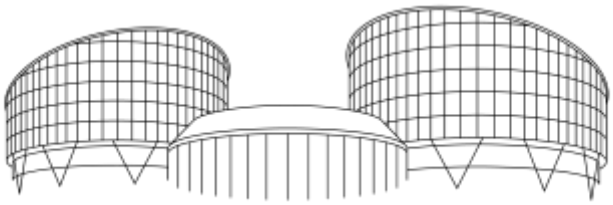

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 25991/05
Vidmantas JONIKA
against Lithuania

The European Court of Human Rights (Second Section), sitting on 20 November 2012 as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
Dragoljub Popović,
Işıl Karakaş,
Nebojša Vučinić,
Paulo Pinto de Albuquerque, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 23 June 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Vidmantas Jonika, is a Lithuanian national, who was born in 1962 and lives in Plungė. He was represented before the Court by Mr V. Falkauskas, a lawyer practising in Joniškis, Lithuania.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 4 October 1995 the tax authority started an investigation into a possible tax fraud in an enterprise of which the applicant was chairman of the board.

5. On 6 February 1996 the public prosecutor opened a criminal case and on 7 February 1996 the applicant was informed that he was suspected of fraud and forgery of documents and, later, of misappropriation of property.

6. The applicant was put in detention which lasted from 7 February 1996 to 6 October 1997 (with deduction of the period from 14 April to 11 July 1997), when house arrest and, later, a written undertaking not to leave the place of residence were ordered.

7. On 13 February and 6 March 1996 the public prosecutor seized the applicant's property, *inter alia*, the shares held by him. It appears that no complaint before the domestic courts was lodged to contest these measures.

8. In 1996 several newspapers published articles about the criminal case, alleging that the applicant was suspected of murder and fraud and had connections with the mafia. The applicant submitted to the Court that he had brought civil proceedings concerning these publications.

9. On 23 February 1996 the public prosecutor's office informed the applicant and his lawyer of the decision that an officer would have to be present at the meetings between the applicant and his lawyer. On 12 June 1996 the lawyer complained about the restriction and on 17 June 1996 the applicant was informed of the decision to annul that restriction.

10. On 24 September 1996 part of the criminal case was separated into a new criminal case against the applicant (the second criminal case).

11. On 20 October 1996 Parliamentary elections were held. The applicant noted that at that time he was in detention in a police station and was denied the right to vote. According to him, his complaint about this to the Prosecutor General and the Central Electoral Commission was neither satisfied nor forwarded to the Commission.

1. Conviction in the first case

12. On 12 November 1996 a bill of indictment was issued and the case was transferred to the first instance court for examination. Later, however, the courts remitted the case for an additional investigation.

13. On 1 June 2001 the Skuodas District Court found the applicant guilty. On 12 April 2002 the Klaipeda Regional Court annulled the judgment and remitted the case to the first instance court.

14. The Klaipėda City District Court found the applicant guilty of "misappropriation of property" (*turto pasisavinimas)* on 16 June 2003 and sentenced him to one year and six months' imprisonment. On 13 May 2004

the Klaipeda Regional Court upheld the applicant's conviction. On 28 December 2004 the Supreme Court reclassified the applicant's actions under another provision of the Criminal Code; however the sentence remained the same.

2. Conviction in the second case

15. On 8 September 2003 the Plungė District Court found the applicant guilty under Articles 183 § 2 and 184 § 2 of the Criminal Code then in force, of "misappropriation of property" and "squandering of property" (*turto iššvaistymas*). It ordered him to pay a fine of 12,500 Lithuanian litai (LTL, approximately 3,600 euros (EUR)). On 24 May 2004 the Klaipeda Regional Court upheld the judgment. On 7 December 2004 the Supreme Court dismissed a cassation appeal by the applicant as unsubstantiated. The applicant's defence counsel attended the hearing.

3. Civil proceedings for damages on account of the alleged delays in the above proceedings

16. In 2007 the applicant lodged a civil claim for damages against the State under Article 6.272 of the Civil Code. Before the national courts the applicant invoked, *inter alia*, the unreasonable length of the first set of criminal proceedings and the unlawfulness of his detention.

17. On 4 October 2010 the Klaipėda Regional Court granted the applicant's claim in part and awarded him LTL 30,000 (EUR 8,700), having concluded that there had been a violation of the applicant's right to a trial within a reasonable time.

18. After having examined the appeals lodged by both parties on 26 April 2012, the Court of Appeal modified the decision of the first instance court. The appellate court acknowledged that there had been a violation of the applicant's right to a trial within a reasonable time in respect of the first criminal case that had ended with the adoption of the decision by the Supreme Court on 28 December 2004, and awarded him LTL 10,000 (EUR 2,900) for non-pecuniary damage. The court also found that the applicant's detention during certain periods (approximately three months if accumulated) was not lawful and awarded LTL 1,000 in that respect.

19. By a final verdict of 2 August 2012 the Supreme Court refused to entertain the applicant's cassation appeal as raising no important legal issues.

B. Relevant domestic law and practice

20. For relevant domestic law and practice see *Giedrikas v. Lithuania* ((dec.) no. 51392/07, 14 December 2010).

COMPLAINTS

21. The applicant complained under Article 6 § 1 of the Convention about the length of the two sets of criminal proceedings against him.

22. The applicant also complained under Article 5 §§ 1, 2, 3 and 4, Article 6 § 1 and Article 18 about the lawfulness and length of his detention.

23. Under Article 6 §§ 1 and 3 (c) and (d) the applicant further complained about various aspects of the two sets of criminal proceedings and claimed that they were unfair.

24. Finally, invoking Article 6, Article 1 and 3 of Protocol No. 1 to the Convention the applicant complained about defamation by various articles in newspapers, breach of the presumption of innocence, seizure of his property and deprivation of his right to vote.

THE LAW

25. The applicant argued that the length of the two sets of criminal proceedings had been incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Length of proceedings complaint as concerns the first criminal case

26. The Government argued that in the applicant's case Article 6.272 of the Civil Code was an effective remedy which had provided him with adequate redress in respect of the proceedings that were unreasonably lengthy.

27. While the civil proceedings were ongoing, the applicant disagreed and submitted that the remedy provided for in Article 6.272 of the Civil Code had no reasonable prospects of success.

28. The Court considers that it is first necessary to determine whether the applicant can still be considered to be a victim of a violation of the Convention. It recalls that the applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on the fact whether the domestic authorities acknowledged, either expressly or in substance, the alleged infringement of the Convention and, if necessary, provided appropriate redress in relation thereto. 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 *Cataldo v. Italy* (dec.), no. 45656/99, ECHR 2004-VI).

29. The proceedings in the instant case lasted from 7 February 1996 to 28 December 2004, thus 8 years and almost 11 months at three levels of jurisdiction.

30. The Court notes that on 4 October 2010 the Klaipėda Regional Court and on 26 April 2012 the Court of Appeal established that the applicant's right to a trial within a reasonable time had been breached. Accordingly, the Court finds that the domestic courts acknowledged the infringement complained of and thus satisfied the first condition laid down in the Court's case law.

31. The applicant's victim status then depends on whether the redress afforded was adequate and sufficient having regard to just satisfaction as provided for under Article 41 of the Convention (see *Dubjaková v. Slovakia* (dec.), no. 67299/01, 19 October 2004).

32. In this connection, the Court recalls that in length of proceedings cases one of the characteristics of sufficient redress which may remove a litigant's victim status relates to the amount awarded. The amount depends, in particular, on the characteristics and effectiveness of the remedy.

33. The Court can also perfectly well accept that a State which has introduced a remedy which is designed to afford compensation will award amounts which – while being lower than those awarded by the Court – are not unreasonable, on condition that the relevant decisions, which must be consonant with the legal tradition and the standard of living in the country concerned, are speedy, reasoned and executed very quickly (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 206, ECHR 2006-V).

34. The Court notes that it has already found on one particular occasion that the sum of LTL 8,000 (EUR 2,200) awarded by the Lithuanian courts as compensation for non-pecuniary damage due to the criminal proceedings that had lasted 7 years and 10 months, was reasonable and appropriate redress (see *Giedrikas*, cited above).

35. Turning to the present case, in which the sum of LTL 10,000 (EUR 2,900) was awarded to the applicant for non-pecuniary damage sustained due to the unjustifiably lengthy court proceedings, the Court finds that the compensation in question almost corresponds to the sum that the Court would be likely to have granted in accordance with its practice.

36. In the light of the above considerations, the Court concludes that the sum awarded to the applicant can be considered sufficient and therefore appropriate redress for the violation suffered.

37. The Court therefore is of the opinion 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 right to a fair trial within a reasonable time in respect of the first criminal case. It follows that the complaint to this effect

is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Length of proceedings complaint as concerns the second case

38. Turning to the applicant's complaint about the length of the second set of criminal proceedings, the Court notes that they ended on 7 December 2004 when the final judgment of the Supreme Court was delivered. As the present application was introduced on 23 June 2005, the complaint concerning the length of the second proceedings should be declared inadmissible as being lodged outside the six-month time limit, pursuant to Article 35 §§ 1 and 4 of the Convention.

C. Remaining complaints

39. Invoking Article 5 §§ 1, 2, 3 and 4, Article 6 the applicant complained about various aspects of his pre-trial detention. It must be noted that the applicant's detention ended on 6 October 1997 when he was released from custody. Given that the applicant submitted the application to the Court only on 23 June 2005, this part of the application must be dismissed as lodged outside the six-month time limit (see *Jėčius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX) pursuant to Article 35 §§ 1 and 4 of the Convention.

40. Invoking Article 6 §§ 1 and 3 (c) and (d) the applicant further complained that the courts wrongly assessed the evidence, had violated his defence rights by restricting communication with his counsel and that the criminal proceedings were unfair.

41. The Court observes that as a general rule, it is for the national courts to assess the evidence before them, in so far as overall fairness of the proceedings is observed (see, *mutatis mutandis*, *Bernard v. France*, no. 22885/93, judgment of 23 April 1998, § 37, *Reports of Judgments and Decisions* 1998-II; *Daktaras v. Lithuania* (dec.), no. 42095/98, 11 January 2000, § 5 of the law part). On the basis of the materials submitted by the parties, the Court notes that the first criminal case was examined by the courts of three instances and reasoned decisions were adopted. The applicant's submissions were given due consideration, and there is no appearance of arbitrariness.

42. As regards the alleged impairment of the applicant's defence rights the Court notes that the applicant did not substantiate his allegations either before the domestic courts nor in the application to the Court. Even assuming that for a short period of time the applicant's and his lawyer's communications were restricted, the Court is not ready to find that that impediment was of such magnitude that the applicant's defence rights were curtailed in essence. Above all, from 17 June 1996 onwards the applicant

could enjoy the effective assistance of his counsel both during the pre-trial investigation and the trial before the court.

43. In the light of the above the Court concludes that the applicant had the benefit of fair criminal proceedings. 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.

44. The applicant lastly complained under Article 6 of the Convention, and Articles 1 and 3 of Protocol No. 1 to the Convention about the seizure of his property, defamation in the newspapers, inability to vote in the elections and the breach of the presumption of innocence.

45. The Court observes that it has no information that the applicant has exhausted the domestic remedies by applying to the national courts in order to redress the violations complained of. It follows that the applicant has failed to exhaust the domestic remedies and thus this part of the application is inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Guido Raimondi
President