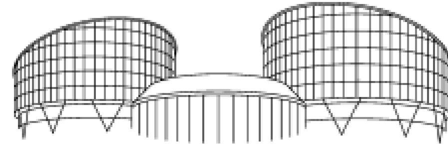

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

**CASE OF KUDREVIČIUS AND OTHERS v. LITHUANIA**

*(Application no. 37553/05)*

JUDGMENT

STRASBOURG

26 November 2013

Referral to the Grand Chamber

14/04/2014

*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 Kudrevičius and Others v. Lithuania,**

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

Guido Raimondi, *President,*
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 22 October 2013,

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

# PROCEDURE

1. The case originated in an application (no. 37553/05) 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 five Lithuanian nationals, Mr Arūnas Kudrevičius, Mr Artūras Pilota, Mr Kęstutis Miliauskas, Mr Virginijus Mykolaitis and Mr Bronius Markauskas ("the applicants"), on 8 October 2005.

2. The applicants were represented by Mr. K. Stungys, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

3. The applicants alleged a breach of Article 6 of the Convention in that various procedural violations had occurred during the criminal proceedings against them. They further alleged a violation of Article 7 of the Convention, submitting that the law under which they had been convicted had not met the requirements of that provision.

Lastly, relying on Articles 10 and 11 of the Convention, the applicants complained that their right to freedom of expression and their right to freedom of assembly had been violated by the criminal investigation into their actions and by their subsequent convictions.

4. On 21 May 2008 Court decided to give notice to the Government of the applicants' complaints under Articles 6, 7, 10 and 11 of the Convention. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 3).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, Mr Arūnas Kudrevičius (hereinafter – A.K.), was born in 1970 and lives in Vaitkūnai village, Utenos region; the second applicant, Mr Bronius Markauskas (hereinafter – B.M.), was born in 1960 and lives in Triušeliai village, Klaipėda region; the third applicant, Mr Artūras Pilota (hereinafter – A.P.), was born in 1973 and lives in Ožkasviliai village, Marijampolė region; the fourth applicant, Mr Kęstutis Miliauskas (hereinafter – K.M.), was born in 1959 and lives in Jungėnai village, Marijampolė region; and the fifth applicant, Mr Virginijus Mykolaitis (hereinafter – V.M.), was born in 1961 and lives in Varakiškė village, Vilkaviškis region.

6. In April 2003 a group of farmers held a demonstration in front of the Seimas (the Lithuanian Parliament) building to protest about the situation in the agricultural sector with regard to a fall in wholesale prices for various agricultural products and the lack of subsidies for producing those products, demanding that the State take action.

7. On 16 May 2003 the Chamber of Agriculture (*Žemės ūkio rūmai*), an organisation established to represent the interests of farmers, met to discuss possible solutions to the issues. If no positive changes in legal regulation were forthcoming, the measures foreseen included addressing complaints to the administrative courts. In the meantime, it was decided to organise, in three different locations next to trunk roads in the State (*prie magistralinių kelių*), protests to draw attention to the problems in the agricultural sector.

8. In May 2003 the Kalvarija municipality issued a permit to hold a peaceful assembly in Kalvarija town, "near the marketplace". The Pasvalys municipality issued a permit to hold a demonstration "at the car park at the sixty-third kilometre of the Via Baltica highway and next to that highway". The Klaipėda municipality issued a permit covering an "area in Divupiai village next to, but not closer than twenty-five metres from, the Vilnius-Klaipėda highway". The permit specified that B.M. was one of the organisers of the gathering. He was informed that he had to observe the law and to adhere to any orders from the authorities and the police.

9. The demonstrations started on 19 May 2003. The farmers gathered in the designated areas.

10. On 21 May 2003 the farmers blocked and continued to demonstrate on the roads next to Dirvupiai village, on the Vilnius-Klaipėda highway, at the sixty-third kilometre of the Panevėžys-Pasvalys-Riga highway, and at the ninety-fourth kilometre of the Kaunas-Marijampolė-Suvalkai highway.

11. On 22 May 2003 the farmers continued negotiations with the Government. The next day, following a successful outcome to those negotiations, the farmers stopped blocking the roads.

12. Pre-trial investigations against the applicants and a number of other persons, on suspicion of having caused a riot, were started. In July 2003 B.M., V.M., A.P. and K.M. were ordered not to leave their place of residence. That measure was lifted in October 2003.

The police record of 22 May indicates that during the farmers' demonstration on Kaunas-Marijampolė-Suvalkai highway "the farmers and the lorry drivers had a few arguments, but more serious conflicts were avoided".

13. As transpires from the documents submitted to the Court, later that month four companies that transport goods informed the police and Linava, the Lithuanian National Road Carriers' Association, that they had sustained pecuniary damage in the sum of 25,235 Lithuanian litai (LTL) (approximately 7,300 euros (EUR)) due to the blockade of the roads during the farmers' demonstrations. The companies stated that they would institute civil proceedings in respect of those claims.

14. On 1 September 2003 the Pasvalys police issued a certificate stating that on 19-23 May 2003 the farmers had held a demonstration at the car park at the sixty-third kilometre of the Panevėžys-Pasvalys-Riga highway. On 21 May at around midday the farmers had gone on to the highway and had stopped the traffic. They had only allowed through passenger vehicles and vehicles that carried dangerous substances. Vehicles that carried goods and cars had been allowed to go through once in an hour and ten at a time on each side of the road. In order to ameliorate the situation, the police had attempted to let the traffic bypass the blockade through neighbouring villages. However, due to the poor condition of those neighbouring roads, not all lorries that carried goods had been able to drive on them and they had had to remain on the highway until the farmers had left it. Some lorries had become stuck in sand and special machinery had been necessary to pull them out. The police indicated that the farmers had unblocked the highway at 4 p.m. on 23 May 2003.

15. The applicants submitted that on 1 October 2003 the police had imposed a fine of LTL 40 (approximately EUR 12) on farmer A.D. According to the applicants, it was established in the police record relating to the fine that on 21 May 2003 A.D. had taken the farmers to block the Kaunas-Marijampolė-Suvalkai highway in Kalvarija municipality; he had walked in the middle of the road, pushing a cart in front of him, thus obstructing the traffic. By such actions A.D. had breach paragraph 81 of the Road Traffic Rules and thus committed an administrative law violation, as provided for in Article 131 of the Code of Administrative Law Offences (see Relevant domestic law below).

16. On 4 December 2003 an indictment was brought before the courts. B.M. and A.K. were accused of incitement to riot under Article 283 § 1 of the Criminal Code.

The prosecutor noted that B.M. had taken part in the farmers' meeting of 16 May 2003, at which the farmers had decided to hold demonstrations near major highways on 19 May and, should the Government not grant their requirements by 11 a.m. on 21 May, to blockade those highways. On 19 May B.M. had told the farmers to blockade the roads on 21 May. As a result, at 12.09 p.m. on that date around 500 farmers had gone on to the Vilnius-Klaipėda highway. The farmers had refused to obey police requests not to stand on the road. Consequently, traffic had been blocked until 1 p.m. on 23 May. Traffic jams had occurred on neighbouring roads and road transport in the region had become impossible.

With regard to A.K., the prosecutor claimed that he had also incited the farmers to blockade the highway. As a result, at midday on 21 May around 250 people had gone on to the Panevėžys-Pasvalys-Riga highway, refusing police orders not to block the highway. The road had remained blocked until 10.58 a.m. on 23 May. The roads in the vicinity had become clogged. The normal functioning of the Saločiai-Grenctale border control post had been interrupted.

17. V.M., K.M. and A.P. were accused of a serious breach of public order during the riot, under Article 283 § 1 of the Criminal Code. The prosecutor established that on 21 May 2003, at around 11.50 a.m., around 1500 people had gone on to the ninety-fourth kilometre of the Kaunas-Marijampolė-Suvalkai highway. At about 3-4 p.m. the aforementioned applicants had driven on to the highway with three tractors and had left the tractors on the asphalt carriageway. The three applicants had refused to obey police instructions not to breach public order and not to leave the tractors on the road. The tractors had remained on the road until 4.15 p.m. on 23 May 2003. As a result, the highway had been blocked from the eighty-fourth to the ninety-fourth kilometre. Due to the resulting increase of traffic on neighbouring roads, congestion had built up and car transport in the region had come to a halt. The normal functioning of the Kalvarija and Marijampolė State border control posts had been disrupted.

18. Within the criminal proceedings, a logistics company brought a civil claim against A.K., as the person who had incited the farmers to block the Panevėžys-Pasvalys-Riga road, seeking damages of LTL 1,100 (approximately EUR 290) for the loss allegedly incurred by it due to the blockade of that road.

19. On 16 August 2004 the Kaunas City District Court suspended the examination of the case in respect of K.M., V.M., B.M. and A.K., as they had failed to present themselves at the hearing. As it transpires from the documents submitted by the Government, A.K. and V.M. had been notified

about the forthcoming hearing by summons. B.M. had also been informed about the hearing in advance.

On that date the case was examined only with regard to A.P. The district court questioned eight witnesses. The applicants' lawyer was present at the hearing and put questions to seven of them.

On 17-20 August 2004 the Kaunas City District Court held hearings where several other witnesses testified about the demonstration at issue. The court examined the case only with regard to A.P., who was present at those hearings. It transpires from the judgments of the appellate and cassation courts (paragraphs 30 and 35 below) that all the applicants were present at certain hearings.

20. On 29 September 2004 the Kaunas City District Court found the applicants guilty of having incited riots or having participated in them, under Article 283 § 1 of the Criminal Code.

21. In convicting B.M., the district court relied on video recordings of the events, documentary evidence and the testimony of one witness. The court concluded that B.M. had organised a gathering with the aim of seriously violating public order, that is to say a riot. B.M. had been one of the leaders of the farmers' meeting on 16 May 2003, at which the farmers had decided to attempt to achieve their goals by organising protests next to trunk roads. The court noted that the applicant had coordinated the actions of the farmers and as a consequence on 21 May 2003 around 500 people had gone to the Vilnius-Klaipėda road and had blocked it. As a result, car traffic had been blocked until 23 May 2003. The ensuing serious breach of public order had been deliberate and had to be qualified as rioting. The district court dismissed B.M.'s claim that he and other farmers had acted out of necessity because the roadblock had been their last opportunity to draw the Government's attention to their problems. For the court, the farmers had had another alternative, namely bringing complaints before the administrative courts. The farmers had themselves mentioned that alternative during the meeting of 16 May 2003. The court further noted that a person who created a dangerous situation by his or her actions could only rely on the defence of necessity when a dangerous situation arose through negligence (Article 31 § 2 of the Criminal Code). However, the actions of B.M. had been deliberate and it was therefore appropriate to find him guilty of organising the riot.

22. As concerns A.K., the Kaunas City District Court established, mainly on the basis of video recordings and documentary evidence, that A.K. had also organised a gathering with the aim of seriously breaching public order. A.K. had taken part in the farmers' meeting of 16 May 2003 and had known about the decision to hold protests next to the roads. When a crowd of farmers had blocked the Panevėžys-Pasvalys-Riga road on 21 May 2003, public order had been seriously breached. Car traffic had stopped at that part of the road, causing inconvenience to drivers and goods

carriers. The district court established that "during the blockade of 21 and 22 May, A.K. coordinated the actions of the crowd, that is to say he gave orders that some of the vehicles should be let through, incited [the farmers] to hold on and not to move away from the highway, was in contact with the participants in the protests in Kalvarija municipality and Klaipėda region, [and] was negotiating with the authorities by mobile phone in the name of the farmers". The district court emphasised that the farmers who had gathered "obeyed the actions of A.K. and followed his orders". For the court, the actions of A.K. were to be qualified as organising riots under Article 283 § 1 of the Criminal Code.

On the basis of written evidence submitted by Linava, the district court also found that by having organised the blockade of the Panevėžys-Pasvalys-Riga road A.K. had seriously breached public order and had caused pecuniary damage to three carrier companies. As one of the carriers had submitted a civil claim in the sum of LTL 1,100, the district court deemed it proper to grant it.

23. In finding V.M., K.M. and A.P. guilty of rioting, the Kaunas City District Court, on the basis of documentary evidence, audiovisual materials and two witnesses' testimony (one of whom testified on 16 August 2004), established that on 21 May 2003 between 11.50 a.m. and 4.15 p.m. the three of them had driven tractors on to the Kaunas-Marijampolė-Suvalkai highway at its ninety-fourth kilometre. They had refused to obey lawful requirements by the police not to breach public order and not to park the tractors on the road (*ant važiuojamosios kelio dalies*) and had kept the tractors there until 4.15 p.m. on 22 May 2003. As a consequence, and because about 1,500 people had gathered on the road, the traffic had been blocked between the eighty-fourth and ninety-fourth kilometres of the Kaunas-Marijampolė-Suvalkai road, traffic jams had occurred and the normal functioning of the Kalvarija and Lazdijai border control offices had been disrupted.

24. The five applicants were each given a sixty-day custodial sentence (*baudžiamasis areštas*). The district court also noted that all the applicants had positive characteristics and there were no circumstances aggravating their guilt. Accordingly, there was reason to believe that the aim of the punishment could be achieved without actually depriving them of their liberty. Consequently, the court suspended their sentences for one year. The applicants were ordered not to leave their places of residence for more than seven days without the authorities' prior agreement. This measure was to last for one year, whilst execution of the sentence was suspended.

The Kaunas City District Court also acquitted, for lack of evidence, two other individuals charged with organising the riots.

25. The applicants lodged an appeal with the Kaunas Regional Court. They noted, *inter alia*, that another farmer, A.D., had been punished under

administrative law for an identical violation. All five applicants took part in a hearing before that court and asked that they be acquitted.

26. On 14 January 2005 the Kaunas Regional Court found that the trial court had thoroughly and impartially assessed all the circumstances of the case. The appellate court observed that the crime of rioting placed in danger public order, society's safety, human health, dignity and the inviolability of property. The objective aspect of the crime was organising gathered people for a common goal – namely, to breach public order – and to carry out that decision which, in the instant case, had been to organise the roadblocks. To constitute a crime, the actions also had to be committed on purpose, that is to say, the persons charged had to understand the unlawfulness of their actions. In relation to B.M. and A.K., the appellate court observed that during the demonstrations the two applicants had told others that it had been decided to block the roads. It had been established that B.M. and A.K. had understood that the roadblocks would be illegal and that they had been warned about their liability as organisers. Even so, they had kept coordinating the farmers' actions and had insisted that farmers would maintain the roadblocks. As a direct result of the actions of B.M. and A.K., on 21 May 2003 a crowd had gone on to a highway and had blocked it, thereby stopping the traffic and breaching the constitutional rights and liberties of others to move freely and without restriction, causing damage to goods carriers and thus seriously breaching public order.

27. The appellate court also shared the trial court's conclusion as to the reasonableness of convicting V.M., K.M. and A.P. The court noted that by driving tractors on to the road, thus causing traffic congestion and disturbing the work of the State border control service, and by refusing to obey lawful requests by the police not to park their tractors on the road, the three applicants had seriously breached public order. The fact that after the roads had been blocked the police and the drivers had negotiated with the farmers with the result that some of the drivers had been let through did not diminish the danger of the offence and its unlawfulness. The appellate court also emphasised that the blockade of a major highway (*magistralinis kelias*) had had dangerous consequences and could not be considered to have been a mere administrative law offence such as a traffic violation. As to the applicants' argument that their offences were identical to that for which another farmer, A.D., had been given a merely administrative punishment for a traffic violation, the Kaunas Regional Court only briefly indicated that it was not an administrative court and thus could not comment on the administrative violation.

28. Whilst noting that the applicants had the right to freedom of expression under Article 10 of the Convention, the Kaunas Regional Court nevertheless observed that that right was not without restrictions, should the interests of public order and prevention of crime be at stake. Analogous limitations to freedom of expression were listed in Article 25 of the

Lithuanian Constitution. On this issue, the court emphasised that the behaviour of B.M. and A.K., in guiding the actions of the other individuals involved in the protest, could not be regarded as a non-punishable expression of their opinion, because they had breached public order by their actions, for which criminal liability was foreseen.

As to the applicants' complaint that the offence had lost its element of public danger, the court stated that the criminal offence had not lost that element merely because the Government had refused to raise wholesale prices or because the Government had allegedly failed to take necessary action.

29. The Kaunas Regional Court also dismissed the applicants' complaints that they had not had a fair trial, in that the video recordings proving their guilt had been forged. The appellate court observed that when the video recordings had been shown as evidence before the court of first instance, the applicants had not alleged that they had been falsified, although they had each been asked if the events shown in the recording were true. The applicants had not answered in the negative, but had agreed with the recorded material. The mere fact that the film had been recorded with interruptions did not mean that it was illegitimate evidence. Although the applicants had alleged that one of the tapes had been falsified, the judgment had not been based on that particular tape. The trial court's refusal to question some witnesses had been reasoned, the evidence in the case had been legitimate and not falsified and no other procedural violations were found.

30. The court also observed that although K.M., V.M., B.M. and A.K. had failed to attend the first hearing at the trial court on 16 August 2004, the court had suspended the examination of the case with regard to those applicants. It noted that all the applicants were present at some point when the case was examined by trial court and therefore could exercise their procedural rights unhindered. Witnesses had not been questioned in the absence of the applicants concerned. Thus, the rights of the applicants had not been infringed at any point.

31. The Kaunas Regional Court also dismissed a complaint by B.M. that immunity from criminal liability should apply to him because of his status as a parliamentary candidate. The appellate court noted that the crime at issue had been committed in May 2003, whilst the Central Electoral Commission had registered B.M. as a candidate in the Parliamentary elections only in September 2004. Thus, B.M. did not have immunity under domestic law with regard to that particular crime.

32. Lastly, the appellate court upheld the trial court's decision not to summon the Speaker of Parliament, the Prime Minister and other members of the Government and Parliament for questioning. The court deemed that these people could only have given evidence on economic matters which had no relation to the case. The aforementioned politicians had not

participated in the gathering or seen the violations of public order and therefore could not have given any evidence as to the circumstances of the offence charged.

33. On 4 October 2005 the Supreme Court, composed of an enlarged chamber of seven judges (see paragraph 47 below), dismissed an appeal on points of law brought by the applicants. In providing an explanation of the substance of the crime of rioting, as established in Article 283 § 1 of the Criminal Code, the Supreme Court referred to the classification of the said offence as an offence against public order, which was the object of the crime (*nusikaltimo objektas*). In establishing the scope of the offence, the aforementioned provision stipulated the following features of the crime: the organisation of a gathering with the aim of causing public violence, damaging property or breaching public order in other ways, or the commission of those actions during a gathering. For the Supreme Court, a riot was to be characterised as a situation when a gathering of people deliberately seriously breached public order, caused public violence, or damaged property. The subjective aspect of the crime was that of the deliberate nature of the action (*kaltė pasireiškia tiesiogine tyčia*). The guilty person had to (i) be aware that he or she was performing an action that was listed as an offence in Article 283 § 1 of the Criminal Code and (ii) wish to so act.

34. Turning to the situation of the applicants in the instant case, the Supreme Court found that the lower courts had been correct in qualifying the applicants' actions as falling under Article 283 § 1 of the Criminal Code. In particular, the court of first instance had properly established all the prerequisites for the application of Article 283 § 1, namely that there had been a crowd and that public order had been breached by blocking the roads, stopping traffic and disturbing the work of the State border control service. The applicants had been sentenced for their crimes under a law which had been valid at the time at which the crimes had been committed and their sentences had been imposed in accordance with the provisions of the Criminal Code. It followed that the applicants' convictions had been in accordance with the law and not in breach of Article 7 § 1 of the European Convention on Human Rights.

35. The Supreme Court also stated that the applicants had not been sentenced for expressing their opinion or imparting ideas, actions which were protected by the guarantees of Article 10 § 1 of the Convention, but for actions by which they had seriously breached public order. As to the requirements of a fair trial, the Supreme Court noted that while part of the examination of the case at the trial stage had been carried out without some of the applicants being present, they had failed to submit any legitimate reasons for their absence, and thus the courts had had the right to examine the case without them. There was no indication that the trial court would have deliberately obstructed any of the applicants from taking part in the

hearing. Moreover, the trial court had to ensure that the case would be decided within a reasonable time. Most importantly, the convictions had been based solely on the evidence examined at the hearings at which all applicants had been present. The applicants' lawyer, who had defended the interests of all the co-accused, had also had every opportunity to question every witness in the case, thus having assured the applicants' right to have witnesses against them examined under Article 6 § 3 of the Convention. The question of the immunity of the parliamentary candidate had also been correctly settled. The parliamentary candidate had immunity only for actions performed during the electoral campaign, whereas a member of Parliament had immunity irrespective of the date on which he or she had committed a crime. Referring to the Court's case-law to the effect that the accused does not have the right to request that every witness be called to testify, the Supreme Court also upheld the trial court's reasoning not to summon members of the Parliament and the Government for questioning.

36. Lastly, the Supreme Court shared the appellate court's view that the applicants could not be considered as having acted out of necessity. The fall in milk purchase prices and other problems with subsidies for agriculture had not constituted a clear or present danger to someone's property, because the property in question had not yet materialised. The court held that the law protects existing property. The State had not deprived the applicants of their property, and their dissatisfaction with the Government's agricultural policy had not justified the acts for which the five applicants had been convicted. For the Supreme Court, the materials in the case file did not allow the conclusion that the applicants' conviction under Article 283 § 1 of the Criminal Code had been in breach of Article 23 of the Lithuanian Constitution or Article 1 of the Protocol No. 1 to the European Convention on Human Rights, because the property in question had not yet materialised.

37. By court rulings of 17, 18, 20, 21 October and 7 November 2005, the courts discharged the five applicants from their suspended sentences.

## II. RELEVANT DOMESTIC LAW

38. Article 23 of the Constitution of the Republic of Lithuania states that property is inviolable.

39. Article 25 of the Constitution reads as follows:

**Article 25**

> "[A natural person] shall have the right to have his own convictions and to freely express them.
>
> [A natural person] must not be hindered from seeking, receiving and imparting information and ideas.

Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honour and dignity, private life, and morals of a [natural person], or to defend the constitutional order.

Freedom to express convictions and to impart information shall be incompatible with criminal actions – incitement of national, racial, religious, or social hatred, violence and discrimination, [or] slander and disinformation. (...)”

40. On 25 October 2000 the Criminal Code was published in the Official Gazette (*Valstybės žinios*). Article 283 § 1 of the Criminal Code establishes criminal liability for rioting, which is categorised as a public order offence, and provides:

**Article 283. Riot**

“1. A person who has organised or provoked a gathering of persons to commit public acts of violence, damage property or seriously breach public order in other ways, or a person who, during a riot, has committed acts of violence, damaged property or seriously breached public order in other ways, may be sentenced to a custodial sentence (*baudžiamasis areštas*) or imprisonment for up to five years.”

41. Article 75 §§ 1 and 2 of the Criminal Code stipulate that if a person is sentenced to imprisonment for a term not exceeding three years for the commission of one or several minor or less serious premeditated crimes, a court may suspend the sentence imposed for a period ranging from one to three years. The sentence may be suspended when the court rules that there is a sufficient basis for believing that the purpose of the penalty will be achieved without the sentence actually being served. When suspending execution of the sentence, the court may order the convicted person not to leave his place of residence for a period of longer than seven days, without prior agreement of the authority which supervises execution of the judgment.

Pursuant to Article 97 of the Criminal Code, individuals convicted of a crime and whose conviction has become effective are considered as people with a previous conviction. Any person given a suspended sentence is considered as having a previous conviction during the period of suspension of the sentence.

42. Article 31 of the Criminal Code defines the concept of necessity (*būtinasis reikalingumas*). It states that a person shall not be held liable under the criminal law for an act committed in an attempt to avert an immediate danger which threatens him, other persons or their rights, or public or State interests, where this danger could not have been averted by other means and where the damage caused is less than the damage which it is intended to avert. Nonetheless, a person who creates a dangerous situation by his actions may only rely upon the defence of necessity when the dangerous situation arose through negligence (*dėl neatsargumo*).

43. Article 124[1] of the Code of Administrative Law Offences at the relevant time provided for administrative liability for a breach of traffic rules by drivers. The provision stipulated that a breach of the rules on how and when a driver could stop and park on highways carried a fine from LTL 100 to LTL 150 (approximately EUR 30-45). Article 131 of the Code provided for administrative liability for non-observance by pedestrians of traffic signals, crossing of a carriageway or walking on it. The offence was punishable by a fine of LTL 30-50 (approximately EUR 8-15).

44. The Road Traffic Rules provided that pedestrians must walk on the sidewalk and, if there is none, on the right side of the road in a single line (point 81 of the Rules).

45. Article 62 (2) of the Constitution of the Republic of Lithuania states that a member of the Parliament may not be held criminally liable without the consent of the Parliament. Article 49 (1) of the Law on Parliamentary Elections provides that without the consent of the Central Electoral Commission, during an election campaign as well as until the first meeting of a newly-elected Parliament, a parliamentary candidate may not be charged with a crime or arrested and his or her freedom may not be restricted in any other way.

46. Article 248 § 2 of the Code of Criminal Procedure stipulates that when there are many accused in the criminal case, the court may allow one or several accused or their counsels not to take part in the examination of the evidence that is not related to that or those accused.

47. The Law on Courts at the material time provided that the Supreme Court forms uniform judicial practice in interpreting and applying laws and other legislation. To that end the Supreme Court publishes the decisions of the plenary court as well as the most important decisions of its three or seven judges' chambers in the "Courts' practice" bulletin. The Supreme Court also analyses courts' practice when they apply the laws and gives recommendations to be followed.

Depending on the complexity of the case, the Supreme Court decides cases in chambers of three or seven judges or in plenary session (Articles 23, 27 and 36).

## III. RELEVANT EUROPEAN UNION LAW AND PRACTICE

48. In *Eugen Schmidberger, Internationale Transporte und Planzüge v. Republik Österreich*, Case C-112/00 [2003], ECR I-05659 the European Court of Justice found that the fact that the Austrian authorities did not ban a demonstration by protesters which resulted in the complete closure of a single major transit route between Austria and Germany for almost thirty hours was not incompatible with Articles 28 and 29 of the Treaty Establishing the European Community, read together with Article 10 of that Treaty, provided that that restriction of trade in goods between Member

States was justified by the legitimate interest in the protection of fundamental rights, in that case the protesters' freedom of expression and freedom of assembly, which applied both to the Community and the Member States. Even though it was true that the national authorities enjoyed a wide margin of discretion in that regard, it was for the European Court of Justice to determine whether the restrictions placed upon intra-Community trade were proportionate in the light of the legitimate objective pursued, namely, in *Schmidberger*, the protection of fundamental rights. It was acknowledged that whilst a demonstration on a public highway usually entailed inconvenience for non-participants, in particular as regards free movement, that inconvenience could in principle be tolerated provided that the objective pursued is the public and lawful demonstration of an opinion.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 OF THE CONVENTION

49. The applicants complained that they had not had a fair trial in the determination of the criminal charges against them. They relied on Article 6 §§ 1 and 3 (d) of the Convention, the relevant parts of which read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
>
> ..."

### A. The rights to participate in the court hearing and to question witnesses

50. The applicants alleged that during their trial a number of procedural violations had occurred. In particular, they submitted that the courts had violated their right to make submissions, given that four of them had not

taken part in the hearings on 16-20 August 2004 at the Kaunas City District Court.

51. The applicants further argued that even though K.M., V.M., B.M and A.K. had not been present at the aforementioned hearings, the trial court had suspended the examination of the case with regard to them, but it had nonetheless questioned witnesses about the blockade of the roads, and those witnesses had not been questioned again later. The applicants were also dissatisfied that their requests to question certain witnesses who were politicians had been denied.

52. Lastly, B.M. complained that the domestic courts had not asked the Central Electoral Commission to lift the immunity they had been entitled to as parliamentary candidates, thus breaching the provisions of the Law on Parliamentary Elections.

53. The Government contested the applicants' claims.

54. On the basis of the materials submitted to it, the Court notes that A.K., B.M., V.M. and K.M. were indeed absent from the trial court's hearings on 16-20 August 2004. It observes, however, that there is no information to the effect that those applicants had been improperly summoned to the court. Neither can the Court overlook the Supreme Court's conclusion that those four applicants had not informed the trial court of the reasons for their absence. The Court further recalls that the trial court took the decision to adjourn the examination of the case in respect of the absent applicants and, in order of preserve the applicants' right to trial within a reasonable time, to continue the examination of the case only as regards A.P. (see paragraph 35 above). Furthermore, there is nothing to indicate that the domestic courts were biased or created any obstacles to the applicants directly taking part in the hearing.

55. The Court next turns to the applicants' complaint that they could not examine witnesses who had testified at the hearings of 16-20 August 2004. To this end, the Court observes that the defence counsel, who represented all five applicants before the domestic courts, was present at the hearing of 16 August 2004. As the transcript of the hearing reads, the counsel cross-examined seven out of eight witnesses who testified on that day. Neither have the applicants argued that their counsel was not present at the hearings of 17-20 August 2004, when some other witnesses were questioned. Most importantly, the Court finds it decisive that, as it transpires from the trial court's judgment, the guilt of the four applicants was determined on the basis of documentary evidence and video recordings of the demonstrations, and not on the basis of the witnesses who had testified during the hearings in question (see, by contrast, *Lucà v. Italy*, no. 33354/96, § 43, ECHR 2001-II). This latter point has been confirmed by both the appellate and cassation courts, who unequivocally stated that when finding the applicants guilty the trial court relied only on the statements of

witnesses who testified at the hearings where all applicants had been present (see paragraphs 30 and 35 above).

56. The applicants also criticised the domestic courts for not having summoned high-ranking State politicians to testify in the criminal proceedings at issue. In this context the Court recalls that the admissibility of evidence is primarily governed by the rules of domestic law. As a general rule, it is for the national courts to assess the evidence before them, as well as the relevance of the evidence which defendants seek to adduce (see, among other authorities, *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 68, Series A no. 146). More specifically, Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system (see *Asch v. Austria*, 26 April 1991, § 25, Series A no. 203). It "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words "under the same conditions", is a full "equality of arms" in the matter" (see, among other authorities, *Engel and Others v. the Netherlands*, 8 June 1976, § 91, Series A no. 22, and *Bricmont v. Belgium*, 7 July 1989, § 89, Series A no. 158). As concerns the applicants in the instant case, the Court considers that their complaints were thoroughly addressed and dismissed by both the appellate and the cassation courts. It sees no valid reason to depart from their conclusions that the testimony of the politicians who had not taken part in the gathering or seen the violations of public order was not pertinent to the charges against the five applicants (see paragraphs 32 and 35 above). The Court also sees no cause to depart from the national courts' findings, based on their direct knowledge of domestic law, as regards B.M.'s contention that immunity from criminal liability should have applied (see paragraphs 31 and 35 above).

57. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

### B. Use of audiovisual materials and alleged falsification of the recordings

58. The applicants also argued that the video recordings of the demonstration that had been used in the court proceedings had been forged. The applicants further argued that the court of appeal had refused their request to view all the video recordings of the scene, in particular the parts of the recordings that would prove that they had been falsified.

59. The Government disputed the applicants' submissions. They noted that the issue had been addressed in detail and that the applicants' allegation had been rejected by the appellate court (see paragraph 29 above). The Government also submitted that those video recordings which the court had used as evidence in the case had been examined in the presence of the

applicants, while the latter had been in a position to contest them. The trial and appellate courts had examined potential obscurities and had dismissed the applicants' accusations, giving valid reasons in doing so. Lastly, the Government observed that in the present case the applicants' right to a fair trial could not have been violated, because, as had been indicated in the decision of the appellate court, the disputed videotape had not been used to convict the applicants.

60. The Court has examined the applicants' complaint. However, in the light of the materials submitted and the observations by the parties, the Court does not find valid reasons to depart from the Government's line of argument that the present complaint lacks a proper factual and legal basis. Accordingly, it must be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

61. The applicants complained that their criminal conviction had unlawfully interfered with their rights to freedom of expression and freedom of peaceful assembly, guaranteed by Articles 10 and 11 of the Convention respectively, which read as follows:

**Article 10**

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

**Article 11**

"1. Everyone has the right to freedom of peaceful assembly...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others..."

## A. Admissibility

62. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

## B. Merits

### *1. The scope of the applicants' complaints*

63. The Court notes that, in the circumstances of the case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis*. It is therefore unnecessary to take the complaint under Article 10 into consideration separately (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202).

64. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of the freedom of peaceful assembly enshrined in Article 11 (ibid., § 37).

### *2. Whether there was an interference with the exercise of the freedom of peaceful assembly*

#### (a) The submissions by the parties

65. The applicants argued that their conviction in relation to the events of 21-23 May 2003 amounted to an interference with their right to organise a peaceful demonstration and to take part in it.

66. The Government submitted that there had not been any interference with the applicants' right to the freedom of peaceful assembly guaranteed by Article 11 of the Convention. On the contrary, the applicants and other participants had been given permission to organise peaceful meetings. They had availed themselves of that freedom and no one had been punished for that. The applicants had not been convicted for exercising their freedom of assembly, but rather for a serious breach of public order by organising riots.

#### (b) The Court's assessment

67. The Court shares the Government's view that the applicants were permitted to exercise their right to peaceful assembly. It notes, however, that the applicants were convicted of an offence in connection to their actions during an assembly which did not involve any violence. Accordingly, the Court finds that the applicants' conviction for their participation in the

gathering at issue amounted to an interference with their right to freedom of peaceful assembly.

### 3. *Whether the interference was justified*

68. An interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims.

#### (a) The parties' submissions

##### *i. The applicants*

69. The applicants firstly argued that their conviction under Article 283 § 1 of the Criminal Code had not been "prescribed by law". In particular, the notion of "serious breach of public order", as specified in the aforementioned provision of the Criminal Code, had not been clearly defined and thus could not legitimately be held out as a feature characterising the criminal offence. B.M. and A.K. insisted that they had not been convicted and punished in accordance with the law, but rather for having expressed their opinions at the farmers' meeting and for defending those opinions during a peaceful demonstration. The other three applicants – V.M., K.M. and A.P. – claimed that they had been convicted under Article 283 § 1 of the Criminal Code merely for having driven on the road and left their tractors on it, even though the road had already been blocked by the police and the farmers. Accordingly, criminal conviction had been an excessive measure and their actions should have been treated as an administrative offence, in accordance with Articles 124 or 131 of the Code of Administrative Law Offences, as was the case of farmer A.D.

70. The applicants further argued that in view of the Government's ongoing and deliberate delay in regulating milk prices (see paragraph 75 below), their decision to stage the roadblocks had been the last resort to defend their interests as farmers. They also submitted that the demonstrations were peaceful and no incidents took place: public order had not been breached, nor had there been destruction of property belonging to others or damage caused to a person's health. On the contrary, B.M. and A.K., who had been respected among the farmers, had maintained order among the farmers who had gone on to the roads. During the demonstrations the farmers had acted calmly and had taken no actions that would require police special units or the army to intervene to restrain them. The movement of goods and people had been minimally disturbed. Only one lawsuit for civil damages in the amount of LTL 1,100 had been upheld by a court. By blocking the roads the farmers had in part obtained

satisfaction of their requirements – the milk purchasing price and the compensatory payments had been raised.

71. Lastly, the applicants contended that the criminal proceedings against them had been a clearly disproportionate and unnecessary measure. Restrictions of movement had been imposed upon them in 2003, given that at the beginning of the pre-trial investigation they, as suspects, had been ordered not to leave their places of residence. Later on, those measures had been lifted. Subsequently, the Kaunas City District Court had convicted each of the applicants and had given each of them a sixty-day custodial sentence. Even though the execution of the sentences had been suspended, the applicants had not been able to leave their places of residence without the authorities' permission during the year that the suspended sentences had been in force.

*ii. The Government*

72. The Government submitted that if the Court were to conclude that there had been an interference with the applicants' right to freedom of peaceful assembly, that interference had been prescribed by law. The applicants had been convicted under Article 283 § 1 of the Criminal Code, which prescribes a penalty for a serious breach of public order. Referring to the Court's judgment in *Galstyan v. Armenia* (no. 26986/03, § 107, 15 November 2007) and taking into account the diversity inherent in public order offences, the Government considered that the domestic legal norm had been formulated with sufficient precision to satisfy the requirements of Article 11 of the Convention. They also maintained that the offence established by Article 283 § 1 of the Criminal Code corresponded to the requirements of Article 7 of the Convention and the conviction of the applicants had not violated the rights guaranteed by the Convention provision.

73. The Government further disputed as unreasoned the applicants' argument that their acts ought to have been qualified as violations of administrative law. Administrative responsibility for parking agricultural vehicles (tractors) on the roads and leaving them in an impermissible place could hypothetically have been imposed on the applicants, pursuant to Articles $124^1$ or 131 of the Code of Administrative Law Offences. However, the scope of the violation of administrative law provided for in those Articles had not encompassed the applicants' acts in the instant case. Firstly, the applicants had acted as part of a crowd of people. Secondly, agricultural vehicles had not only been parked and left unattended, but had also been used to block roads with heavy traffic, which had threatened the rights of others, as well as the normal functioning of State institutions. Lastly, a concrete result had been pursued – the roadblocks. Therefore, the applicants' intent had been to commit a serious breach of public order and not merely to violate a parking order. It followed that the applicants had not

carried out violations of administrative law, but rather had committed dangerous acts corresponding to the scope of the offence established by Article 283 § 1 of the Criminal Code.

74. For the Government, the interference had also been necessary for the prevention of disorder and for the protection of the rights of others, given that the applicants had been personally involved in committing unlawful actions during the demonstration.

75. With regard to the proportionality principle, the Government considered it appropriate to briefly present the economic context of the events in the present case. They submitted that in 2003 the situation of the Lithuanian dairy sector had worsened, milk purchase prices had been reduced and farmers had become increasingly discontented. Farmers had demanded an increase in milk purchase prices and had organised various actions. Following negotiations among farmers, dairy processors and the Government, during March-June 2003 the Government had adopted a number of decisions providing subsidies to milk producers in the sum of LTL 52,000,000 and concerning milk purchase prices. The Government also maintained that they had organised and participated in meetings with farmers' representatives and had actively sought possible solutions involving regulation of the dairy sector and the milk market. However, despite the Government's efforts, the applicants had turned to such illegal measures as road blocking – thus violating the rights of other members of society, including those of other countries – which had not been directly related in any manner to the farmers' problems.

76. For the Government, the applicants' conviction for organising or participating in rioting had been grounded in relevant and sufficient reasoning. Such an outcome had been based on the nature and level of danger of the applicants' acts. The Government pointed out that the applicants had had a full and unhindered opportunity to exercise their freedom of peaceful assembly and to draw the attention of the Government and Lithuanian society to the farmers' problems. In fact, the applicants had been exercising that freedom for several days. Nonetheless, they had subsequently broken the law through their actions, which had constituted a serious breach of public order and which, overall, had inflicted harm on other persons, had impaired the functioning of State institutions and had raised a real danger of greater harm of an unpredictable degree. Contrary to the facts in *Ezelin* (cited above, § 20), where the applicant had been punished for merely having neither shown his disapproval of the "demonstrators' offensive and insulting acts" nor left the procession in order to dissociate himself from them, in the present case the applicants had been convicted for actual, offensive behaviour of organising or carrying out acts of road blocking, in breach of public order.

77. The Government asserted that the applicants had not been convicted for participation in the protest actions, but for specific criminal behaviour

during the protest actions which had put a bigger restraint on public life than the exercise of freedom of peaceful assembly should normally do. The acts of blockading the road and the organisation thereof had radically departed from the ambit of the meetings for which the farmers had had permission. Consequently, the mode of exercising their freedom of peaceful assembly chosen by the applicants had embodied a severe lack of respect for other members of society, essentially having no direct connection to the farmers' problems. As had been clearly stated and precisely indicated by the national courts, the motivation behind the behaviour of the applicants when they had blocked trunk roads, due to which traffic had been halted, the functioning of State institutions, including border post controls, had been impaired and damage had been inflicted on an unknown number of people, had been sufficient grounds to justify a ruling that the breach of public order had been serious in nature and to support the conviction of the applicants under Article 283 § 1 of the Criminal Code. In the light of the foregoing, the Government submitted that the interference had been proportionate as it had been aimed at preventing the applicants' unlawful actions and avoiding public disorder.

78. Lastly, in the context of the proportionality issue, the Government pointed out that the applicants, although found guilty in criminal proceedings, had received only the mildest of possible sanctions – a short custodial sentence – provided for in Article 283 § 1 of the Criminal Code (see paragraph 40 above). What is more, their punishment following conviction had mainly had a moral force, given that the execution of their sentences had been suspended for a year and had therefore not entailed any ban, even temporary, on the applicants continuing their professional, political and representational activities. The Government also considered it worth noting that one year after conviction the applicants had been discharged by the court upon the expiry of the term of their suspended sentences (paragraph 37 above). With the expiry of the conviction, the applicants were no longer considered as convicted persons. Having regard to the above, the Government concluded that the gravity of the serious breach of public order of which the applicants had been accused had justified the sanction imposed on them and that it had been in accordance with the proportionality principle. Accordingly, there had been no violation of Article 11 of the Convention.

#### (b) The Court's assessment

79. The Court recalls that, on the basis of Article 283 § 1 of the Criminal Code, the applicants incurred a sanction for actions which were qualified by the authorities as having seriously violated public order. A.K. was also held liable to compensate pecuniary damage which a transportation company had sustained as a result of the road blocking. However, even assuming that such interference was therefore "prescribed by law" and in pursuit of

legitimate aims, namely the "prevention of disorder" and "the protection of the rights and freedoms of others" so as to satisfy the requirements of Article 11 § 2 of the Convention in that respect, for the reasons described below, the Court considers that it was not proportionate.

80. The Court observes at the outset that the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively. As such this right covers both private meetings and meetings in public thoroughfares as well as static meetings and public processions; in addition, it can be exercised by individuals and those organising the assembly (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III). Turning to the question of whether the interference was "necessary in a democratic society", the Court refers to its case-law to the effect that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct (see *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-XIII). The Court also observes that paragraph 2 of Article 11 entitles States to impose "lawful restrictions" on the exercise of the right to freedom of assembly. It notes that restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic (see *Éva Molnár v. Hungary*, no. 10346/05, § 34, 7 October 2008).

81. The Court further reiterates that the proportionality principle demands that a balance be struck between the requirements of the purposes listed in Article 11 § 2 of the Convention and those of freedom of peaceful assembly. The Court also recalls that a conviction for actions inciting violence at a demonstration can be deemed as an acceptable measure in certain circumstances (see *Osmani and Others v. the former Yugoslav Republic of Macedonia* (dec.), no. 50841/99, 11 October 2001). Furthermore, the imposition of a sanction for participation in an unauthorised demonstration is similarly considered to be compatible with the guarantees of Article 11 (see *Ziliberberg v. Moldova*, no. 61821/00, (dec.), 4 May 2004). On the other hand, the freedom to take part in a peaceful assembly is of such importance that a person cannot be subjected to a sanction – even one at the lower end of the scale of disciplinary penalties – for participation in a demonstration which has not been prohibited, so long as this person does not himself commit any reprehensible act on such an occasion (see *Ezelin*, cited above, § 53).

82. As regards the facts of the present case, the Court recalls that in May 2003 the Lithuanian authorities issued the farmers with permits to hold peaceful assemblies in selected areas (see paragraph 8 above). The Court cannot turn a blind eye to the fact that on 21 May 2003 the farmers' peaceful demonstration dispersed and resulted in major disruptions of traffic on three main roads (see paragraphs 14 and 16 above). As a general

principle, the Court nevertheless reiterates that any demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic, and that it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance (see *Galstyan*, cited above, §§ 116-117; *Bukta and Others v. Hungary*, no. 25691/04, § 37, ECHR 2007-III; *Oya Ataman*, cited above, §§ 38-42; and *Barraco v. France*, no. 31684/05, § 43, 5 March 2009). Whilst giving due regard to the Government's argument that pecuniary damage was caused to transporters of goods, the Court nonetheless observes that only one carrier company sued the farmers for that reason (see paragraphs 18 and 22 above). The Court also finds it particularly important that the farmers who held a demonstration on Panevėžys-Pasvalys-Riga highway not only allowed through passenger vehicles and vehicles that carried dangerous substances, but also that vehicles which carried goods and cars had been allowed to go through ten at a time on each side of the road (see paragraph 14 above). Furthermore, good faith negotiations between the farmers and the Government had been on-going during the demonstrations (see paragraphs 11 and 22 above). In this context it recalls that any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles do a disservice to democracy and often even endanger it (see *Fáber v. Hungary*, no. 40721/08, § 37, 24 July 2012). For the Court, especially in the circumstances where the applicants gave evidence of their flexibility and readiness to cooperate with the other road users, the element of violence was clearly absent in the instant case. On this point the Court also finds it paramount that, in contrast with the facts in *Barraco* (cited above, §§ 12 and 19), the Lithuanian courts considered the case in the context of riot and that context did not allow for the proper consideration of proportionality of the restriction of the right of assembly and thus significantly restricted their analysis.

83. When assessing the proportionality of the sanctions the applicants had to experience, the Court further notes that another farmer A.D., who had taken the other farmers to block the Kaunas-Marijampolė-Suvalkai highway in Kalvarija municipality and had himself been walking in the middle of the road, pushing a cart in front of him and thus obstructing the traffic during the same demonstration of 21 May 2003, had been charged with merely an administrative offence – a violation of road traffic rules. This fact has not been denied by the Government, and it also appears to have been supported by the Lithuanian courts (see paragraphs 15, 25 and 27 above). Having had regard to the domestic courts' findings and the documents presented to it by the parties, the Court considers that the actions of the five applicants and those of A.D. appear to have been of similar nature and thus of similar danger to society. However, A.D. escaped with nothing but administrative

punishment and a modest fine of LTL 40 (approximately EUR 12), whereas the five applicants had to go through the ordeal of criminal proceedings, and, as a result of criminal conviction, were given a custodial sentence. Although the execution of the sentences was suspended for one year, the applicants were also ordered not to leave their places of residence for more than seven days without the authorities' prior approval, that restrictive measure having lasted for an entire year (paragraph 24 above; also see *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011).

84. Having regard to the foregoing considerations, the Court finds that the applicants' conviction for the criminal offence was not a necessary and proportionate measure in order to achieve the legitimate aims pursued. Accordingly, there has been a violation of Article 11 of the Convention.

## III. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

85. The applicants further complained that the provisions of the Criminal Code, under which they had been sentenced, had not been clearly formulated and had not been properly interpreted by the domestic courts. The applicants alleged that they had been convicted in breach of Article 7 of the Convention, which reads as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

86. The Government maintained that the applicants' conviction under Lithuanian law had been compatible with the principles of Article 7 of the Convention.

87. The Court finds that this complaint is intrinsically linked to the complaints submitted under Articles 10 and 11 of the Convention and must therefore be declared admissible. However, having regard to its findings in paragraphs 83 and 84 above, the Court considers that it has already examined the main legal issue and that therefore it is not necessary to examine this complaint separately.

## IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

88. Lastly, the applicants alleged a violation of Article 1 of Protocol No. 1 to the Convention in that the farmers' produce had been underpriced.

89. The Court reiterates that Article 1 of Protocol No. 1 guarantees in substance the right to property. However, it has to consider first whether Article 1 of Protocol No. 1 applies to the present case.

90. The Court has consistently held that future income is only itself a "possession" once it has been earned, or an enforceable claim to it exists (see *Ian Edgar* (*Liverpool*) *Ltd v. the United Kingdom* (dec.), no. 37683/97, ECHR 2000-I; and *Van Marle and Others v. the Netherlands*, 26 June 1986, §§ 39-41, Series A no. 101). In the present case and in respect of the applicants' plea the Supreme Court found that the applicants' property had not yet materialised (see paragraph 36 above). The Court is of the same view. It considers that the applicants have complained in substance of a possible loss of future income and of a diminution in value of their business assets. Accordingly, the Court finds that the complaint thus falls outside the scope of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Findlater v. United Kingdom* (dec.), no. 38881/97, 26 September 2000).

91. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

93. The five applicants claimed sums from 58,000 euros (EUR) to EUR 350,000 in respect of non-pecuniary damage.

94. The Government disputed the claims as unsubstantiated and excessive.

95. The Court reiterates, firstly, that an applicant cannot be required to furnish any proof of the non-pecuniary damage he has sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court also considers that the applicants' frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the amount claimed appears excessive. Making its assessment on an equitable basis, it awards each of the applicants EUR 2,000 in respect of non-pecuniary damage.

### B. Costs and expenses

96. The five applicants claimed a sum of EUR 13,566, in total, for transportation expenses incurred during the criminal proceedings. They also claimed a sum of EUR 40,827, which the Chamber of Agriculture had paid for the applicants' and other farmers' legal defence during the proceedings before the domestic courts. In addition, they claimed EUR 8,051 for legal costs in connection with the Court proceedings. The latter sum consisted of 100 hours' work at a rate of EUR 80.51 per hour.

97. The Government disputed the claims.

98. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case the Court notes that the applicants have not substantiated their claim for transportation expenses with any documentation. Moreover, the costs of their legal representation before the domestic courts were paid by the Chamber of Agriculture, and the applicants themselves did not incur those expenses. The Court lastly notes that, except for their claim, the applicants have not produced any proof that they incurred any costs for their legal representation in connection with the Convention proceedings. Accordingly, the Court rejects, in total, the applicants' claims under this head.

### C. Default interest

99. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT

1. *Declares* unanimously admissible the complaints under Articles 7 and 11 of the Convention, and the remainder of the application inadmissible;

2. *Holds* by four votes to three that there has been a violation of Article 11 of the Convention;

3. *Holds* by four votes to three that there is no need to examine separately the complaint under Article 7 of the Convention;

4. *Holds* by four votes to three

(a) that the respondent State is to pay each applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Lithuanian litas at the rate applicable on the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Stanley Naismith<br>Registrar | Guido Raimondi<br>President |
|---|---|

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Raimondi, Jočienė and Pinto de Albuquerque is annexed to this judgment.

G.R.A.
S.H.N.

# PARTLY DISSENTING OPINION OF JUDGES RAIMONDI, JOČIENĖ AND PINTO DE ALBUQUERQUE

1. We agree with the finding that the complaints under Article 6 §§ 1 and 3 of the European Convention on Human Rights (the Convention) are manifestly ill-founded and should therefore be dismissed. However, with regret, we are not able to share the majority's position that the applicants' conviction for the criminal offence of "riot" was not a necessary and proportionate measure in order to achieve the aims pursued. The applicants dispute the foreseeability of the notion of "serious breach of public order in other ways" as specified in the criminal offence of "riot" enshrined in Article 283 of the Lithuanian Criminal Code, the proportionality of the criminal sanctions imposed by the national courts and the interference with their freedom of assembly. We think that these claims are unfounded.

## The lawfulness of the criminal conviction

2. According to the Lithuanian Supreme Court, the applicants' conduct was construed as a "grave violation of public order" and therefore classified as the criminal offence of riot for the purposes of article § 283 of the Lithuanian Criminal Code. The applicants' case was the first one in which the above-mentioned domestic legal norm was applied. However, we do not consider that that fact alone made the application of the legal norm in issue unforeseeable, given that there must come a day when one or another legal norm is applied for the first time. In this connection, we draw particular attention to the fact that the Lithuanian courts gave extensive explanations as to the content of the concept of the criminal offence of "riot" and as to how the applicants' actions fell within the scope of Article 283 § 1 of the Criminal Code.[1] We also take note of the appellate court's view, in its judgment of 14 January 2005,[2] that the organisation of a crowd of people to block major highways in different places in Lithuania, paralysing not only the traffic but also the normal functioning of State border control posts, went beyond the scope of the provisions of the Code of Administrative Violations and caused far more serious consequences than a mere violation of traffic regulations. What is also of great importance for us in this case, when analysing the lawfulness aspect, is the fact that the Supreme Court of Lithuania, in its judgment of 4 October 2005, provided a clear legal explanation of the substance of the criminal offence of "riot" and the reasons for its application in the applicants' case.[3]

[1] See, in particular, §§ 33 and 34 of the judgment.
[2] See § 27 of the judgment.
[3] See § 33 of the judgment.

3. We also note that the European Court of Human Rights (the Court) cannot be regarded as a court of fourth instance, replacing the domestic courts in the interpretation of domestic law.[4] The Court's function, therefore, according to Article 19 of the Convention, remains only to ensure the observance of the obligations undertaken by the Parties to the Convention, and not to deal with an application alleging that errors of law or fact have been committed by domestic courts, except in cases where it considers that such errors may have violated any of the rights and freedoms protected by the Convention.[5] The Court cannot replace the domestic courts, especially in cases where the interpretation of domestic law has been made by the highest tribunal of the country concerned, acting, as in the present case, in their enlarged composition. Indeed, in Lithuania the enlarged composition of the Supreme Court has the legal authority to interpret the most important legal aspects of domestic law. Moreover, as a general rule, it is for the domestic courts to assess the evidence before them.[6]

4. The interpretation of national law made by the domestic courts in this case does not seem arbitrary. In Lithuanian law the criminal offence of "riot" can be made out either through the organisation or provocation of a public meeting of two or more people aimed at causing acts of violence, damage to property or public disorder ("organised or provoked a gathering of persons to commit...") or by participation therein ("or a person who, during a riot, has committed acts of violence, damaged property or seriously breached public order in other ways"). In addition, the violation of public order must be "serious". In the case of both organisers and participants, punishment for the consummated offence of riot is dependent on the effective occurrence of acts of violence, damage to property or serious breach of public order in other ways.

The facts of the present case constitute a clear example of the "gathering of persons", organised in breach of valid administrative permits and police orders and with a chaotic impact on social life and public order. The seriousness of the violation of public order cannot be disputed. This was not a spontaneous, but an organised demonstration which set out, and managed, to cause as much public disorder as possible on the country's major highways while negotiations between farmers and the Government were going on.[7]

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[4] *Ruiz Garzia v. Spain* [GC], no. 30544/96, §§ 26, 28-29, ECHR 1999-I; *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 540, § 59; case *Bykovv. Russia* [GC], appl. No. 4378/02, judgment of 10 March2009, § 88.

[5] *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX.

[6] *Galstyan v. Armenia,* no. 26986/03, § 77, 15 November 2007.

[7] In para. 82 of the judgment, the majority assumes that "good faith negotiations between the farmers and the Government" went on during the demonstrations. The alleged "good faith" of the negotiations is mere speculation, not proven in the file.

5. Contrary to the applicants' contention, the fact that the provision refers to a serious breach of public order "in other ways" does not raise a problem of foreseeability, since the law envisages certain means of causing public disorder. The criminal provision refers explicitly to two means of committing the offence: violence and damage to property. The expression "in other ways" is clearly intended to refer to additional ways of causing "riot", other than by violence or damage to property.[8] The openness of the incrimination is acceptable because of the immense variety of ways and means by which public order may be seriously disturbed. Any attempt to list those ways and means would be gratuitous and would run the risk of leaving many serious types of conduct outside the field of criminal law. In that respect the criminal provision of § 283 of the Lithuanian Criminal Code is compatible with the principle of legality. Indeed, it is similar to many criminal provisions of its kind all over Europe.[9]

6. Thus, the applicants were not punished for their participation in the demonstrations of 21 to 24 May 2003 as such, but for their particular behaviour in the course of those demonstrations, namely blocking three major highways and other roads for some forty-eight hours, thereby hindering thousands of Lithuanians and foreigners in their work and travel on the country's major traffic and trade routes, and preventing people from entering and leaving the country through the State border control posts that were affected, all of which caused more disruption than would normally arise from the exercise of the right to peaceful assembly.[10] Some of the applicants were organisers of the unlawful assemblies; others participated actively in blocking the roads and highways. In other words, the applicants were not punished for the unlawful conduct of others[11] or even for merely participating in an unlawful assembly.[12] Recognition of the right of assembly is premised on the assumption that the assembly will not infringe the human rights of other persons or groups of persons who are part of the same society. In this case, however, it did. In spite of the fact that the national authorities did as much as possible to accommodate the right of

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[8] On 4 December 2012 the Lithuanian Supreme Court dealt with a riot caused by a violent mob. The present case relates to a "grave violation of public order" caused by a non-violent group of people, and therefore these cases cannot be assimilated.

[9] See, for instance, Article 237 of the Swiss Penal Code, Article 290 of the Portuguese Penal Code and Article 412-1 of the French *Code de la Route*.

[10] *Barraco*, cited above, § 46.

[11] *Ziliberberg v. Moldova (dec.)*, no. 61821/00, 4 May 2004.

[12] This is what differentiates this case from the *Akgöl and Göl v. Turkey* case, cited by the majority. It is true that the Court established, in principled terms in *Akgöl and Göl*, that participation in unauthorised, peaceful demonstrations should not be criminalised. This principle presupposes, however, that there is no serious breach of public order. Where the demonstrators have wilfully caused considerable public disorder, seriously jeopardising public safety and causing major traffic chaos, the principle established in *Akgöl and Göl* does not apply.

assembly, while at the same time limiting the negative consequences the events might have on the rights of other citizens, the demonstrators ignored the limits of the permits granted to them and spurned the police orders to unblock the highways and roads and not to hinder the traffic. It is to be ascertained whether the State response to this serious abuse of freedom of peaceful assembly was necessary and proportionate.

**The proportionality of the criminal conviction**

7. Turning to the question of whether the interference was "necessary in a democratic society", we refer to the Court's case-law to the effect that the authorities have a duty to take appropriate measures with regard to lawful demonstrations in order to ensure their peaceful conduct and the safety of all citizens.[13] We also acknowledge, obviously, that freedom of assembly constitutes one of the most essential foundations of a democratic society.[14] However, we also observe that paragraph 2 of Article 11 of the Convention entitles States to impose "lawful restrictions" on the exercise of the right to freedom of assembly. Restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic.[15]

8. This is not the first time that the Court has been confronted with unauthorised roadblocks. *Barraco*[16] is the leading authority in this field. While it is true that the Court is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases.[17] However, since the Convention is first and foremost a system for the protection of human rights, we also understand that the Convention must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. The Contracting States have to assess the Convention standards "in the light of present-day conditions".[18] In the present context, however, we note that the Chamber has neither pointed to any changing conditions nor stressed the importance of the need for changes in the jurisprudence of the Court in the field of freedom of assembly.[19] Therefore, in our opinion, as no need for a departure from the case-law has been established, the principles of the

[13] *Oya Ataman v. Turkey*, no. 74552/01, § 35, ECHR 2006-XIV.
[14] See, *mutatis mutandis*, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, §§ 85-86, ECHR 2001-IX.
[15] *Éva Molnár v. Hungary*, no. 10346/05, § 34, 7 October 2008.
[16] *Barraco v. France*, no. 31684/05, 5 March 2009.
[17] *Chapman v. the United Kingdom* [GC], no. 27238/95, § 70, ECHR 2001-I.
[18] *Tyrer v. the United Kingdom* judgment of 25 April 1978, Series A no. 26, § 31.
[19] On this aspect of the case, see Dissenting Opinion of Judge Gyulumyan in *Bayatyan v. Armenia*, [GC], No. 23459/03, 7 July 2011.

*Barraco v. France* judgment should have applied in the Lithuanian case as well. We regret that the majority did not follow these principles in the case at hand, without explaining the reasons for the change.

9. In fact, in *Barraco,*[20] there was an unauthorised traffic-slowing or "snail's-pace" operation (*opération escargot*) that lasted five hours on one single highway, while in the present case the public disorder and disruptions spread to the three most important highways in the country and lasted forty-eight hours. The present case is much more serious than the former one. In other words, if there was no violation of Article 11 in *Barraco*, the present case is *a fortiori* an even clearer case of no violation of freedom of assembly. What is more, the fact that certain vehicles were allowed to go through the roadblocks staged by the farmers and their tractors, invoked by the applicants to ground a violation of their freedom of assembly, cannot absolve them of responsibility, as it did not in *Barraco*.

10. The international and national case-law lends support to this conclusion. In *Schmidberger v. Austria,*[21] the Luxembourg Court considered that the disruption caused to public order by an authorised blocking of one single highway (the Brenner highway) for 28 hours, which had been accompanied by preventive measures, such as a public warning 30 days prior to the event, suggesting alternative routes and providing extra trains to allow traffic to use railway facilities, did not amount to a violation of the European Union's freedom of circulation. The major differences with the case before the Court are obvious: in the Austrian case the demonstration was timed to take place between a bank holiday and the weekend, when there was in any event a general prohibition on heavy goods traffic, and was authorised by the administrative authorities, which co-operated with the organisers and motoring organisations to limit the disruption caused, helping drivers to avoid circulating on the blocked highway. According to the Luxembourg Court, freedom of expression and freedom of assembly as guaranteed by Articles 10 and 11 of the Convention are compatible with a State's duty, under Article 28 of the EC Treaty, to keep major transit routes open in order to ensure the free movement of goods within the Community, if and when the purpose of the demonstration is of public interest, such as drawing attention to the threat to the environment and public health posed by heavy goods vehicles on the Brenner motorway, and provided that measures can be taken in good time by the administrative authorities to minimise the disruption to traffic.[22]

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[20] *Barraco v. France*, no. 31684/05, 5 March 2009.

[21] C-112/00, judgment of 12 June 2003.

[22] According to the Luxembourg Court, "the inconvenience may in principle be tolerated provided that the objective pursued is essentially the public and lawful demonstration of an opinion" (paras. 90-91).

11. Very different from this case was the situation in the *Commission v. France* case,[23] which referred to serious incidents of unauthorised and violent roadblocks on several French highways during the months of April-August 1993. Although the violence of the roadblocks was absent in the present case, there is also a clear lesson to be drawn from the Luxembourg Court's judgment in *Commission v. France*, since the respondent State was reproached for not having prevented the trade blockages resulting from the actions of private individuals and the consequent breaches of the freedom of circulation and the property rights of others.

12. Some national jurisdictions have set a standard for differentiating between abusive and non-abusive exercise of the freedom of peaceful assembly on highways and roads. In the *DPP v. Jones and Lloyd* case[24] the House of Lords acquitted the applicants because they simply did not create any public nuisance, as their demonstration, although unauthorised, took place peacefully, on the roadside, without interfering with the traffic.

13. In the *Sitzblockade III* case[25] the Constitutional Court of Germany asserted that a criminal act does not become legal just because it takes places in an assembly. Although the courts may not control the purpose of the assembly, they do have the power to ascertain the proportionality of the restriction of the rights of third persons caused by roadblocks. The criminal punishment of the authors of a "wild" roadblock lasting more than 24 hours was not found disproportionate.[26] Similarly, the Polish Constitutional Court held that the moral views of the holders of political power are not synonymous with "public morals" as a premise for limiting freedom of assembly in streets and other public spaces, and thus public authorities are entrusted with the obligation to protect freedom of assembly regardless of the degree of controversy of the publicly-expressed opinions, provided that legal prohibitions are not transgressed.[27]

14. Finally, in the *Baregg Tunnel* case[28] the Swiss Federal Supreme Court found that the blocking of the Baregg tunnel for more than one hour, without any prior warning, had caused mass chaos, and therefore the criminal punishment of the demonstrators had not been excessive.

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[23] C-265/95, judgment of 9 December 1997.
[24] House of Lords, judgment of 4 March of 1999.
[25] German Constitutional Court, judgment of 24 October 2001.
[26] The German Constitutional Court had already established the case-law in the *Sitzblockade I and II* judgments, having evolved from a dematerialised concept of violence to a more physical concept, in line with the exigencies the principle of legality placed on the interpretation of § 240 of the German Criminal Code. In a recent judgment of 7 March 2011 the Constitutional Court reiterated the criteria set forward in its *Sitzblockade III* judgment.
[27] Polish Constitutional Court judgment of 18 January 2006, K 21/05.
[28] Swiss Federal Supreme Court judgment of 3 April 2008.

15. Taking into account the Court's precedent and the other European case-law cited, it can be affirmed that the Convention protects freedom of peaceful assembly on roads and highways, but this freedom is not unlimited. While freedom of peaceful assembly is essential for the manifestation of political and civil rights in a democratic society, its exercise must not endanger public safety and the free and safe movement of persons and goods. Restrictions on the place, time and manner of holding assemblies are admissible for that purpose.[29] Unauthorised blocking of highways and roads in order to cause serious public disorder is not a legitimate means of furthering a political cause in a democratic society. That is what happened in the present case. The demonstrators, including the applicants, were able, from 19 to 21 May 2003, to exercise their right to peaceful assembly in designated areas without any restrictions. There was neither a blanket ban on assemblies nor a content-based control of the applicants' initiative to organise the demonstrations. The administrative authorities duly exercised their competence to manage traffic in the public space and related security risks, mindful of the rights of the demonstrators and the competing rights of those who work and circulate on the public highways and roads. However, on 21 May 2003 the demonstrations turned into an unlawful movement to disrupt traffic on three major highways and other roads in the country, causing grave damage to the public at large and especially to transporters of goods, and even compromising the normal functioning of State border control posts.

16. The public authorities and the general public were caught by surprise by the farmers' aggressive measure to block major highways without any prior warning. It was clearly impossible for the administrative authorities to re-route the traffic or take any alternative measures, given the surprise factor and the farmers' choice to target the country's three main highways.[30]

17. Moreover, criminalisation of "wild" roadblocks does not appear *per se* to be an excessive criminal policy measure, bearing in mind that the aim is to avoid damage to life, physical integrity and property. The same applies to the general interest of public order, which is also protected by the provision. Causing mere inconvenience to the public is one thing; causing

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[29] Venice Commission, Compilation of Venice Commission Opinions concerning Freedom of Assembly, 2012, para. 5.2, and Venice Commission and OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, 2008, para. 80.

[30] Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association by Maina Kiai, 2012, para. 41, and the Inter-American Commission on Human Rights' Report on Citizen Security and Human Rights, 2009, para. 193. Both the Special Rapporteur and the Inter-American Commission call for an effort of the administrative authorities to re-route traffic in this type of case. While the free flow of traffic should not automatically take precedence over freedom of peaceful assembly, the former precedes the latter when no alternatives to roadblocks can be provided by the administrative authorities, as in the present case.

general chaos is another. The former is socially tolerable, and must not be criminalised;[31] the latter is socially intolerable, and may be criminalised.[32]

18. Furthermore, the applicants could not rely, as they argued, on the defence of necessity, which is provided for in Article 31 of the Criminal Code of Lithuania. Since the roadblocks were not staged in order to avert an immediate danger which threatened the farmers, their conduct cannot be justified under the defence of "immediate necessity". Even assuming, for the sake of argument, that there was such an immediate danger to farmers, that danger could have been averted by means other than the unlawful blocking of major highways and other roads and the resulting paralysis of the country for forty-eight hours.

19. Lastly, the criminal sanctions imposed on the applicants were lenient custodial sentences, which were proportionate to the gravity of their conduct.[33] Furthermore, none of the applicants even had to serve their respective sentences, because the trial judge considered that the aims of punishment could be achieved by suspending the execution of the sentences.[34]

## Conclusion

20. In view of the compatibility with the Convention of criminalising roadblocks if and when they cause a grave breach of public order, and the legality and proportionality of the penalties imposed on the applicants, we find that neither Article 7 nor Article 11 of the Convention were violated.

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[31] Venice Commission, Compilation of Venice Commission Opinions concerning Freedom of Assembly, 2012, para. 5.2.

[32] The condition for proportionate criminalisation, according to international standards, is that the risk to public order is not a hypothetical risk, but a clear and imminent one (Venice Commission and OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly, 2008, paras. 63 and 86-90, and Principle 6 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information). In the present case, the risk culminated in serious damage to public order for forty-eight hours.

[33] Compare and contrast with *Barraco*, for instance.

[34] The majority argue that another farmer, A.D., was convicted of an administrative offence, a road traffic offence, and sentenced to a minor fine, and that this fact brings the applicants' criminal convictions into question. First, the Court ignores the exact circumstances of the farmer A.D.'s case, which was not the subject of the Court's judgment. Second, the facts imputed to the farmer A.D. are in fact much less serious than the ones imputed to the applicants, who organised the blockage of the highways and roads. Third, the mere fact that national authorities take different approaches to personal cases does not *per se* raise an issue under the Convention, unless the applicants can provide evidence of discriminatory application of the criminal provision to them. No such evidence was produced.