



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

SECOND SECTION

CASE OF ŠULCAS v. LITHUANIA

(Application no. 35624/04)

JUDGMENT

STRASBOURG

5 January 2010

FINAL

05/04/2010

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

In the case of Šulcas v. Lithuania,

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

Françoise Tulkens, *President*,

Vladimiro Zagrebelsky,

Danutė Jočienė,

Dragoljub Popović,

András Sajó,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 35624/04) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Donatas Šulcas (“the applicant”), on 2 June 2003. In this application the applicant raised complaints relating to the second set of criminal proceedings and administrative proceedings described at paragraphs 35 to 42 below. In his supplement to the application, lodged with the Court on 1 October 2004, the applicant submitted complaints relating to a first set of criminal proceedings described at paragraphs 4 to 34 below.

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

3. On 7 June 2006 the Court decided to communicate the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

1. The first set of criminal proceedings

4. The applicant owns several companies.

5. On 15 December 1993 a State-owned bank, *Lietuvos valstybinis komercinis bankas*, brought a civil action against the applicant, alleging that the latter had failed to repay a number of loans granted to his companies.

6. On 30 August 1994 the Kėdainiai District Court granted the bank's claim in the sum of 97,563.60 Lithuanian litas (LTL) against the applicant's personal venture "Nida". On 28 May 1997 another State owned bank, the *Turto bankas*, became the successor of the creditor's claim.

7. On 24 January 1995 in the above-mentioned civil case the Kėdainiai District Court ordered the seizure of the applicant's company's vehicles.

8. On the same day the prosecution instituted criminal proceedings on suspicion that the loans from the *Lietuvos valstybinis komercinis bankas* had been obtained by fraud on a large scale (*sukčiavimas stambiu mastu*) (Article 274 § 3 of the Criminal Code as then in force).

9. The applicant was summoned as a witness for questioning before the prosecutors on 23 February 1995. However, he failed to appear.

10. On 12 April 1995 the *Lietuvos akcinis inovacinis bankas* submitted a civil claim in the sum of LTL 97,536 in the criminal proceedings against the applicant.

11. On 13 April 1995 the prosecution opened a new set of criminal proceedings under the then Article 274 § 3 of the Criminal Code concerning another episode of alleged large-scale fraud and Article 316 of the Criminal Code for deliberate failure to repay loans (*skolininko nesąžiningumas ir apgaule*).

12. On 24 April 1995 the two sets of proceedings were joined.

13. On 7 June 1995 the applicant was questioned in the criminal proceedings as a witness.

14. On 29 August 1995 the applicant was ordered not to leave his place of residence.

15. On 31 August 1995 the *Lietuvos valstybinis komercinis bankas* submitted a civil claim against the applicant in the sum of nearly 3,000,000 LTL. On 30 March 1998 the *Turto bankas* took over the former creditor's claim against the applicant.

16. On 22 September 1995 the prosecution approved the bill of indictment. The case was transferred to the court.

17. On 23 October 1996 the Kėdainiai District Court found that the pre-trial examination had been incomplete and returned the case to the prosecution. The court also decided to charge two *Lietuvos valstybinis komercinis bankas* employees, M.B. and R.L., who were suspected of aiding and abetting the applicant.

18. On 29 January 1997 a new set of criminal proceedings was opened. The applicant was accused of selling or hiding property that could have been used for the repayment of his loans (Article 316 § 1 of the Criminal Code).

19. On 4 April 1997 part of the applicant's property was seized.

20. On 11 February 1998 the civil proceedings against the applicant were discontinued, since the civil claim was submitted in the criminal proceedings against him.

21. On 8 June 1998 several houses belonging to the applicant and his relatives were seized.

22. On 30 July 1998 the bank accounts of the applicant's companies were seized.

23. On 26 October 1998 new charges on three counts of forgery of official documents (the then Article 207 § 2 of the Criminal Code) were brought against the applicant.

24. On 7 January 1999 the prosecution approved the bill of indictment. During the pre-trial investigation it was established that the applicant, together with M.B. and R.L., had acted in an organised group and from 1991 to 1993 had embezzled and stolen (*iššvaistė ir pasisavino*) money from the *Lietuvos valstybinis komercinis bankas* in the sum of LTL 750,181 (approximately 217,254 euros (EUR)). They were also suspected of having forged nine credit and mortgage agreements (*kredito sutartis ir turto įkeitimo sutartis*), thereby having caused significant damage to the State. The charges against the applicant and the two co-accused amounted to 44 counts of fraud, forgery and unlawfully obtaining the property of another.

25. On 28 March 2001 the Kėdainiai District Court, at the request of the applicant's counsel, returned the case for additional pre-trial investigation. On 24 May 2001 the Panevėžys Regional Court quashed that decision and returned the case for trial.

26. On 29 April 2002 the Kėdainiai District Court convicted the applicant of forgery and unlawfully obtaining the property of another (Articles 207 § 2 and 275 § 3 of the Criminal Code as then in force). The same day the obligation on the applicant not to leave his place of residence was lifted.

27. On 11 July 2002 the Panevėžys Regional Court heard the case on appeal. The court dismissed as unsubstantiated the applicant's allegation that it was partial and could not decide the case. As to the merits, it quashed the Kėdainiai District Court's judgment, returning the case for a fresh examination because of various procedural irregularities. In particular, it was established that the first-instance court had breached its duty to respect the principle of the secrecy of deliberations.

28. On 26 August 2002 the Kėdainiai District Court adjourned the examination of the case because one of the co-accused, R.L., had fallen ill with cancer. On 23 September 2002 that court held one more hearing. The applicant and the other co-accused, M.B., requested the court to adjourn the proceedings until R.L. had recovered. However, the Kėdainiai District Court dismissed their request, noting that given the serious nature of R.L.'s illness it was not possible to ascertain if and when the latter would be able to take

part in the proceedings. The court disjoined the charges against R.L. in order to avoid a delay in the proceedings against the applicant and M.B.

29. On 28 October 2002 the Kėdainiai District Court dismissed the applicant's request for a supplementary audit examination to be executed and for certain supplementary documents to be obtained. The court noted that the applicant's requests had been addressed by earlier court rulings and that it was obvious that the applicant was merely attempting to prolong the criminal proceedings.

30. On 8 January 2003 the Kėdainiai District Court convicted the applicant of forgery of an official document and of unlawfully obtaining the property of another. The applicant was sentenced to four years' imprisonment and the confiscation of half of his assets. M.B., the applicant's co-accused, was also convicted but had her sentence lifted. The court also granted the *Turto bankas*' civil claim in the sum of LTL 750,181.17, to be paid by the applicant and M.B. The court noted that the civil claim could be paid out of seized property.

31. At a hearing of 13 May 2003 at the Panevėžys Regional Court, the applicant alleged that the chamber which was to decide his case was partial. The court dismissed the applicant's allegation as unfounded. The applicant further alleged the partiality of the whole Panevėžys Regional Court and requested that his case be heard by another regional court. The Panevėžys Regional Court transferred the case to the Court of Appeal for the questions of partiality to be resolved.

32. On 4 June 2003 the Court of Appeal found the applicant's complaint of partiality to be unsubstantiated. The case was returned to the Panevėžys Regional Court for examination.

33. On 14 October 2003 the Panevėžys Regional Court quashed the trial court's judgment of 8 January 2003 and adopted a new decision. The applicant was acquitted of unlawfully obtaining the property of another; the charges of forgery were reclassified, and the proceedings in this respect discontinued on account of the fact that the criminal prosecution had become time-barred. The seizure of the applicant's property was lifted. The *Turto bankas*' civil claim was left unexamined.

34. On 6 April 2004 the Supreme Court dismissed the applicant's cassation appeal.

2. The second set of criminal proceedings

35. On 16 November 2001 the applicant was accused of faulty accounting practices (Article 322 of the Criminal Code as then in force).

36. On 25 February 2002 the bill of indictment was approved.

37. On 18 April 2002 the Kėdainiai District Court convicted the applicant.

38. On 27 June 2002 the Panevėžys Regional Court upheld the conviction.

39. The applicant lodged a cassation appeal, alleging that the courts had erred in fact and law, that the first-instance judge had been biased, and that the court of appeal had failed to respond to his arguments.

40. On 14 January 2003 the Supreme Court dismissed the applicant's cassation appeal, no procedural irregularities having been detected.

3. *Administrative proceedings*

41. On 25 October 2002 the Inland Revenue ordered the applicant to pay certain taxes and surcharges on unpaid tax.

42. On 4 July 2002 the Vilnius Regional Administrative Court dismissed the applicant's appeal against the order. On 10 September 2002 the Supreme Administrative Court upheld the decision.

4. *Civil proceedings for damage*

43. On 13 September 2005 the Panevėžys Regional Court approved the claim of the *Turto bankas* in the sum of LTL 3,015,423.17 against the applicant's personal venture "Nida".

44. On 11 May 2006 the Court of Appeal quashed the above decision and remitted the case for a fresh examination.

45. On 25 January 2006 the applicant, invoking, *inter alia*, Articles 6.246 and 6.272 of the Civil Code, lodged a complaint with the Vilnius Regional Court claiming redress in the total amount of LTL 6,015,423.17 for pecuniary and non-pecuniary damage, which he alleged to have sustained "due to the unlawful actions of the court when that court had been adjudicating the civil case". In particular, the applicant noted that since 1990 he had been the owner of a personal venture "Nida". From 1993 to 1996 the authorities brought a number of criminal charges against him. Moreover, a number of civil claims had been lodged against that company. On 30 March 1998 the *Turto bankas* took over the creditor's claim. The applicant observed that, by a decision of 13 September 2005, the Panevėžys Regional Court granted the *Turto bankas*' claim in the sum of LTL 3 015 423.17. In the applicant's view, that decision had been unfounded. The applicant further noted that:

"from 1993 to 2003 I had been defending my rights in courts against unlawful claims of [the creditors]. Moreover, for 10 years corrupt law enforcement officials unlawfully continued to criminally prosecute me and attempted to break me down psychologically and morally. ... However, after 10 years, justice had been done and by the judgment of 14 October 2003 I had been acquitted in the criminal case and the unlawful civil claims had been left unexamined. ... Nonetheless, by a decision of 13 September 2005, the judge of the Panevėžys Regional Court openly mocked the above judgment, which had already entered into force, as well as my ten-year struggle to achieve justice in the Lithuanian courts, and by unlawfully granting the [*Turto bankas*] creditor's claim in the sum of LTL 3 015 423.17 performed an act of Judas ..."

46. The applicant concluded that, in addition to pecuniary damage, the Panevėžys Regional Court's decision of 13 September 2005 had caused him non-pecuniary damage, given that that decision had humiliated him and caused him psychological suffering. As compensation for non-pecuniary damage, the applicant claimed LTL 3 000 000 from the State of Lithuania.

47. On 26 January 2006 the Vilnius Regional Court accepted his lawsuit for examination.

48. By a decision of 21 June 2006, the Vilnius Regional Court suspended the civil proceedings until the creditors' claims were resolved in the civil case against the personal venture of the applicant. The court noted, *inter alia*, that:

“The plaintiff Donatas Šulcas submitted a lawsuit, the object (*ieškinio dalykas*) of which is the damage caused by the Panevėžys Regional Court's [allegedly] unlawful decision [of 13 September 2005] by which that court granted the *Turto bankas*' creditor's claim in Donatas Šulcas' personal venture's “Nida” case. ...”.

49. By a decision of 30 June 2006, the Panevėžys Regional Court granted the *Turto bankas*' creditor's claim in the amount of LTL 97,536.60.

50. The Court has no information as to the outcome of the civil proceedings for damage.

II. RELEVANT DOMESTIC LAW AND PRACTICE

51. Article 135 § 4 of the Code of Civil Procedure provides that a lawsuit must contain a plaintiff's claim (the subject matter of the lawsuit (*ieškinio dalykas*)). Pursuant to Article 138, if a lawsuit does not meet the requirements of Article 135, a judge may order the plaintiff to rectify it.

52. Article 6.272 § 1 of the Civil Code allows a civil claim for pecuniary and non-pecuniary damage arising from the unlawful actions of investigating authorities or courts in the context of a criminal case. The provision envisages compensation for an unlawful conviction, an unlawful arrest or detention, the application of unlawful procedural measures of enforcement, or an unlawful administrative penalty. According to recent domestic case-law, this provision may also allow claims for damages arising from the excessive length of criminal proceedings. In particular, by a judgment of 6 February 2007 the Supreme Court awarded an individual damages under this provision on account of the excessive length of criminal proceedings which had been instituted in 1998 and discontinued in 2004 (see *Norkūnas v. Lithuania*, no. 302/05, § 26, 20 January 2009). Other relevant domestic law concerning domestic remedies for the excessive length of civil proceedings is reproduced in the judgment of *Četvertakas and Others v. Lithuania* (no. 16013/02, § 22, 20 January 2009).

53. Article 340 of the Code of Criminal Procedure, in force until 1 May 2003, provided that, upon adoption of an accusatory judgment, a court was to fully or partially grant the civil claim lodged in the criminal

proceedings. Pursuant to Article 341, if an exculpatory judgment was adopted, the civil claim was to be left unexamined and the civil claimant was entitled to lodge that claim in separate civil proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. The applicant complained that the length of the criminal proceedings had been incompatible with the “reasonable time” requirement of Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

55. The Government presented joined arguments as to the admissibility of the complaint in respect of the length of the criminal proceedings under Article 6 § 1 of the Convention and the complaint as to the alleged violation of Article 13 thereof.

56. The Government contended that the applicant could have applied to the domestic courts claiming redress for the length of the criminal proceedings, pursuant to Article 6.272 of the Civil Code, and indeed did have recourse to that measure. In particular, on 25 January 2006 the applicant lodged a lawsuit with the Vilnius Regional Court claiming that the judicial proceedings against him had been too lengthy and had been unlawful. In that lawsuit the applicant clearly expressed his intention to seek redress for “10 years of unlawful criminal prosecution”. If the applicant’s claim had not been thus formulated, it would have been for the judge of the domestic court to return the lawsuit to the applicant for rectification. Nonetheless, on 26 January 2006 the court accepted the applicant’s lawsuit for examination. It followed that the applicant had had access to an effective domestic remedy not only in theory but also in practice within the meaning of Article 13 of the Convention. The Government maintained that, taking into account the fact that the applicant’s complaint regarding redress for the allegedly lengthy proceedings was still pending before the domestic courts, his complaints under Articles 6 § 1 and 13 of the Convention were to be

rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

57. Relying on the ruling of the Constitutional Court of 19 August 2006, the Government alternatively argued that, even presuming that specific redress had not been enshrined in any law, the applicant could have claimed redress by directly relying on the Constitution. Moreover, having regard to the fact that the Convention was a legal act of direct applicability and had precedence over Lithuanian law, the applicant could have relied on it, alleging that the State authorities' inaction had been unlawful and requesting redress at the domestic level.

58. The applicant contested these submissions.

2. The Court

59. As the Court has held on numerous occasions, the purpose of Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 141, ECHR 2006-V). This rule is based on the assumption, reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). Nevertheless, the only remedies which the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; *Dalia v. France*, 19 February 1998, § 38, *Reports* 1998-I; *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

60. In this connection, the Court refers to its conclusion in the case of *Norkūnas* (cited above, § 30), where it decided that a claim for damages under Article 6.272 of the Civil Code did not satisfy the test of "effectiveness" in contexts of the present kind. The Court finds that the Government have not submitted any convincing arguments which would require the Court to depart from this established case-law.

61. In addition, the Court notes that the object of the applicant's claim before the Vilnius Regional Court, as that court found in its decision of 21 June 2006, was the damage caused by the Panevėžys Regional Court's allegedly unlawful decision in the civil case with regard to the reasonableness and amount of the creditors' claims (see paragraph 48 above) but not the damage the applicant allegedly suffered due to the length of the criminal proceedings. In this context the Court reiterates that the domestic courts are best placed for assessing, interpreting and applying

rules of substantive and procedural law (see *Pekinel v. Turkey*, no. 9939/02, § 53, 18 March 2008). Having examined the materials submitted to it, the Court sees no reason to disagree with the conclusions of the Vilnius Regional Court.

62. Lastly, whereas the Government argued that the applicant could have brought a claim based on the Constitution, they have not adduced any evidence to demonstrate that such a remedy had any reasonable prospect of success, especially before the ruling of the Constitutional Court on 19 August 2006. Neither have the Government provided the Court with practical examples showing that the applicant could have relied effectively on the Convention at the domestic level before lodging his supplement to the application with the Court on 1 October 2004.

63. It follows that the Government's objection as to non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. The parties' submissions

65. The Government noted at the outset that despite the fact that the applicant's situation was already substantially affected on 7 June 1995 when he was first questioned as a witness in the criminal proceedings, the beginning of the period to be taken into consideration, to which the criterion of "reasonable time" applied, was 20 June 1995, when the Convention entered into force with regard to Lithuania. They further argued that, due to the financial nature of the criminal acts with which the applicant had been charged, the case was complex. The charges against the applicant amounted to 40 counts of fraud, forgery and unlawfully obtaining the property of another. In addition, the case was voluminous; when transferred for trial, it had consisted of 6 volumes with more than 1,500 pages. As to what was at stake for the applicant, the Government noted that throughout the entire criminal proceedings the applicant had not been detained, but was only required not to leave his place of residence. Last but not least, the Government argued that, by submitting numerous unsubstantiated requests to the investigative authorities and the courts, the applicant himself had caused considerable delays to the criminal proceedings and, as a result, had benefitted from their length. In particular, given that under Lithuanian law a civil claim in criminal proceedings is to be resolved upon the adoption of the judgment convicting or acquitting the defendant, the extended length of the criminal proceedings allowed him to delay repayment of his loans. For

the Government, the State authorities carried out a thorough examination of the circumstances of the case and acted with the required diligence and without unreasoned delays.

66. The applicant disagreed with the Government and alleged that the length of the criminal proceedings in his case had been excessive.

2. *The Court's assessment*

67. The Court shares the Government's view that, even though certain steps in the criminal proceedings against the applicant had been taken before 20 June 1995, it is the latter date, when the recognition by Lithuania of the right of individual petition took effect, from which the period to be taken into consideration must be counted. Given that the proceedings ended on 6 April 2004, when the Supreme Court dismissed the applicant's cassation appeal, within the Court's jurisdiction *ratione temporis* they therefore lasted eight years and nine months. The applicant's case has been adjudicated at three levels of jurisdiction.

68. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant has also to be taken into account (see, among many other authorities, *Philis v. Greece (no. 2)*, 27 June 1997, § 35, *Reports of Judgments and Decisions* 1997-IV, and *Portington v. Greece*, 23 September 1998, § 21, *Reports* 1998-VI).

69. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present application (see, most recently, *Norkūnas*, cited above, §§ 36-41).

70. Turning to the case at hand, the Court shares the Government's view that the case was complex. Neither can the Court fail to observe that the applicant's conduct contributed to the length of the proceedings. Specifically, the applicant himself successfully protracted the proceedings by a few months by making frivolous allegations of partiality on the part of the courts (see paragraphs 31-32 above) and, in addition, attempted to protract them further by submitting unnecessary requests for supplementary expert examinations (paragraph 29 above) or by insisting that the proceedings be suspended (see paragraph 28 above). Nevertheless, the Court finds that some delays in the proceedings were occasioned by mistakes or inertia on the part of the domestic authorities. As a result, the case had to be returned for further investigations on 23 October 1996 by the Kėdainiai District Court, and to the trial court by the Panevėžys Regional Court on 11 July 2002 (see paragraphs 17 and 27 above).

71. Thus, having regard to the above and to its case-law on the subject, the Court considers that in the instant case the overall length of the

proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

72. The applicant further complained that in Lithuania there were no effective remedies against the excessive length of proceedings. He relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

73. The Government contested that argument.

74. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

75. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see *Kudla*, cited above, § 157). In the present case, having regard to its conclusion with regard to the excessive length of the proceedings, the Court considers that the applicant had an arguable claim of a violation of Article 6 § 1. It also notes that the objections and arguments as to the availability of an effective domestic remedy as regards the length of the criminal proceedings which the Government put forward have been rejected (see paragraphs 60-63 above).

76. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of an effective remedy under domestic law whereby at the material time, on 1 October 2004 when he submitted his complaints to the Court, the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

77. The applicant submitted that the seizure of his and his company’s property during the criminal proceedings violated his right to peacefully enjoy his possessions. He invoked Article 1 of Protocol No. 1 to the Convention, the relevant provisions of which provide as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

78. In the Government’s view, the applicant had failed to exhaust domestic remedies as regards the seizure of his property, given that he had never brought a complaint against that seizure in domestic law. Alternatively, the Government argued that, in view of the economic crimes with which the applicant had been charged, a temporary restriction on his ability to enjoy his property had been proportionate to the legitimate aim to secure the civil claims which had been submitted at the start of the criminal proceedings and were pending in the course thereof.

79. Even without addressing the question of exhaustion of domestic remedies, the Court finds that, bearing in mind the charges against the applicant, the Lithuanian authorities were entitled to impose temporary restrictions on the applicant and his companies’ property pending the outcome of the criminal proceedings (see, *mutatis mutandis*, *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A). It must also be noted that the seizure was lifted on 14 October 2003 when the Panevėžys Regional Court acquitted the applicant of some of the charges and discontinued the proceedings as regards the remainder. Accordingly, this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

80. Invoking Article 3 of the Convention and in vague and general terms the applicant also complained that, by instituting the criminal proceedings against him and by protracting them for ten years, the Lithuanian authorities had sought to destroy him as a person and to deprive him of his spiritual and physical potential.

81. The Court is of the opinion that this complaint, although somewhat rephrased, is essentially the same as those already examined under Article 6 § 1. Having regard to its finding in relation to this provision, the Court considers that the applicant’s complaint under Article 3 does not require a separate examination on the merits.

82. Invoking Article 5 of the Convention, the applicant complained about the order not to leave his place of residence, which was applied to him from 29 August 1995 to 29 April 2002. For the applicant, that order constituted an arbitrary deprivation of his freedom of movement.

83. In this connection the Court observes that, pending the criminal proceedings, the applicant indeed faced restrictions on his movements for six and a half years. However, it must be noted that, as the applicant has himself acknowledged, the remand measure was repealed by the Kėdainiai

District Court on 29 April 2002, whereas the applicant raised this complaint only on 1 October 2004, when he lodged a supplement to his application with the Court. It follows that this complaint has not been lodged within the six-month time-limit laid down in Article 35 §§ 1 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

84. The applicant also complained under Article 6 of the Convention that the charges against him had been fabricated and that the Lithuanian courts had been biased, unfair, and had incorrectly assessed evidence and misapplied domestic law in his case.

85. In this respect the Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among many authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). On the basis of the materials submitted by the applicant, the Court notes that, within the framework of the criminal proceedings, the applicant was able to present all necessary arguments in defence of his interests himself or through counsel, and that the judicial authorities gave them due consideration. His case was examined at three levels of jurisdiction. The decisions of the domestic courts do not appear unreasonable or arbitrary. Lastly, no proof was submitted to the Court to substantiate the applicant's claim that the Lithuanian courts were partial. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

86. Invoking Article 7 of the Convention the applicant alleged that the domestic courts had incorrectly applied criminal law and persecuted him for crimes which he had not committed. He argued that proof of that misapplication of criminal law lay in the fact that on 14 October 2003 the Panevėžys Regional Court acquitted him of some of the charges, and as regards the remaining charges discontinued the criminal proceedings as time-barred.

87. In this connection the Court reiterates that Article 7 of the Convention guarantees a right not to be punished without law. Yet, as the applicant himself acknowledged, either the criminal proceedings against him had been discontinued or he had been acquitted. Consequently, the Court cannot hold that he was found guilty of a crime within the meaning of Article 7. It follows that the applicant cannot claim to be a victim within the meaning of Article 34 of the Convention and this part of the application must be rejected for being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

88. Invoking Article 14 of the Convention the applicant alleged that, during the criminal proceedings, the domestic courts discriminated against him with respect to the *Lietuvos valstybinis komercinis bankas* employee M.B., since only the applicant had been sentenced to four years' imprisonment.

89. Having examined the applicant's complaint under Article 14 of the Convention the Court considers that it is in essence related to the complaint about the fairness of the criminal proceedings, which the applicant has raised under Article 6 and which the Court has dismissed as manifestly ill-founded (see paragraph 85 above). Accordingly, no separate analysis as regards the alleged violation of Article 14 is necessary.

90. Lastly, in the context of the first set of criminal proceedings, the applicant alleged that he could not appeal against the Panevėžys Regional Court's decision of 11 July 2002. He relied on Article 2 of Protocol No. 7 to the Convention. The Court reiterates that this provision guarantees the right of a person who has been convicted of a criminal offence to appeal against his conviction. Yet, as noted above (paragraph 87), the applicant was never convicted. It follows that the applicant's complaint under Article 2 of the Protocol No. 7 is incompatible *ratione materiae* within the meaning of Article 35 § 3 of the Convention and must therefore be dismissed under Article 35 § 4.

91. Invoking Articles 3, 6, 7 and 13 of the Convention, the applicant further complained about the second set of criminal proceedings and the administrative proceedings. In particular, he alleged that they had caused him moral suffering, that the Lithuanian courts had incorrectly evaluated the evidence and misinterpreted domestic law and that, as a result, he had been deprived of an effective remedy to defend his rights.

92. The Court has examined the remainder of the above complaints as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. 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. Damage

94. The applicant claimed LTL 6,450,624 (approximately EUR 1,868,121) in respect of pecuniary damage for the loss and depreciation of his property caused by the violations of the Convention. He also claimed LTL 9,000,000 (EUR 2,606,429) in respect of non-pecuniary damage.

95. The Government contested these claims as unreasonable.

96. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant has suffered some non-pecuniary damage. In the light of the parties' submissions, yet taking account of the applicant's partially obstructive behaviour during the criminal proceedings (paragraph 70 above), the Court awards him, on an equitable basis, EUR 1,700 in respect of non-pecuniary damage.

B. Costs and expenses

97. The applicant also claimed LTL 93,000 (EUR 26,933) for the costs and expenses incurred before the domestic courts and LTL 16,900 (EUR 4,894) for those incurred before the Court. He submitted to the Court a copy of a bill dated December 2001 in the sum of LTL 2,300 (EUR 665) for legal services, a bill dated 3 November 2006 in the sum of LTL 10,000 (EUR 2,896) for legal services in his case before the Court and a bill dated 6 November 2006 in the sum of LTL 250 (EUR 72) for translation services.

98. The Government contested these claims, alleging that the invoice of LTL 2,300 was not related to the proceedings before the Court and that the sum of LTL 10,000 was clearly too high.

99. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

100. In the present case, the Court notes that part of the fees claimed 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 only under Articles 6 § 1 and 13 of the Convention (see *Grauslys v. Lithuania*, no. 36743/97, § 74, 10 October 2000).

Accordingly the Court finds it reasonable to award the applicant EUR 1,000 for costs and expenses.

C. Default interest

101. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the excessive length of the proceedings and the absence of domestic remedies admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 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 in accordance with Article 44 § 2 of the Convention, the following sums, to be converted into the national currency of that State at the rate applicable on the date of settlement:
 - (i) EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage,
 - (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 5 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Françoise Tulkens
President