see § 17 above). In these circumstances, even assuming that on 29 January 1998 the Court of Appeal was competent to decide the question of the applicant’s detention by retroactively reinstating the detention order of 3 January 1997, the handling by the Court of Appeal of the remand matter did not comply with the requirements of clarity, foreseeability, and the protection from arbitrariness, which together constitute the essential elements of the “lawfulness” of detention within the meaning of Article 5 § 1 of the Convention.

69. It follows that the decision of the Court of Appeal of 29 January 1998 did not constitute a “lawful” basis for the applicant’s continued remand in custody. Thereafter, until the applicant’s conviction on 15 October 1998, no order was made by a judge authorising the applicant’s detention under Articles 10 and 104-1 of the Code of Criminal Procedure; nor was there any other “lawful” basis for his remand in custody under Article 5 § 1 of the Convention (see, *mutatis mutandis*, *loc. cit.*, §§ 56-64; also see §§ 58-61 and 64 above).

70. Accordingly, there has been a breach of Article 5 § 1 as regards the applicant’s detention from 23 September 1997 until 15 October 1998.

3. *Detention on remand from 30 September 1999 to 8 February 2000*

71. The applicant finally alleged that his remand in custody from 30 September 1999 until 8 February 2000 also breached Article 5 § 1 of the Convention. In this respect he complained that the Supreme Court should have ordered his release on 30 September 1999, having quashed his conviction. He contended that from thereon the maximum sentence he had risked was five years' imprisonment, but he had already spent a longer period in prison. However, the Supreme Court on 30 September 1999 had not even examined the question of his remand. Furthermore, his detention from

30 September 1999 could not have been justified by reference to the faulty decisions of 3 January 1997, 25 October, 14 and 24 December 1999.

72. The Government argued that the Supreme Court, by quashing the applicant's conviction on 30 September 1999, had reinstated the detention order of 3 January 1997. This order had constituted a valid basis for the applicant's remand in custody until 25 October 1999. On that date a new detention order had been issued, in accordance with the relevant domestic requirements, based on the suspicion that the applicant had committed an offence. The applicant's detention on remand had been further authorised until his release on 8 February 2000. According to the Government, the fact that these orders had been subsequently found to be partially unlawful had not disclosed a violation Article 5 § 1 of the Convention.

73. The applicant stated that neither domestic law, nor the requirement of the protection from arbitrariness under Article 5 § 1 of the Convention, had permitted his remand in custody from the moment when his conviction had been quashed on 30 September 1999 until his release on 8 February 2000.

74. The Court observes that the applicant's conviction was quashed by the Supreme Court on 30 September 1999, but no decision or legal basis for his ensuing detention was specified. The situation during this period was so vague that a Supreme Court judge had to explain to the District Court, by way of a non-procedural letter, the applicant's detention status (see § 42 above). However, neither this letter, nor indeed the alleged retroactive application of the detention order of 3 January 1997, could constitute a "lawful" basis for the applicant's continued remand in custody (see §§ 65-70 above). Nor did the District Court subsequently resolve this question on 25 October 1999, when it authorised the applicant's detention regardless of the fact that at the time the applicant was not and could not be charged with an offence warranting his continued remand in custody, as confirmed by the decision of the Regional Court of 8 February 2000. Furthermore, the applicant's detention up to that date was incompatible with domestic law, as found by the court which ordered his release.

75. It follows that from 30 September 1999 until 8 February 2000 there was no appropriate court order or other "lawful" basis justifying the applicant's detention under Article 5 § 1 of the Convention (see, *mutatis*

mutandis, the aforementioned *Jėčius* judgment, §§ 56-64; also see §§ 58-61 and 64-70 above).

76. Accordingly, there has also been a violation of Article 5 § 1 as regards this period.

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

77. The applicant alleged that the length of his detention on remand was excessive, in violation of Article 5 § 3 of the Convention, which reads, insofar as relevant, as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

78. The Government submitted that the Court was only competent to examine this complaint for the periods from 20 June 1995 (the date of the entry into force of the Convention with regard to Lithuania) until 15 October 1998 (the date of the first instance conviction), and from 30 September 1999 (the date when the conviction was quashed) until 8 February 2000 (the applicant’s release). In the Government’s view, the authorities had adduced “relevant and sufficient” reasons for the applicant’s detention throughout these periods, in particular the danger of his absconding and obstructing the establishment of the truth. Furthermore, the complexity of the case and the numerous charges against the applicant and his co-defendants had constituted a natural reason for the length of the proceedings. There had been no delays that could be attributed to the authorities. Overall, the length of the applicant’s pre-trial detention had not been excessive.

79. The applicant argued that no argument adduced by the Government could have justified the overall length of his remand in custody.

80. The Court must first determine the period to be taken into consideration. The Court is unable to examine events which occurred before the date of the entry into force of the Convention with regard to Lithuania, i.e. 20 June 1995. 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, *mutatis mutandis*, the aforementioned *Jėčius* judgment, §§ 91-92). The applicant had been detained in Lithuania from 1 November 1994, that is for seven months and 19 days before the entry into force of the Convention with regard to Lithuania. While the Court has no competence *ratione temporis* to examine this period, as such, it will take into account that the applicant had been remanded in custody for seven months and 19 days before his detention under Article 5 § 3 of the Convention commenced.

81. The applicant’s remand in custody lasted from 20 June 1995 until his conviction on 15 October 1998 that is for three years, three months and 25 days. Thereafter he was further kept in detention on remand from the

moment when his conviction was quashed on 30 September 1999 until his release on 8 February 2000, that is for four months and 9 days. It follows that the total length of the applicant's detention on remand under Article 5 § 3 was three years, eight months and 3 days.

82. The Court reiterates that the reasonableness of the length of detention must be assessed in each case according to its specific 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 (*loc. cit.*, § 93).

83. The Court is satisfied that, given the applicant's previous escape, the reasons given by the prosecutors and the courts as warranting his pre-trial detention, namely the danger of his absconding and obstructing the investigation and the strength of the evidence against him in the case-file, may have initially justified his detention.

84. At the same time, it is noted that from 21 September 1996 until 3 January 1997 and from 23 September 1997 until the applicant's conviction on 15 October 1998, no appropriate court order was taken authorising his remand in custody (see §§ 55-70 above). Furthermore, the detention orders of 3 January and 23 May 1997, and the decision of the Court of Appeal of 29 January 1998, did not refer to any grounds for remand (see, in particular, §§ 67-68 above). While fear of the applicant's absconding was indicated by the judges as the essential ground for their refusal of his various requests for release in 1997 and 1998, the Court considers that at that time this ground had already become less convincing, given that the applicant had spend almost four years in detention on remand before his conviction was pronounced. It must also be noted that the Ombudsman found that the length of the applicant's detention had been excessive in terms of domestic law, and that the investigation had been unduly delayed by the authorities (see § 30). The situation further aggravated following the annulment of the applicant's conviction on 30 September 1999, after which he spent more than four months in custody despite the fact that he had already completed the maximum term of punishment for the offence of which he was accused (see § 49 above).

85. The Court agrees that the proceedings in question could be considered as complex in view of the nature of the financial offences alleged against the applicant and the number of charges against him and his co-accused. However, the complexity of the proceedings cannot, as such, justify the very long period of the applicant's remand in custody, in view of the numerous procedural irregularities in the domestic courts' handling of his detention matters from 21 September 1996 and the lack of "relevant and sufficient" reasons given when authorising his remand in custody from that date. It follows that the length of the applicant's detention was excessive.

86. There has thus been a breach of Article 5 § 3.

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

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

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

88. The Government argued that the domestic law had afforded the applicant ample opportunities to contest the lawfulness of his detention, namely to submit requests for release which could be reviewed by the domestic courts. In addition, the trial court on many occasions of its own motion had verified the appropriateness of the applicant's detention, and the appellate court had examined the applicant's allegations about the unlawfulness of his detention in his appeal against the conviction, thereby affording him the guarantees of Article 5 § 4 of the Convention.

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

90. The Court recalls that Article 5 § 4 of the Convention entitles arrested or detained persons to obtain the review of the procedural and substantive conditions essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only the 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).

91. On the facts of the present case, the Court observes that the domestic courts, in their decisions authorising the applicant's remand in custody or

rejecting his requests for release, gave no reply to his numerous complaints about the unlawfulness of his detention from 21 September 1996 until 3 January 1997 and from 23 September 1997 until 15 October 1998, in view of the statutory bar under the former Article 372 § 4 of the Code of Criminal Procedure (see §§ 20-36, and 55-70 above). There was thus no adequate judicial response to the applicant's complaints, contrary to what is required by Article 5 § 4 (see, *mutatis mutandis*, the above mentioned *Jėčius* case, § 101).

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

93. 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

94. The applicant sought EUR 434,430 as compensation for loss of earnings and opportunities caused by the violations of Article 5 of the Convention. He also claimed EUR 8,978.22 spent on supplementary food and medication while in prison.

95. The Government considered these claims to be unjustified.

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

B. Non-pecuniary damage

97. The applicant sought EUR 144,810 as compensation for non-pecuniary damage as a result of the violations of Article 5.

98. The Government considered the claim to be excessive.

99. The Court finds that the applicant has certainly suffered non-pecuniary damage, which is not sufficiently compensated by the finding of a violation (see the above mentioned *Jėčius* (§ 109) and *Grauslys* (§ 69) cases). Making its assessment on an equitable basis, the Court awards the applicant EUR 21,700 under this head.

C. Costs and expenses

100. The applicant also claimed EUR 11,584.8 by way of legal costs in the domestic proceedings and before the Convention organs.

101. The Government considered this claim excessive.

102. 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 *Grauslys* case, § 72).

103. The Court notes that a part of the lawyer's fees concerned the applicant's defence to the criminal charges against him before the domestic authorities. These fees do not constitute necessary expenses incurred in seeking redress for the violation of the Convention which the Court has found under Article 5 of the Convention (see, *ibid.*, § 74). Making its assessment on an equitable basis, the Court awards the applicant EUR 8,700 for his legal costs.

D. Default interest

104. 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 6.92 % 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 21 September 1996 to 3 January 1997, from 23 September 1997 to 15 October 1998, and from 30 September 1999 to 8 February 2000;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention as regards the length of the applicant's detention;
3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
4. *Holds*:
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts to be converted into the national currency of the respondent State at the rate applicable on the date of settlement:

- (i) EUR 21,700 (twenty one thousand seven hundred euros) in respect of non-pecuniary damage;
- (ii) EUR 8,700 (eight thousand seven hundred euros) in respect of legal costs and expenses, plus any value-added tax that may be chargeable;
- (b) that simple interest at an annual rate of 6.92 % shall be payable from the expiry of the above-mentioned three months until settlement;

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

Done in English and notified in writing on 21 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President