

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

SECOND SECTION

CASE OF LEONIENĖ v. LITHUANIA

(Application no. 61264/17)

JUDGMENT

STRASBOURG

10 November 2020

This judgment is final but it may be subject to editorial revision.



In the case of Leonienė v. Lithuania,

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

Aleš Pejchal, *President,*
Egidijus Kūris,
Carlo Ranzoni, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 61264/17) 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, Ms Regina Leonienė ("the applicant"), on 17 August 2017;

the decision to give notice of the application to the Lithuanian Government ("the Government");

the parties' observations;

Having deliberated in private on 13 October 2020,

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

INTRODUCTION

1. The case concerns the applicant's detention following her repeated absences from court hearings in criminal proceedings.

THE FACTS

2. The applicant was born in 1948 and lives in Šiauliai. She was represented by Ms M. Gušauskienė, a lawyer practising in Vilnius.

3. The Government were represented by their Agent, Ms L. Urbaitė.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

4. In November 2013 the applicant was notified by the authorities that she was suspected of fraud, abuse of office, and misuse of funds. It was alleged that in 2009 to 2010 she had used financial support, received from European Union funds, not in accordance with its purpose, thereby misappropriating property of high value. In April 2014 an indictment against her and three other individuals was drawn up and the case was transferred to the Kretinga District Court for examination. In June 2014 the court classified the case as "warranting a speedier [than usual] examination" (*byla pripažintina greičiau nagrinėtina*).

5. On an unspecified date during the pre-trial investigation the applicant was banned from leaving the country (see paragraph 45 below). She was informed that a stricter measure might be imposed in the future if necessary.

6. From July 2014 to October 2016 sixty-four court hearings were scheduled. Forty-seven of them were adjourned for reasons unrelated to the applicant: illnesses of the other co-accused, their lawyers or the judge; failure of the other co-accused to appear; and lawyers' holidays or participation in other cases. In September and October 2016 two co-accused were given fines for failure to attend hearings without valid reason (see paragraph 42 below).

II. THE APPLICANT'S ATTENDANCE IN COURT FROM JULY 2014 TO OCTOBER 2016

7. From July 2014 to October 2016 seven hearings were adjourned, and one finished early, for reasons attributable to the applicant (see paragraphs 8-15 below).

8. From March to May 2015 three hearings were adjourned because the applicant was ill. Her lawyer submitted medical certificates to the court. At the prosecutor's request, the court ordered a medical expert to assess whether the applicant's state of health permitted her to attend hearings. The expert examined her medical file and issued a conclusion on 28 May 2015. It stated that the applicant was of advanced age and had several chronic illnesses, including type 2 diabetes, pulmonary hypertension, respiratory insufficiency, and osteochondrosis. She was following outpatient treatment and taking prescription medication. The expert's conclusion further stated:

> "From March to May 2015 [the applicant] had pneumonia and a worsening of her chronic pulmonary illnesses, and she could not therefore attend the court hearings of 27 March, 27 April and 11 May 2015. According to the available medical documents and a laboratory examination, at present [the applicant's] health must be [considered] fully satisfactory (*pilnai patenkinama*) ... and her health allows her to appear before the court. [The applicant] may be simulating ... a worsening of her chronic illnesses (*gali simuliuoti ... lėtinių ligų paūmėjimą*)."

9. From June 2015 to April 2016 five hearings were held and the applicant attended all of them.

10. In April 2016 two hearings were adjourned because the applicant was ill. Her lawyer submitted medical certificates. The court again ordered a medical expert to assess whether the applicant's state of health permitted her to attend hearings. The expert examined her medical file and issued a conclusion on 26 May 2016. It stated:

> "1. [The applicant] is of advanced age, has chronic illnesses and is following outpatient treatment. On 18 and 22 April 2016 [she] saw a general practitioner for pain in the neck, back and waist, and difficulty in spinal movement ... Since both times the deterioration of her health coincided with the dates of the court hearings, [the applicant] may have aggravated (simulated the worsening of) the illnesses. [She] made an appointment with the general practitioner [on her own initiative], no serious pathology was detected, and during the second visit an improvement [of her condition] was identified. She could therefore have attended the court hearings of 19 and 25 April 2016.

2. Based on her state of health, [the applicant] is able to appear before the court. Her illnesses are not included in the list of serious incurable illnesses."

11. Following the expert's conclusion, the court ruled that the applicant's failure to appear at the two hearings in April 2016 had been unjustified and gave her a fine of 570 euros (EUR). It also ordered the Ministry of Health to examine whether the medical certificates which had been issued to the applicant in 2015 and 2016 (see paragraphs 8 and 10 above) had been accurate.

12. The next hearing was held on 13 September 2016 and the applicant was present. However, after the lunch break her lawyer informed the court that a fire had broken out at the applicant's company's premises and asked for permission for her to leave. The court terminated the hearing.

13. The following hearing was scheduled for 23 September 2016. On 21 September the applicant's lawyer requested that she and the applicant be excused from that hearing, on the grounds that the lawyer of one of the co-accused would not be able to attend because of his involvement in another case, and that the hearing would have to be adjourned anyway. It is unclear if she received any response from the court. On 23 September the court held the hearing but the applicant, her lawyer and the aforementioned lawyer were absent. The hearing was adjourned and they were given fines of EUR 380 for failure to appear before the court without valid reason. In its decision to fine the applicant, the court also observed that she had not provided any documents to prove that there had been a fire at her company's premises on the day of the previous hearing (see paragraph 12 above).

14. In October 2016 the relevant institution under the Ministry of Health, after examining the medical certificates which had been issued to the applicant (see paragraphs 8 and 10 above), concluded that the general practitioner who had examined her had not carried out a comprehensive examination of her health, had not properly described her condition in the medical documents, and had not justified the diagnosis of pneumonia with any objective data, in breach of the relevant regulations.

15. Two hearings were held in October 2016 and the applicant attended them. A third hearing scheduled for that month was adjourned because her lawyer requested that the judge be withdrawn from the case. The request was dismissed on the grounds that it had no basis in law.

III. THE DECISION TO DETAIN THE APPLICANT

A. Decision of the Kretinga District Court

16. A hearing was held on 7 November 2016. During that hearing, which started at 9.30 a.m., the applicant's lawyer informed the court that the applicant was on her way to court from her home in Šiauliai (approximately

140 kilometres from Kretinga) but was running late because her car had broken down and she was waiting for help; it was unclear when she would arrive at court. The hearing was adjourned. The applicant arrived at court at around 2.50 p.m.

17. On the same day the Kretinga District Court ordered the applicant's detention for three months. It stated that she had failed to attend hearings on multiple occasions, providing various reasons, such as illness, even though a court-appointed medical expert had found that her health allowed her to attend (see paragraphs 8, 10 and 14 above). She had also previously failed to appear on the grounds that other participants in the proceedings would be absent, and one hearing had been terminated early because of a fire at her company's premises (see paragraphs 12 and 13 above). The court observed that all the other co-accused and their lawyers had managed to attend the hearing that day, so there was no reason to consider that the weather conditions had been difficult. It held that the applicant had "a careless attitude towards the criminal proceedings" and that her repeated absences without valid reason had precluded the court from examining the case in the shortest time possible. It noted that restrictive measures had already been ordered against the applicant and that she had been informed that a stricter measure might be imposed (see paragraph 5 above). Since she was systematically interfering with the proceedings, and hearings had to be adjourned because of her unjustified absences, the court considered that there were grounds for her detention under Article 122 § 1 (2) of the Code of Criminal Procedure (hereinafter "the CCP", see paragraph 48 below).

18. On 9 November 2017 the applicant asked the Kretinga District Court to annul the decision to place her in detention. She submitted that her absence from the hearing had not been deliberate and provided documents showing that her car had broken down. She also asked the court to take into account her state of health, in particular the fact that she had type 2 diabetes. The prosecutor supported the applicant's request, stating that she had not missed the hearing deliberately and that the decision to detain her should therefore be annulled. However, the court left its decision unchanged, citing essentially the same grounds as before (see paragraph 17 above). It also observed that the applicant had previously been fined for failure to appear before the court (see paragraphs 11 and 13 above) and banned from leaving the country (see paragraph 5 above) but that she had continued to "systematically obstruct the proceedings".

B. Decision of the Klaipėda Regional Court

19. The applicant lodged an appeal against the decision to place her in detention. She submitted that the Kretinga District Court had incorrectly found that she had systematically failed to attend hearings without valid reason. In particular, she had not been responsible for the fire at her

company's premises (see paragraph 12 above) or for her car breaking down (see paragraph 16 above), and she had provided the relevant supporting documents to the court. Furthermore, the one time that she had not attended a hearing because of the absence of her co-accused's lawyer, the court had been notified in advance (see paragraph 13 above). She argued that there were therefore no grounds to find that she was wilfully interfering with the proceedings.

20. She further submitted that the detention was disproportionate, especially in view of her advanced age and poor health, and that not even the prosecutor had supported it (see paragraph 18 above). However, the court had not considered imposing more lenient restrictive measures (see paragraph 50 below).

21. Lastly, the applicant contended that the decision to detain her for three months was unreasonable because only two court hearings had been scheduled for November and December 2016.

22. On 22 November 2016 the Klaipėda Regional Court dismissed the applicant's appeal. It observed that the examination of the case had been protracted because, among other things, the applicant had failed to attend hearings. Although she had attempted to justify some of her absences by submitting medical certificates, court-appointed medical experts had considered the absences unjustified and that she might have simulated the worsening of her illnesses (see paragraphs 8, 10 and 14 above). As a result, the court had doubts as to the truthfulness of her submissions regarding the fire at her company's premises and the breakdown of her car. It noted that she had places of residence in Šiauliai and Rietavas, and that she had claimed that on 7 November 2016 she had been coming to court from Šiauliai. However, the documents which she had provided to the court suggested that on the day in question her car had been transported from another town, Plungė, to Šiauliai and back to Plungė, and did not indicate that any repairs had been done to the car. It therefore concluded that the applicant was hiding from the court and protracting the examination of the case, which constituted grounds for her detention under Article 122 § 1 (1) of the CCP (see paragraph 48 below).

23. The court also stated that in view of the circumstances demonstrating the applicant's "deliberate reluctance to attend hearings", more lenient restrictive measures would not be effective in ensuring uninterrupted proceedings, and that therefore the public interest outweighed her right to liberty. However, it considered that there were no grounds to find that she might attempt to influence witnesses or destroy evidence, and that Article 122 § 1 (2) of the CCP (see paragraph 48 below) should not therefore be applied.

24. Lastly, it stated that the number of scheduled court hearings (see paragraph 21 above) was immaterial because additional hearings could be scheduled in the future.

IV. THE APPLICANT'S DETENTION AND RELATED REQUESTS

25. On 29 November 2016 the applicant was admitted to Šiauliai Public Hospital for two months of psychiatric treatment. The hospital recommended that during her treatment she should not take part in court proceedings. On 2 February 2017 she was referred to outpatient treatment. Three court hearings which had been scheduled for December 2016, January and February 2017 were adjourned as a result of the applicant's treatment.

26. In December 2016 the Šiauliai police informed the Kretinga District Court that they had been unable to arrest the applicant because she had not been at home.

27. In December 2016 and January 2017 the applicant lodged several requests with the Kretinga District Court to annul the decision to detain her and to impose a more lenient restrictive measure, raising similar arguments as before (see paragraphs 18-21 above). The requests were dismissed, with the court stating that the applicant's inpatient treatment (see paragraph 25 above) did not eliminate the grounds on which her detention had been ordered.

28. On 25 January 2017 the court ordered a psychiatric assessment of the applicant, in order to determine whether she would be able to take part in the court proceedings. The applicant submitted a request to postpone her detention until the psychiatric assessment was carried out. The court refused to examine it because it had no basis in law.

29. On 2 February 2017 the Kretinga District Court asked the Šiauliai police to explain why the decision to place the applicant in detention had still not been executed.

30. On 8 February 2017 the applicant was arrested and remanded in custody at Šiauliai Remand Prison.

31. Before her arrest, the applicant had asked the court to adjourn several scheduled hearings because of her continuing psychiatric treatment (see paragraph 25 above). The court dismissed her requests after she had been detained, finding that the arguments raised therein were no longer relevant.

32. On 14 February 2017 she informed the court that because of the detention, her psychiatric treatment had been interrupted, which amounted to inhuman and degrading treatment. She asked for permission to complete the treatment at Šiauliai Public Hospital. The court refused to examine the request on the grounds that the CCP did not contain any provisions regarding the medical treatment of detainees.

33. In February and March 2017 the applicant lodged several requests to annul the detention and replace it with a more lenient restrictive measure. She submitted that she required constant medical help and that her health had deteriorated in detention. She also submitted that the examination of the

criminal case was nearly finished and that therefore keeping her in detention no longer served any purpose.

34. The Kretinga District Court dismissed these requests, finding that the grounds for her detention were still present because the examination of the case had not yet finished. It observed that the criminal proceedings had been prolonged because, *inter alia*, the applicant had refused to give evidence and had submitted multiple unfounded requests. It stated that she had been detained because of her repeated unjustified absences from hearings and that more lenient restrictive measures which had previously been imposed on her (see paragraphs 5, 11 and 13 above) had been ineffective. It also noted that the CCP did not provide that an individual should be released from detention on the grounds of the deterioration of his or her health.

35. A court hearing scheduled for 14 February 2017 was adjourned because the applicant was not taken to court from the remand prison. The next hearing was held on 17 March 2017 and the applicant was present. The following hearing, scheduled for 16 May 2017, was adjourned because the civil claimant failed to appear.

V. THE APPLICANT'S RELEASE FROM DETENTION

36. On 3 May 2017 the Kretinga District Court extended the applicant's detention for a further three months (see paragraph 51 below). It stated that the examination of the criminal case had not yet finished because the psychiatric assessment of the applicant was ongoing (see paragraph 28 above), she had not yet given evidence, and defence lawyers kept submitting new or repeated requests for the examination of evidence. The court considered that there were reasonable grounds to believe that the applicant had committed the crimes of which she was suspected. Even though she had a place of residence and a lawful source of income, her behaviour during the proceedings – namely her repeated unjustified absences from court hearings – led to the conclusion that the grounds for her detention were still present, because she might otherwise interfere with the court's ability to examine the case.

37. The applicant lodged an appeal against that decision. She submitted that the court had merely repeated the arguments of its previous decisions (see paragraphs 17, 18 and 34 above) and had not indicated any new circumstances justifying the extension of the detention. She also submitted that the detention had precluded her from continuing her psychiatric treatment. Furthermore, she contended that the detention could not be used to coerce her into giving evidence in the criminal proceedings. Lastly, she submitted that the court had not considered more lenient restrictive measures (see paragraph 50 below) and that she had fully complied with the previous restrictive measure which had been imposed (see paragraph 5 above).

38. On 18 May 2017 the Klaipėda Regional Court allowed the applicant's appeal in part and quashed the decision to extend the detention. It noted that the examination of the criminal case had been protracted because, *inter alia*, the applicant had failed to attend hearings, and that the initial decision to detain her had been justified because of her multiple absences without valid reason. However, it considered that her participation in the proceedings at that time could be ensured by more lenient restrictive measures. The court observed that after the applicant had been placed in detention, the examination of the criminal case had not progressed significantly and hearings had been adjourned for reasons not attributable to her (see paragraphs 35 above). Accordingly, it considered that extending the detention in order to ensure her participation in the hearings was not proportionate. In addition, she was of advanced age and poor health, had a permanent place of residence, a family, her own business, and no previous convictions (see paragraphs 47 and 49 below). Even though she had previously failed to properly comply with the duty to appear before the court, that could be ensured by imposing a more lenient restrictive measure. The Klaipėda Regional Court released the applicant on bail of EUR 5,000 (see paragraph 45 below). She was informed that if she failed to attend court hearings or otherwise interfered with the proceedings, the amount of bail would not be returned to her.

VI. OTHER RELATED DEVELOPMENTS

39. On 18 May 2017 the court-appointed psychiatric expert (see paragraph 28 above), after interviewing the applicant and consulting her medical file, issued a conclusion. It was noted that she had been diagnosed with severe depression without psychotic features, characterised by slow thinking, low mood, impaired memory, attention deficit, feelings of hopelessness, and suicidal thoughts. However, the expert stated that it had not been possible to comprehensively assess the applicant's psychological state after a single interview, and recommended that the court order an inpatient psychiatric assessment.

40. Three further hearings were held in June 2017, at which the applicant appeared and gave evidence. In August 2017 the Kretinga District Court convicted her and sentenced her to two years and three months' imprisonment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

41. Article 20 of the Constitution states that human liberty is inviolable. No one may be arbitrarily apprehended or detained, and no one may be

deprived of his or her liberty other than on the grounds and in accordance with the procedures established by law.

II. CODE OF CRIMINAL PROCEDURE

42. Article 142 § 1 of the CCP enshrines, *inter alia*, the obligation of the suspect and accused to appear before the court when summoned. If the summoned individual fails to appear without valid reason, he or she may be brought to court (*atvesdintas*). Under Article 163 § 1, a suspect or accused who fails to appear before the court without valid reason may be given a fine.

43. Article 37 § 1 provides a list of valid reasons which justify an individual's absence from a hearing in a criminal case. In so far as relevant to the present case, these reasons include an illness which precludes the person from appearing in court, certified with an appropriate medical certificate (Article 37 § 1 (5)), and unexpected loss of property of high value (Article 37 § 1 (4)). Under Article 37 § 2, the court may recognise other reasons for absence as valid. Under Article 37 § 3, a lawyer's participation in a different case is not usually considered a valid reason to justify his or her absence.

44. Article 119 states, *inter alia*, that restrictive measures can be applied in order to ensure that the suspect or the accused participates in the proceedings, to prevent interference with the pre-trial investigation or the examination of the case before the court, and to prevent the commission of further criminal acts.

45. At the material time, Article 120 § 1 listed the restrictive measures which could be imposed during criminal proceedings, including, in so far as relevant: detention, monitoring (by means of electronic tagging), house arrest, bail, confiscation of documents, obligation to regularly report to a police station, and a ban on leaving the country or one's place of residence without the permission of a relevant authority.

46. Article 121 § 3 provides that several restrictive measures, other than detention, may be imposed at the same time.

47. Under Article 121 § 4, when deciding whether to impose a restrictive measure and when choosing a specific measure, the prosecutor or the court must take into account the gravity of the alleged criminal offence, the suspect's character, whether he or she has a permanent place of residence and a job or another legal source of income, the suspect's age, state of health, marital status, and other relevant circumstances.

48. Article 122 § 1 permits detention where there is a well-founded belief that the suspect may flee (Article 122 § 1 (1)), interfere with the investigation (Article 122 § 1 (2)), or commit further crimes (Article 122 § 1 (3)).

49. Article 122 § 2 provides that where there is a reasonable suspicion that a suspect may flee, detention may be ordered after taking into account his or her marital status, permanent place of residence, employment status, state of health, prior convictions, connections abroad, and other relevant circumstances.

50. Article 122 § 7 states that detention may only be ordered when the objectives listed in Article 119 of the CCP cannot be achieved by more lenient restrictive measures (see paragraph 44 above).

51. Article 127 § 1 provides that the duration of the detention is determined by the judge ordering the detention, but that it may not be ordered for more than three months at a time. Under Article 127 § 2, detention may be extended by no more than three months when the case is particularly complex or large-scale.

52. Article 246 § 1 states that the attendance of the accused is obligatory when the case is examined by the first-instance court. If the accused is unable to appear in person or is in detention, his or her attendance may be ensured via audio or video link. Under Article 247, if the accused fails to appear, the hearing must be adjourned. The court has the right to bring the accused to court or impose restrictive measures (see paragraphs 42 and 45 above).

53. Article 242[1] § 1 establishes a court's duty to examine a case within the shortest possible time and with as few adjournments as possible.

54. Under Article 243 § 1, the examination of a case may be adjourned in order to rest, to re-summon the parties or participants who have failed to appear, to request new evidence, or for other valid reasons.

III. CASE-LAW OF THE SUPREME COURT

55. In its ruling of 30 December 2004, the Senate of the Supreme Court of Lithuania stated that if the suspect or accused denied the charges against him or her, refused to give evidence in the criminal proceedings or gave inconsistent evidence, this did not amount to interference with the proceedings within the meaning of Article 122 § 1 (2) of the CCP (see paragraph 48 above).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicant complained that she had not been provided with adequate medical assistance in detention, in violation of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

57. In her application form, the applicant submitted that the courts' decision to detain her had interrupted her psychiatric treatment (see paragraph 25 above) and that she had been denied the possibility of continuing that treatment in detention. However, in her subsequent observations to the Court, she stated that she was complaining of "the arbitrariness of the court and disrespect for human rights, the violation of the principles of fair and just criminal proceedings and not about the conditions of her stay in Šiauliai Remand Prison". She did not submit any further observations with regard to the complaint under Article 3 of the Convention.

58. The Government submitted that the applicant had failed to exhaust domestic remedies. If she considered that the medical treatment provided to her at Šiauliai Remand Prison had been inadequate, she could have lodged a complaint with the administrative courts and obtained compensation in respect of non-pecuniary damage (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, §§ 88-92, 8 December 2015). They submitted that there was sufficient domestic case-law demonstrating the effectiveness of that remedy in similar situations.

B. The Court's assessment

59. The Court considers that in the present case it is not necessary to address the Government's objection of non-exhaustion of domestic remedies, for the reasons provided below.

60. It observes that the applicant raised the complaint under Article 3 of the Convention in her application and that that complaint was communicated to the Government, which provided observations. In her response to the Government's observations, the applicant, represented by a lawyer, explicitly stated that she was not complaining about the conditions at Šiauliai Remand Prison (see paragraph 57 above).

61. In such circumstances, the Court finds that the applicant does not intend to pursue her complaint under Article 3 of the Convention, within the meaning of Article 37 § 1 (a). Furthermore, it finds no reasons of a general nature affecting respect for human rights as defined in the Convention which would require further examination of this complaint by virtue of Article 37 § 1 of the Convention *in fine*. Accordingly, the Court considers that it is no longer justified to continue the examination of this complaint and that it should therefore be struck out of the list.

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

62. The applicant complained that her detention had been unjustified. She relied on Article 5 § 1 (c) and 5 § 4 of the Convention. The Court considers it appropriate to examine this complaint under Article 5 § 1 of the Convention, the relevant parts of which provide:

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

A. Admissibility

63. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

64. Firstly, the applicant submitted that the domestic courts had incorrectly held that she had repeatedly failed to attend hearings without valid reason. It had not been disputed that she suffered from various physical and psychological ailments (see paragraphs 8, 10 and 39 above). The medical certificates which she had provided to the courts to justify her absences had been issued by a competent doctor who had examined her in person, unlike any of the court-appointed experts, and that doctor had not been prosecuted for issuing false medical documents (see paragraph 14 above). Furthermore, the court-appointed experts had only found that she "might have simulated" the worsening of her illnesses, but not that she had actually done so.

65. The applicant also submitted that on the one occasion she had been absent from a hearing because of the unavailability of another co-accused's lawyer (see paragraph 13 above), this had been consistent with courts' established practice of adjourning hearings in such circumstances. As regards the two accidents – the fire at her company's premises and breakdown of her car (see paragraphs 12 and 16 above) – she had provided the courts with documents issued by the relevant public authorities. Although the courts had stated that they had doubts as to whether the

accidents had actually happened, they had not provided any reasons to doubt the veracity of the supporting documents, or taken any measures to establish the truth. The applicant therefore contended that it had not been demonstrated that she had wilfully interfered with the proceedings.

66. She further submitted that the domestic courts had not provided relevant and sufficient reasons for placing her in detention. They had referred to factors beyond her control – such as the fact that her psychiatric assessment had not been completed or that the lawyers of her co-accused had submitted requests to the court (see paragraphs 34 and 36 above). She also contended that the detention could not be used to pressure her into giving evidence in the criminal proceedings or to punish her for exercising her procedural rights and submitting requests.

67. The applicant also argued that the courts had not properly considered applying more lenient restrictive measures, even though that had been required both by domestic law (see paragraph 50 above) and the case-law of the Court. In addition, they had not assessed the proportionality of detention, in view of her advanced age, poor health, constant need for medical treatment, lack of previous convictions and the absence of reasons to consider her a danger to society (see paragraphs 47 and 49 above). Nor had the courts justified ordering the detention for three months, which was the maximum period under domestic law (see paragraph 51 above).

68. Lastly, the applicant submitted that even though she had been detained in order to secure her participation in court hearings, on 14 February 2017 the authorities had failed to take her to court from the remand prison (see paragraph 35 above).

(b) The Government

69. The Government submitted that the applicant's detention had been necessary in order to ensure her appearance at trial after she had failed to attend court hearings on numerous occasions. Although she had attempted to justify some of her absences on health grounds, the courts, with the help of competent experts who had examined her medical documents, had established that her health did in fact permit her to attend court hearings (see paragraphs 8, 10 and 14 above). As regards the applicant's absences because of the alleged fire at her company's premises and breakdown of her car, the courts found that she had not provided relevant supporting documents to prove that those accidents had actually occurred (see paragraph 13 above). The Government argued that by questioning those decisions, the applicant was essentially asking the Court to reassess the facts established by the domestic courts, and act as a court of "fourth instance".

70. They also submitted that the criminal case against the applicant had been complex, as it had concerned financial crimes and multiple suspects, and at the time of her detention its examination had still been ongoing. It appeared that all the co-accused had sought to prolong the criminal

proceedings until they had become time-barred, as demonstrated by their multiple absences and numerous unfounded requests (see paragraphs 6 and 36 above). Furthermore, the applicant had refused to give evidence for a long period of time (see paragraphs 34, 36 and 40 above). The Government therefore argued that the courts had taken the necessary measures to ensure the proper course of the criminal proceedings, and that only after the applicant's detention had those proceedings been able to progress.

71. Furthermore, the domestic courts had considered imposing more lenient restrictive measures on the applicant, but they had found that such measures – namely fines and a ban on leaving the country – had been imposed in the past and had been ineffective in ensuring her presence at hearings (see paragraphs 17, 18 and 34 above).

72. Moreover, the Government submitted that the courts had taken the applicant's state of health into account. They had examined the medical certificates which had been issued to her (see paragraphs 17 and 22 above) and had ordered a psychiatric assessment (see paragraph 28 above). However, in view of the experts' findings that the applicant might have simulated her medical conditions and that the medical certificates had not been accurate, it was understandable that the courts might have had certain doubts as to the severity of her illnesses.

73. The Government also contended that the hearing of 14 February 2017 had been adjourned at the applicant's lawyer's request because of the applicant's psychiatric treatment (see paragraph 31 above). In addition, they stated that it should not be "overlooked that at that point little time had passed since the applicant's actual arrest on 8 February 2017".

74. Lastly, the Government submitted that the courts had released the applicant from detention as soon as they had become convinced that the grounds for detaining her were no longer present and that her presence could be ensured by more lenient restrictive measures.

2. The Court's assessment

(a) General principles

75. The general principles relating to the lawfulness of detention and the absence of arbitrariness under Article 5 § 1 of the Convention, as well as the requirement inherent in Article 5 § 1 (c) that the detention be necessary in the circumstances, are summarised in *S., V. and A. v. Denmark* ([GC], nos. 35553/12 and 2 others, §§ 73-77, 22 October 2018, and the cases cited therein).

(b) Application of the above principles in the present case

76. At the outset, the Court notes that in the present case there is no dispute that the applicant's detention had basis in domestic law (see paragraph 48 above and *Jėčius v. Lithuania*, no. 34578/97, § 56, 31 July

2000). Nor is it disputed that the detention falls to be examined under sub-paragraph (c) of Article 5 § 1 of the Convention. Furthermore, the Court has no reason to doubt that throughout the period of detention there existed a "reasonable suspicion" that the applicant had committed the criminal offences with which she had been charged (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 184, 28 November 2017, and the cases cited therein).

77. Accordingly, the Court will examine whether the detention was necessary to ensure the applicant's appearance at trial and whether it was devoid of arbitrariness. In doing so, it will assess the reasons provided by the domestic courts to justify the detention, as it is incumbent on the authorities to convincingly demonstrate that detention is necessary (see *Vasiliciuc v. the Republic of Moldova*, no. 15944/11, § 40, 2 May 2017).

78. The applicant argued that all of her absences from hearings had been justified and that the domestic courts had erred in finding otherwise (see paragraphs 64 and 65 above). However, the Court is unable to agree with this argument as regards the period prior to 7 November 2016. During that period, the courts established that the applicant had submitted medical certificates which had been issued in breach of the relevant legal requirements and that, according to medical experts, she might have simulated the worsening of her medical conditions (see paragraphs 8, 10 and 14 above). The Court takes due note of the applicant's state of health, which was not disputed by the parties (see paragraphs 8, 10 and 39 above). It also observes that it was never alleged that she herself had contributed to the unlawfulness of the medical certificates. At the same time, the Court emphasises that it is not its role to assess whether the applicant's health allowed her to attend the hearings or whether her doctor acted lawfully, and it does not consider the assessment of the domestic courts in this respect to be arbitrary or manifestly unreasonable. Furthermore, the courts found that she had not provided any documents to prove that there had been a fire at her company's premises (see paragraph 18 above) and that her absence from a hearing because of the planned absence of another co-accused's lawyer was not justified under domestic law (see paragraph 13 above). The Court is satisfied that the domestic courts reached their conclusions on the basis of the relevant documents in their possession, and has no reason to question their assessment.

79. However, the Court cannot fail to notice that the domestic courts did not consider that those absences, albeit unjustified, warranted placing the applicant in detention. She was given fines for some of them (see paragraphs 11 and 13 above) and no penalties for the others. It therefore appears that it was specifically her absence on 7 November 2016 which led the Kretinga District Court to order her detention (see paragraphs 16-18 above). The Court will thus examine the circumstances related to that occasion.

80. There is no dispute that on that date, after the start of the hearing, the Kretinga District Court was informed by the applicant's lawyer that her car had broken down on the way to Kretinga from her home in Šiauliai and that later that day the applicant arrived at court and provided supporting documents (see paragraph 16 above). These documents have not been submitted to the Court, but it can be seen from the case material that there was proof that on the day in question the applicant's car was transported from Plungė (a town near Kretinga) to Šiauliai and back to Plungė (see paragraph 22 above).

81. The domestic courts expressed doubts as to whether that accident had taken place, for the following reasons: the fact that the car was transported from Plungė to Šiauliai and back to Plungė, when the applicant had homes in Šiauliai and Rietavas; the absence of repairs done to the car; the fact that all the other participants managed to attend the hearing, which must have meant that the weather conditions had not been difficult; and the fact that the applicant previously missed court hearings without valid reason and without providing proper supporting documents (see paragraphs 17 and 22 above).

82. The Court is mindful of its limited role in dealing with errors of fact or law allegedly committed by a national court (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). However, in the present case, it has serious doubts as to the relevance and sufficiency of the reasons provided by the domestic courts for considering the applicant's absence from the hearing on 7 November 2016 unjustified. In particular, they did not provide any explanation why the fact that the applicant's car had been found in Plungė, which was on the way from her home to the court, raised doubts that it had broken down. Furthermore, the Court is unable to accept that the applicant's previous unjustified absences were in themselves proof that any future absences would also be unjustified, especially if supported by relevant documents. It also notes that there is nothing in the case material to indicate that the domestic courts took reasonable steps to verify whether the accident had occurred, such as requesting the applicant to provide additional documents or an explanation, before ordering her detention (see, *mutatis mutandis*, *Vasiliciuc*, cited above, § 40).

83. In such circumstances, the Court finds that it was not convincingly demonstrated that the applicant had failed to attend the hearing of 7 November 2016 without valid reason.

84. Be that as it may, even accepting that, in the light of her previous unjustified absences, the domestic courts were justified in seeking to ensure her appearance at trial by imposing restrictive measures, the Court reiterates that the detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public

interest which might require that the person concerned be detained (see *S., A. and V. v. Denmark,* cited above, § 77, and the relevant provisions of the domestic law in paragraph 50 above).

85. The Court is aware that some of the more lenient restrictive measures – fines and a ban on leaving the country (see paragraphs 5, 11 and 13 above) – were imposed on the applicant but did not preclude her from missing hearings. It nonetheless observes that other restrictive measures were available under domestic law, such as electronic monitoring, house arrest and bail, as well as the possibility of applying several of them at the same time (see paragraphs 45 and 46 above). However, the decisions of the Kretinga District Court and the Klaipėda Regional Court did not contain any reference to any of the other measures or an explanation why they would not be sufficient to ensure the applicant's appearance at trial (see paragraphs 17, 18, 22-24, 34 and 36 above and *Ambruszkiewicz v. Poland*, no. 38797/03, § 32, 4 May 2006).

86. The Court further observes that, under domestic law, the courts were required to take into account, *inter alia*, the applicant's age, state of health and other relevant personal circumstances (see paragraphs 47 and 49 above), and that in her appeals and requests she asked them to impose more lenient restrictive measures in view of her advanced age and various physical and psychological ailments (see paragraphs 18, 20, 27 and 33 above and contrast *Žekonienė v. Lithuania*, no. 19536/14, § 56, 12 July 2016). The Government argued that the courts had had good reason to doubt the applicant's claims about her health, in view of the fact that medical experts had previously concluded that she might have simulated the worsening of her conditions (see paragraph 72 above). However, the Court points out that the expert findings concerned the applicant's ability to attend court hearings, but not whether her health was compatible with detention. In any event, the courts in their decisions did not explicitly address the question of the applicant's health and did not rule that it was compatible with detention, referring to either the findings of the court-appointed experts or to any other available information (see paragraphs 17, 18, 22-24, 34 and 36 above and, *mutatis mutandis*, *Korneykova v. Ukraine*, no. 39884/05, § 47, 19 January 2012). Furthermore, even though, following the applicant's admission to a psychiatric facility, the Kretinga District Court ordered an assessment to determine whether her mental health allowed her to be detained, she was placed in detention before that assessment was carried out (see paragraphs 28, 30 and 39 above).

87. The Court also reiterates that Article 5 § 1 of the Convention requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. The condition that there be no arbitrariness demands, *inter alia*, that both the order to detain and the execution of the detention genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (see

James, Wells and Lee v. the United Kingdom, nos. 25119/09 and 2 others, §§ 191 and 193, 18 September 2012, and the cases cited therein).

88. It does not escape the Court's attention that, while the stated purpose of the applicant's detention was to ensure her appearance at trial and the speedy examination of the criminal case, only one hearing was held during the three months of her detention and one was adjourned because the authorities had failed to transport her from the detention centre to the court or to ensure her participation by alternative means (see paragraphs 35 and 52 above). Indeed, in the decision replacing the detention with release on bail, the Klaipėda Regional Court acknowledged that after the applicant had been detained, the examination of the criminal case "had not progressed significantly" and that hearings had been adjourned for reasons not attributable to her (see paragraph 38 above).

89. Lastly, one of the reasons for which the Kretinga District Court refused to release the applicant from detention was the fact that she had refused to give evidence in the criminal proceedings (see paragraphs 34 and 36 above). In this connection, the Court reiterates that the privilege against self-incrimination and the right to remain silent are generally recognised international standards which lie at the heart of a fair procedure (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 266, 13 September 2016, and the cases cited therein; see also the case-law of the Supreme Court of Lithuania in paragraph 55 above). The Court considers that advancing such grounds for detention appears particularly disturbing, as it indicates that a person may be punished for relying upon his or her basic right to a fair trial (see *Lutsenko v. Ukraine*, no. 6492/11, § 72, 3 July 2012, and *Volyanyk v. Ukraine* [Committee], no. 7554/10, § 18, 2 October 2014).

90. In the light of the foregoing, the Court concludes that the domestic courts did not convincingly demonstrate that the applicant's detention was necessary in the circumstances, as required by Article 5 § 1 of the Convention. There has therefore been a violation of that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

91. 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

92. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

93. The Government considered this claim to be excessive and unsubstantiated.

94. The Court is of the view that the violation of the applicant's rights under Article 5 § 1 of the Convention undoubtedly caused her emotional distress and suffering which cannot be compensated by the finding of a violation alone. However, it considers the amount claimed by her to be excessive. Making its award on an equitable basis, it awards the applicant EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

95. The applicant did not submit any claim in respect of costs and expenses. The Court therefore makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike out the complaint under Article 3 of the Convention in accordance with Article 37 § 1 (a) of the Convention;

2. *Declares* the complaint concerning Article 5 § 1 of the Convention admissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage:
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Aleš Pejchal
Deputy Registrar	President