



## Multiple violations in treatment of accused in covid-test-purchase case

In today's **Chamber judgment**<sup>1</sup> in the case of [Narbutas v. Lithuania](#) (application no. 14139/21) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights,**

**a violation of Article 5 § 1 (right to liberty and security),**

**a violation of Article 8 (right to respect for private and family life),**

**a violation of Article 10 (freedom of expression), and**

**a violation of Article 1 of Protocol No. 1 (protection of property).**

The case concerned various remand measures applied against Šarūnas Narbutas in the context of a high-profile criminal investigation relating to his involvement in the acquisition by the Lithuanian Government of more than 300,000 covid-19 tests from a Spanish pharmaceutical company in March 2020. At the time, he was acting as an intermediary between the Ministry of Health and the company concerned, for which he was paid 1 euro (EUR) for every detection kit it sold as a result of his mediation.

The Court found in particular that Mr Narbutas's provisional detention had not followed a procedure provided by law (Article 5).

There had been no justification for the authorities' release of specific information concerning Mr Narbutas, which had seriously damaged his reputation (Article 8).

As regards the seizure of Mr Narbutas's property, that measure had not been proportionate and the decision had not correctly balanced his needs with those of the public (Article 1 of Protocol No. 1).

### Principal facts

The applicant, Šarūnas Narbutas, is a Lithuanian national who was born in 1988 and lives in Vilnius. From 2013-19, he was the president and later a board member of the Lithuanian Cancer Patient Coalition. He was a legal advisor to the President of Lithuania in 2014-16. He also served on the management boards of several public bodies working mainly in the area of public health.

In February 2020, owing to the spread of the covid-19 virus, a state of emergency and a national lockdown were declared in Lithuania. The authorities scrambled to secure the necessary medical supplies to deal with the pandemic.

During this time, Mr Narbutas negotiated purchases of covid-19 tests for Lithuania and entered into a contract with a Spanish pharmaceutical company to be paid 1 euro (EUR) for every one of the company's covid-19 tests sold to the Lithuanian Government. 303,360 tests at a total cost of EUR 5,157,120 were bought. Mr Narbutas was paid by June 2020.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

On 21 July 2020 the Special Investigations Service informed the applicant that he was suspected of bribery-related charges and placed him in provisional detention. That decision was taken owing to the alleged risk that he would flee or interfere with the investigation and it had been impossible to secure a court detention order. His home and car were searched by virtue of a court order.

On 22 July 2020, following a request by the prosecutor, the pre-trial investigation judge ordered that Mr Narbutas be confined to home from 10 p.m. to 6 a.m., that he not contact certain people, and that he not enter the Ministry of Health or any institutions under its aegis (it should be noted that he was at the time receiving treatment for cancer). Mr Narbutas was then released from provisional detention after around 33 hours in total. He complained about his provisional detention, but a senior prosecutor ruled that it had been permitted without a court order by virtue of Article 140 § 2 of the Code of Criminal Procedure. He appealed to the courts without success.

He also appealed against the remand order. In August 2020 he was allowed to enter Ministry of Health hospitals for treatment purposes and later released from house arrest.

In the meantime, in July 2020 the prosecutor had ordered the seizure of Mr Narbutas's bank accounts and car to secure against a possible civil claim, confiscation order or extended confiscation order. Following his complaints, the prosecutor allowed him to use EUR 607 per month for his expenses. He went to court, complaining that that amount did not cover his basic needs, which required over EUR 6,000 per month, and asserting that the seizure of property worth more than the value of the alleged bribe was disproportionate. He was unsuccessful on both points. In February 2021 the courts did increase the amount he could use to EUR 1,000 per month, which he considered insufficient. It wasn't until 25 March 2022 that the courts limited the funds seized to the alleged value of the bribe.

On 21 July 2020 the Special Investigations Service published a press release naming Mr Narbutas, disclosing some of his employment history and detailing allegations against him. Extensive media coverage followed. Senior public figures, including the President of Lithuania, the Minister of Health and several members of the *Seimas*, also commented on the case in the media, as did the prosecutor. In August 2020 Mr Narbutas was warned by the prosecutor not to disclose any information about the pre-trial investigation to unauthorised individuals. He complained, to no avail, to the prosecution service and then to the courts about this imbalance in the media, arguing that as the prosecutor was making the information public, he should be able to comment.

In May 2023 Mr Narbutas was acquitted on all charges by the first-instance court. The case remains pending before the appellate court.

## Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 5 § 1 (right to liberty and security), 6 § 2 (presumption of innocence), 8 (right to respect for private and family life) and 10 (freedom of expression) of the Convention, and Article 1 of Protocol No. 1 (protection of property), Mr Narbutas complained that he had been banned from hospitals, despite the fact that he had cancer; that his detention had been unlawful and unnecessary; that the President, the Minister of Health and several members of the *Seimas* had made public comments implying his guilt; that the investigating authorities had disclosed excessive information about the case to the media, including his full name, thereby harming his reputation; that he had been officially warned not to disclose information about the pre-trial investigation, even though a lot of the information had already been in the public domain; and that the seizure of his property had been disproportionate.

The application was lodged with the European Court of Human Rights on 15 February 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Arnfinn Bårdsen (Norway), *President*,  
Jovan Ilievski (North Macedonia),  
Egidijus Kūris (Lithuania),  
Pauliine Koskelo (Finland),  
Frédéric Krenc (Belgium),  
Diana Sârcu (the Republic of Moldova),  
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

## Decision of the Court

### Article 5

There was no dispute between the parties that from 8.01 a.m. on 21 July 2020 to 5.15 p.m. on 22 July 2020 Mr Narbutas had been placed in provisional detention and therefore deprived of his liberty. That provisional detention had been decided by the Special Investigations Service (on the basis of Article 140 § 2 of the Code of Criminal Procedure) without a court order.

Article 140 § 2 of the Code of Criminal Procedure allowed the law-enforcement authorities to place someone in provisional detention for up to 48 hours without a court order where, among other conditions, it was not possible to urgently obtain such an order. In Mr Narbutas's case, none of the domestic authorities or courts had provided an adequate explanation as to why obtaining a court order had not been possible in the circumstances. Moreover, Lithuanian law also required detention of any length to be necessary to prevent the suspect from fleeing or interfering with the proceedings, but the authorities had not addressed the relevant and pertinent arguments advanced by Mr Narbutas by which he had challenged the necessity of the detention in his case.

For those reasons, the provisional detention of Mr Narbutas had not been in accordance with the law and had been in **violation** of his right to liberty and security.

### Article 8

The Court accepted that providing information to the public about the trial contributed to a debate of public interest – in this case concerning the purchase of Covid-19 tests. However, it found relevant the fact that Mr Narbutas had not been a politician or in public office at the time (he had been a university lecturer, the head of a private company and a self-employed consultant). His previous public role had not, for the Court, made him comparable to a politician or public official, while his notoriety had not been such as to justify the disclosure of his identity.

Furthermore, the disclosure of his identity had greatly increased media interest in the case. He had no way to protect his identity when he had been escorted to court by police officers with his arms seemingly handcuffed behind his back. Images of that escort had then been published, bringing him into public focus.

Overall, the information issued and how it had been released by the investigating authorities had not been justified by the need to inform the public and had caused serious damage to Mr Narbutas's reputation. There had therefore been a **violation** of his right to respect for private life.

### Article 1 of Protocol No. 1

The Court considered that the seizure of all of Mr Narbutas's bank accounts, containing 350,000 euros (EUR) (for a period he had been unable to access any of his money at all) and any future income, as well as his car, had to be seen as harsh and restrictive. That measure had been imposed

without any consideration for his needs, and had only been re-evaluated following his own complaints to the prosecutor.

The Court noted that when Mr Narbutas had requested that EUR 6,000 be released to him monthly for his needs, including for cancer medication and for legal defence in the ongoing criminal proceedings, the authorities had refused without giving reasons.

The national courts had justified the restrictions by the possibility of future civil claims involving or confiscation of that property (civil claims can be lodged within a long period under Lithuanian law). However, the Court held that the seizure of Mr Narbutas's assets and all future income had been carried out without an assessment of the proportionality of the measure, and had failed to strike a fair balance between the public interest and his fundamental rights.

There had therefore had been a **violation** of Article 1 of Protocol No. 1.

### Other articles

The Court held that the restriction on entering hospitals must have caused Mr Narbutas stress and anxiety in view of his cancer diagnosis. However, it found that the situation had not been sufficiently severe to engage **Article 3**, as the restriction had been lifted within three weeks and Mr Narbutas had not demonstrated that it had had an effect on his health. There had therefore been **no violation** of that provision.

Mr Narbutas's complaint under **Article 6 § 2** was declared **inadmissible** for [non-exhaustion of domestic remedies](#). Mr Narbutas did not refute the argument advanced by the Government that he could have lodged a civil claim for protection of his honour and dignity against the State in respect of public figures implying that he had been guilty, but he had not done so.

As regards **Article 10**, the Court found a **violation**. It held that as a significant part of the information in question had already been in the public domain and in the media, it had been up to the authorities to provide a more detailed explanation to Mr Narbutas as to what he could or could not disclose. The Court reiterated the necessity for non-disclosure obligations in criminal investigations in general, but held that the restrictions in this case had not been shown to be proportionate or necessary in a democratic society.

### Just satisfaction (Article 41)

The Court held that Lithuania was to pay the applicant EUR 768.94 in respect of pecuniary damage, and EUR 26,000 in respect of non-pecuniary damage.

*The judgment is available only in English.*

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### Press contacts

[echrpres@echr.coe.int](mailto:echrpres@echr.coe.int) | tel.: +33 3 90 21 42 08

**We would encourage journalists to send their enquiries via email. 14139/21**

Neil Connolly (tel.: + 33 3 90 21 48 05)

Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)

Denis Lambert (tel.: + 33 3 90 21 41 09)

Inci Ertekin (tel.: + 33 3 90 21 55 30)

Jane Swift (tel.: + 33 3 88 41 29 04)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.