

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

FOURTH SECTION

CASE OF ŠČENSNOVIČIUS v. LITHUANIA

(Application no. 62663/13)

JUDGMENT

STRASBOURG

10 July 2018

FINAL

10/10/2018

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



In the case of Ščensnovičius v. Lithuania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Faris Vehabović,
Egidijus Kūris,
Iulia Motoc,
Georges Ravarani, *judges,*

and Andrea Tamietti*, Deputy Section Registrar,*

Having deliberated in private on 19 June 2018,

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

PROCEDURE

1. The case originated in an application (no. 62663/13) 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 Anton Ščensnovičius ("the applicant"), on 25 September 2013.

2. The applicant was represented by Mr R. Mazurov, a lawyer practising in Kaunas. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged, in particular, that the length of his detention on remand had been excessive, contrary to Article 5 § 3 of the Convention, and that the conditions of his detention between 24 February 2010 and 17 February 2014 had been inadequate.

4. On 31 May 2017 the complaints concerning the length of his detention on remand and the conditions of his detention were communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

5. Following communication, the applicant raised new additional complaints under Articles 6 § 1, 8 and 17 of the Convention. These complaints fall outside the scope of the present application and will not be further examined.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and is detained in Pravieniškės Correctional Facility.

A. The applicant's detention during the pre-trial investigation

7. On 11 May 2009 the State criminal police bureau started a pre-trial investigation into allegations that an armed criminal organisation was active in Vilnius Region. It was suspected that the said organisation was armed with firearms and possessed and distributed large amounts of narcotic and psychotropic substances (for the general factual background, see *Lisovskij v. Lithuania*, no. 36249/14, § 6, 2 May 2017).

8. In the context of that investigation, on 15 December 2009 some of the members of the organisation were arrested and in the course of imposing coercive measures on them it was established that the applicant also possibly belonged to the organisation.

9. On 23 February 2010 the applicant was arrested and officially notified that he was suspected of participating in a criminal organisation armed with firearms.

10. On 24 February 2010 the Vilnius District Court authorised the applicant's detention on remand for two months. The court considered that the available evidence was sufficient to hold that the applicant may have committed the crimes of which he was suspected. It held that the applicant might commit new crimes because he: was suspected of having committed a very serious crime that could lead to a long period of imprisonment; had no strong social ties; was unemployed and not enrolled in an educational institution; was not married; had been convicted two times before for crimes concerning the illegal possession of narcotic and psychotropic substances (which constituted a negative character trait); and acknowledged that he had been using narcotic and psychotropic substances. Moreover, there was a risk that the applicant might try to abscond, given that he had relations abroad. The court also found that the applicant might interfere with the criminal investigation because he was living with another suspect in the case, was buying narcotic and psychotropic substances from other persons, his role in the criminal organisation was quite active and there was a risk that he might try to influence other witnesses or suspects or that those persons might try to influence him. The court also stated that the case was extremely complex and a number of procedural actions had to be performed. It appears that the applicant did not appeal against this decision.

11. On 22 April 2010 the Vilnius Region District Court extended the applicant's detention for a further three months. It relied on the same

grounds as those given in its previous decision (see paragraph 10 above). In addition, the court noted that the case against the applicant was complex and of a large scale, and that a number of investigative actions had to be carried out, including the determination of the applicant's role in the criminal organisation and his relationship with other suspects. The court also observed that although during the applicant's detention no investigative actions had been carried out with regard to the applicant, the records of the pre-trial investigation showed that various investigative actions had been performed in order to establish grounds for the suspicion in respect of the applicant (vehicles had been inspected, a chemical analysis of the substances found during the search of the applicant's flat had been performed, expert conclusions had been received, and other suspects – who had given testimony about the applicant – had been questioned). It appears that the applicant did not appeal against this decision.

12. On 20 July 2010 the Vilnius Region District Court extended the applicant's detention for a further month. It relied on the same grounds as those given in its previous decision (see paragraphs 10 and 11 above). In addition, the court noted that intensive investigative actions had been undertaken, without limiting the pre-trial investigation to the actions solely against the applicant. It appears that the applicant did not appeal against this decision.

13. On 20 August 2010 the Vilnius Regional Court extended the applicant's detention for a further three months. It relied on essentially the same grounds as those given in its previous decision (see paragraph 10 above). However, the court held that there was no indication that the applicant might try to interfere with the criminal investigation, so it decided to strike it out from the list of grounds on which the applicant had been detained. Nevertheless, the grounds for detention listed in domestic law were alternatives – that is to say the existence of only one was enough for detention on remand to be imposed. The court also noted that in the course of the past three months, numerous procedural actions had been carried out: a number of suspects had been questioned, eyewitnesses had been identified, additional questioning of suspects had taken place, verification of testimony given at the crime scene had taken place, items significant for the pre-trial investigation had been examined, additional tasks (including the investigation of certain objects) had been scheduled, descriptions of the suspects had been collected. The court was convinced that sufficient grounds to prolong the applicant's detention on remand existed.

14. The applicant appealed against that decision and applied for the imposition of a different restrictive measure. He argued that before his arrest he had had a permanent place of residence with his father and a permanent income because he had been working as a long-distance driver, and that he had strong social ties and had not known any of the other suspects. He also claimed that the investigation was inactive and that there were no grounds to

further detain him. However, on 16 September 2010 the applicant's appeal was dismissed by the Court of Appeal. The court stated that when ordering detention on remand, a court was not establishing the applicant's guilt, and that the standard of evidence required for detaining him was thus lower. The court considered that there was enough information to believe that the applicant had committed the crimes he had been accused of. The court also agreed that the applicant might abscond or commit new crimes. Moreover, the court stated that it could not impose a more lenient restrictive measure because it could only uphold or quash the first-instance decision. The court also observed that, under domestic law, detention on remand could last longer than six months only when the case was especially complex or of a large scale. It found that in the applicant's case those conditions had been met: the investigation concerned a criminal offence committed by a criminal organisation, there were more than fifty suspects, and it was necessary to carry out numerous investigative actions.

15. On 23 November 2010 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on the same grounds as those given in its previous decisions and noted that the procedural action that had been taken had been the same as that listed in its previous decision (see paragraph 13 above).

16. The applicant appealed against that decision and asked for a different restrictive measure to be imposed. He claimed that he was not guilty and that in the nine months of his detention the officers had not presented any proof of his guilt. He also denied the risk of his absconding because it was in his interests that the court examine his case on the merits and acquit him. The applicant denied that he would commit new crimes just because he was unemployed. It was the applicant's view that if that were so then every unemployed person could be detained. He also claimed that his previous conviction should not have been taken into account when prolonging his detention on remand because he had been paying a fine imposed on him in that case and no one could be punished for the same offence twice. He also had a father and a brother, which showed his strong social ties. Finally, he had only been questioned twice in the nine months he had been detained.

17. On 17 December 2010 the Court of Appeal dismissed the applicant's appeal. It reiterated the previous findings (see paragraphs 10 and 11 above) but also noted that the applicant's criminal activities had lasted for a long time and that he had been making money from them. The court also noted that the applicant had been additionally questioned on 15 and 17 November 2010, that another suspect had been questioned twice as well, and that DNA and dactyloscopy examinations had been scheduled.

18. On 23 February 2011 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on the same grounds as those given in its previous decisions (see paragraphs 10 and 13 above). In addition, the court held that there were over forty suspects

in the case; numerous investigative actions had been performed: suspects had been arrested and questioned; witnesses had been questioned; eyewitnesses had been identified; items relevant for the investigation had been examined; characteristics of the suspects had been collected; and material gathered in the pre-trial investigation had been divided into two parts (and the material gathered in the first part had already been transferred to a court for examination on the merits).

19. The applicant appealed against that decision and asked that a different restrictive measure be imposed. On 31 March 2011 the Court of Appeal upheld the decision of the Vilnius Regional Court of 23 February 2011. It relied on essentially the same grounds as those given before (see paragraph 17 above). The court also stated that the applicant's argument that he had only been questioned twice during the pre-trial investigation could not be assessed in the light of a delay in the proceedings caused by the extreme complexity of the case and the intensity of the pre-trial investigation. Moreover, the offences committed by the applicant had not been incidental; rather, they had been committed over a long period of time. The applicant's argument that he had a father and a brother with whom he had strong social ties could not be deemed to outweigh the public interest in his remaining in detention.

20. On 19 May 2011 the applicant was officially notified that he was suspected of participating in a criminal organisation armed with firearms and of possession of a very large amount of narcotic and psychotropic substances with the intention to distribute them.

21. On 20 May 2011 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on the same grounds as those given in its previous decision (see paragraph 18 above). In addition, the court held that there were fifty-eight suspects, of whom twenty were granted the status of a suspect, and that numerous procedural actions had been performed.

22. The applicant appealed against that decision and asked that it be quashed. On 16 June 2011 the Court of Appeal upheld the decision of the Vilnius Regional Court of 20 May 2011.

B. The applicant's detention during his trial

23. On 1 August 2011 the prosecutor referred the bill of indictment and the case to the Vilnius Regional Court for examination on the merits.

24. On 18 August 2011 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 21 above). It added that the applicant had been working as a long-distance driver for eight years and had been travelling to Russia constantly; there was thus a danger

that he could abscond. Moreover, the court held that the applicant might try to interfere with the proceedings and that thirty-three persons stood accused.

25. The applicant appealed against that decision and asked that it be quashed. On 14 September 2011 the Court of Appeal upheld the decision of the Vilnius Regional Court of 18 August 2011. The court, however, decided that the first-instance court had wrongly concluded that the applicant might interfere with the proceedings and removed this ground from the list of grounds for extending the applicant's detention. The court furthermore held that there were no grounds to believe that the case was being delayed and it also observed that the criminal case had already been referred to the court for examination on the merits.

26. On 21 November 2011 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 24 above). It added that there were thirty-three co-accused in the criminal case against the applicant and that the case was complex. It appears that the applicant did not appeal against this decision.

27. On 23 February 2012 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 26 above). In addition, it stated that the case file comprised ninety-six volumes of material; the standpoints of the co-accused were not clear because all of the co-accused had stated that they would give their testimony at the end of the proceedings; and the hearings were planned in advance and their schedule was extremely intense. It appears that the applicant did not appeal against this decision.

28. On 17 May 2012 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 27 above).

29. The applicant appealed against that decision and asked for it to be quashed. He claimed that he had been detained for twenty-seven months and had not been questioned once. The applicant furthermore submitted that the searches of his home had not revealed any trace of narcotic or psychotropic substances, the identity of persons to whom he had allegedly sold the substances had not been established, other co-accused had not recognised him as a person whom they knew and the whole accusation against him had been based on the testimony of a drug addict. The applicant also stated that he had a father and could live with him.

30. On 14 June 2012 the Court of Appeal upheld the decision of the Vilnius Regional Court of 17 May 2012. The court held that it could not conclude that the proceedings had been protracted because the case had been transferred to the Vilnius Regional Court for examination on the merits and because of that, in the course of criminal proceedings the duration of the applicant's detention on remand had not been limited.

31. On 22 August 2012 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on the same grounds as those given in its previous decision (see paragraph 28 above).

32. The applicant appealed against that decision and asked for it to be quashed. On 11 September 2012 the Court of Appeal dismissed the applicant's appeal. The court stated that the case was being examined before the first-instance court on the merits and that the evidence had been examined; the applicant's allegations that no investigative actions had been performed in respect of him were thus unfounded.

33. On 22 November 2012 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on the same grounds as those given in its previous decision (see paragraph 31 above). In addition, the court noted that the case file comprised 104 volumes, there were thirty-three co-accused and the hearings had been taking place in accordance with the schedule.

34. The applicant appealed against that decision and asked for it to be quashed. On 21 December 2012 the Court of Appeal rejected the applicant's appeal and upheld the lower court's findings that the applicant might abscond, that the criminal case was complex (it had 106 volumes and thirty-three co-accused), and that it was not possible to achieve the purpose of Article 119 of the Code of Criminal Procedure.

35. On 15 February 2013 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 33 above). In addition, the court noted that the criminal case had 107 volumes and thirty-two co-accused, and that the hearings had been taking place in accordance with the very intense schedule.

36. The applicant appealed against that decision and asked for it to be quashed. On 5 March 2013 the Court of Appeal rejected the applicant's appeal and upheld the lower court's findings.

37. On 14 May 2013 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 35 above). In addition, the court noted that the case filed contained 114 volumes and thirty-two co-accused and that the hearings had been taking place in accordance with the schedule.

38. The applicant appealed against that decision and asked for it to be quashed. On 28 May 2013 the Court of Appeal rejected the applicant's appeal and upheld the lower court's findings.

39. On 21 August 2013 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 37 above). In

addition, the court stated that the case file comprised 116 volumes, and that the case involved thirty-two co-accused and was extremely complex.

40. The applicant appealed against that decision and asked for a less restrictive measure to be imposed. On 5 September 2013 the Court of Appeal rejected the applicant's appeal and upheld the lower court's findings.

41. On 15 November 2013 the Vilnius Regional Court extended the applicant's detention on remand for a further three months. It relied on same grounds as those given in its previous decision (see paragraph 39 above). In addition, the court stated that the case file comprised 118 volumes and that the case was extremely complex. Moreover, the criminal case was at the end of its examination before the first-instance court and the closing arguments had begun.

42. The applicant appealed against that decision and asked for the imposition of a less restrictive measure. On 6 December 2013 the Court of Appeal rejected the applicant's appeal and upheld the lower court's findings.

43. On 17 February 2014 the Vilnius Regional Court decided not to extend the applicant's detention on remand and instead imposed house arrest. The court held that his previous convictions had been for non-violent crimes and that although he was not married, he had a family and relatives who had taken care of him even during his detention (by means of calls and visits), which showed that he had strong social ties. Although the applicant had been born in Russia and worked as a long-distance driver, his father lived in Vilnius, so the risk of his absconding was low. The court also stated that over the four years of the pre-trial investigation the relevant data had been collected and the final speeches were already taking place in the criminal case. The court thus decided to impose house arrest for six months and obliged the applicant to stay at his place of residence between 11 p.m. and 9 a.m. and not to communicate with certain people.

C. Conduct of the criminal proceedings during the applicant's detention

44. Between the applicant's arrest on 23 February 2010 until the completion of the pre-trial investigation on 1 August 2011 (see paragraphs 9 and 23 above) the authorities conducted six interviews with the applicant, seized and examined his car and other belongings, and ordered a forensic examination of various items seized from the applicant. Moreover, the authorities received fifty expert reports; there were fifty examinations of the objects found in the course of the pre-trial investigation; twenty searches were performed, thirty restrictive measures were imposed, the suspects were questioned 194 times, eight persons were arrested, forty-four witnesses were questioned, the authorities conducted 196 eyewitness identifications,

various witnesses and suspects visited the crime scene twenty-four times to give testimony, a search warrant was issued in respect of one suspect and a request for extradition was sent to Israel regarding another suspect.

45. Between the transfer of the case to the Vilnius Regional Court for examination on the merits on 1 August 2011 and the decision on 17 February 2014 to impose house arrest on the applicant, a total of sixty-five hearings were coordinated in advance and scheduled, and nineteen of those hearings were either cancelled or adjourned:

(a) From 1 August 2011 until 26 June 2012 twenty-two hearings were scheduled (one each month from October 2011 until January 2012, three in February 2012, three in March 2012, four in April 2012, three in May 2012 and five in June 2012); four of them were adjourned (one in February 2012, two in April 2012 and one in June 2012) and one was cancelled (in May 2012);

(b) From 12 September 2012 until 7 June 2013 thirty-three hearings were scheduled (three each month from September 2012 to March 2013, six in April 2013, three in May 2013 and three in June 2013); seven of them were adjourned (one in December 2012, one in February 2013, three in March 2013 and two in April 2013), and three of them were cancelled (one in February 2013 and two in April 2013);

(c) From 13 September 2013 until 17 February 2014 ten hearings were scheduled (two each month from September 2013 until November 2013, one in January 2014, and two in February 2014); three of them were adjourned (one in September 2013, one in October 2013, and one in February 2014) and one of them was cancelled (in October 2013).

46. The main reasons for the adjournment or cancellation of hearings were illnesses of members of the court, lawyers or co-accused or the failure of some of the co-accused to appear; on one occasion one of the co-accused did not have a lawyer, on one occasion one of the members of the court had to attend a funeral, and on several occasions lawyers for the co-accused were unable to attend (for various reasons). During the forty-six hearings which were held, the court heard testimony from the co-accused, witnesses and victims, played audio and video recordings, and read out case material.

D. Subsequent court decisions

47. On 22 May 2014 the Vilnius Regional Court convicted the applicant of participation in a criminal organisation armed with firearms and of possession of narcotic and psychotropic substances with the intention to distribute them (Articles 249 § 2 and 260 § 1 of the Criminal Code, respectively). The applicant was sentenced to eight years of imprisonment and he was ordered to pay a fine of 4,443 euros (EUR). It was decided to continue his house arrest until the start of the execution of the judgment.

48. The applicant appealed against his conviction, and so did the prosecutors. The prosecutors asked the court to re-categorise the applicant's offence and to hold that he had participated in a criminal organisation armed with firearms and that he had possessed a very large amount of narcotic and psychotropic substances with the intention to distribute them, and to increase the length of the imposed prison sentence to thirteen years. The applicant complained that the first-instance judgment had been unlawful and unfounded and that it had been based on controversial, inaccurate, illogical testimony given by one person. He also complained that the first-instance court had not identified the indications that he had belonged to a criminal organisation, the relationships between the members of that criminal organisation, and the specific actions they had performed. Lastly, the mere fact that some narcotic and psychotropic substances had been found in his room during the search did not mean that he had had the intention of distributing them.

49. On 24 April 2017 the Court of Appeal held that although during the search of the applicant's room the amounts of narcotic and psychotropic substances found had not been large, he had known that a certain D.J. had stored large amounts of narcotic and psychotropic substances in the same flat. Moreover, testimony of witnesses confirmed that the applicant had been distributing the narcotic and psychotropic substances. The court thus decided to re-categorise the applicant's offence under Article 260 § 3 of the Criminal Code and sentenced him to twelve years of imprisonment and ordered him to pay a fine of EUR 4,443.

50. The applicant lodged an appeal on points of law. He claimed that there was no evidence that he had committed the offences at issue, that the lower courts had failed to examine all the relevant circumstances of the case, that their judgments had been based on incorrect assumptions, and that he had not known about any arms used by the criminal organisation or about narcotic and psychotropic substances being kept in the flat that he had been living in. He also complained about the length of the criminal proceedings, given that the offences he had been convicted of had been committed before 2010, and yet the criminal proceedings were still on-going.

51. On 9 January 2018 the Supreme Court examined the applicant's appeal on points of law and allowed it in part. The court held that the lower courts had drawn the right conclusions about the applicant's criminal activities. However, the Supreme Court assessed the sentence imposed in the light of the applicant's complaint about the length of criminal proceedings against him. The court held that the proceedings in respect of the applicant had lasted from 23 February 2010, when he had been arrested, until the adoption of the present judgment – that is to say seven years, eleven months and fourteen days, which was an extremely long period of time and could only be justified by exceptional circumstances. The court noted that the case had been extremely complex because there had been

thirty-two co-accused, the case file had comprised 138 volumes, the first-instance judgment had amounted to 480 pages and the judgment of the appellate court had amounted to 197 pages. In such a case the length of proceedings could be justified, but only if the relevant authorities reacted to the complexity of the case appropriately and undertook all relevant measures without undue delays. The court held that in the instant case the process followed by the Court of Appeal had not been effective. The first-instance judgment had been delivered on 22 May 2014, and the case had been received at the Court of Appeal on 10 November 2014. However, at the first hearing on 19 February 2015 the Court of Appeal had decided to adjourn the case until 7 October 2015. During the hearing on 6 November 2015 the Court of Appeal had decided to apply to the relevant German authorities to be allowed to question one witness in Germany, and the next hearing was scheduled for April 2016. The reply from Germany had been received by the Court of Appeal on 10 February 2016; however, during the hearing on 7 April 2016 the next six scheduled hearings had been cancelled owing to the fact that the lawyers of eleven of the co-accused had been involved in other cases. The Court of Appeal had delivered its judgment on 24 April 2017. The length of the criminal proceedings in the present case was extremely important because the applicant had been detained on remand for almost four years. The Supreme Court held that in accordance with the case-law of the Court, the fact that the applicant had been held in detention on remand for such a long period of time, required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously. The Supreme Court made references to the case-law of the Court (*Matoń v. Poland* [Committee], no. 30279/07, § 29, 9 June 2009; *Paskal v. Ukraine*, no. 24652/04, § 58, 15 September 2011; *Pawlak v. Poland* [Committee], no. 28237/10, § 46, 13 January 2015; and *Tomczyk v. Poland*, no. 7708/12, § 41, 13 January 2015). The Supreme Court thus held that the unjustifiable length of criminal proceedings constituted grounds to impose a more lenient sentence on the applicant and ordered the applicant's imprisonment for eleven years and six months and ordered him to pay a fine of EUR 4,443.

E. The applicant's conditions of detention

1. Administrative proceedings for damages for the period 24 February 2010-13 May 2013

52. The applicant lodged a claim with the domestic courts for 100,000 Lithuanian litai (LTL – approximately EUR 28,962) in compensation for non-pecuniary damage in respect of his detention in allegedly inadequate conditions in Lukiškės Remand Prison. He alleged overcrowding.

53. On 23 September 2013 the Vilnius Regional Administrative Court held that for 1,159 days the applicant had been held in overcrowded cells and awarded him LTL 5,795 (approximately EUR 1,678) in compensation.

54. The applicant appealed and on 18 August 2014 the Supreme Administrative Court increased the amount of compensation to LTL 11,700 (approximately EUR 3,389).

2. Administrative proceedings for damages for the period 14 May 2013-17 February 2014

55. The applicant lodged a claim before the domestic courts and asked that he be awarded LTL 50,000 (approximately EUR 14,481) in non-pecuniary damages for detention in inadequate conditions from 24 February 2010 until 17 February 2014 in Lukiškės Remand Prison. He alleged that the cells had been overcrowded, and cold and humid in winter and hot in summer; he also alleged that the cells had suffered from dampness and mould.

56. On 9 January 2015 the Vilnius Regional Administrative Court held that the applicant had already received compensation for the period from 24 February 2010 until 13 May 2013, and decided to terminate the case in respect of this period. As regards the remaining period of time, the court considered that for 248 days the applicant had been held in overcrowded cells and awarded him approximately EUR 1,437 in compensation. The domestic courts dismissed the applicant's complaint regarding other sanitary conditions as unfounded.

57. The applicant appealed and on 6 October 2015 the Supreme Administrative Court upheld the decision of the Vilnius Regional Administrative Court of 9 January 2015.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

58. For relevant domestic law regarding detention on remand, house arrest and the conduct of criminal proceedings, see *Lisovskij v. Lithuania*, (no. 36249/14, §§ 45-54, 2 May 2017).

59. According to Article 249 § 2 of the Criminal Code provides that a person who participates in the activities of a criminal organisation armed with firearms risks a life imprisonment.

60. In an unrelated criminal case, the Šiauliai Regional Court held that it had been established case-law that holidays were not important reasons not to participate in a hearing (case of 22 July 2012, no. 1S-864-354/2014).

61. In an unrelated civil case, the Supreme Court also held that holidays were not important reasons not to participate in a hearing (case of 14 May 2015, no. 3K-3-329-916/2015).

62. For the relevant domestic law and practice and international materials regarding conditions of detention, in particular in Lukiškės Remand Prison, at the material time, see *Mironovas and Others v. Lithuania* (nos. 40828/12 and 6 others, §§ 50-69, 8 December 2015).

63. A delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") visited Lithuania from 5 to 15 September 2016. In its report, published on 1 February 2018, the CPT noted:

> "50. At Lukiškės Prison, the delegation noted that material conditions were in general better than during the 2012 visit due to continuous efforts of the management to renovate parts of the prison. However, a number of unrenovated cells were still dilapidated, humid and lacking adequate ventilation; proper access to daylight was problematic throughout the prison due to small windows. Despite the decrease of population, some cells were overcrowded and did not provide 4 m^2 of living space per inmate."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

64. The applicant complained that the conditions of his detention had been inadequate. He relied on 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. Admissibility

1. The parties' submissions

65. The Government argued that the applicant could no longer be considered a victim of the alleged violations of Article 3 of the Convention. The cases regarding both periods he complained of had been reviewed by the administrative courts and decisions in the applicant's favour had been adopted. The sums awarded to him in compensation for non-pecuniary damage had been adequate and sufficient, and had been calculated in accordance with the Court's case-law and by taking into account the entirety of the relevant criteria (the duration and the extent of the violation, the consequences for the applicant's health of the violation, the actions of the aggrieved person, the economic living conditions in Lithuania, examples of similar cases, the criteria of equity, fairness and reasonableness, and the principle of proportionality) and the individual situation of the applicant.

66. The applicant disputed the Government's arguments, submitting that the sums awarded to him were inadequate.

2. The Court's assessment

(a) The period of detention between 24 February 2010 and 13 May 2013

67. The principles governing the assessment of an applicant's victim status have been summarised in paragraphs 178-192 of its judgment in the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V). In that connection, the Court notes that a decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention. One of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded as a result of using the domestic remedy. The Court indicates that an applicant's victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court (ibid., §§ 180 and 202).

68. The Court also refers to the general principles concerning the assessment of an applicant's victim status in cases of conditions of detention, stemming from its case-law and to its earlier findings (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, §§ 84-85 and 93-94, 8 December 2015) and the specific aspects of the victim status in Lithuanian conditions of detention cases (ibid., §§ 86-88).

69. In the applicant's case the Lithuanian courts admitted a violation of domestic legal norms setting out specific aspects pertinent to the conditions of detention (see paragraphs 53 and 54 above). However, the Court considers that even though the applicant was awarded EUR 3,389, this amount, whilst apparently consistent with Lithuanian case-law at that time, is significantly lower than the amounts that the Court awards in similar cases (see *Mironovas and Others*, cited above, §§ 99 and 156). The Court thus considers that the applicant retains his victim status under Article 34 of the Convention for his complaint in respect of the period between 24 February 2010 and 13 May 2013 and dismisses the Government's preliminary objection of loss of victim status.

70. The Court furthermore notes that the applicant's complaint about his conditions of detention for the period between 24 February 2010 and 13 May 2013 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It furthermore notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) The period of detention between 14 May 2013 and 17 February 2014

71. The Court observes that the domestic courts in the proceedings instituted by the applicant acknowledged that the applicant had had insufficient cell space for a period of 248 days (see paragraphs 56 and 57 above). The courts noted that the insufficient cell space had breached domestic requirements, and the Court is satisfied that a violation of the applicant's rights under Article 3 was acknowledged (see *Mironovas and Others*, cited above, § 87).

72. As the applicant was released from detention on remand on 17 February 2014 (see paragraph 43 above) the Court considers that the violation of the applicant's rights has been brought to an end and, in such circumstances, monetary compensation constitutes an effective remedy (see *Mironovas and Others*, cited above, § 85).

73. The Court notes that in the domestic proceedings the applicant was awarded EUR 1,437 in respect of non-pecuniary damage. The Court considers this amount not to be inconsistent with what it would award in similar cases (ibid., §§ 95-98). It therefore finds that in respect of the period between 14 May 2013 and 17 February 2014 the applicant may no longer claim to be a victim of a violation of Article 3 of the Convention. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must therefore be rejected, pursuant to Article 35 § 4.

B. Merits

1. The parties' submissions

74. The applicant submitted that in Lukiškės Remand Prison he had been detained in overcrowded cells, he also complained of other types of sanitary conditions (cells that had been cold and humid in the winter and hot in the summer, insufficient light and ventilation, the presence of parasites, insufficient time allowed outside, not enough time to shower). The applicant considered the compensation awarded to him by the domestic courts to be insufficient.

75. The Government acknowledged that the applicant had been detained in overcrowded cells, in breach of domestic standards. However, they emphasised that the domestic courts had not found any breaches of hygiene norms or other sanitary conditions. Moreover, the cells in which the applicant had been held had been renovated before he had been detained, they had met sanitary requirements, and the applicant had engaged in certain out-of-cell activities. The Government also stated that the applicant had been transported to the hearings and had had meetings with his lawyers and relatives, thereby spending a lot of time outside his cell.

2. The Court's assessment

(a) General remarks about Lukiškės Remand Prison

76. The Court notes at the outset that according to the CPT, the material conditions at Lukiškės Remand Prison, where the applicant was held, varied considerably from one part of the prison to another, which means that the extent of overcrowding and other conditions was not the same in every part of the prison. Although the Court cannot apply the presumption of overcrowding automatically, it has, however, already accepted the conclusions of the CPT that overcrowding in Lukiškės Remand Prison was further aggravated by deplorable conditions – dilapidated and dirty cells and furnishings, a lack of sufficient heating in winter, and poor ventilation (ibid., §§ 65 and 142, see also paragraph 63 above). Moreover, it has also already accepted the CPT's findings that inmates in Lukiškės Remand Prison spend about twenty-three hours a day in cells (see *Mironovas and Others*, cited above, § 143). The Court has repeatedly held that a short length of time for outdoor exercise – for instance when such exercise is limited to about one hour per day – may be a factor that exacerbates the situation of a prisoner confined to his or her cell for the rest of the time (ibid., § 143; see also *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 151, 10 January 2012, and *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 235, 27 January 2015; also contrast *Muršić v. Croatia* [GC], no. 7334/13, §§ 161-162, ECHR 2016).

(b) The applicant's situation

77. The Court refers to the principles summarised in its case-law regarding overcrowding (*Muršić*, cited above, §§ 136-141).

78. The applicant complained of the conditions of his detention in Lukiškės Remand Prison from 24 February 2010 until 13 May 2013. Domestic courts found that for 1,159 days the applicant had been held in overcrowded cells (see paragraphs 53 and 54 above). In the absence of specific calculations (or a list of cells in which the applicant was detained and the number of inmates held in them every day), the Court considers that most probably the applicant had less than 3 square metres of personal space at his disposal for 1,159 days, and that this created a strong presumption of a violation of Article 3 (see *Muršić*, cited above, §§ 136-137).

79. The Court reiterates its findings as regards Lukiškės Remand Prison (see paragraph 76 above) and holds that it cannot accept the Government's argument that the lack of personal space could have been compensated for by the applicant's freedom to engage in certain out-of-cell activities and by the otherwise adequate conditions of his detention.

80. Having examined all the material submitted to it, the Court concludes that the applicant's conditions of detention in Lukiškės Remand Prison from 24 February 2010 until 13 May 2013 amounted to degrading

treatment prohibited by Article 3 of the Convention. There has accordingly been a violation of that provision.

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

81. The applicant complained of the allegedly excessive length of the time that he had spent in detention on remand. He relied on Article 5 § 3 of the Convention, which, in its relevant parts, reads:

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

A. The parties' submissions

82. Relying on the Court's judgment in *Varnas v. Lithuania* (no. 42615/06, §§ 85-89, 9 July 2013), the Government argued that the applicant had failed to exhaust effective domestic remedies. They submitted that he had had the possibility to lodge a civil claim for damages, in line with Article 6.272 of the Civil Code. The Government referred to the well-established case-law of the domestic courts in assessing the lawfulness and reasonable length of detention on remand, and noted that in many cases parties had successfully sought compensation for damage caused by unreasonably long periods of detention.

83. The Government submitted that under domestic law the total length of detention on remand during a pre-trial investigation could not exceed eighteen months (see *Lisovskij v. Lithuania*, no. 36249/14, § 50, 2 May 2017). In the applicant's case, detention had been imposed on 23 February 2010 and the case had been referred for examination on the merits to the Vilnius Regional Court on 1 August 2011; thus, the applicant's detention on remand during the pre-trial investigation had lasted for seventeen months. Moreover, the duration of detention on remand throughout criminal proceedings could not exceed two-thirds of the maximum term of imprisonment established for the most serious crime for which the case was examined. The duration of the applicant's detention on remand had followed this rule (see paragraph 59 above).

84. The Government furthermore argued that in cases concerning serious criminal acts the Court had found no violation of Article 5 § 3 when detention on remand had lasted over three years (see *Wrona v. Poland*, no. 23119/05, 5 January 2010; *Simonov v. Poland* [Committee], no. 45255/07, 17 April 2012; *Luković v. Serbia*, no. 43808/07, 26 March 2013; *Mierzejewski v. Poland*, no. 15612/13, 24 February 2015; and *Gawrecki v. Poland* [Committee], no. 56713/09, 14 April 2015). The Government stated that the present case, which concerned a criminal organisation armed with firearms and engaged in the large-scale distribution

of narcotic and psychotropic substances, had been exceptionally complex and had therefore justified the length of the detention of the applicant, who had been suspected of frequent participation in distributing the said illegal substances. The authorities justified the applicant's continued detention on remand by the fact that a lot of complex investigative actions had had to be performed and that there had been no considerable periods of inactivity on their part.

85. The Government submitted that the grounds for the applicant's detention had been relevant and sufficient, taking into account the fact that there had been a risk of his absconding, committing new crimes and interfering with the criminal investigation. The domestic courts referred to the specific facts of the case and the applicant's character and did not use general and abstract arguments as grounds for the applicant's continued detention. In particular, on 20 August 2010 the Vilnius Regional Court held that the risk of the applicant interfering with the criminal investigation had not been proved, and removed it from the list of grounds under which the applicant had been detained. Moreover, the applicant had been free to appeal against the decisions to extend his detention on remand, and every time he had done so the Court of Appeal had confirmed that the above-mentioned relevant and sufficient reasons for his detention on remand had not ceased to exist. Moreover, on 17 February 2014, as soon as the grounds for the applicant's detention on remand had ceased to exist, the applicant had been placed under house arrest.

86. Lastly, the Government submitted that the competent domestic authorities had displayed "special diligence" in the conduct of the criminal proceedings against the applicant during the period of his detention on remand. During the pre-trial investigation, fifty-eight expert reports had been ordered; there had been fifty examinations of certain objects; ninety-four examinations of relevant items and twenty searches had been carried out; restrictive measures had been applied; the suspects had been questioned 194 times; eight persons had been detained; witnesses had been questioned forty-four times; witnesses and suspects had participated in the identification of 196 persons from photographs and had visited the crime scene twenty-four times to give testimony; and a search warrant had been issued in respect of one suspect and the authorities had applied to the authorities of Israel with an extradition request in respect of another suspect. During the examination of the criminal case on the merits, the chairman had set dates for twenty forthcoming hearings and had cooperated with the police and the prosecutors to inform the persons concerned of the dates of the hearings; the dates of those hearings had been coordinated six months in advance; the Vilnius Regional Court had taken steps to inform other courts of the dates of the hearings so that other hearings would not interfere with them and to ask for additional lawyers from the State Guaranteed Legal Aid Service in order to ensure that the hearings would not have to be adjourned

owing to the lawyers being occupied by other cases; and the victims and witnesses had been brought to the court. Moreover, the hearings before the Vilnius Regional Court had been held regularly and there had been two to three hearings scheduled per month. The only longer breaks had been made during the summer period in 2012 and 2013 because of the holidays of participants in the proceedings, and the other hearings had been adjourned or cancelled for objective reasons: illnesses of judges, lawyers or suspects, or the inability of lawyers or suspects to participate. The Government referred to the case of *Lisovskij* (cited above) and argued that unlike that case, in the applicant's case the authorities had taken appropriate measures to schedule the hearings more efficiently and to ensure shorter intervals between them.

87. The applicant submitted that his continued detention had been excessively long and unjustified. He stated that his detention on remand had been extended sixteen times by the same court, which had relied on the same grounds as those given in respect of every decision. The applicant had lodged eleven appeals against the extension of his detention on remand and had asked that a less restrictive measure be imposed but none of them had been satisfied. The applicant stated that he had had strong social ties with his father and brother and although he had quit his job before his arrest, he had been constantly looking for another job, and that the conclusions drawn by the courts about his income from criminal activities had thus been groundless. He furthermore claimed that after he had been placed under house arrest on 17 February 2014, he had found a job and had been given a positive character reference by his employer.

B. The Court's assessment

88. The Court finds that it is not necessary to address all the issues raised by the parties because this complaint is in any event inadmissible for the following reasons.

89. The Court reiterates that an applicant's status as a "victim", within the meaning of Article 34 of the Convention, depends on whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress. Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V, and *Michalák v. Slovakia*, no. 30157/03, § 127, 8 February 2011). The alleged loss of the applicant's victim status involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision, and the persistence of adverse consequences for the applicant after the decision (see *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006).

90. The Court firstly notes that in the present case the applicant's detention on remand started on 23 February 2010, when he was arrested (see paragraph 9 above). He was detained for the purposes of Article 5 § 3 of the Convention until the restrictive measure imposed on him was changed on 17 February 2014 from that of detention on remand to house arrest (see paragraph 43 above). The Court reiterates that conditions of house arrest under Lithuanian law differ rather significantly from those which it has previously assessed, where it held that the imposition of house arrest, in view of its degree and intensity, had amounted to deprivation of liberty within the meaning of Article 5 of the Convention (see *Lisovskij*, cited above, § 71, and the references therein; compare and contrast *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 104-05, ECHR 2016 (extracts)). In the present case the applicant was allowed to leave his home for most of the day (except for between 11 p.m. and 9 a.m.), he was allowed to work, and there were only limited restrictions on his public and social life (see paragraph 43 above); thus, the period to be considered as constituting that during which the applicant was deprived of his liberty ended at the point when the restrictive measure imposed on the applicant was changed from that of detention on remand to house arrest. Accordingly, the period of the applicant's detention on remand to be considered in the present case was three years, eleven months and twenty-five days (from 23 February 2010 until 17 February 2014).

91. The Court furthermore observes that the Supreme Court found that because the applicant had been held in detention on remand for such a long period of time, particular efforts on the part of the authorities dealing with the case to administer justice expeditiously were required. The Supreme Court found that the length of the criminal proceedings was unjustifiable and that this circumstance constituted grounds for imposing a more lenient sentence on the applicant. Given these circumstances the Court finds that the Supreme Court in substance acknowledged the alleged infringement of the Convention.

92. As to the issue of redress, the Court does not exclude the possibility that in a situation like the one in the present case, adequate redress would not necessarily imply monetary compensation but might take other forms, the adequacy of such redress being assessed with regard to the particular circumstances of each case (see, *mutatis mutandis*, *Anatoliy Tarasov v. Russia*, no. 3950/02, § 54, 18 February 2010). It is clear that the applicant in the present case had become a victim before he lodged the application with the Court. It was for the State to provide the applicant with adequate and sufficient redress in respect of his complaint in a timely manner – that is to say, before the Court examined the case. The Supreme Court did that by (i) acknowledging in a sufficiently clear manner the strain caused by the long duration of the applicant's detention on remand, and (ii) by balancing this consideration in favour of the applicant (see paragraph 51 above). In

particular, the Supreme Court acknowledged the delays in the criminal proceedings against the applicant, assessed the authorities' actions throughout those proceedings and, having found that the courts had not acted with sufficient diligence, reduced the applicant's sentence by six months (see paragraph 51 above). It can therefore be said that the applicant was afforded explicit and quantifiable redress for the delays in proceedings and the long duration of his detention (see, *a contrario, Anatoliy Tarasov*, cited above, § 54). The Court, exercising its supervisory function, is satisfied that the redress afforded was sufficient.

93. The Court therefore concludes that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of his rights under Article 5 § 3 of the Convention.

94. It follows that this complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 145,000 euros (EUR) in respect of non-pecuniary damage.

97. The Government considered that amount to be excessive and unsubstantiated.

98. The Court considers that the applicant must have suffered distress as a result of the violation of Article 3 found in the present case. Also, having regard to the amount granted to the applicant at the domestic level for the inadequate conditions of his detention and deciding on an equitable basis, the Court considers it reasonable to award EUR 11,900 under the head of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed EUR 1,800 for the costs and expenses incurred before the domestic courts and EUR 950 for those incurred before the Court.

100. The Government considered that the applicant had not provided any documented agreement in respect of the provision of legal services and

that he had failed to provide invoices for the amount of EUR 1,800 and the specification of services that had been provided for that amount.

101. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 300 for the proceedings before the Court.

C. Default interest

102. 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. *Declares* the complaint under Article 3 concerning the conditions of the applicant's detention from 24 February 2010 to 13 May 2013 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention with regard to his conditions of detention from 24 February 2010 to 13 May 2013;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 11,900 (eleven thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President