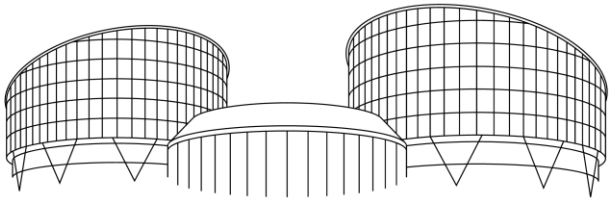

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 20496/02
by Mindaugas SILICKIS and Jurgita SILICKIENĖ
against Lithuania

The European Court of Human Rights (Second Section), sitting on 10 November 2009 as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Danutė Jočienė,
András Sajó,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos, *judges,*
and Sally Dollé, *Section Registrar*,

Having regard to the above application lodged on 15 May 2002,

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

Having deliberated, decides as follows:

THE FACTS

The first applicant, Mr Mindaugas Silickis, was a Lithuanian national, born in 1972. The case was introduced by him on 15 May 2002, while he was detained in the Lukiškės Remand Prison in Vilnius. On 24 April 2003 the first applicant committed suicide there. As the application was lodged during his lifetime, he will hereafter still be referred to as an applicant, so that the explanation of the facts and complaints remains coherent.

The second applicant, Mrs Jurgita Silickienė, is the first applicant's widow. She was born in 1971 and lives in Vilnius. By a letter of 10 September 2003, she expressed the wish to pursue the case on behalf of her late husband. She also brought complaints in her own name on that date under Article 2 of the Convention. On 17 November 2005 she raised other Convention matters.

The applicants were represented before the Court by Mr Ričardas Girdziušas, a lawyer practising in Kaunas. The Government were represented by their Agent, Ms Elvyra Baltutytė.

A. The circumstances of the case

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

1. The criminal proceedings against the first applicant

On 16 August 2000 the first applicant, a high ranking tax police officer, was arrested on suspicion of having committed various offences of fraud. On 18 August 2000 he was brought before the Kaunas District Court and remanded in custody for 10 days.

On 24 August 2000 he was charged with forgery, fraud, inappropriate commercial activities and smuggling. The next day, on 25 August 2000, he was remanded in custody by the Kaunas Regional Court. On 2 February 2001 the Kaunas Regional Court extended the term of this detention until 2 May 2001 for fear that he might obstruct the investigation and abscond. The first applicant successfully appealed that decision to the Court of Appeal, which held, on 14 May 2001, that less severe remand conditions would have been sufficient.

On 10 May 2001 the first applicant was charged with more serious offences, including that of smuggling large quantities of alcohol.

The first applicant remained in prison until 16 May 2001, when he was placed in a medical institution for an expert examination. The investigator in the case changed the remand measure to a written undertaking not to leave his place of residence.

On 21 May 2001 a prosecutor authorised the first applicant's house arrest under the following conditions:

a) that he stay at his home in Kaunas twenty-four hours a day (except when being summoned for investigation in the criminal proceedings);

b) that he should not contact any of his three co-accused; and

c) that he should not use a mobile telephone.

On an unspecified date in August 2001, the conditions of the house arrest were varied by an investigator. The first applicant was allowed to go for a walk from 2 to 3 p.m. daily in a specified Kaunas street, without visiting any public place, except a particular grocery shop and pharmacy located on that street.

On 9 August 2001 the first applicant requested the investigator to vary the conditions of his house arrest. He submitted that his family, including his two minor children, were in a difficult financial situation, and that he needed to work in order to support them. The first applicant further maintained that he had found a full-time job as a manager in Vilnius, and enclosed a copy of the offer of employment.

On 10 August 2001 the investigator rejected this request, considering that the first applicant's submissions as to the financial situation of his family were not convincing. The first applicant was advised to request that his house arrest be varied with bail of not less than 500,000 Lithuanian litai (LTL, about 144,600 euros (EUR)).

On 22 August 2001 the first applicant applied to a prosecutor, requesting a variation of the conditions of his house arrest, and claiming the right to work. On 3 September 2001 his request was rejected.

On 1 October 2001 the first applicant lodged a hierarchical complaint to a superior prosecutor. He requested that his house arrest be varied in order to enable him to live and work in Vilnius, and that he be permitted to use his mobile telephone and communicate with the persons specified in the order of 21 May 2001. The complaint was rejected on 10 October 2001.

The first applicant lodged a further hierarchical complaint to another prosecutor, but it was again rejected on 24 October 2001. On an unspecified date in October 2001, the conditions of the first applicant's house arrest were again varied - he was allowed to visit medical institutions after informing an investigator, engage in some sports activities in Kaunas from 10 a.m. to 12 noon daily, and take up a job after consulting the investigator.

On 12 November 2001 the first applicant applied to the prosecution, requesting a milder regime of house arrest. On 20 November 2001 the Deputy Prosecutor General informed the first applicant that the investigator had been instructed to vary the conditions of his house arrest, enabling him to work. The question of the appropriateness of any possible employment arrangements was left to the discretion of the investigator. The Deputy Prosecutor General also lifted, as unlawful, the ban on the first applicant using his mobile telephone and communicating with his co-accused.

On 26 November 2001 the investigator signed an order pursuant to which the first applicant could work in Kaunas city during the daytime only. The particular conditions of such work were to be agreed with the investigator.

On 28 November 2001 the first applicant requested the investigator to vary the conditions of his house arrest so that he could take up a management job with working hours from 7 a.m. to 7 p.m. daily. On 5 December 2001 the investigator refused the first applicant's request due to the gravity of the charges against him. Furthermore, the first applicant was

advised that his house arrest would only permit a Kaunas-based job for up to four hours a day.

During November 2001 it was alleged that threats had been made in the first applicant's name to a key witness in the case who was cooperating with the prosecution. That same month two witnesses withdrew their testimony.

On 6 December 2001 the first applicant requested the investigator to be allowed to take up a job as a taxi driver. On 11 December 2001 his request was rejected as he had failed to submit a copy of the offer of employment.

On 17 December 2001 the first applicant lodged a hierarchical complaint to the Office of the Prosecutor General, but it was rejected on 27 December 2001.

On 29 December 2001 the first applicant again applied for authorisation to work as a taxi driver, submitting an employment contract. On 3 January 2002 the investigator rejected his request on the ground that the proposed working conditions were incompatible with his house arrest.

The first applicant unsuccessfully tried to raise his complaints before a court, but his applications were disallowed by the Kaunas Regional Court on 17 September 2001, the Court of Appeal on 12 October 2001, and the Supreme Court on 25 January 2002.

Between 14 and 19 January 2002 the first applicant was in the Kaunas 3rd Clinical Hospital.

On 18 January 2002 the Kaunas Regional Court granted the prosecution's request to re-detain the first applicant for fifteen days, that is to say until 1 February 2002. The court observed that the first applicant kept giving orders to persons who continued the criminal activity of smuggling. It was also noted that some witnesses had been threatened in the first applicant's name and later retracted their earlier testimony. Given that the first applicant continued his business activities abroad, including setting up offshore companies and the transfer of assets to Latvia, the court considered that he might attempt to abscond from trial. Being in hospital, the first applicant was not present at the hearing; he was represented by counsel.

The first applicant's lawyer lodged an appeal, claiming, *inter alia*, that his client's health was poor and that, due to his difficult financial situation, his client needed to provide for his family. The lawyer argued that allegations that his client was influencing witnesses and continuing criminal activities were unfounded. Lastly, the lawyer noted that at the time the Kaunas Regional Court decided to re-detain the first applicant the latter had been held in hospital due to an acute heart condition. Given that that court had decided to re-detain his client without the latter having been present at the hearing, neither the first applicant nor his lawyer could submit their arguments as to the validity of the grounds for re-detention.

By a ruling of 31 January 2002 the Court of Appeal dismissed the appeal. The first applicant's lawyer was present at the court hearing. The appellate court noted that there was sufficient and detailed evidence showing that the first applicant, while held under house arrest, had kept in regular contact with the other co-accused, who were in hiding in Latvia and for whom the

authorities were officially searching, continued accumulating money in Latvia and other countries and establishing offshore companies. Moreover, there was evidence that the first applicant himself and through other persons had taken measures with a view to influencing witnesses and thereby obstructing the investigation.

Lastly, the Court of Appeal emphasised that Article 106 § 5 of the old Code of Criminal Procedure (see the Relevant domestic law and practice part below) allowed a court to decide the matter of a person's detention when that person could not take part in a hearing for health reasons. Given that the first-instance court had documentary evidence of the first applicant's illness and his treatment in the hospital and that his lawyer had taken part in the hearing of 18 January 2002 and argued on the first applicant's behalf, the latter's right to submit arguments when deciding the lawfulness of his re-detention had not been curtailed.

On 1 February 2002 the Kaunas Regional Court extended the first applicant's detention until 1 April 2002 on the same grounds. The court also referred to the volume of the case file and the need to carry out further investigations. The first applicant and his counsel were present at the hearing.

On 11 February 2002 the first applicant was accused of further serious crimes, including forming and leading a criminal association in order to smuggle alcohol and cigarettes in large quantities on more than twenty occasions.

The first applicant appealed against the extension of his remand in custody. On 20 March 2002 the Court of Appeal dismissed the appeal, endorsing the lower court's conclusions. The first applicant and his counsel were present at the hearing.

On 28 March 2002 the Kaunas Regional Court extended the first applicant's remand in custody until 1 July 2002. The court referred to the gravity of the charges, the complexity of the case, the need for further investigative measures and the risk of the first applicant absconding, obstructing the investigation and committing new crimes. The first applicant and his counsel were present at the hearing.

On 26 June 2002 the Kaunas Regional Court extended the term of the first applicant's detention until 1 October 2002 on the same grounds as before. It was also noted that his state of health did not warrant his release since he could obtain adequate medical treatment in custody.

On 22 July 2002 the first applicant wrote to the Court of Appeal requesting his release. He mentioned, *inter alia*, that on 11 June 2002 the pre-trial investigation had been concluded and that "at the moment he was fully acquainted with the case file".

His appeal was rejected by the Court of Appeal on 1 August 2002.

On an unknown date, the criminal investigator froze certain property belonging to the first and second applicants and the first applicant's mother. The latter appealed against that decision, pursuant to Article 244^1 of the old Code of Criminal Procedure. Consequently, on 23 July 2002 the District

Court of Kaunas City released some of her assets, the seizure of which was deemed to have been unreasonable. The court noted, however, that the café and stocks which had been in the possession of the first applicant's mother was property acquired as a result of the first applicant's criminal activities. The seizure of those items was upheld.

On 14 August 2002 the bill of indictment was approved and the case was transmitted to the Kaunas Regional Court.

On 28 August 2002 the Kaunas Regional Court extended the first applicant's detention until 1 January 2003 for fear that he might obstruct the investigation and abscond. Reference was made to the volume of the case file, involving more than twenty incidents of criminal activity, and the severity of a possible sentence. The court noted that there was no evidence that the first applicant's detention was precluded by ill-health. The first applicant was not present at the hearing, but was represented by counsel.

The first applicant appealed this measure, but his motion was rejected by the Court of Appeal on 13 December 2002. Both the first applicant and his counsel were present at the appeal hearing.

On 21 December 2002 the Kaunas Regional Court extended the first applicant's detention until 1 April 2003 for fear that he might obstruct the investigation and abscond. The same references and conclusions were reached as above. The first applicant was not present at the hearing, but was represented by counsel. They were both present at an unsuccessful appeal hearing on 5 February 2003.

On 24 March 2003 the Kaunas Regional Court extended the first applicant's detention until 2 July 2003 for fear that he might obstruct the investigation and abscond. The same references and conclusions were reached as above. It was noted that the first applicant had been receiving medical treatment in the prison hospital and an outside clinic. The first applicant was represented by counsel at the hearing.

However, on 24 April 2003 the first applicant committed suicide in the Lukiškės Remand Prison in Vilnius.

On 25 and 28 April 2003 the second applicant and the first applicant's mother requested the court to continue the case to enable the first applicant's rehabilitation in accordance with Article 3 § 1 (7) of the new Code of Criminal Procedure (see the Relevant domestic law and practice part below). That same day the Kaunas Regional Court decided to continue the proceedings in so far as they concerned the activities of the allegedly criminal association organised by the first applicant. The court appointed a lawyer to defend the interests of the deceased.

On 28 May 2003 the Kaunas Regional Court received a request from the second applicant and the first applicant's mother to discontinue the criminal proceedings. By a ruling of 2 June 2003 the court dismissed that request, noting that it had already started examining the evidence in the case. It observed that, without having examined the evidence, the court could not establish whether grounds existed for the first applicant's rehabilitation.

On 22 January 2004 the Kaunas Regional Court adopted its judgment. It noted that there were no grounds on which the first applicant could be vindicated. On the contrary, the court found sufficient evidence to prove that the first applicant had indeed organised and led a criminal association for smuggling purposes between 1999 and 2000. The offenders had succeeded in passing contraband on twenty-two occasions. However, in view of the first applicant's death, the court decided to discontinue the proceedings against him. At the same time, it ordered the confiscation of certain items of property - shares in a telecom company belonging to the first applicant, his mother and the second applicant, the second applicant's flat in Vilnius, a café belonging to the first applicant's mother as well as certain other items - on the ground that that property had been acquired as a result of the first applicant's participation in criminal activities. Three of the first applicant's co-accused were convicted.

The first applicant's lawyer and the convicted persons appealed. The lawyer contended that the criminal proceedings should have been discontinued after his client's death. Furthermore, he submitted extensive arguments, mentioning each item of confiscated property, including that belonging to the second applicant, as to why that confiscation had been unlawful.

On 25 October 2004 the Court of Appeal upheld the trial court's judgment. The appellate court emphasised that the persons convicted had acted as an organised group (*nusikalstamas susivienijimas*) which was the most dangerous form of conspiracy (*bendrininkavimas*). The group's criminal activity lasted many years, was conducted systematically and did great harm to the State. The value of smuggled goods was worth millions of Lithuanian litai. Taking into account the scale, its systematic nature and the organisational level of the criminal activity, the case could be viewed as exceptional.

As regards the second applicant, the Court of Appeal noted that she was well aware of the criminal activities of her husband's criminal association:

> "Even though the first applicant's wife J. Silickienė herself has not been charged [in this case], the examined evidence leaves no doubt that she was well aware of her spouse's and other co-accused' criminal activities. ... J. Silickienė was informed each time smuggled goods were loaded or unloaded as well as about the sale of those goods. ... There is evidence that J. Silickienė herself received money which had been paid for smuggled goods. ... Consequently, J. Silickienė without any doubt knew that property which the [trial] court confiscated and which had been registered in her name previously had been obtained as a result of criminal activities."

With regard to the mother of the first applicant, the appellate court noted that she also knew or at least should have known that by the transfer of stocks she was receiving property obtained as a result of criminal activities, conducted by the criminal organisation headed by her son. The Court of Appeal also observed that the trial court meticulously, devoting to it eight pages of the judgment, explained why certain objects and other property had to be confiscated and based its conclusions on an extensive analysis of the

evidence. In the appellate court's view the trial court's findings had been reasonable.

The first applicant's lawyer submitted a cassation appeal. He argued, first, that the criminal proceedings against the first applicant should have been discontinued after his death. Moreover, confiscation of property was possible only if an accusatory judgment had been adopted. Secondly, he alleged that the property, the confiscation of which had been ordered by the trial court, did not meet the requirements of Article 72 of the Criminal Code. In his submission, no fault of third persons, whose property was being confiscated, had been established.

On 17 May 2005 the Supreme Court dismissed the cassation appeal. As regards the confiscation of property, the Supreme Court ruled that confiscation as a penal measure (*baudžiamojo poveikio priemonė*) could be applied independently of whether the procedure had been concluded by acquittal or conviction, and even in cases where a person had not been charged with a crime (*kai asmuo netraukiamas baudžiamojon atsakomybėn*). The Supreme Court emphasised that it was a court's duty to confiscate property which fell under Article 72 §§ 2 and 3 of the Criminal Code. It was noted that, in its judgment, the trial court had thoroughly motivated its choice as to which items of property should be confiscated for being the proceeds of illegal activities. The Supreme Court acknowledged that most of that property had been found in the possession of third persons. However, given the trial court's conclusion that those persons knew or should have known about the illicit funding of the items concerned, it was lawful to confiscate them even though those persons had not been charged in the first applicant's case.

2. Related criminal proceedings against the second applicant and the mother of the first applicant

By a judgment of 30 June 2005 of the Kaunas Regional Court in the criminal case, related to the proceedings against the first applicant, the second applicant was convicted of misappropriating property and falsifying documents. She fully confessed that she had committed the crimes with the aim of helping her husband avoid criminal liability while he had been in detention. The second applicant was sentenced to four years' imprisonment.

The mother of the first applicant was convicted of falsifying documents and sentenced to 6 month's imprisonment. The court noted that she was merely executing the orders of the second applicant, but they had the common goal of helping the first applicant.

Both the second applicant and the first applicant's mother were pardoned under an Amnesty Act.

3. The conditions of the first applicant's detention on remand and the circumstances of his suicide

The Government provided details of the first applicant's medical history in prison.

The first applicant had received medical treatment whilst detained on remand at the Lukiškės Prison for angina and depression. During his detention prior to his house arrest, he had been diagnosed with reactive "subdepression", which developed into a prolonged depressive reaction. During his detention after the house arrest, he was again diagnosed with "subdepression" and symptoms of psychosomatic pain. His autopsy confirmed these diagnoses, as well as episodic instances of self injury (an attempted hanging and slitting of veins) since 2001.

On 6 December 2000 the first applicant was admitted to the psychiatric department of the Prison Hospital for a week. He made many complaints and stated that, because of his isolation, he felt anxious and had thoughts of death. He kept to his bed and requested anti-depressant medication. He proclaimed his innocence and the need to clear his reputation. The psychiatrist diagnosed an "adaptive subdepressive reaction" and prescribed medication.

On 16 March 2001 the first applicant attempted suicide by hanging but was found in time and hospitalised for treatment. The Disciplinary Commission of the Lukiškės Remand Prison recognised his suicidal tendencies and ordered his increased supervision.

From 13 to 18 April 2001 the first applicant was in the prison hospital for a "prolonged depressive reaction", as he was having suicidal thoughts. Upon his request, he was discharged, only to be re-admitted later that month.

The investigator considered that, in order to determine his criminal liability, an expert psychiatric examination of the first applicant was required in appropriate conditions. Accordingly, he was transferred to the Forensic Psychiatric Division at Utena. There it was established that, after three months in detention, he had started to feel scared and moody, with suicidal thoughts. In the Prison Hospital he had been treated for an "adaptive subdepressive reaction" with psychotropic medication and discharged after showing no further psychosis. Thereafter he complained of headaches, insomnia and stress, for which he received medication and vitamins. After inflicting injury to himself with a razor, the first applicant had been examined by the prison psychiatrist, who had confirmed the earlier diagnosis. The expert opinion noted the first applicant's aggressive behaviour with his defence counsel, whereupon he had been returned to the prison hospital with the diagnosis of a "situational subdepressive reaction". In hospital he had been treated for a prolonged depressive reaction with medication which had improved his mental health, whereupon he had been discharged.

The first applicant's heart condition was also regularly monitored during his detention and he was admitted periodically to the Prison Hospital for treatment. He was closely supervised because of his suicidal tendencies and heart problems as he feared insufficient help in case of an infarctus. He was provided with medication whenever he asked for it and he had full access to medical specialists. However, according to a verification ordered by the

domestic court, there was no indication that the first applicant could not be detained because of ill-health, as his condition was treatable.

During his second period of detention, the first applicant was examined by a psychiatrist on 6 May 2002. He mentioned his previous suicide attempts and said that he felt isolated and anxious. The psychiatrist noted the absence of current suicidal thoughts or psychosis. The psychiatrist did not think that that applicant's admittance to the Prison Hospital was necessary. The attention of the prison administration was drawn to his mental state.

The first applicant received another psychological examination on 18 March 2003. The psychologist noted the first applicant's personal crisis in the loss of family relations and professional activities, and his inadequate response to it through, *inter alia*, anger, aggressiveness and hostility. The psychologist recommended external assistance to help him come to terms with his situation.

During the psychologist's visit on 26 March 2003, the first applicant said that he could no longer cope with the isolation and that he had thoughts of suicide. He was sent to the Prison Hospital where he saw the psychotherapist, who noted the absence of psychosis, but advised the prison administration not to leave the first applicant alone.

On 21 April 2003 the first applicant again attempted to hang himself. At first he refused hospitalisation and the surgeon who examined him for injuries concluded that no surgical intervention was required. Scratches were noted on his hand. He was confused and expressed worries about his family and divorce. He later agreed to hospitalisation and the risk of suicide was recorded. No psychosis was found. Out-patient treatment was recommended with visits from the psychologist.

Between 18 and 22 April 2003 another detainee was placed with the first applicant. (The first applicant could only be detained with prisoners of the same officer status as himself, and was subjected to special rules.)

On 24 April 2004 at around 12.50 p.m. a nurse was called in by the prison warder to see the first applicant as he had apparently injured himself and was anxious. The nurse found him crying and he refused to answer questions. She expressed concern to the psychotherapist who made a five minute visit to the first applicant. The latter said that he could no longer cope. The therapist informed the first applicant that the nurse would return to give him an injection. That visit ended around 2.11 p.m.

The warder locked the first applicant in his cell and dealt with two other prisoners. When he returned to the first applicant's cell around 2.21 p.m. he only saw a belt on the bars. He opened the cell and found the first applicant dead after having hanged himself. Reanimation attempts by the warder and the nurse who had returned were to no avail.

Amongst the documents found in his cell afterwards was a letter from the second applicant telling her husband to pull himself together and not do anything to himself because his family were waiting for him. The first applicant had himself written down that he had been recognised as suicidal

and that the medication prevented him from understanding what was going on.

4. The investigation into the suicide of the first applicant

The official records noted that, when the body of the first applicant was discovered at 2.20 p.m. on 24 April 2003, at 2.30 p.m. the administration of the Lukiškės Remand Prison informed the Prisons Department of the Ministry of Justice, the Vilnius City Police, the Chief Prosecutor and the Kaunas Regional Court of the suicide. An investigation team was dispatched, arriving at 3.55 p.m. The scene was inspected at 4 p.m. and the body between 4 and 4.30 p.m. An autopsy was ordered, wardens and medical staff were questioned and relevant material evidence seized.

The mother of the first applicant and his wife, the second applicant, were recognised as victims in the procedure.

The autopsy concluded that the suicide had been triggered by the first applicant's mental disorder and his unpredictable conduct in the face of his difficulties in adapting to prison life. Supervision had been necessary because the deceased's insane behaviour could only have been cured when its causes had been eliminated.

The official report of the Prison Department, adopted on 13 May 2003 and submitted to the Vilnius District Prosecutor's Office, found no fault in the behaviour of the prison and medical staff, whose actions had been timely and adequate.

On 14 January 2005 the Vilnius District Prosecutor's Office terminated the investigation in the absence of any elements of a crime. Neither the second applicant nor the mother appealed this decision.

B. The relevant domestic law and practice

1. The Law on Pre-Trial Detention

Article 12 of the Law on Pre-Trial Detention at the material time provided that untried prisoners who had been civil servants employed in institutions of State power, including law enforcement officials, were to be kept in locked cells separate from other remand prisoners. Article 19 of that law required the provision of free medical care of the same standard as for people at liberty, to be organised by the Ministries of Health and Justice both within and, if need be, outside the detention facility.

2. The Code of Criminal Procedure

(a) The Code of Criminal Procedure as in force until 1 May 2003

Remand measures could be imposed to ensure the accused's attendance at trial and the prevention of any hindrance to the trial process (Article 95 of the Code of Criminal Procedure, in force until 1 May 2003, "the old CCP"). When imposing such measures, account was to be taken, *inter alia*, of the

gravity of the offence, the personality of the accused, the permanency of that individual's residence, the accused's state of health, and the risk of absconding, of obstructing the establishment of the truth or committing further offences (Article 98 of the old CCP). House arrest was one such measure, conditional upon a more severe measure being imposed if breached (Article 101² of the old CCP). That more severe measure would be a remand in custody. Pre-trial detention could only be imposed in respect of charges entailing the possible sanction of at least a year's imprisonment and the custody decision had to be reasoned (Article 104 § 1 of the old CCP).

Remand in custody could be ordered and extended by a judge, after having heard the accused (Article 104^1 of the old CCP). The length of such custody could not exceed 18 months, if warranted by the particular complexity of the case, the volume of the case file or other objective circumstances (Article 106 §§ 1 and 2 of the old CCP). A judge's ruling to order or to prolong detention could be appealed by the accused and/or his lawyer to an appellate court (Article 109^1 of the old CCP). If due to his illness the detainee was not able to attend the court hearing in which the question of extension of the term of detention on remand is being decided, the term of detention on remand could be extended for a period not exceeding 15 days in the detainee's absence. However, defence council and the prosecutor had to be present at such a hearing (Article 106 § 6 of the old CCP).

An appeal to a prosecutor lay against any actions of a pre-trial investigator under Article 242 of the old CCP. A similar hierarchical appeal lay to a superior prosecutor against any actions or decisions of a lower prosecutor under Article 244 of the old CCP.

Article 52 § 2 (4) of the old CCP gave the accused the right of access to the entire case file after the pre-trial investigation had been terminated. Article 58 § 2 (6) of the old CCP afforded defence counsel access to the evidence in the investigation file earlier, upon an express request to and authorisation by the investigator.

(b) The Code of Criminal Procedure as in force from 1 May 2003

When elements of a crime are detected, prosecutors and investigators have to institute criminal proceedings and establish whether a crime has been committed, within a reasonable time (Article 2 of the Code of Criminal Procedure, in force from 1 May 2003, "the new CCP). Criminal proceedings cannot be initiated or, if opened, have to be terminated, when no elements of a crime have been established (Article 3 § 1 (1) of the new CCP). Under Articles 212 § 1 and 214 § 1 of the new CCP, the prosecutor can terminate an investigation if there is no evidence disclosing that a crime has been committed. Under Article 214 § 3 of the new CCP, the parties to the proceedings (the suspect, his or her representative, the injured party, or civil claimants and their representatives) are to be informed about that decision and can appeal against it to a higher prosecutor and, if the latter refuses to grant the appeal, they can appeal to the investigating judge (Article 63 § 1

of the new CCP). Pursuant to Article 64 § 6 of the new CCP, the decision of the investigating judge is final.

Similarly, if an accused dies, the proceedings are to be terminated unless continued in order, *inter alia*, to rehabilitate that person (Article 3 § 1 (7) of the new CCP).

Article 63 § 1 of the new CCP envisages appeals to a superior prosecutor against any actions of the prosecutor during the investigation. If the higher prosecutor fails to satisfy the appellant, the former's decision may be appealed to the investigating judge, whose decision in final. Under Article 65 § 1 of the new CCP, the original acts and decisions of the investigating judge may be appealed to the President of the District Court.

3. Confiscation of property

The freezing of the assets of an accused, or assets which were acquired in a criminal manner but later were in a third party's possession, could be ordered by a pre-trial investigator in order to protect a potential civil claim or confiscation order (Article 195 § 1 of the old CCP). Appeals lay against such orders of investigators to two court instances (Article 244^1 §§ 2 and 3 of the old CCP).

When adopting a judgment, a court has to confiscate money and property which has been acquired in a criminal manner (Article 72 § 2 (3) of the Criminal Code and Article 94 § 1 (1) of the new CCP). Moreover, property which was transferred to a third person is to be confiscated even though no criminal charges have been brought against the latter, if that third person knew or should have known that that property, money or new valuables obtained for that money are the proceeds of a crime (Article 72 § 3 (2) of the Criminal Code).

4. The Civil Code

Articles 6.271 and 6.272 of the Civil Code (in force as of 1 July 2001) created strict liability and the possibility of compensation to be paid from the State budget for any unlawful action or omission by a public authority or a pre-trial investigation official, a prosecutor or a judge directly affecting an individual's rights or freedoms.

COMPLAINTS

1. The first applicant complained under Article 5 § 1 of the Convention that his detention on remand had been unlawful.

2. The first applicant complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge while re-detained on 18 January 2002. He further submitted that the length of his detention had been excessive and unreasonable.

3. The first applicant also complained that he had not been afforded appropriate judicial guarantees in the context of the review of the lawfulness of his detention, in breach of Article 5 § 4 of the Convention.

4. Under Article 6 of the Convention the first applicant complained about the lack of access to the case file.

5. The first applicant complained under Article 2 of Protocol No. 4 to the Convention that his house arrest from 21 May 2001 until 18 January 2002 had been unlawful and arbitrary.

6. The first applicant submitted that the impugned house arrest had been such a severe measure that it amounted to an unlawful and arbitrary deprivation of liberty, in breach of Article 5 § 1 of the Convention.

7. The first applicant also maintained that the strictness of his house arrest regime had violated his right to respect for his private and family life under Article 8 of the Convention.

8. Lastly, the first applicant complained under Article 13 of the Convention that he had been afforded no effective remedy to complain about the conditions of his house arrest, as the law at the material time had not provided for a possibility to contest the lawfulness or those conditions before a court.

9. By a letter dated 10 September 2003, the second applicant complained of a breach of Article 2 of the Convention. She considered that the State had not protected the life of her husband.

10. By an application dated 17 November 2005, the second applicant further complained under Article 6 of the Convention that the criminal proceedings vis-à-vis the first applicant should have been discontinued immediately after his death. The finding by the trial court of her late husband's "criminal acts", and the confiscation of their family's property on the basis of that finding, amounted to a fundamental abuse of process.

11. Under Article 1 of Protocol No. 1 to the Convention, the second applicant complained about the confiscation of her property as a result of the findings of the courts in the criminal case against her late husband. She also alleged that she had no further remedy under the law to appeal against the confiscation order. In this respect the second applicant invoked Article 13 of the Convention and Article 2 of Protocol No. 7 to the Convention.

THE LAW

A. As regards Article 2 of the Convention

1. The parties' submissions

The second applicant complained under Article 2 of the Convention that the State did not fulfil its positive obligation to protect the life of her

husband in that it had taken no effective steps to prevent him committing suicide while in prison.

The Government expressed their condolences to the second applicant, but contended that the State bore no responsibility for this tragic event. In particular, they contended that the second applicant had not exhausted domestic remedies under Article 35 § 1 of the Convention, in two respects. Firstly, she had not instituted a claim for compensation under Article 6.271 of the Civil Code for any alleged unlawful action or omission of a public authority in respect of the events or conditions of detention leading to her husband's suicide (cf. *Slimani v. France* no. 57671/00, judgment of 27 October 2004, §§ 39-41). Secondly, she had not sued the Lukiškės Prison Administration or responsible medical staff about the allegedly inadequate conditions of her husband's detention and his medical treatment. Thirdly, she had not appealed the prosecutor's decision of 14 January 2005 to terminate the investigation into the first applicant's death.

2. The Court's assessment

The relevant provisions of Article 2 of the Convention read as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law..."

The Court notes the Government's inadmissibility arguments under Article 35 § 1 of the Convention. It reiterates that the rule of exhaustion of domestic remedies under this provision obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. However, it does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, §§ 51-52).

Lithuanian law provided for the possibility, under Article 6.271 of the Civil Code, to sue the State for any alleged unlawful action or omission of a public authority. However, the Court considers that this remedy was insufficient for the respondent State's obligations under Article 2 of the Convention in the present case, in that it was aimed at awarding damages rather than identifying and punishing those responsible (see *Salman v. Turkey* [GC], no. 21986/93, §§ 81-83 ECHR 2000-VII, and, *mutatis mutandis*, *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3286, § 85).

To this end, the Court observes that the investigation of the first applicant's suicide by the public prosecutor was the appropriate channel, but that the second applicant did not appeal the prosecutor's decision of 14 January 2005 to terminate the investigation, as she could have done under Article 214 § 3 of the new Code of Criminal Procedure. This appeal to a superior prosecutor under that Article and then, if necessary, to an investigating judge, was a necessary step in the Court's view. Accordingly,

whilst regretting the apparent negligence of the prison administration in allowing a known suicide risk to be left alone in his cell with a belt, with which he was then able to hang himself, the Court finds that the second applicant has indeed failed to exhaust domestic remedies (see *Kanlibaş v. Turkey* (dec.), no. 32444/96, 28 April 2005 and, *a contrario*, *Salgın v. Turkey*, no. 46748/99, § 60, 20 February 2007). Consequently, her complaint under Article 2 of the Convention must be rejected pursuant to Article 35 §§ 1 and 4.

B. As regards Articles 5, 8 and 13 of the Convention and Article 2 of Protocol No. 4

1. Detention during the criminal proceedings

(a) The parties' submissions

The first applicant complained under Article 5 § 1 of the Convention that his detention during the criminal proceedings had been unlawful. In particular, he alleged that there had been no valid grounds for the remand in custody, and that there had been no valid court orders covering the whole of the period of his detention. He next complained under Article 5 § 3 of the Convention that he had not been brought promptly before a judge when re-detained on 18 January 2002. He further submitted that the length of his detention had been excessive, the reasons given by the courts in this respect being irrelevant and insufficient.

This applicant also complained that he had not been afforded appropriate judicial guarantees in the context of the review of the lawfulness of his detention, in breach of Article 5 § 4 of the Convention. In this regard he submitted that his defence counsel had not been afforded full access to the case file, and that he had thereby been unable properly to challenge the lawfulness of his detention.

The Government contended that the part of this complaint relating to the first period of detention was inadmissible for non-observance of the six-month rule, pursuant to Article 35 §§ 1 and of the Convention. They noted that the first applicant had been detained from 16 August 2000 until his release following his successful appeal on 14 May 2001. However, he had only lodged this complaint on 15 May 2002 (see *Jėčius v. Lithuania*, no. 34578/97, § 44, ECHR 2000-IX).

The Government further submitted that, regarding his renewed remand in custody from 18 January 2002 to 24 April 2003, the first applicant's detention had been in accordance with domestic law in force at the time (Articles 104 and 106 of the old CCP), following reasoned court decisions devoid of any arbitrariness, in compliance with Article 5 § 3 of the Convention. Those decisions had been based, *inter alia*, on the more serious charges which he faced by then, new evidence having materialised. While he had been under house arrest the first applicant had apparently still been involved in smuggling, and witnesses had been intimidated. Consequently,

it was reasonable for the courts to find that he might commit further offences, obstruct the establishment of the truth, influence witnesses or abscond.

According to the Government, the first applicant had not been able to attend the hearing of the Kaunas Regional Court on 18 January 2002 or the appeal hearing on 31 January 2002 because he had been in hospital since 14 January 2002 and was unfit. He was represented by counsel at both instances. The first applicant was able to be present at the subsequent remand hearings, beginning on 1 February 2002. He thus benefitted from prompt and proper judicial reviews, in compliance with Article 5 § 3 of the Convention. In all, the first applicant was detained for less than sixteen months, on the basis of renewable periods of up to three months. Defence counsel could have had appropriate access to the case file to challenge those decisions effectively (Articles 52 and 58 § 2 (6) of the old CCP), but had never requested such access or complained of its lack before the domestic courts. Nevertheless, the first applicant had had a right of appeal under Article 109^1 of the old CCP, which he had unsuccessfully exercised against five of the seven orders to remand him in custody. He had thus had an effective remedy under Article 5 § 4 of the Convention.

In conclusion, the Government submitted that this aspect of the case was manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention.

The first applicant's representative queried why remand in custody had to be ordered while his client was still in hospital. He contended that there had been no evidence that the first applicant's liberty would have had any impact on third persons, such as witnesses, or that he could have been instrumental in such an impact. Moreover, there was no evidence that he had committed further offences whilst under house arrest. This was supported by the fact that he was only prosecuted for offences allegedly committed between 1999 and 2000. The order of 18 January 2002 to renew his remand in custody was made without bringing him promptly before a judge, contrary to Article 5 § 3 of the Convention. This was a new decision, not an extension of a previous decision when his personal presence in court could have been waived.

For the applicants' representative, the practice of the domestic courts did not ensure that defence lawyers could access the case file to establish what materials might justify their clients' remand in custody. Even now, such access can be wholly or partially refused by the prosecutor until the pre-trial investigation is closed. The prosecutor may, unannounced, request a remand measure in open court, giving reasons which do not have to be supported by concrete evidence disclosed to the defence. There is no equality of arms or genuine adversarial procedure involved in such measures.

(b) The Court's assessment

The relevant provisions of Article 5 of the Convention read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. ..."

The Court agrees with the Government that the complaints about the first period of the first applicant's detention are to be rejected for non-observance of the six-month rule under Article 35 §§ 1 and 4 of the Convention. As for the second period of custody from 18 January 2002 to 24 April 2003, the Court notes that remand in custody was lawfully ordered by the Lithuanian courts, in compliance with Article 5 § 3 of the Convention. What is more, when ordering and extending the first applicant's detention, the domestic courts thoroughly examined whether the necessity to keep him detained still existed and did not confine themselves to mere formal reasons. Lastly, the Court considers that, taking into account the seriousness of the charges against the first applicant as well as the Lithuanian courts' conclusion about the likelihood of him absconding and influencing witnesses, in the context of that Convention provision the length of the first applicant's remand in custody does not appear to have been excessive.

As regards the first applicant's complaint under Article 5 § 3 of the Convention that he was not brought promptly before a judge when re-detained on 18 January 2002, the Court notes that for health reasons this applicant had been in hospital since 14 January 2002 and consequently could not take part in that hearing. The Court observes, however, that at that hearing the first applicant's lawyer was present, who argued at length on his client's behalf. Moreover, the Court notes that the Kaunas Regional Court granted the prosecutor's request to re-detain the first applicant considering that it had come to light that, while the latter was under house arrest, he had been organising further smuggling and was obstructing the investigation. In addition, the decision to re-detain the first applicant was lawful under the national law, given that he was remanded in custody for fifteen days which, according to Article 106 § 6 of the old CCP, was the maximum time a judge could detain a person who was in hospital. The Court also has regard to the fact that on 31 January 2002 the lawfulness of the first applicant's re-detention was upheld by the Court of Appeal, which found that the first applicant's right to have his interests defended had not been curtailed (see The Facts above). That being so, the Court holds that in the particular

circumstances of the case the first applicant's right to be promptly brought before a judge had not been breached.

Lastly, the Court cannot accept the first applicant's submission that he had no access to an adequate judicial review of the decisions to detain him, as guaranteed by Article 5 § 4 of the Convention. The first applicant's lawyer could have requested access to part of the case file from the investigator in order to challenge them more effectively. Although the first applicant's representative has hypothetically suggested that any request for full access to the case file at the stage of the pre-trial investigation would have been rejected, it transpires from the material before the Court that neither in his appeals against the detention orders, nor at the court hearings, did the first applicant's counsel make a request to consult any specific aspect of the case file, or suggest that he lacked such access (see *Kamantauskas v. Lithuania* (dec.), no. 45012/98, 29 February 2000). The Court is therefore unable to establish that the accessibility of a specific aspect of the case file was essential to ensure the first applicant's effective challenge to his detention. Furthermore, it should be noted that, in his appeal of 22 July 2002 against the order to prolong his detention, the first applicant acknowledged having been fully acquainted with all the documents of his case file. Lastly, given that the first applicant's lawyer and, with few exceptions, the applicant himself, attended the court hearings at which the grounds for his detention were examined, there is no evidence that the first applicant was deprived of the possibility to contest the validity of his detention in adversarial proceedings.

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

2. House arrest

(a) The parties' submissions

The first applicant complained under Article 2 of Protocol No. 4 to the Convention that his house arrest from 21 May 2001 until 18 January 2002 had been unlawful and arbitrary. He submitted that the measure had been ordered for an indefinite period, and that his personal and family situation had not been taken into account when reaching that decision. He also complained that he had not been allowed to work whilst under house arrest. He submitted that the impugned measure had been so severe that it amounted to an unlawful and arbitrary deprivation of liberty, in breach of Article 5 of the Convention.

The first applicant also claimed that the regime of his house arrest had violated his right to respect for his private and family life under Article 8 of the Convention. In this respect he submitted that he had been deprived of the opportunity to work and take care of his family. His contacts with the outside world had been severely restricted. The first applicant noted that the ban of 21 May 2001 on using a mobile telephone or communicating with his co-accused had been subsequently quashed by the Deputy Prosecutor

General, confirming the unlawfulness and the arbitrary nature of these measures.

Finally, the first applicant complained under Article 13 of the Convention that he had been afforded no effective remedy to complain about the conditions of his house arrest, as the law at the material time did not provide the opportunity to contest their lawfulness before a court.

The Government contended that Article 5 of the Convention had not been applicable to the decision to impose house arrest on the first applicant. The measure had not had a punitive element of being a deprivation of liberty within the meaning of Article 5 § 1 of the Convention. Whilst under house arrest, the first applicant had continued enjoying a social life, living with his family and receiving visits (see, *a contrario*, *Guzzardi v. Italy*, 6 November 1980, Series A no. 39). If the first applicant had considered that Article 5 § 1 of the Convention had been breached by this measure, he could have invoked the Convention provision directly before the domestic courts, and sued the State under the strict liability provisions of Article 6.272 of the Civil Code. As he had not done so, he had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

For the Government, the first applicant had had other channels of hierarchical appeal, which he had used on several occasions, against the decisions of the investigator and prosecutor under Articles 242 and 244 of the old Code on Criminal Procedure. He had thus had effective remedies at his disposal for the purposes of Article 13 of the Convention.

The Government submitted that the measure had anyway been a legitimate restriction on freedom of movement within the meaning of Article 2 of Protocol No. 4, imposed in accordance with the domestic law for valid reasons of criminal procedure.

As regards the complaint concerning the restriction on the use of his mobile telephone when under house arrest, the Government again submitted that the first applicant had failed to exhaust domestic remedies, such as a claim for damages under Article 6.272 of the Civil Code. They noted that the restrictions on the first applicant's use of his mobile telephone and the prohibition on contacting his co-accused had anyway been withdrawn within two months by the prosecutor as unlawful. Nevertheless, the Government submitted that while they lasted they would not have had a significant impact on his social life or could be said to have been disproportionate. Despite the restriction to use his mobile telephone, the first applicant had apparently used those of other people to continue his criminal activities.

In the Government's view, it was obvious that the house arrest entailed a great deal less social isolation for the first applicant than a remand in custody. They considered that, consequently, this aspect of the case was manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention.

The first applicant's representative submitted that the house arrest of his client had amounted to a deprivation of liberty, its twenty-four-hour-a-day

nature being a form of imprisonment, aggravated by a prohibition on using his mobile telephone and contacting certain people. The drastic nature of the interference with his liberty could be gauged by the fact that these latter restrictions had to be lifted. It had been imposed without any real assessment of public or State interests or any genuine possibility of being effectively challenged before the domestic courts. Raising Convention arguments before the courts at that time was pure theory, and neglected in practice. The hierarchical appeals mentioned by the Government were also theoretical, as the investigator and prosecutor had the same prosecution goals. Similarly, a civil claim for damages was deemed ineffective in respect of a breach of criminal defence rights.

The representative concluded that the higher public interest arguments put forward by the Government could not palliate the clear breaches of the Convention in the present case, reiterating that "unlawful means cannot justify the end".

(b) The Court's assessment

The Court notes at the outset that the first applicant's complaints regarding him being held under house arrest fall to be examined in the light of Article 5 of the Convention (see *Lavents v. Latvia*, no. 58442/00, §§ 62-64, 28 November 2002). In view of this conclusion the Court will disregard his complaints as presented under Article 2 of Protocol No. 4.

It should also be noted that on 21 May 2001 house arrest was ordered instead of a remand in custody. The Court further observes that initially the house arrest was ordered for twenty-four hours a day, which it finds regrettable. However, by August 2001 the conditions of house arrest had already been varied. Furthermore, they were again varied in October 2001 (see the Facts above).

The Court has regard to the fact that on 20 November 2001 the Deputy Prosecutor General clearly instructed the investigator to vary the conditions of the first applicant's house arrest, even allowing the latter to work. The Court further observes that the first applicant's house arrest was lawfully ordered by the domestic authorities and courts, in compliance with Article 5 § 3 of the Convention, and, given the seriousness of the crimes with which he had been charged as well as the complexity of the case, the length of this measure does not appear to have been excessive in the context of that Convention provision. It follows that this part of the complaint is to be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

As to the first applicant's complaint under Article 13 of the Convention, that he had no effective judicial remedy to question the lawfulness of his house arrest and the conditions thereof, the Court recalls that the "authority" referred to in that provision does not necessarily have to be judicial; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective (see, *mutatis mutandis, Dobrev v. Bulgaria*, no. 55389/00, § 145, 10 August

2006). Turning to the present case the Court notes that under Articles 242 and 244 of the old CCP the first applicant could complain to the prosecutors. Given the above-mentioned decisions of the prosecutor and Deputy Prosecutor General, the outcome of which had been positive for the first applicant, the Court is not ready to find that such recourse was ineffective as regards the personal situation of the first applicant and in this particular case. Consequently, the complaint under Article 13 of the Convention must be dismissed as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

The Court likewise considers unfounded the first applicant's complaint under Article 8 of the Convention that his house arrest violated his right to respect for his private and family life. The Court shares the Government's view that the measure of house arrest entailed a great deal less social isolation than his remand in custody. Consequently, the first applicant faced no obstacles as regards opportunities to communicate with his family members. Moreover, whilst under house arrest the first applicant was allowed to visit medical institutions and to engage in some sports activities. As regards the first applicant's complaint that due to house arrest he could not provide for his family the Court observes that he was advised by the investigator that he could take up a Kaunas-based job. It is true that the authorities did not allow the first applicant to work as a full-time manager or taxi driver. However, in the light of the serious charges against the first applicant the Court does not consider these restrictions unreasonable. Consequently, the first applicant's complaint under Article 8 of the Convention should be dismissed as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

Lastly, as to the first applicant's complaint under Article 8 that the investigators deprived him of the opportunity to use his mobile telephone, the Court notes that on 12 November 2001 the Deputy Prosecutor General indeed quashed that ban as unlawful. However, since in that connection the first applicant failed to institute any proceedings for damages under Article 6.272 of the Civil Code, this complaint should be dismissed for failure to exhaust domestic remedies pursuant to Article 35 §§ 1 and 4.

C. As regards Article 6 of the Convention

1. The parties' submissions

The first applicant complained of a breach of Article 6 of the Convention, alleging that he had not had access to the criminal file. The second applicant complained under this provision that the criminal proceedings *vis-à-vis* the first applicant should have been discontinued immediately after his death. She alleged that the finding by the trial court of her late husband's "criminal acts", and the confiscation of their family property on the basis of that finding, amounted to a fundamental abuse of process.

The Government contended that this provision was not applicable to the case as the criminal charges against the first applicant were not finally determined. Instead the proceedings were discontinued. This was not done immediately as the court had to decide whether to fully exculpate the first applicant and rehabilitate him. He could not have been convicted under domestic law after his death. His interests had been safeguarded by the appointment of an *ex officio* lawyer who had been previously acquainted with the case.

The order to confiscate some of the family's property was not related to any finding of fault on the part of the first applicant, but was related to the criminal activities of the association in which he had participated and in respect of which three of his co-accused were convicted, pursuant to Article 72 of the Criminal Code.

In the Government's view, Article 6 under its civil limb was also not applicable to the confiscation procedure, whilst acknowledging that the second applicant had no right of appeal against the measure. However, they contended that the appeal brought by the first applicant's counsel in his name also represented her interests and those of other concerned third parties. Moreover, the second applicant had had a right of appeal, which she did not use, at the stage when the property was frozen by the criminal investigator under Article 244^1 of the old CCP. Thus her procedural interests were ultimately not impaired.

In conclusion, the Government submitted that this part of the case should also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For the representative of the applicants, it could not be argued that Article 6 in its criminal limb was not applicable in the present case. By the judgment of 22 January 2004 the Kaunas District Court clearly found the first applicant responsible for the organisation and execution of criminal acts, short of pronouncing the word "guilt" or imposing a sentence. If he had been properly exonerated or excluded from the case, his name should not even have been cited in that judgment, but it was, and frequently. One has only to read the Government's submissions under Article 5 of the Convention, to understand that the full criminal process was in operation in the present case.

Lastly, the applicants' representative noted that the confiscation of the second applicant's property was related to the findings of the first applicant's criminal behaviour. Yet she had not been tried and convicted in relation to the same conduct. Nor could she defend her interests before the first-instance court or on appeal.

2. The Court's assessment

Even assuming that the "rehabilitation" proceedings as regards the first applicant after his death could be characterised as "criminal" in the Article 6 sense, the Court considers that his complaint of not having had access to the criminal file cannot be upheld. Throughout the criminal proceedings the

first applicant was represented by a lawyer. Nothing in the case file suggests that the first applicant had ever sought to acquaint himself with the documents related to the charges against him but had been denied. It follows that this complaint is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

Next, the Court turns to the second applicant's claim that the criminal proceedings against the first applicant should have been discontinued after his death.

In this connection the Court reiterates that it is in the first place for the national authorities, and notably the courts, to interpret domestic law and that the Court will not substitute its own interpretation for theirs in the absence of arbitrariness (see *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII). This applies in particular to the interpretation by courts of rules of a procedural nature such as whether the criminal proceedings should continue or at which stage they should have been discontinued.

On the facts of the case the Court recalls that the second applicant herself requested the domestic courts to continue the criminal proceedings with the view to exonerating her late husband. Even though she later withdrew that request, the Lithuanian courts decided to continue the criminal proceedings, noting that they concerned three co-accused and arguing that the first applicant's rehabilitation was impossible without having considered all the evidence against him as well as the other accused. This was necessary to ensure impartiality. Moreover, after the first applicant's death the Kaunas Regional Court appointed counsel to represent the first applicant's interests. The Court has special regard to the fact that in his appeal and cassation application that counsel explicitly argued that the criminal proceedings should have been discontinued after his client's death. The Court finds nothing arbitrary in the procedure followed.

It the light of the above, the complaint that the criminal proceedings with regard to the first applicant should have been discontinued after his death is manifestly ill-founded and should be dismissed under Article 35 §§ 3 and 4 of the Convention.

Lastly, in view of the parties' submissions, the Court finds that the second applicant's complaints under Article 6 of the Convention concerning an alleged abuse of her procedural rights raises complex questions of fact and law, the determination of which should depend on an examination of the merits. They cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

D. As regards Article 1 of Protocol No. 1, together with Article 13 of the Convention and Article 2 of Protocol No. 7

1. The parties' submissions

Under Article 1 of Protocol No. 1 to the Convention, the second applicant complained about the confiscation of her property in the wake of the criminal case against her late husband. She also alleged that, given that she was not a party to the criminal proceedings against her late husband, she had no remedy under the domestic law to appeal against the confiscation order. Her and her representative's arguments in this respect are reflected above under the section on Article 6 of the Convention. In this connection she also invoked Article 13 of the Convention and Article 2 of Protocol No. 7.

The Government disagreed and referred to the possibility of appealing the decisions of the investigators to the courts, under Article 244^1 of the old CCP. The property had first been frozen by an investigator, that measure being a pre-condition for its future confiscation. The efficacy of such an appeal was shown in the case of the mother of the first applicant (the decision on 23 July 2002 of the District Court of Kaunas City releasing some of her frozen assets). The second applicant had thus failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

In any event, the confiscation of part of the family's property had been in accordance with domestic law (Article 72 of the Criminal Code) and amounted to a justified control of the use of property in the general interest, within the meaning of Article 1 of Protocol No. 1 (see, amongst others, *Jarvi-Eristys Oy v. Finland*, no. 41674/98, decision of 15 March 2005, and *Air Canada v. the United Kingdom*, 5 May 1995, Series A no. 316-A). In the interests of crime prevention, the State had a wide margin of appreciation in controlling property obtained by unlawful means or used for unlawful purposes (see *Raimondo v. Italy*, 22 February 1994, Series A no. 281-A). A fair balance between the public and individual interests had been achieved in the present case, particularly as the second applicant, with her knowledge of her husband's criminal activities, must have known full well that the property in question had been acquired with money gained unlawfully (see the decision of the Court of Appeal of 25 October 2004 and her own conviction on 30 June 2005, The Facts above).

2. The Court's assessment

The Court considers that the second applicant's complaints under Article 13 of the Convention and Article 2 of Protocol No. 7 are absorbed by her complaint under Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

As regards the Government's objection concerning non-exhaustion of domestic remedies, the Court observes that seizure ordered by the investigator had been provisional. However, the domestic courts' final decision to confiscate some of the second applicant's possessions constituted a permanent deprivation of property for which there was no domestic remedy. Consequently, the Government's objection must be dismissed.

In view of the parties' submissions, the Court finds that this part of the application raises complex questions of fact and law, the determination of which should depend on an examination of the merits. It cannot therefore be regarded as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the second applicant's complaints, under Article 6 of the Convention, concerning an alleged abuse of her procedural rights and her complaints, under Article 1 of Protocol No. 1 to the Convention, about the confiscation of her property;

Declares inadmissible the remainder of the application.

Sally Dollé
Registrar

Françoise Tulkens
President