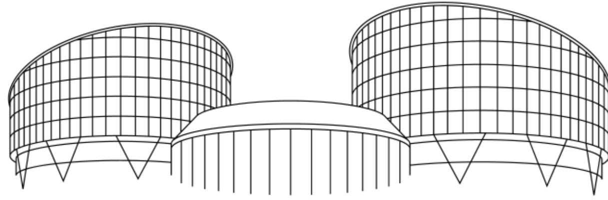

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BORISOV v. LITHUANIA

(Application no. 9958/04)

JUDGMENT

STRASBOURG

14 June 2011

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

In the case of Borisov v. Lithuania,

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

Françoise Tulkens, *President,*
David Thór Björgvinsson,
Dragoljub Popović, *appointed to sit in respect of Lithuania*,
Giorgio Malinverni,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 9958/04) 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 Russian national, Jurij Borisov (“the applicant”), on 27 February 2004.

2. The applicant was represented by Mr A. Liutvinskas and Mr V. Sirvydis, lawyers practising in Vilnius and Kaunas. The Lithuanian Government (“the Government”) were represented by their Agent, Ms E. Baltutytė.

3. Danutė Jočienė, the judge elected in respect of Lithuania, withdrew from the case (Rule 28). The Government accordingly appointed Dragoljub Popović, the judge elected in respect of Serbia, to sit in her place (Article 27 § 2 of the Convention and Rule 29 § 1, as in force at the material time).

4. The applicant alleged that the decision of 9 January 2004 to deport him from the Republic of Lithuania and the subsequent uncertainty of his situation breached his right to respect for his private and family life under Article 8 of the Convention.

5. On 2 May 2007 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 (former Article 29 § 3). Having been informed of the case by a letter of 4 May 2007, the Russian Government did not express any wish to intervene under Article 36 § 1 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1956, in the territory of Primor Oblast, now in the Russian Federation.

7. In 1962, the applicant's father, a military officer in the Soviet Union army, was posted to the territory of Lithuania to perform his military service. The applicant also moved to Lithuania, where he got married in 1977 and where he lives with his wife and daughter, who was born in 1996 and is therefore still a minor. They are both Lithuanian citizens. The applicant and his wife also have two grown-up sons. The applicant's parents are Lithuanian citizens, born in 1926 and 1931, and, like the applicant, they live in Vilnius.

8. On 11 March 1990, at the time of the restoration of the independent State of Lithuania, the applicant was an officer in the Soviet Union army. On 27 May 1991, by an order of the Minister of Defence of the Soviet Union, the applicant was discharged, finishing his military service with the rank of major.

9. In 1991 the applicant created an enterprise called Avia Baltika, which was engaged in the aviation business and related activities. The applicant is a major shareholder and director.

10. On 1 November 1991, the applicant made a pledge to the Republic of Lithuania and was subsequently granted Lithuanian citizenship. On 20 October 1992, the applicant was issued with a Lithuanian passport.

11. On 4 November 1999 the Commission on Questions of Citizenship (*Pilietybės reikalų komisija*) found that the applicant's Lithuanian passport had been issued in breach of the applicable legislation because Soviet Army personnel could not be granted Lithuanian citizenship. However, the Commission recommended that the applicant remain a Lithuanian citizen.

12. On 11 November 1999 the Migration Department decided to follow the above recommendation and to make an exception by permitting the applicant to keep his Lithuanian passport.

13. At the end of 2000 the applicant applied to the President of the Russian Federation, requesting Russian citizenship. His request was determined by the fact that he conducted business in both the Republic of Lithuania and the Russian Federation.

14. On 18 June 2002 the President of the Russian Federation granted the applicant Russian citizenship. On 18 March 2003, on a request by the applicant, the Embassy of the Russian Federation in Lithuania issued him with a Russian passport.

15. In June 2002, the applicant participated in the 2002 Lithuanian Presidential election campaign by providing financial and other support to

one of the candidates, Rolandas Paksas ("RP"). RP officially declared to the Central Electoral Commission that the applicant's enterprise, Avia Baltika, had donated 1,205,000 Lithuanian litas ((LTL), approximately 349,000 euros (EUR)) to RP's election campaign.

16. On 5 January 2003, RP was elected President of the Republic of Lithuania.

17. On 24 March 2003, the applicant informed the Minister of the Interior of the Republic of Lithuania in writing that he had acquired citizenship of the Russian Federation. By a decision of 10 April 2003, the Director of the Migration Department found that the applicant had lost his Lithuanian citizenship, since he had acquired the citizenship of another State.

18. On 24 March 2003, the applicant asked RP to grant him Lithuanian citizenship by way of exception. In his application, the applicant maintained that since 1991 he had been conducting business in Lithuania, that he had created more than 200 jobs, that there were 600 other people working in other enterprises providing services to, or otherwise related to, the enterprise headed by him, that since 1991 Avia Baltika had paid more than LTL 17 million in taxes to the budget of the Republic of Lithuania, and that he had donated about LTL 6 million to charity. The applicant also attached to his application copies of the passports of his relatives, who were Lithuanian citizens.

19. In the meantime, the Director of the State Security Department ("the SSD") informed RP on several occasions that an investigation was being conducted into the activities of the applicant and the Avia Baltika aviation company. On 17 March 2003 the Director of the SSD informed RP that the applicant had sworn to discredit RP in public if the latter did not fulfil his promises given to the applicant during the electoral campaign.

20. On 20 March 2003 an interim commission of the Seimas (the Parliament of the Republic of Lithuania) found that in 2001 the applicant's company, Avia Baltika, had exported a Mi-8T helicopter to Sudan without a licence. The commission stated that such action "did not violate the legislation of the Republic of Lithuania valid at the relevant time, but it was not compatible with the rules of the European Union embargo or sanctions applied by the United Nations".

21. On 11 April 2003 RP, the President of the Republic of Lithuania, issued Decree No. 40 "On Granting Citizenship of the Republic of Lithuania by Way of Exception", whereby he granted Lithuanian citizenship to the applicant by way of exception, that is, for the applicant's "special merits" to the Lithuanian State and without applying the general conditions of naturalisation.

A. Withdrawal of the applicant's Lithuanian citizenship

22. On 2 December 2003 the Seimas approved the conclusions of its *ad hoc* Inquiry Commission into Possible Threats to Lithuania's National Security. The conclusions, as far as relevant, read as follows:

> "the President's relations with J. Borisov are specific. Driven by political, economic and personal motives (...), J. Borisov had an influence on the activities of the President's Office and on the President's decisions. Thus J. Borisov has secured favourable conditions for his business, which, among other things, includes trading in spare parts for military helicopters with countries supporting terrorism. So far, the President has failed to publicly dissociate himself from J. Borisov and has implicitly vindicated him by his actions. The extent of J. Borisov's influence on the President is made clear by the fact that the President, aware of J. Borisov's threats, granted him citizenship under an accelerated procedure."

23. On 30 December 2003 the Constitutional Court found that the President's decree of 11 April 2003 was in breach of the Law on Citizenship and the Constitution, effectively annulling it. According to the Constitutional Court:

> "... in the sense of the Law on Citizenship, in general, the merits of a citizen of a foreign state or a stateless person to the State of Lithuania cannot be evaluated merely by the amount of money or the amount of material and other support rendered by the citizen of a foreign state or stateless person to a certain citizen or a group of citizens of the Republic of Lithuania, a State official, a certain enterprise, establishment or organisation or even to the State of Lithuania itself. It does not follow from the Constitution, the Law on Citizenship, or other laws, that citizenship of the Republic of Lithuania can be acquired by financial, material or any other support, i.e. 'bought'. In the context of apparent citizenship relations, merits to the State cannot be evaluated only by the money transferred (donated) to a certain subject or by other support. In terms of the Law on Citizenship, only the activity of the person is to be considered of merit to the Republic of Lithuania, when the person very significantly contributes to strengthening Lithuanian statehood, to the increase of the power of Lithuania and its authority in the international community, and when it is evident that the person has already been integrated into Lithuanian society. Only in such cases may pre-conditions be considered and a decision taken as to whether a citizen of a foreign state or stateless person is of merit to the Republic of Lithuania, as required by the Law on Citizenship."

24. As regards the applicant's case, the Constitutional Court found that RP had knowingly ignored, among other facts, that in 1999 the State institutions had already made an exception with regard to the applicant and shown special benevolence towards him (see paragraphs 11 and 12 above). According to information from the SSD, the applicant had sworn to compromise RP if the latter did not fulfil promises given during the electoral campaign (see paragraph 19 above). The Constitutional Court concluded:

> "The fact that, while issuing Decree No. 40 "On Granting Citizenship of the Republic of Lithuania by Way of Exception" on 11 April 2003, whereby citizenship of the Republic of Lithuania was granted to J. Borisov by way of exception, the

> President of the Republic knowingly disregarded the aforementioned circumstances that are of essential importance in deciding whether to grant citizenship ... (especially when one takes account of the fact that J. Borisov notably supported R. Paksas financially and in other ways when the latter participated in the 2002 Lithuanian Presidential elections), is evidence that the decision of the President of the Republic, R. Paksas, to grant citizenship of the Republic of Lithuania to J. Borisov by way of exception was determined not by certain merits of J. Borisov to the State of Lithuania, but by his notable financial and other support rendered to R. Paksas in the 2002 elections. Thus, the granting of citizenship to J. Borisov by way of exception was but a reward by the President of the Republic, R. Paksas, to J. Borisov for the aforesaid support.
>
> Therefore, [the court]... holds that the President of the Republic, R. Paksas, when issuing Decree No. 40 ... was following neither the Constitution of the Republic of Lithuania, nor the laws, nor the interests of the Nation and the State of Lithuania, but his personal interests.
>
> Thus, in granting citizenship of the Republic Lithuania to J. Borisov by way of exception by Decree No. 40 ... the President of the Republic, R. Paksas, treated this person as a person who sought to acquire citizenship of the Republic of Lithuania in an exceptional manner, and knowingly disregarded the requirement consolidated in Paragraph 1 of Article 29 of the Constitution that all persons shall be equal before State institutions and officials, and the requirement consolidated in Paragraph 1 of Article 82 of the Constitution that the President of the Republic must be equally just to all."

25. On 31 December 2003 the Constitutional Court's ruling was published in the State Gazette and the same day the applicant lost his Lithuanian citizenship.

26. On 19 February 2004 the Seimas asked the Constitutional Court to determine whether specific actions of the State President had breached the Constitution. The charges included the following:

- that the State President had undertaken to perform a number of actions in favour of the applicant in exchange for financial and other support during the electoral campaign, and that the President had acted under the influence of the applicant;
- that, as a reward for the applicant's support, the President had unlawfully granted the applicant Lithuanian citizenship;
- that the State President had revealed a State secret by informing the applicant that the secret services were investigating the applicant's activities and had wiretapped his phone.

27. On 31 March 2004 the Constitutional Court found that the President had committed a gross violation of the Constitution and breached the constitutional oath by:

- unlawfully granting Lithuanian citizenship, by the Decree no. 40, to the applicant in return for the latter's financial and other support, contrary to Article 16 § 1 of the Law on Citizenship and Articles 29 § 1, 82 § 1 and 84 § 1 (21) of the Constitution;

- knowingly hinting to the applicant that the law enforcement institutions had been investigating him and tapping his telephone conversations, contrary to Articles 3 § 7, 9 § 2 and 14 § 1 of the Law on Official Secrets, as well as Articles 77 § 2 and 82 § 1 of the Constitution.

28. On the basis of the Constitutional Court's conclusion, on 6 April 2004 RP was impeached and the Seimas removed him from the office of President. The same day the Chairman of the Seimas temporarily took over the President's duties.

B. The criminal proceedings against the applicant

29. On 1 November 2003 the applicant was accused of having threatened the State President (Article 287 § 1 of the Criminal Code in force as of 1 May 2003).

30. He was convicted by the Vilnius City First District Court on 22 November 2004 and fined LTL 10,000. It was established that in March 2003, and from January to March 2004, the applicant had demanded that the President appoint him as an advisor, grant him Lithuanian citizenship and grant other favours, failing which the applicant threatened to disclose certain information which could damage the President's reputation.

31. The applicant's conviction was based on the submissions of ten witnesses questioned at an open hearing, physical evidence, expert submissions and the records of the applicant's telephone conversations with three persons, secretly made by the SSD in March 2003 upon the courts' orders. On the latter point the Vilnius City First District Court noted that, even though two of the applicant's interlocutors had not been questioned in court, the records had been obtained lawfully and were a separate piece of evidence from witness testimony.

32. The applicant appealed, alleging that the provision of the Criminal Code under which he had been convicted had only come into force on 1 May 2003, while some of the acts for which he had been convicted had been committed earlier, in March 2003. He further complained - with respect to the same part of the conviction - that the court should not have admitted in evidence the secretly made records of his telephone conversations, because his interlocutors had not been questioned as witnesses at the court hearing.

33. On 6 April 2005 the Vilnius Regional Court granted the applicant's appeal in part, quashing the conviction for those acts committed in March 2003, that is, before the entry into force of Article 287 § 1 of the new Criminal Code. The court did not rule on the question of the admissibility of evidence, as the applicant's complaints in this respect related to that part of the judgment which had been quashed.

34. The applicant lodged a cassation appeal, essentially alleging errors of fact and law; he did not reiterate his complaints regarding the

admissibility of evidence. The prosecution also lodged a cassation appeal, requesting the reinstatement of the first-instance court judgment.

35. On 18 October 2005 the Supreme Court granted the prosecution's request and reinstated the judgment of 22 November 2004. The Supreme Court held that the applicant had been rightly convicted for his actions committed in March 2003, because, even at that time, the old Criminal Code had criminalised blackmail (Article 132 § 1). Because the new provision (Article 287 § 1) provided for a less-severe sentence, it prevailed over the older one.

36. Before the courts, the applicant was represented by a lawyer.

C. Proceedings regarding the deportation of the applicant

37. Following the withdrawal of the applicant's Lithuanian citizenship, on 2 January 2004 he applied for a permanent residence permit.

38. On 9 January 2004 the Migration Department of the Ministry of the Interior refused the applicant's request and decided to deport him from Lithuania to the Russian Federation, barring his access to Lithuanian territory for a year. The Migration Department's decision was based on Article 14 § 1 (1) of the Law on the Legal Status of Aliens (currently Article 35 § 1 (1) of the Law) and stipulated that the applicant was a threat to national security. The applicant appealed.

39. On 22 March 2004 the Vilnius Regional Administrative Court quashed the Migration Department's decision and ordered the latter to review the applicant's situation again and to adopt a new decision. The deportation proceedings were suspended.

40. On 29 June 2004 the Migration Department again decided not to issue the applicant with a permanent residence permit, on the ground that he posed a threat to national security. It therefore requested the Vilnius Regional Administrative Court to order the applicant's deportation from Lithuania. The Migration Department relied on the information provided by the SSD in a letter dated 1 April 2004, in which it had been alleged, *inter alia*, that the applicant had sought to destabilise and influence political events in Lithuania, that he had threatened the President, and that the company Avia Baltica had sold spare parts for military helicopters to Sudan, disregarding the international arms embargo on that regime. This information had been updated in the SSD's letters of 11 May and 21 June 2004, maintaining that the threat presented by the applicant persisted. The Migration Department based its decision on, *inter alia*, Articles 35 § 1 (1) and 126 §§ 1 (3) of the Law on the Legal Status of Aliens.

41. On 2 July 2004, before the Vilnius Regional Administrative Court, the applicant challenged the decision to refuse him a permanent residence permit.

42. On 12 August 2004 and then on 25 May 2005, the Vilnius Regional Administrative Court decided to adjourn the examination of the applicant's appeal until the end of the criminal proceedings against him (see paragraphs 29-36 above).

43. On 19 August 2004 the applicant asked the Migration Department to issue a temporary residence permit to him.

44. On 10 September 2004 the Migration Department granted the applicant's request. The applicant was issued with a temporary residence permit, valid until the court resolved the applicant's administrative case, but not exceeding a period of one year. On 1 September 2005, 4 September 2006 and 19 September 2007 the Migration Department issued the applicant with new residence permits of the same duration (until the adoption of the decision in the applicant's administrative case but not exceeding a year).

45. On 19 December 2005 the Vilnius Regional Administrative Court dismissed the Migration Department's request that the applicant be deported, ordering the Migration Department to issue a permanent residence permit to him. The court found no evidence that the applicant's presence in Lithuania could cause a danger to State security. It relied on the fact that the offence of which the applicant had been convicted was not considered "serious" under Lithuanian criminal law and did not fall under the group of "crimes against State independence, territorial unity and constitutional order". Moreover, the court considered that the commercial activities of Avia Baltika could not be directly imputable to the applicant, because the company was a separate legal entity. For the court, taking into consideration the applicant's family ties to Lithuania, his expulsion would disproportionately affect the applicant's right to respect for his family life as well as his economic interests.

46. On 28 June 2006 the Chairman of the Seimas, VM, in his address to the General Assembly of Lithuanian judges stated that "it was hard to imagine a State which could allow a foreign citizen to threaten its President and to remain unpunished or at least not to deport him from the country in which he had made the threats" and that "it was bad that our courts had acquitted former President RP. Maybe the courts would also decide to leave [the applicant] free to live in Lithuania[?]".

47. On 30 June 2006 the Supreme Administrative Court quashed the decision of 19 December 2005, remitting the case for fresh examination. It noted that the first-instance court had not assessed all the circumstances related, on the one hand, to the applicant's family and economic ties in Lithuania and, on the other hand, to the threat to national security, possibly arising from the applicant's presence. On the latter point, the court considered that the threat presented by the applicant could not be assessed only by reference to formal provisions of the criminal law qualifying the offence of which the applicant had been convicted. Moreover, the lower court should have assessed the influence which the applicant had over the

company's commercial transactions and which might have been incompatible with the State's security policy.

48. On the same day the Supreme Administrative Court adopted a separate ruling on the remarks which VM had made on 28 June 2006. Invoking Article 6 of the Convention and the Court's judgments (*Daktaras v. Lithuania*, no. 42095/98, ECHR 2000-X, and *Butkevičius v. Lithuania*, no. 48297/99, ECHR 2002-II (extracts)), the court emphasised the need to avoid any statements which could raise doubts as to the impartiality and independence of the courts. The court pointed out that VM's speech was not in line with the principle that justice is administered by the courts (Article 109 of the Constitution and Article 3 of the Law on Courts). The text of the ruling was sent to the Seimas for consideration.

49. Having been questioned by members of the Seimas on 12 September 2006, VM assured his colleagues that in truth he was not attempting to influence the courts in any way and he believed that, when adopting its decision, the Vilnius Regional Administrative Court would have disregarded his words.

50. On 7 November 2006 the Vilnius Regional Administrative Court, on the request of the applicant's lawyer, adjourned the proceedings to await the outcome of the present application before the Court. The Migration Department appealed.

51. On 14 December 2006 the Supreme Administrative Court quashed the decision of 7 November 2006 as unfounded, noting, *inter alia*, that the European Court of Human Rights had not yet declared the applicant's case admissible. The administrative proceedings resumed.

52. By a letter of 4 January 2007, JR, a member of the Seimas, who at that time was the deputy head of the political faction of the Homeland Union Party (*Tėvynės Sąjunga*) in the Parliament, wrote to the Minister of the Interior, to whom the Migration Department was subordinate. JR asked the Minister whether the Vilnius Regional Administrative Court had indeed suspended proceedings in the applicant's case because the applicant had lodged an application with the European Court of Human Rights. For JR, such a decision by a court would clearly be unlawful, as it was not provided for under domestic law and especially in a case dealing with the deportation of a foreign national presenting a threat to national security. JR asked the Minister whether the Migration Department had appealed against such a "clearly unlawful" decision of the first-instance court. JR also asked the Minister to explain, if no appeal had been lodged, why this was the case and what measures would be taken in connection with "the failure of the Migration Department's officials to fulfil their duty to protect the State's interests".

53. On 23 April 2007 the applicant's lawyer asked the Vilnius Regional Administrative Court to suspend the applicant's case and to ask the Constitutional Court to clarify certain questions. The court granted that

request; however, on 22 May 2007 the Constitutional Court refused to accept the referral as it was deemed unreasoned.

54. By a decision of 26 June 2007, the Vilnius Regional Administrative Court again dismissed the Migration Department's request to deport the applicant from Lithuania and ordered it to issue him with a permanent residence permit. In reaching this conclusion the court observed that the applicant had been convicted of a minor offence (*už baudžiamąjį nusižengimą*) and only a fine had been imposed on him. It referred to the Court's case-law (*Amrollahi v. Denmark*, no. 56811/00, 11 July 2002; *Boultif v. Switzerland*, no. 54273/00, ECHR 2001-IX; *Boughanemi v. France*, 24 April 1996, *Reports of Judgments and Decisions* 1996-II) in which the Court had found a violation of Article 8 § 1 of the Convention even in such cases where a person to be deported had systematically been committing crimes or had committed major offences for which he had been imprisoned. The Vilnius Regional Administrative Court also observed that the applicant had never been criminally charged with regard to the other grounds to deport him, namely, that his company had exported a military helicopter to Sudan. Taking into account the Seimas' conclusion that such an export did not breach Lithuanian legislation (see paragraph 20 above), there were no grounds to rule that the episode proved that the applicant was a threat to national security. The court also emphasised that, at the hearing, the SSD had not provided any sufficiently serious and verified information to show that the applicant was a danger to national security. Moreover, there was no information in the case file that since 2004 the applicant had taken part in any illegal activities.

55. Next, the Vilnius Regional Administrative Court turned to the applicant's family situation, noting that his wife, daughter and parents had lived in Lithuania for decades and were Lithuanian citizens. For the court, had the family been forced to move to the Russian Federation to follow the applicant, it would have caused them serious hardship. Alternatively, had the applicant been sent to his country of origin, these family relationships would have been broken.

56. Lastly, when assessing whether the applicant's expulsion was necessary in a democratic society and proportionate to the legitimate aim pursued, the Vilnius Regional Administrative Court turned to the criteria enumerated by the Court in the case of *Üner v. the Netherlands* ([GC], no. 46410/99, § 57, ECHR 2006-XII). It found that not one single criterion had been fully satisfied to justify the applicant's deportation. This was even more so when those criteria were taken as a whole. In sum, taking into account the strict criteria of Article 8 of the Convention, the nature of the crime committed by the applicant, the level of his integration into Lithuania and his family's situation, it was not proportionate or necessary to deport the applicant.

57. The Migration Department appealed.

58. On 16 April 2008 the Supreme Administrative Court remitted the case for fresh examination. It noted that the lower court had thoroughly analysed the Strasbourg Court's practice with regard to Article 8 of the Convention. Yet, the Vilnius Regional Administrative Court had wrongly interpreted and applied domestic legal norms when deciding on the applicant's possible threat to Lithuania's national security. In particular, the fact that the applicant had, in the criminal proceedings, been convicted of a minor offence and had been punished only by a fine was not sufficient to rule out the possibility that he was a threat to national security. Moreover, the lower court had not properly examined the data presented by the SSD, had not examined all the evidence in the case and had not given proper reasons for its decision. In sum, from the decision of the first-instance court it was not clear whether the applicant's presence in Lithuania had in the past posed, and still posed a real threat to Lithuania's national security.

59. On 27 October 2008 the Vilnius Regional Administrative Court adopted a separate ruling in the proceedings, changing the procedural status of the SSD from that of a third party to plaintiff. The ground for this change was an amendment to Article 140^1 of the Law on the Legal Status of Aliens, adopted on 16 December 2006.

60. By a letter of 5 November 2008, the SSD informed the court that the Migration Department was the proper plaintiff in the case. The SSD also noted that it concurred with the Migration Department's request to remove the applicant from Lithuania.

61. On 24 November 2008 the Vilnius Regional Administrative Court dismissed the Migration Department's request to deport the applicant from Lithuania, and ordered the Migration Department to issue the applicant with a permanent residence permit. The Migration Department and the SSD appealed.

62. On 7 December 2009 the Supreme Administrative Court quashed the lower court's decision. The court found that, by changing the procedural position of the parties on 27 October 2008, the Vilnius Regional Administrative Court had wrongly interpreted the amended Article 140^1 of the Law on Legal Status of Aliens. It had therefore breached administrative procedure, which did not allow that court to analyse all the claims in the case. The Supreme Administrative Court also noted that it was well aware of the fact that the administrative proceedings had already started in 2004 and that, "had the case been returned for fresh examination one more time, it could have been a reason [for the applicant] to appeal to an international court, claiming that the hearing in his case before the [domestic] courts may possibly have taken too long". However, if the Supreme Administrative Court had adopted a final decision without having answered all the claims, it would have formed a wrong legal precedent for future judicial practice.

63. The Supreme Administrative Court also noted that the lower court had failed to properly evaluate all the evidence in the case. The case was returned for a fresh examination.

64. On 29 January 2010 the Vilnius Regional Administrative Court adopted a new decision, noting that it was essential to look into the grounds for the applicant's deportation retrospectively – how pertinent those grounds were in 2004, when the Migration Department took its decision, and whether they still remained relevant in 2010. For the court, the danger that the applicant posed to the State of Lithuania stemmed from his close personal relationship with former President RP. Given the Constitutional Court's conclusions in the rulings of 30 December 2003 and 31 March 2004 (see paragraphs 24 and 27 above), it was legitimate to state that the applicant had had significant influence on RP, when the latter was the President of Lithuania. Such actions by the applicant, when mainly for his own economic interests he had a strong influence over the Head of State and the political processes in Lithuania, had to be evaluated as presenting a threat to Lithuania's national security. In this connection the court noted the Seimas's conclusions to the same effect (see paragraph 22 above).

65. The Vilnius Regional Administrative Court nonetheless noted that, after RP's impeachment on 6 April 2004, the Chairman of the Seimas had been entrusted to temporarily act as the Head of State. As the evidence presented by the Migration Department and the SSD showed, all the circumstances pointing to the applicant's threat to national security were related to his close personal relationship with RP. Consequently, once RP had lost his Presidential powers, the applicant had lost his opportunity to influence the Head of State and political processes in Lithuania.

66. The Vilnius Regional Administrative Court further noted that, even though at the beginning of RP's term in office Lithuania's national security guarantees in the foreign and international spheres were rather delicate, on 16 March 2004 Lithuania had joined the North Atlantic Treaty Organisation and its national security with regard to defence had become significantly stronger. A new step in Lithuania's security was accession to the European Union on 1 May 2004. As a result, when the Migration Department had taken its decision on 29 June 2004 to remove the applicant from the territory of Lithuania, the latter had posed no clear and present danger to national security. The court also noted that, at the hearing of 20 January 2010, the representative of the SSD had testified that, after RP's impeachment, no actions of the applicant that could pose a threat to national security had been established.

67. Lastly, when addressing the applicant's personal and family situation, the court observed that the applicant had permanently lived in Lithuania where all his family – wife, daughter and retired parents – resided. Admittedly, and as argued by the Migration Department, the applicant often went abroad for business; however, that did not mean that he did not have a

relationship with his wife and fourteen-year-old daughter, for whom the applicant played a very important role. There were no reasons to doubt the genuineness of the applicant's marriage. Moreover, regarding the aforementioned factual circumstances, except for the applicant's permanent residence in Lithuania, none had been disputed by the parties. The court also noted that, since 1991, the companies headed by the applicant had paid more than 17 million litas in taxes to the State budget.

68. Relying on the above, the Vilnius Regional Administrative Court concluded that the applicant's request that a permanent Lithuanian residence permit be issued to him was grounded. The request to deport the applicant from Lithuania was dismissed.

69. The Migration Department appealed.

70. On 23 June 2010 the Supreme Administrative Court found for the applicant and ended the court proceedings. It noted that in 2004, when the decision not to grant the applicant a residence permit was taken, the applicant had indeed posed a danger to national security. Only upon the lapse of a certain period of time could one ascertain whether such a threat had ceased to exist. The decision whether to deport the applicant had to be decided at present; the situation could not be assessed merely retrospectively. Taking into account the requirements of Article 8 of the Convention, a very serious threat would be necessary to outweigh the applicant's obvious and unquestionable connections with Lithuania. The case-file did not contain any evidence about the applicant's current threat; the only possible threat was related to the events of 2003-2004. In the light of the above considerations, the State Security Department's request that the applicant be deported was dismissed.

71. The Supreme Administrative Court also noted that "if the applicant was of the view that the examination of the case at issue has continued too long and therefore his rights that were guaranteed by the European Convention on Human Rights had been breached, he was entitled to claim compensation for damage in accordance with the procedure provided for by law".

72. After the above court decision, the applicant addressed the Migration Department with a request that he be issued with a permanent residence permit. On 13 August 2010 the Migration Department issued the applicant with such a permit.

D. The private prosecution for alleged defamation

73. On 18 May 2004 the applicant asked the prosecutors and the Inspector of Journalistic Ethics to conduct an inquiry into an article about his activities, published by a journalist, ML, in a national daily newspaper. He alleged that the statements made by ML amounted to the criminal offence of defamation.

74. The article allegedly recounted ML's interview with an anonymous person, JL, who maintained that the applicant was connected to the Russian intelligence service, the GRU.

75. On 24 May 2004 the prosecution refused to initiate criminal proceedings, and advised the applicant to bring his claim by way of a private prosecution.

76. On 8 July 2004 the applicant brought a private criminal prosecution against ML, alleging defamation.

77. ML was acquitted by the Vilnius City Third District Court on 11 October 2004, because the court found no evidence of a crime.

78. On 30 December 2004 the Inspector of Journalistic Ethics replied to the applicant, opining that ML had violated the applicant's "honour and dignity". At the same time, the Inspector addressed the editor of the daily newspaper concerned, asking him to publish a denial of the statements about the applicant's connections to the GRU. According to the applicant, this was not done.

79. On 20 January 2005 the Vilnius Regional Court dismissed the applicant's appeal. That decision was final. The court noted that ML had only recounted his interview with JL, whose opinion, including the impugned statement about the applicant's connections to the Russian intelligence service, had been cited in the article. There was no evidence that the journalist had known that the information given by JL had been incorrect, or that he had intended to defame the applicant. If it appeared that the information was false, JL could be held criminally responsible, but not the journalist who had interviewed him.

80. On 20 April 2005 the applicant's lawyer addressed the Supreme Court, requesting that the appellate decision be quashed and the proceedings reopened on the basis of newly discovered facts. He alleged that, following the publication of the appellate decision, one of the appellate judges had declared his former relations with the USSR State Security Committee, the KGB. In the applicant's view, that affiliation could have affected the judge's impartiality in the case.

81. On 30 May 2005 the Supreme Court advised the applicant that his request should be addressed to the prosecutor. The Court has no information as to whether the applicant ever lodged such a request.

II. RELEVANT DOMESTIC LAW AND PRACTICE

82. Article 16 § 1 of the Law on Citizenship, as in force until 1 January 2005, provided that the President may grant Lithuanian citizenship by way of exception - that is, without applying the usual conditions for naturalisation - to citizens of foreign states who are "of merit" to the Republic of Lithuania.

83. Article 2 of the Law on Legal Status of Aliens, as in force since 30 April 2004, defines "an alien" as a person other than a national of the Republic of Lithuania, irrespective of whether he or she is a foreign national or a stateless person.

84. Article 35 § 1 (1) of the Law provides that an alien is not to be issued with a Lithuanian residence permit if his or her residence in the country may be a threat to public security, public order or public health. Under Article 126 § 1 (3), an alien can be expelled if his or her presence on Lithuanian territory represents a threat to State security or public order. The decision to deport such a person is to be taken by the Vilnius Regional Administrative Court (prior to 30 April 2004, it was the Migration Department).

85. Pursuant to Article 128 of the Law, when making a decision to deport an alien, account is to be taken of the period of his or her lawful stay in Lithuania, his or her family relationship with persons residing in Lithuania, social and economic ties with the country and the type and extent of the danger of the infringement of law committed by that individual. The execution of a decision to deport an alien from Lithuania is suspended if it has been appealed against in court. Article 133 of the Law provides that a deported alien, whose entry and stay in the country would constitute a threat to national security, may be prohibited from entering Lithuania for a fixed or indefinite period.

86. On 16 December 2006 the Seimas amended Article 140^1 of the Law on the Legal Status of Aliens by providing that it was the function of the SSD to request the Vilnius District Administrative Court to annul an alien's right to reside in Lithuania and to deport him or her, if that alien posed a threat to national security.

87. Article 132 of the old Criminal Code, in force until 30 April 2003, provided for criminal liability for blackmail. This offence required the performance of certain acts in accordance with the perpetrator's instructions, with the threat that, in the event of failure, the perpetrator would, *inter alia*, disclose sensitive information liable to damage the reputation of the blackmailed person.

88. Article 287 § 1 of the new Criminal Code, in force since 1 May 2003, provides for criminal liability if a person, by using mental coercion, demands that a public official carry out certain actions in his or her favour.

89. Article 154 of the new Criminal Code provides criminal liability for defamation. According to Articles 407 and 408 of the Code on Criminal Procedure, defamation is a crime to be prosecuted by private prosecution, that is to say, by the person defamed. Under Article 367 § 3 of the Code, in cases of private prosecution a cassation appeal is not possible.

90. Article 109 of the Constitution and Article 3 of the Law on Courts stipulate that justice is only administered by the courts. While administering justice, the judge and courts are independent.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

91. The applicant complained that his right to respect for private and family life, as guaranteed by Article 8 of the Convention, had been breached in view of his proposed deportation and the uncertainty of his situation owing to judicial proceedings which started in 2004 and ended only in 2010. Invoking Article 6 of the Convention, the applicant further argued that the delay in resolving his case had been caused by political pressure on the courts.

92. The Court considers that all these complaints are in essence related to an alleged violation of the right to respect for private and family life guaranteed by Article 8 of the Convention, on which the Court will concentrate its examination in this case, and which reads in so far as relevant as follows:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, ..."

A. The parties' submissions

1. The Government

93. The Government argued that there was nothing uncertain in the applicant's situation in connection with the administrative case concerning his expulsion from the Republic of Lithuania. Contrary to the Court's judgment in *Shevanova v. Latvia* (no. 58822/00, 15 June 2006), where the applicant had undergone a period of seven years of uncertainty and insecurity owing to her illegal stay in Latvia, the applicant in the instant case had been residing in Lithuania legally, that is, his stay had been regularised ever since the final loss of Lithuanian citizenship. In particular, by the decisions of the Migration Department of 10 September 2004, 1 September 2005, 4 September 2006 and 19 September 2007, the applicant had been issued with one-year, temporary residence permits until the end of the examination of his administrative case. On that basis he could legally reside in the country.

94. For the Government, it was very important to clarify the circumstances under which the applicant had arrived at the present situation. On this point they noted that the applicant had been a Lithuanian citizen

from 1991 to 2003, when he himself had refused Lithuanian citizenship after having received a passport from the Russian Federation. Subsequently, the applicant had asked the President of the Republic of Lithuania to grant him Lithuanian citizenship by way of exception. The President had granted that request. However, as established afterwards by the Constitutional Court, the applicant had in fact "bought" the Lithuanian passport, because citizenship had been granted for financial and other support rendered by the applicant to the President during the electoral campaign. As a result, the President's decree had been declared null and void. In addition, by the final decision of 18 October 2005 the Supreme Court had convicted the applicant of a crime against the constitutional order of the Republic of Lithuania, namely, blackmailing the President. In the view of the Government, the applicant, by causing harm to Lithuanian society, by violating Lithuanian laws and by threatening the State's constitutional order, whilst at the same time demonstrating disrespect for the State of Lithuania and its citizenship, was expected to undergo at least some inconveniences.

95. The Government further argued that neither the domestic courts nor other State institutions participating in the court proceedings for the applicant's deportation could be blamed for delays. The Government admitted that, normally in cases regarding alleged violations of Article 8 of the Convention, the passage of time could have irremediable consequences for the applicant's family. However, in the instant case, the passage of time had had no negative impact on the applicant's private and family life. Quite the opposite, it was a well thought-out strategy, chosen by the applicant and his lawyers, expecting that the lapse of time would possibly render the applicant's threat to national security less significant. It was true that the administrative proceedings in the applicant's case had started already in 2004. Nonetheless, the delays had been caused by the necessity to await the outcome of the criminal case against the applicant (see paragraph 42 above), and the applicant's or his lawyers' requests to suspend the administrative proceedings until his case had been heard before the European Court of Human Rights, or to make interpretative requests to the Constitutional Court (see paragraphs 50 and 53 above).

96. The Government also submitted that, owing to his frequent business trips abroad, the applicant usually spent more than half a year outside Lithuania, away from his wife and daughter. Accordingly, the gravity of the applicant's situation could not be compared to the gravity of the situations in other cases involving immigration questions which the Court had examined under Article 8 of the Convention.

97. In sum, the events leading to the possible deportation of the applicant were preconditioned by his own unlawful conduct. Moreover, the fact that, pending the administrative litigation, the applicant had never faced a real risk of deportation and could still legally reside in Lithuania with his

family meant that he had been afforded the possibility of leading his private and family life without too big a burden.

98. Lastly, in their letter of 27 August 2010 the Government pointed out that on 23 June 2010 the Supreme Court had ended the administrative litigation, adopting a decision in the applicant's favour. The Migration Department had issued the applicant with a permanent residence permit. If the applicant was of the view that the duration of the administrative proceedings at issue caused him certain inconveniences, he could file a claim for damages pursuant to the rules of domestic law.

2. The applicant

99. The applicant argued that the decision to deport him from Lithuania, linked to the coercive deprivation of Lithuanian citizenship, was in breach of his right to respect for his family life, guaranteed by Article 8 of the Convention. He submitted that he had lived in Lithuania since 1962, where he had completed his secondary education, married and had children. He also observed that since 1991 he had run a business in Lithuania and paid taxes.

100. Even assuming that he had represented a threat to national security in 2004, when he had been accused of having significant influence over the State President, that threat could not be interpreted as being permanent. Many years have passed since then and no new evidence has surfaced. No new charges have been brought against him to prove his continuous danger to the Lithuanian State. As a result, and taking into account the Court's case-law as to the need to establish whether the offence which a person had committed may give rise to certain fears that he constituted a danger to public order and security for the future (see *Boultif*, cited above, § 51), it was not proportionate to deport him from the country.

101. As to what was at stake for him, the applicant submitted that he lived in Vilnius with his wife and daughter, to whose upbringing and education he contributed, and that both were Lithuanian citizens. His retired parents, also holders of Lithuanian passports, lived in Vilnius. As the applicant's lawyer had mentioned during the administrative proceedings, except for their knowledge of the Russian language, neither his wife nor his daughter had any links to the Russian Federation. In addition, the applicant disagreed with the Government that there was no interference with his right to respect for family life on account of the fact that he spent quite a significant amount of time on business trips abroad. That circumstance had been assessed in the decision of 29 January 2010 by the Vilnius Regional Administrative Court and dismissed as irrelevant.

102. Neither did the applicant share the Government's view that his situation had been regularised by issuing him with temporary residence permits. In fact, such residence permits were granted only by way of exception and until the administrative courts had decided his case. Such

status hardly ensured legal certainty; on the contrary, it made the applicant's private and family life dependent not on his alleged threat to national security, but on the hearing of his case in court. The applicant pointed out that on three occasions the Vilnius Regional Administrative Court had found that the applicant posed no danger to national security and had prohibited his expulsion from Lithuania. Yet, despite the absence of proof of the applicant's actual and present threat, the Migration Department had abused its procedural right by repeatedly lodging appeals to the Supreme Administrative Court.

103. The applicant also argued that his situation was not so different from the facts in the aforementioned *Shevanova* case. Admittedly, the decision to deport him had not been enforced. Yet, entirely analogous actions of the State authorities had put him in an undefined and insecure situation.

104. Lastly, the applicant submitted that his unpredictable and insecure situation had been incited by political pressure on the Supreme Administrative Court, which had failed to remain impartial in the applicant's case. In this connection, the applicant referred to the statements by VM to the General Assembly of Judges (see paragraph 46 above), noting that, after that speech, the Supreme Administrative Court had quashed the decision of the Vilnius Regional Administrative Court, which had been in the applicant's favour (see paragraph 47 above). As another illustration of political pressure, the applicant drew the Court's attention to the letter of parliamentarian JR (see paragraph 52 above), who directly interfered with the actions of the Government by requesting that a minister, to whom the Migration Department is subordinate, provide explanations, as well as urging the Migration Department to relentlessly challenge the court decisions favourable to the applicant.

B. The Court's assessment

105. The Government submitted, among other arguments, that during the whole period at issue the applicant was afforded the opportunity to lead his normal and family life. Most importantly, the administrative proceedings in connection with the decision to expel the applicant from Lithuania had come to an end. The applicant was issued with a permanent residence permit. The Government could be understood as arguing that the applicant may no longer claim to be a "victim" of a violation of Article 8 of the Convention.

106. For its part, the Court finds the applicant's complaint about a violation of his rights under Article 8 of the Convention admissible. However, the Court does not consider it necessary to rule on whether the applicant can still claim to be a "victim" of a violation of Article 8. In the light of the decisions of 23 June 2010 and 13 August 2010 (see paragraphs

70-72 above), the Court considers that there is no longer any justification for examining the merits of the case, for the reasons set out below.

107. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may "at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ...the matter has been resolved...". To be able to conclude that this provision applies to the instant case, the Court must answer two questions in turn: firstly, it must ask whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* [GC] (striking out), no. 36732/97, § 42, 24 October 2002). In the present case, that entails first of all establishing whether the risk of the applicant being deported persists; after that, the Court must consider whether the measures taken by the authorities constitute adequate redress in respect of the applicant's complaint (see *Sisojeva and Others v. Latvia* [GC], no. 60654/00, § 97, ECHR 2007-II).

108. With reference to the first question, the Court observes that the authorities' request for the applicant's deportation has been dismissed by a final court decision and that, as matters stand, he therefore faces no real and imminent risk of being deported. In this connection the Court points to the Supreme Administrative Court's decision of 23 June 2010 affirming the applicant's close family links to Lithuania and explaining that the applicant may not be considered as posing a threat to national security merely on the basis of the events of 2003-2004. The Court also finds that the measure indicated by the Lithuanian Government, the permanent residence permit granted to the applicant on 13 August 2010, allows him to remain in Lithuania, maintain his relationship with his wife, children and parents and thus to exercise freely in that country his right to respect for his private and family life, as guaranteed by Article 8 of the Convention and interpreted in the Court's case-law (see, *mutatis mutandis*, *Sisojeva and Others*, cited above, §§ 98 and 102).

109. In short, the material facts complained of by the applicant have ceased to exist. It therefore remains to be determined whether regularisation of his stay is sufficient to redress the possible effects of the situation of which he complained to the Court.

110. In the instant case the Court acknowledges that from the time when the Migration Department refused the applicant's request for a permanent residence permit and decided to deport him from Lithuania on 9 January 2004 the applicant experienced a lengthy period of insecurity and legal uncertainty in Lithuania. That period lasted six years and seven months. The Court observes that the expulsion of a person who possesses strong personal or family ties in the host country may give rise to serious issues under Article 8 of the Convention (see, for example, *Moustaquim v. Belgium*,

18 February 1991, § 36, Series A no. 193; *Amrollahi v. Denmark*, cited above, § 27).

111. As regards the facts of the instant case, the Court notes that the applicant's father moved to Lithuania in 1962, when the applicant was six years old. Until 2004, when the applicant was forty-eight years old, he continued to live in Lithuania; the applicant has been married for twenty-seven years of his life in Lithuania and has conceived two sons there, who are now adults, and a daughter, who is still a minor and lives with her parents. The applicant's parents live in Lithuania. As noted by the Vilnius Regional Administrative Court, since being discharged from the Soviet Army in 1991, the applicant has created a private business and paid taxes (see paragraph 67 above). Accordingly, the Court has no doubt that, during all this time in Lithuania, the applicant has forged the personal, social and economic ties that make up the private and family life of every human being (see *Slivenko v. Latvia* [GC], no. 48321/99, § 96, ECHR 2003-X).

112. Assessing further, the Court notes with deep concern that the decision making in the applicant's case was politicised (see paragraphs 46 and 52 above). Neither can the Court fail to observe that the Supreme Administrative Court chose to remit the case for fresh examination two times on somewhat contrived grounds (see, in particular, paragraphs 58 and 62 above), thus continuing to keep the applicant and his family in a state of uncertainty. Even so, and whilst regretting that the Lithuanian authorities did not find an earlier solution to the matter, the Court does not consider that these facts on their own make the measure regularising the applicant's stay in Lithuania inadequate in view of the applicant's personal situation, as it appears that pending the administrative litigation he was effectively able to remain in Lithuania on the basis of temporary residence permits (see, *mutatis mutandis*, *Kaftailova v. Latvia* (striking out) [GC], no. 59643/00, § 53, 7 December 2007). Consequently, at no stage was the applicant actually deported or otherwise restricted in the enjoyment of his private and family life in Lithuania. This reduces considerably the extent of the redress which needs to be afforded in the present case. Lastly, the Court notes the Supreme Administrative Court's suggestion to the effect that the applicant could address the domestic courts with a claim for damages, should he consider that the administrative proceedings had lasted too long.

113. Consequently, and in the light of all the relevant circumstances of the case, the Court considers that the regularisation arrangements granted to the applicant by the Lithuanian authorities constitute an adequate and sufficient remedy for his complaint under Article 8 of the Convention.

114. Having regard to all the above considerations, the Court concludes that both conditions for the application of Article 37 § 1 (b) of the Convention are met in the instant case. The matter giving rise to this complaint can therefore now be considered to be "resolved" within the meaning of Article 37 § 1 (b). Finally, no particular reason relating to

respect for human rights as defined in the Convention requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

Accordingly, this part of application should be struck out of the Court's list of cases.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

115. The applicant complained, under Article 6 § 1 of the Convention, that the proceedings before the Constitutional Court, whereby he had been deprived of his Lithuanian citizenship, had been unfair. He further argued that he had had no remedy, in accordance with Article 13 of the Convention, to challenge the loss of Lithuanian citizenship following the decision of the Constitutional Court of 30 December 2003. In the same connection, the applicant also complained under Article 14 of the Convention that he had been discriminated against as a person of Russian ethnicity, to the extent that he had automatically lost Lithuanian citizenship following the acquisition of a Russian passport.

116. With respect to the applicant's complaints regarding the decision of the Constitutional Court to withdraw his Lithuanian citizenship, the Court recalls that Article 6 § 1 of the Convention does not apply to proceedings regulating a person's citizenship, as such proceedings do not involve either the "determination of his civil rights and obligations or of any criminal charge against him" within the meaning of that provision. Consequently, Article 6 § 1 does not apply to these proceedings (see *S. v. Switzerland* (dec.), no. 13325/87, DR 59, 15 December 1988, and *Šoć v. Croatia* (dec.), no. 47863/99, 29 June 2000). It follows, that the applicant's complaint is to be rejected as being incompatible *ratione materiae*, pursuant to Article 35 §§ 3 and 4 of the Convention. Similarly, the Court notes that the Convention does not guarantee the applicant any right to citizenship (see *Makuc and Others v. Slovenia* (dec.), no. 26828/06, § 208, 31 May 2007). Hence, without an arguable claim under Article 13 of the Convention, the applicant's complaint thereunder must also be rejected as being incompatible *ratione materiae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

117. The Court reiterates that Article 14 of the Convention has no independent existence because it solely has effect in relation to "the enjoyment of the rights and freedoms" safeguarded by the Convention and its Protocols. Given that the Court has found the applicant's citizenship complaint to be incompatible with the provisions of Article 6 § 1, so too the complaint under Article 14 must be similarly rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

118. In the context of the criminal proceedings against him, the applicant complained that the principle of the presumption of innocence and the requirement of impartiality on the part of the courts had not been

respected because, at the time of those proceedings, a number of publications about him and his activities had been printed in the press. The applicant also alleged that one of the appellate court judges could not be considered impartial because, during the Soviet period, that judge had had relations with the Soviet intelligence agencies. The applicant invoked Article 6 §§ 1 and 2 of the Convention in this respect.

119. Having analysed the documents presented to it, the Court finds that the applicant did not properly raise the above-mentioned issues during the domestic proceedings. Consequently, this part of the application must be dismissed for failure to exhaust domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

120. Invoking Article 6 the Convention and in the context of the same criminal proceedings, the applicant further argued that the Lithuanian courts had incorrectly admitted in evidence and wrongly assessed the secret recordings of his telephone conversations, because two out of three of his interlocutors had not been heard by the court at an open hearing. The applicant next alleged that the charges against him were not specific enough to enable him to prepare his defence, as required by Article 6 § 3 of the Convention; in particular, they did not specify who had been the purported victims of his acts. Lastly, the applicant complained, under Article 7 of the Convention, that there had been no legal basis for his conviction in respect of the acts carried out in March 2003.

121. The Court has examined the complaints raised above as submitted by the applicant. It notes that the applicant's pleas have been addressed and examined by the Lithuanian court's, whose decisions do not seem arbitrary. Having regard to all the material in its possession, the Court finds that the complaints raised above do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

122. In the context of criminal proceedings in relation to his purported defamation claim and, invoking Article 8 of the Convention, the applicant complained that his right to respect for his private life had been breached. The applicant contended that, in the proceedings against ML, the courts had incorrectly interpreted and applied domestic law and the Convention, and had failed to strike a fair balance between his rights under Article 8 and the journalist's right to impart information, guaranteed by Article 10 of the Convention.

123. In the same connection and relying on Article 13 of the Convention, the applicant alleged that he had had no effective remedy to protect his right to respect for privacy. In particular, the applicant complained that the prosecutor had refused to institute criminal proceedings against ML, that the Inspector of Journalistic Ethics had failed to examine his complaint within the time-limits set by law, and that the courts had not

instituted – of their own motion – separate criminal proceedings against the person who had allegedly given information to ML. The applicant did not consider that a private criminal prosecution was an effective remedy, *inter alia*, because a cassation appeal was not available in such proceedings, whereas the case of a prosecution by a public prosecutor could be examined at three levels of jurisdiction.

124. The applicant also invoked Article 14 in conjunction with his Article 13 complaints, alleging that he had suffered discrimination on the grounds of his ethnic and social origin, as well as on the grounds of his political views.

125. The Court notes that the applicant has raised various complaints regarding alleged defamation by the press and seems to imply that the State failed to properly prosecute and punish the journalist. In this connection, it must be recalled that the Convention does not grant the right for an applicant to have third parties prosecuted or sentenced for a criminal offence (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). Furthermore, the Court observes that the prosecutors refused to institute criminal proceedings for defamation but indicated the possibility of a private criminal prosecution, a remedy which the applicant pursued. The mere fact that the outcome of those criminal proceedings was not in the applicant's favour, does not render them ineffective. Moreover, the Court finds nothing discriminatory in leaving private defamation cases to two levels of jurisdiction compared to the extra protection afforded to the public interest at three levels of jurisdiction in a prosecution brought by the State. The protection of the public interest represents an objective and reasonable basis for that difference. Finally, the Court finds that there was nothing arbitrary or discriminatory in the decisions of the domestic courts. Consequently, this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. COSTS AND EXPENSES

126. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court. ..."

127. The Court points out that, unlike Article 41 of the Convention, which comes into play only if the Court has previously found "that there has been a violation of the Convention or the Protocols thereto", Rule 43 § 4 allows the Court to make an award solely for costs and expenses (see *Sisojeva and Others*, cited above, § 132).

128. The applicant noted that litigation costs before the domestic courts and the Court had been substantial, but did not itemise them or submit any documents to substantiate them.

129. The Government submitted that no sum should be awarded to the applicant, because the applicant had not specified his claims for legal costs and expenses.

130. The Court reiterates that the general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see *Pisano*, cited above, §§ 53-54). In other words, in order to be reimbursed, the costs must relate to the alleged violation or violations and be reasonable as to quantum. Furthermore, under Rule 60 § 2 of the Rules of Court, itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the claim in whole or in part (see, for example, *Lavents v. Latvia*, no. 58442/00, § 154, 28 November 2002).

131. In the instant case and in the absence of any supporting documentation, the Court makes no award for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant's complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Declares* that the matter giving rise to the applicant's complaint under Article 8 of the Convention has been resolved and *decides* to strike the application out of its list of cases in so far as it relates to that complaint.

Done in English, and notified in writing on 14 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President