

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

SECOND SECTION

CASE OF POCIUS v. LITHUANIA

(Application no. 35601/04)

JUDGMENT

STRASBOURG

6 July 2010

FINAL

06/10/2010

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

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

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Kristina Pardalos,
Guido Raimondi, *judges,*

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 15 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 35601/04) 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, Mr Vidas Pocius ("the applicant"), on 16 September 2004.

2. The applicant was represented by Mr E. Liutkevicius, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicant alleged that the proceedings for removing his name from an "operational records file" had been unfair in that the principles of fairness and equality of arms had not been respected. He invoked Article 6 § 1 of the Convention.

4. On 11 December 2006 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Kaunas.

6. By letter of 28 May 2002, Kaunas City Police informed the applicant that his permits to keep and carry a firearm for defence purposes as well as a hunting rifle had been revoked because on 19 April 2002 the applicant had

been listed in an "operational records file" (*policijos operatyvinė įskaita*), a database containing information gathered by law-enforcement authorities (see paragraphs 24-26 in 'Relevant domestic law' below). The applicant was informed that he was to hand in these firearms to the authorities and would receive money for them.

7. On 19 September 2002 the applicant requested the Kaunas City District Court to order the removal of his name from the operational records database. The applicant stated that he had only discovered that his name had been so listed from the aforementioned police letter.

8. On 11 October 2002 the Kaunas City District Court refused the applicant's request, finding that he should have brought his claims before the administrative courts.

9. The applicant appealed to the Kaunas Regional Court, arguing that he had never been informed of the reasons for the listing of his name in the operational records file and requesting that it be removed. The applicant also asked the court to order the police to provide him with all the written materials concerning the listing of his name.

10. On 21 October 2002 the Kaunas Regional Court found that it was necessary to decide which court – of general or administrative jurisdiction – was competent to hear the applicant's case.

11. On 29 October 2002 Kaunas city police officials instituted criminal proceedings on charges of theft when acting in an organised group (Article 271 § 3 of the Penal Code). The applicant was charged on 16 November 2002 and placed under house arrest.

12. On 26 November 2002 the special chamber responsible for questions of jurisdiction, composed of the judges of the Supreme Court and the Supreme Administrative Court, decided that the applicant's case should be examined by the administrative courts.

13. On 27 March 2003 the applicant was charged with covering up a crime committed by others (Article 295 of the Penal Code). In particular, the investigators suspected that in October and November 2002 the applicant had helped to hide stolen cars on the premises of the company where he worked as the director. In his application the applicant maintained that this was not a fresh charge against him but a substitution for the previous charge of theft (see paragraph 11 above).

14. On 27 May 2003 the Kaunas City District Court ordered that the applicant be released from house arrest.

15. On 29 May 2003 the Kaunas Regional Administrative Court allowed the applicant's action, holding that the listing of his name in the police file was contrary to the principles of the presumption of innocence and the rule of law. Having reviewed the classified materials submitted by the police, the court found no evidence showing that the applicant had been engaged in any criminal activity. The court also noted the absence of any accusatory judgment against the applicant. On the contrary, testimony to his positive

attributes, submitted to the court by environmental protection agencies and non-governmental associations, showed the applicant's goodwill and dedication (*principingumą*) to protecting nature. For the above reasons, the court ordered the Kaunas police officials to remove the applicant's name from the operational records file.

16. On 12 June 2003 the Kaunas police appealed. They contended that, when listing the applicant's name in an operational records file, the police had respected the applicable rules. In their appeal they observed that the file had been submitted to the Kaunas Regional Administrative Court and that the judges had acquainted themselves with that information. Lastly, the police noted that criminal proceedings on charges of theft had been pending and that the applicant was one of the accused.

17. On 23 July 2003 the Supreme Administrative Court quashed the lower court's decision and returned the case for fresh examination. It was noted that the lower court had erred in law and failed to consider certain relevant evidence. The appellate court emphasised that, when adopting a decision, the lower court had to evaluate all the evidence which had been presented at the hearing and to determine which circumstances had been established and which had not. In particular, the lower court had not properly examined the circumstances relating to the criminal proceedings on charges of theft and had failed to evaluate the applicant's procedural position in them. The Supreme Administrative Court stressed that it was indispensable to examine all the circumstances relevant to the dispute over the listing of the applicant's name in the operational records file.

18. On 1 December 2003 the Kaunas Regional Administrative Court dismissed the applicant's claim. The court admitted that a person listed in police records could be negatively affected in a number of ways, for example, he could lose the right to carry a firearm or face restrictions when applying for certain jobs. However, the court noted that having examined the "written evidence" in the case, as well as having examined, in the judges' chambers, the operational file on the applicant, the listing of the applicant's name in the police file had been lawful and justified. Whilst acknowledging that it had not been possible to disclose the operational file to the applicant, the court noted, nevertheless, that the applicant had been able to substantiate his claims by providing evidence or by asking the court to obtain the relevant materials when it had not been possible for him to obtain them himself. It concluded that he had not adduced any proof in support of his claim that the listing of his name in the operational file was unlawful.

19. The applicant appealed, noting the lower court's observation that the listing of his name in the police file could entail negative consequences for him. The applicant also submitted that he was an inspector of nature protection (*gamtos apsaugos inspektorius*) and that he had been attacked by poachers on numerous occasions. Consequently, were the guns to be taken

away from him, it would be too dangerous for him to pursue that activity. Furthermore, the applicant alleged that the gun was necessary for defending his family – living in a remote and insecure rural area – and also for his job, as he occasionally transported large sums of money from his company's safe to the bank.

20. The applicant argued that he had had no access to the information which had served as the basis for the listing of his name in the police file. No reasons, except for theories (*išskyrus prielaidas*) had been disclosed to him. Relying on the above, the applicant submitted that his rights of defence had been breached and that the file on him should be destroyed.

21. On 24 March 2004 the Supreme Administrative Court dismissed the applicant's appeal, upholding the reasoning of the lower court. It noted that, "having evaluated the written evidence in the case and the operational file [which under the Law on State Secrets could not be disclosed to the defence], it had been possible to conclude that the listing of the applicant's name in that operational file had been reasonable and lawful".

22. On 28 June 2004 the criminal investigation in respect of the applicant on account of suspected theft was discontinued due to statutory limitations.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. Article 21 of the Constitution provides that the dignity of a human being is to be protected by law. Article 22 states that the private life of a human being is inviolable and that information concerning it may be collected only following a reasoned court decision and only in accordance with the law. The law and the courts are to protect anyone from any arbitrary or unlawful interference with his or her private life or from encroachment upon his or her honour and dignity. Article 23 of the Constitution provides that property is inviolable and that ownership rights are protected by law. Property may be taken only for the needs of society in accordance with the procedure established by law and must be fairly compensated. Under Article 30 of the Constitution, a person whose constitutional rights or freedoms have been violated has the right to apply to a court. Article 48 provides that each human being may freely choose a job or occupation.

24. Article 2 § 1 of the Law on Operational Activities (*Operatyvinės veiklos įstatymas*) (as in force until 28 June 2002) described "operational activities" as being intelligence and counter-intelligence activities conducted by institutions and authorised by the State to combat organised crime. Under Article 2 § 8 of the Law, an "operational records file" is the data on individuals, events and other targets obtained during the process of operational activities, with the intention of providing information to operational entities.

25. Under Article 4 of the Law, possible reasons for commencing operational activities would be the existence of preliminary information about a crime which was being planned or had already been committed against the State, about another kind of major crime, about an individual who was planning or who had committed a crime, about an individual's links to a criminal organisation, or about the activities of foreign intelligence services.

26. Article 13 of the Law provided:

Article 13. The Use of Information

> "1. Information obtained during the course of operations may be disclosed during court proceedings with prior authorisation from the Prosecutor General or the Deputy Prosecutor General designated by him. Use of information obtained during the course of operations for purposes other than those for which it was intended is prohibited.
>
> 2. Information obtained during the course of operations may be used as evidence in a criminal case in accordance with the formalities and procedure established by the Code of Criminal Procedure.
>
> 3. If, during the course of proceedings, information about an individual obtained using special equipment is disclosed, the individual has the right to lodge a complaint and contest the use of that information in court, on the grounds that the information was obtained illegally. In such instances the court has the right to disclose excerpts from the reasoned authorisation request [to start an operational activity] in order to prove the legality of that authorisation."

27. Article 17 § 1 (2) of the Law on the Control of Arms and Ammunition (*Ginklų ir šaudmenų kontrolės įstatymas*) provided at the material time that arms and ammunition could not be acquired or possessed by a person who did not have an impeccable reputation. According to Article 18 § 2 (5) of that Law, a person was not regarded as having an impeccable reputation if his or her name had been listed in an operational records file. Article 38 of the Law provided that, after a firearms licence had been revoked, the arms and ammunition were to be taken from the person concerned and sold through the Arms Fund (a State agency) or through other companies authorised to sell them.

28. Article 6 § 2 (4) of the Law on the Protection of Persons and Property (*Asmens ir turto saugos įstatymas*) provides that a person whose name is listed in an operational records file is not eligible to work as a security officer.

29. The relevant part of the Law on Administrative Procedure (*Administracinių bylų teisenos įstatymas*) provides as follows:

Article 57. Evidence

> "1. Evidence in an administrative case is all factual data found admissible by the court hearing the case and based upon which the court finds ... that there are circumstances which justify the claims and rebuttals of the parties to the proceedings and other circumstances which are relevant to the fair disposal of the case, or that there are no such circumstances ...
>
> 3. As a rule, factual data which constitutes a State or official secret may not be used as evidence in an administrative case, until the data has been declassified in a manner prescribed by law."

30. In the judgment of 4 September 2002 in case no. A10-786-02, the Supreme Administrative Court stated, in so far as relevant to the present case, that:

> "as a rule, factual data which constitutes a State or official secret may not be used as evidence in an administrative case until it has been declassified (Article 57 § 3 of the Law on Administrative Procedure). Therefore, in the absence of other evidence, the [lower] court's reliance on solely written information provided by the State Security Department which was marked as secret had no legal basis".

31. On 15 July 2007 the Constitutional Court adopted a ruling on the compatibility with the Constitution of Article 57 § 3 of the Law on Administrative Procedure, and Articles 10 § 4 and 11 of the Law on State Secrets. It ruled that no decision of a court could be solely based on information which constituted a State secret and which was not disclosed to the parties to the case. In the ruling no. A^{822}-326/2009 of 8 October 2009 the Supreme Administrative Court confirmed the above principles.

THE LAW

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

32. The applicant complained that the proceedings before the administrative courts had been unfair in that the principle of equality of arms had not been respected. He invoked Article 6 § 1 of the Convention, which, in so far as is relevant, reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

A. Admissibility

1. The parties' submissions

(a) The Government

33. The Government argued that Article 6 § 1 of the Convention was not applicable to the proceedings at issue. They explained that records in operational files served only as tools, mainly for the prevention of crime and in certain situations to help investigate them. Operational files contained information concerning events, circumstances and persons. Data on a particular person could be recorded in an operational file only in connection with investigative activities carried out in respect of other persons. However, the fact that certain operational activities had been carried out in respect of a certain person did not mean that that person was suspected of having committing a crime. Moreover, the mere listing of a person's name in an operational file could not be equated with the legal status of a suspect or official notification of an allegation that a person had committed a criminal offence. Operational information was to be considered only as certain preliminary information. Consequently, it had to be declassified if the authorities wanted to use it as evidence in criminal proceedings. Relying on the above, the Government submitted that Article 6 § 1 of the Convention, under its criminal head, was not applicable to the applicant's case.

34. In the alternative, the Government argued that contesting the lawfulness and reasonableness of listing the applicant's name in the operational records file under the administrative procedure could not be considered a determination of his civil rights. The litigation at issue had concerned an administrative dispute, a conflict between the applicant and a public administrative body – the Police Commissariat. The applicant had challenged before the domestic courts the actions of State agents when carrying out one of the State's main functions – guaranteeing public security and safety, and in this particular connection the State institution had not been acting as a private party. The State had a broad margin of discretion over the exercise of the right to carry a gun. Moreover, an administrative decision to grant or withhold such a licence did not directly affect a person's property rights or lawful interests. For the Government, the right to carry a gun was not to be considered as being equal to, for example, the right to carry out certain professional activities. Nor did it affect a person's possessions.

35. On this latter point, the Government submitted that it did not follow from Article 38 of the Law on the Control of Arms and Ammunition that the listing of a person's name in an operational records file and the subsequent possibility of his or her firearm being taken would be acts

amounting to an interference with that person's property rights by the State. Once a licence to carry a gun had been revoked, the gun was to be temporarily kept by the police. The subsequent sale of the gun was to be for a reasonable price and the money received was to be given to the person concerned. As a result, a person would receive fair compensation and no determination of his or her civil rights would be at issue.

36. Relying on the above, the Government asserted that the applicant's complaint under Article 6 of the Convention was inadmissible *ratione materiae*. In the alternative, the Government submitted that the complaint was manifestly ill-founded.

(b) The applicant

37. The applicant did not expressly articulate whether Article 6 § 1 of the Convention applied to his case. Nonetheless, he submitted that, as a result of his name being listed in the operational records file, he had experienced intense humiliation and was emotionally distressed. He also argued that, because of the public suspicion that he was involved in alleged, unnamed criminal activities, whilst at the same time being denied any information about the basis of those suspicions or the opportunity to defend his good name, his chances of communicating with others as well as the opportunity to seek work were severely reduced. The applicant also noted that on 8 May 2002 the police had urged him to hand in his firearms. For the applicant, the revocation of his licence to keep firearms, which were his rightfully acquired property, and their forced collection to be sold to other individuals, could be equated with restrictions upon the owner.

2. The Court

(a) Applicability of Article 6 § 1

38. The Court will first consider whether Article 6 § 1 of the Convention applies under its civil head. In this connection the Court reiterates that, according to the principles laid down in its case-law (see, for instance, *Kerojärvi v. Finland*, 19 July 1995, § 32, Series A no. 322; *Gülmez v. Turkey*, no. 16330/02, § 28, 20 May 2008), it must first ascertain whether there was a dispute ("*contestation*") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether they are also protected under the Convention. The dispute must be genuine and serious; it may relate not only to the existence of a right but also to its scope and the manner of its exercise; and the outcome of the proceedings must be directly decisive for the right in question.

39. As regards the first of the above-mentioned criteria, that the dispute must concern a right which arguably exists under national law, it should further be reiterated that Article 6 § 1 does not guarantee any particular

content for those civil rights in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (see *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B).

40. Turning to the question of whether an arguable claim existed in the present case, the Court shares the Government's view that the State authorities enjoy a wide margin of discretion in assessing whether the applicant was eligible for a firearms licence. Nonetheless, for the reasons outlined below, the Court finds that the revocation of that licence and the subsequent judicial proceedings to determine the lawfulness and reasonableness of the listing of his name in the operational records file, even though they had been conducted in accordance with the administrative procedure, had an effect upon the applicant's civil rights.

41. The Court recalls that the applicant's firearms licence was revoked because an operational records file, compiled by police officers and containing data on the applicant's alleged risk to society, had been opened. The applicant attempted, albeit unsuccessfully, to obtain that information from the police, with the help of the courts, and to challenge its validity before the domestic courts. There can be little doubt that such information had an impact on the applicant's reputation, which merits protection under Lithuanian law (see paragraph 23 above) and falls within the scope of Article 8 of the Convention (see, for example, *Fayed v. the United Kingdom*, cited above, § 67-68; *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI).

42. Likewise, the Court observes, with reference to its case-law, that when information about a person's life, including, *inter alia*, his criminal record, is systematically collected and stored in a file held by agents of the State, this information falls within the scope of “private life” for the purposes of Article 8 § 1 of the Convention (see *Rotaru v. Romania* [GC], no. 28341/95, §§ 43-44, ECHR 2000-V; *Amann v. Switzerland* [GC], no. 27798/95, §§ 65-67, ECHR 2000-II; *Leander v. Sweden*, 26 March 1987, § 48, Series A no. 116). The Court further notes that Article 22 of the Lithuanian Constitution guarantees the protection of a person's private life.

43. The Court cannot rule out the possibility, albeit theoretical, that the listing of the applicant's name in the operational records file could have resulted in restrictions on him entering certain private-sector professions or otherwise earning a living, thereby again affecting his private life (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, §§ 47-50, ECHR 2004-VIII). Indeed, as can be seen from Lithuanian legislation (see paragraph 28 above), certain professions, such as that of security officers, are not accessible to persons who have been the subject of operational investigations. In this respect the Court notes Article 48 of the Lithuanian Constitution, which provides that each person is free to choose a job or occupation.

44. Lastly, the Court notes the applicant's argument that the revocation of his firearms licence had meant that he was obliged to hand in the guns which he already owned to the State authorities for disposal, albeit in exchange for money (see paragraph 6 above). There can be little doubt that this involved an interference with another civil right, guaranteed both by Article 23 of the Lithuanian Constitution and Article 1 of Protocol No. 1 to the Convention, that is to say, the right to the protection of property.

45. In the light of the above, the Court finds that Article 6 § 1 is applicable to the impugned proceedings under its civil head. Consequently, the Government's objection that the applicant's complaint is incompatible *ratione materiae* must be dismissed.

46. Having regard to its conclusion in the preceding paragraph, the Court does not find it necessary to determine whether the criminal limb of Article 6 § 1 of the Convention was applicable in the present case to the proceedings before the Lithuanian courts.

(b) Other observations

47. The Court finds 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

48. If the Court were to find Article 6 § 1 of the Convention applicable to the present case, the Government argued that the applicant's right to a fair hearing had been limited in a proportionate manner. Whilst conceding that, for a hearing to be fair, proceedings should be adversarial, the Government submitted that the guarantees of Article 6 § 1 were not of an absolute nature and that the entitlement to the disclosure of relevant evidence was not an absolute right. Consequently, it was permissible for the right to equality of arms to be restricted when certain guarantees were proportionately limited in order to achieve legitimate aims.

49. The Government submitted that the Lithuanian courts had carefully reviewed the circumstances of the case. On the basis of all the collected evidence, including the classified information, the courts had taken into account the fact that criminal proceedings had been instituted against the applicant and they had adopted reasoned decisions finding that the data on the applicant had been lawfully recorded in the operational file. The applicant had been able to submit evidence, present his arguments, make submissions and participate in the decision-making process as far as had

been possible without revealing to him the classified material, whose secrecy the courts had sought to maintain in the public interest. The Government stressed that the applicant had not complained that the Lithuanian courts had not been impartial or objective. As to the information in the operational records file, it had constituted a State secret. The interest in protecting State secrets was paramount. Consequently, it had been legitimate not to disclose that information to the applicant in the course of the judicial proceedings. Nonetheless, the fair-balance principle had been maintained, given that non-disclosure had been chosen in order to protect the proper administration of justice and to guarantee existing public needs and the safety of Lithuanian society. The State had had the legitimate aim of maintaining the secrecy of police criminal investigation methods, whilst at the same time ensuring that the courts themselves had been able to assess all the relevant materials in the course of the judicial proceedings in order to adopt a lawful and reasoned decision. In sum, a fair balance had been maintained between the general interests of society and the applicant's fair trial guarantees, in that the principle of equality of arms had been compromised in proportion to the aims sought.

50. The applicant submitted that the restriction on his having access to the operational records file had not been proportionate. The domestic courts had based their decisions on classified information which had not been disclosed to him. Instead of evidence, the applicant had been presented with mere assumptions. As to the criminal charges against him, the applicant argued that, in their appeal of 12 June 2003, the police had misled the court by stating that he had been charged with a serious crime. The police, who had themselves investigated the case of theft, had been well aware of the fact that on 27 March 2003 the theft charge had been replaced by a lesser accusation of covering up a crime. Moreover, when submitting the appeal, the police had also been aware that his house arrest had been lifted on 27 May 2003. The Supreme Administrative Court had failed to consider any of this, despite the fact that the applicant had submitted documents – a copy of the amended decision regarding the charges (*pakeisto kaltinimo kopiją*) and a copy of the decision to release him from house arrest.

2. The Court's assessment

51. The Court reiterates that, according to its case-law, the principle of equality of arms – one of the elements of the broader concept of a fair hearing – requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place the litigant at a substantial disadvantage *vis-à-vis* the opponent (see, among many other authorities, *Kress v. France* [GC], no. 39594/98, § 72, ECHR 2001-VI). It also implies, in principle, the opportunity for the parties to have knowledge of and discuss all evidence adduced or observations filed with a view to

influencing the court's decision (see *Fretté v. France*, no. 36515/97, § 47, ECHR 2002-I).

52. However, the Court notes that the entitlement to disclosure of relevant evidence is not an absolute right. In any court proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the defence. In some cases it may be necessary to withhold certain evidence from the defence so as to preserve the fundamental rights of another individual or to safeguard an important public interest. However, only such measures restricting the rights of the defence which are strictly necessary are permissible under Article 6 § 1. Moreover, in order to ensure that a person receives a fair trial, any difficulties caused to the defence by a limitation on its rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see, *mutatis mutandis*, *Jasper v. the United Kingdom* [GC], no. 27052/95, § 52, 16 February 2000).

53. In cases where evidence has been withheld from the defence on public interest grounds, it is not the role of this Court to decide whether or not such non-disclosure was strictly necessary since, as a general rule, it is for the national courts to assess the evidence before them. In any event, in many cases, including the present, where the evidence in question has never been revealed, it would not be possible for the Court to attempt to weigh the public interest in non-disclosure against that of the accused in having sight of the material. It must therefore scrutinise the decision-making procedure to ensure that, as far as possible, the procedure complied with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the accused (ibid., § 53). Taking into account the circumstances of the present case, in which the applicant had contested being implicated in criminal activities, as a ground for listing his name in the operational records file, the Court considers that the above principles could also be applied to the proceedings before the Lithuanian administrative courts.

54. Turning to the instant case, the Court observes that the Government do not dispute the fact that the content of the operational records file, on the basis of which the courts found against the applicant, was never disclosed to him. The Court is not insensitive to the goals which the Lithuanian law-enforcement authorities pursued through their operational activities. Likewise, the Court shares the Government's view that documents which constitute State secrets may only be disclosed to persons who possess the appropriate authorisation. However, the Court notes that Lithuanian law and judicial practice provide that such information may not be used as evidence in court against a person unless it has been declassified, and that it may not be the only evidence on which a court bases its decision (see paragraphs 29-31 above).

55. It appears that the undisclosed evidence in the present case related to an issue of fact decided by the Lithuanian courts. The applicant complained that his name had been listed in an operational records file without proper reason and asked the courts to consider whether the operational file on him should be destroyed. In order to conclude whether or not the applicant had indeed been implicated in any kind of criminal activity, it was necessary for the judges to examine a number of factors, including the reason for the police operational activities and the nature and extent of the applicant's participation in alleged crime. Had the defence been able to persuade the judges that the police had acted without good reason, the applicant's name would, in effect, have had to have been removed from the operational records file. The data in the operational file were, therefore, of decisive importance to the applicant's case (see, albeit with regard to criminal proceedings, *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001-II).

56. More importantly, as can be seen from the decisions of the Lithuanian courts, the information contained in the operational records file was deemed to be essential evidence of the applicant's alleged danger to society. The Court notes that on numerous occasions the applicant asked for the information to be disclosed to him, even in part. However, the domestic authorities - the police and the courts - denied his requests. Whilst, before dismissing the applicant's case, the Lithuanian judges did examine, behind closed doors and in their chambers, the operational records file, they merely presented their conclusions to the applicant. It was not, therefore, possible for the applicant to have been apprised of the evidence against him or to have had the opportunity to respond to it, unlike the police who had effectively exercised such rights (see, *mutatis mutandis*, *Gulijev v. Lithuania*, no. 10425/03, § 44, 16 December 2008).

57. As for the other evidence against the applicant, the Court cannot speculate whether on 27 March 2003 the applicant was charged with a new criminal offence of covering up a crime or whether this was a substitution for the previous charges of theft (see paragraph 13 above). It notes, nevertheless, that on 23 July 2003 the Supreme Administrative Court pointed out that it was necessary for the lower courts to examine the circumstances relating to the theft proceedings and to evaluate the applicant's procedural position in that regard (see paragraph 17 above). However, it transpires from the subsequent decisions of the Lithuanian courts that they failed to elaborate on those charges and did not devote a single sentence of their decisions to them. The Court notes that, in its decision of 1 December 2003, the Kaunas Regional Administrative Court stated that, besides the operational file, it had examined “written evidence” against the applicant, without further elaboration. The same was true for the Supreme Court's decision of 24 March 2004, which merely mentioned “written evidence” against the applicant, without any further explanation.

58. In conclusion, therefore, the Court finds that the decision-making procedure did not comply with the requirements of adversarial proceedings or equality of arms, and did not incorporate adequate safeguards to protect the interests of the applicant. It follows that there has been a violation of Article 6 § 1 in the present case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

59. Invoking Article 6 § 1 of the Convention, the applicant further complained that the length of the proceedings before the Lithuanian courts had been excessive. In this connection, the Court notes that the proceedings were initiated on 19 September 2002 and ended one and a half years later, on 24 March 2004 (see paragraphs 7 and 21 above). In such circumstances, the Court finds that the length of the proceedings in issue did not exceed the "reasonable time" requirement of Article 6 § 1 of the Convention. It follows that this complaint should be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

60. Lastly, the applicant alleged that the Lithuanian courts had failed to examine additional evidence, that they had erred in law, and that the court decisions had lacked reasoning. The applicant relied on Article 6 § 1 of the Convention.

61. However, the Court finds that these complaints have been addressed and examined above when deciding whether the applicant had had a fair hearing. Consequently, the Court finds that there is no need to examine their admissibility or merits.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 100,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. Pecuniary damage had been caused by the compulsory surrender of his firearms. The non-pecuniary damage had been caused by being suspected of criminal activities, having been denied any information about the basis of those suspicions, and having been denied the opportunity to defend his good name.

64. The Government contested these claims as unsubstantiated and excessive.

65. In the light of the parties' submissions and the material in the case file, the Court notes that the applicant has failed to submit any documentation in support of his claim for pecuniary damage. Consequently, the Court rejects it. However, the Court considers that the applicant may be considered to have suffered some non-pecuniary damage as a result of the breach of his rights which cannot be compensated by the Court's finding of a violation alone. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,500.

B. Costs and expenses

66. The applicant did not submit any claims for costs and expenses. Consequently, the Court makes no award under this head.

C. Default interest

67. 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 applicant's complaint concerning the fairness of the proceedings (in relation to the operational records file) admissible and the complaint about the length of court proceedings inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Declares* that it is not necessary to examine the admissibility and merits of the remainder of the applicant's complaints under Article 6 § 1 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, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, which sum is to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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 6 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Françoise Tulkens
Deputy Registrar	President