

REVIEW OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS IN CASES AGAINST THE REPUBLIC OF LITHUANIA IN 2011

Justinas Žilinskas, Dovilė Gailiūtė

Mykolas Romeris University, Faculty of Law,
Department of International and European Union Law
Ateities 20, LT-08303 Vilnius, Lithuania
Telephone (+370 5) 271 4669
E-mail: j.zilinskas@mruni.eu; dgailiute@mruni.eu

Received on 5 March, 2012; accepted on 29 March, 2012

***Abstract.** In 2011 the European Court of Human Rights delivered 10 judgments in cases against the Republic of Lithuania. In 9 judgments the Court found at least one violation of rights and freedoms guaranteed by the European Convention on Human Rights. Article 6 which provides the right to a fair trial, remains dominant in the applications against Lithuania, since in 7 out of 10 delivered judgments the Court declared violations of Article 6 (mostly paragraph 1 concerning the length of proceedings). In 2011 the Court as well declared violations of prohibition of torture, right to respect for private and family life and the right to free elections.*

***Keywords:** European Convention on Human Rights, European Court of Human Rights, cases against Lithuania.*

Introduction

The annual statistics of the year 2011 show the continuing increase of applications lodged with the European Court of Human Rights (hereinafter – ECtCR or the Court). In 2011 64,500 new applications were allocated to a judicial formation. Thus, in the end of December 2011 already more than 151,600 applications were pending before a judicial formation. In 2011 50,677 applications were declared inadmissible or struck out of the list of cases by a Single Judge, a Committee or a Chamber and Judgments were delivered in respect of 1,511 applications¹.

It should be mentioned that the numbers of applications against the Republic of Lithuania also has a tendency to grow. In 2011 305 new applications against Lithuania were lodged with the European Court of Human Rights (see Chart 1) (in comparison in 2010 242 new applications were allocated to a judicial formation). In the end of the year 2011 586 applications were pending before a judicial formation (see Chart 2) (in comparison in 2010 443 applications were pending). In 2011 152 applications against Lithuania were declared inadmissible or struck out of the list of cases, 142 applications were decided by a Single Judge, 5 – by a Committee and 5 - by a Chamber. Summarizing the decisions of Committee and Chamber, it could be noted that 3 applications were struck out of the list of cases because the applicants were regarded as no longer wishing to pursue their applications², other applications were declared inadmissible mostly because they were rejected as manifestly ill-founded or applicants failed to exhaust domestic remedies³. In 2011 the Court first time struck out of the list of cases the application against Lithuania following the unilateral declaration proposed by the Government⁴.

In 2011 the European Court of Human Rights delivered 10 judgments in cases against the Republic of Lithuania. In 9 judgments Court found at least one violation of rights and freedoms guaranteed by the European Convention on Human Rights (hereinafter – ECHR or the Convention). As the last year in 2011 the Court in most cases found violations of the right to a fair trial and other procedural rights laid down

- 1 For more information on general statistics see: *Analysis of statistics 2011*. European Court of Human Rights, 2012 [interactive]. [accessed on 01-03-2012]. <http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF>.
- 2 *Sanian v. Lithuania* (dec.), no. 23562/05, ECHR 18 October 2011; *Alzuhari v. Lithuania* (dec.), no. 16688/06, ECHR 18 October 2011; *Jakimčikas v. Lithuania* (dec.), no. 15518/08, ECHR 13 December 2011.
- 3 *Česnulevičius v. Lithuania* (dec.), no. 419922/06, ECHR 10 May 2011; *Loveika v. Lithuania* (dec.), no. 31244/06, ECHR 18 October 2011; *Beržinis v. Lithuania* (dec.), nos. 45073/07, 20508/08, 20510/08, 20513/08, ECHR 13 December 2011.
- 4 *Jankauskas v. Lithuania* (dec.), no. 21978/07, ECHR 6 December 2011. The Government acknowledged that in the circumstances of the present case the conditions of the applicant's pre-trial detention were not compatible with the requirements under Article 3 of the Convention as regards the overcrowding and sanitary conditions at the pre-trial detention facility. The Government also admitted that the censorship of the applicant's correspondence with the European Court of Human Rights whilst he had been detained was not compatible with the guarantees of Article 8 of the Convention. The Government offered to pay to the applicant compensation in the amount of EUR 5,000. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, the Court considered that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c)) and decided to strike it out of the list of cases.

in Article 6 (violations of this right dominates in the general statistics as well⁵). In 7 out of 10 delivered judgments the Court declared violations of Article 6 (mostly paragraph 1 concerning the length of proceedings). In 2011 in the cases against Lithuania the Court as well found violations of prohibition of torture, right to respect for private and family life and the right to free elections.

In this review all 10 delivered judgments of the Court in cases against Lithuania shall be reviewed. In order to disclose the content of different rights and freedoms which were violated, the cases should be provided in thematic system following the main issue it raises.

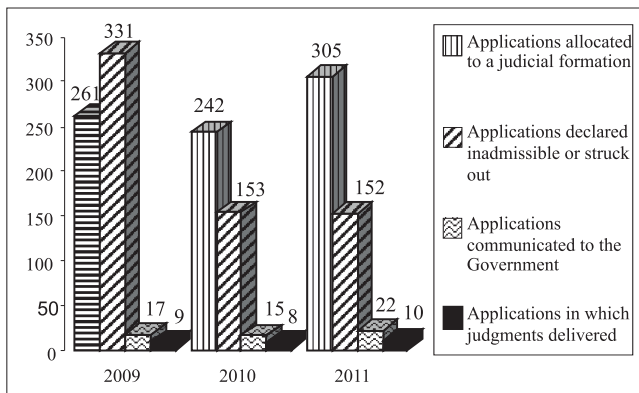


Chart 1. Lithuania: Major procedural steps in processing applications⁶

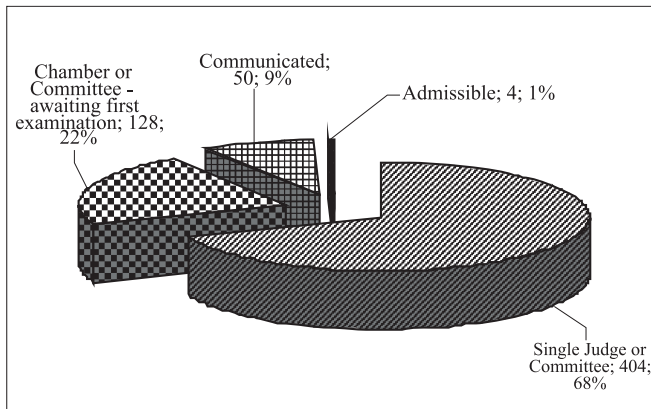


Chart 2. Lithuania: The Court's caseload by stage of proceedings and decision body⁷

5 Violations by Article and by State, 2011. European Court of Human Rights [interactive]. [accessed on 01-03-2012]. <http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_EN_2011.pdf>.

6 Analysis of statistics 2011, supra note 1, p. 38.

7 Ibid.

1. Prohibition of Torture (Article 3): *Iļina and Sarulienė v. Lithuania*⁸

The applicants Iļina and Sarulienė (mother and daughter) complained that the treatment to which they and their close family members had been subjected by the police officers had caused them great physical and mental suffering, amounting to inhuman and degrading treatment contrary to Article 3⁹ of the Convention. They also complained that the investigating and prosecuting authorities, as well as the court, had failed to proceed with an effective and impartial investigation into the incident capable of leading to the identification and punishment of the police officers responsible. In that connection the applicants invoked Article 3 as well as Articles 6 and 13 of the Convention.

As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

The Court also recalled that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII).

The Court has also consistently held that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see *Corsacov v. Moldova*, no. 18944/02, § 69, 4 April 2006). Also the persons responsible for the inquiries and those conducting the investigation should be independent of anyone implicated in the events. This means not only that there should be no hierarchical or institutional connection, but also that the investigators should be

8 *Iļina and Sarulienė v. Lithuania*, no. 32293/05, ECHR 15 March 2011.

9 **Article 3 – Prohibition of torture:** No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

independent in practice (see *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, § 135, ECHR 2004-IV (extracts)).

In the case *Iljina and Sarulienė v. Lithuania* the parties to the national proceedings did not dispute the fact that the injuries as shown by medical evidence actually arose in the course of the conflict with the police. In particular, the forensic expert concluded that the applicants and their three male family members had sustained light physical injuries, consisting of bruises and scratches. Having examined the materials submitted to it, the Court found that the applicants' injuries were consistent with their version of events, including being pulled by the arms off the police car (the first applicant), and having a foot shut in a door (the second applicant).

The Court further reiterated that Article 3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by “creating a state of anguish and stress by means other than bodily assault” (see, *mutatis mutandis*, *Soering v. the United Kingdom*, 7 July 1989, § 100, Series A no. 161). There can be little doubt that the sight of them being beaten up by the police officers (as concerns the second applicant) and unsuccessful attempts to obtain information about the reason behind their arrest (as concerns the first applicant) intimidated the applicants on account of the arbitrariness of the situation and caused them emotional and psychological distress. Overall, having regard to the first applicant's physical injuries and the fact that due to them the forensic expert deemed her to be unfit to work for nine days, the traces of injuries on the second applicant's body and the fact that both applicants witnessed the police violence, the Court found that the applicants were subjected to ill-treatment which was sufficiently serious to be considered degrading and thus to fall within the scope of Article 3 of the Convention.

As justification of the use of force against the applicants and their relatives the Government have advanced the argument that those family members had been arrested lawfully for obstructing the police officers in the performance of their legitimate duties and for insulting them. However, the Court noticed the fact that by a prosecutor's order those charges were dropped as unfounded. This did cast doubt on the real necessity to arrest the applicants' family members and to have recourse to physical force to put the arrest into effect. The Court also noted the absence of signs of physical injuries to the policemen which is a typical consequence of resistance to arrest in comparable cases.

In the present case the Vilnius City First District Court and even the prosecutor, who had to assure the independence and objectivity of the investigation, had no opportunity of hearing the parties to the criminal proceedings and witnesses at first hand and of evaluating their credibility. The Court was mindful of the fact that the decision the court took was of a procedural nature, as opposed to examining the complaint of alleged police abuse on the merits and passing a judgment as to the actual guilt of the policemen. The Court also noted that the investigation failed to establish the particular roles of each of the policemen implicated in the events – to this day it is not clear to what extent each of them contributed to the applicants' injuries.

Consequently, the Court concluded that the State is responsible for degrading treatment under Article 3 of the Convention on account of the physical and mental

violence, considered as a whole, committed against the applicants as well as the lack of an effective investigation into the incident, and that therefore there has been a violation of this provision.

2. Right to a Fair Trial (Article 6)

2.1. Length of criminal proceedings: *Stasevičius v. Lithuania*¹⁰; *Zabulėnas v. Lithuania*¹¹; *Maneikis v. Lithuania*¹²; *Kravtas v. Lithuania*¹³

In cases *Stasevičius*; *Zabulėnas*; *Maneikis* and *Kravtas* the applicants lodged the applications against Lithuania with the European Court of Human Rights complaining that the length of the proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention¹⁴. All above mentioned cases concern the length of criminal proceedings of financial crimes and the judgments of the Court are very similar, therefore those cases shall be analysed together. First of all, the facts of the cases will be summarized and later the assessment of the Court will be provided.

The applicants *Stasevičius* and *Zabulėnas* were respectively the director and the accountant of the same holding company. In 1994 the applicants became the suspects in a criminal case of fraud and later they were charged with unlawful financial activities, fraud, and breaching the currency and securities regulations. On 15 October 1998 the Kaunas City District Court convicted the applicants, but the case was remitted for retrial by the cassation court, then returned for additional investigation by the trial court twice and subsequently discontinued because the statutory time-limit had lapsed. Given that the proceedings ended by the Vilnius Regional Court’s decision of 10 November 2005, within the Court’s jurisdiction *ratione temporis* they therefore lasted ten years and nearly five months at three levels of jurisdiction.

In another case *Maneikis v. Lithuania* on 17 January 1996 the applicant was charged with the embezzlement of 1,000,000 Lithuanian litas (LTL), which his company had given him to purchase certain equipment. The criminal proceedings ended with the decision of the Supreme Court of 14 November 2006. They thus lasted some ten years and six months for three levels of jurisdiction. It should be noted that it took the Mažeikiai District Court six years to decide the case on first instance and whilst criminal proceedings were pending, the applicant had been under house arrest for nearly ten years.

10 *Stasevičius v. Lithuania*, no. 43222/04, ECHR 18 January 2011.

11 *Zabulėnas v. Lithuania*, no. 44438/04, ECHR 18 January 2011.

12 *Maneikis v. Lithuania*, no. 21987/07, ECHR 18 January 2011.

13 *Kravtas v. Lithuania*, no. 12717/06, ECHR 18 January 2011.

14 **Article 6 § 1:** In the determination of <...> any criminal charge against him, everyone is entitled to a <...> hearing within a reasonable time by [a] <...> tribunal <...>.

In the fourth case *Kravtas v. Lithuania* the applicant was the chairman of the commercial bank Vakarų Bankas. On 6 September 1995 a criminal case was instituted regarding embezzlement of the bank's property. By a judgment of 20 April 2001, the Klaipėda City District Court acquitted the applicant, dismissing charges against him. Following the appeal by the prosecutor, the case had to be remitted for further investigation. The Supreme Court decided that the prosecution had failed to properly formulate the charges against the applicant. But again the trial courts dismissed the charges against the applicant as unfounded. The proceedings lasted nine years and nearly eleven months at three levels of jurisdiction.

Firstly, the European Court of Human Rights had to decide on the admissibility of the applications. In all above mentioned cases the Government submitted that the applicants had failed to exhaust domestic remedies by claiming redress for the length of the criminal proceedings. But the Court referred to its earlier case law, where it already established that at the time when these applications were lodged by the applicants no effective remedy for obtaining a redress for the length of the proceedings existed in Lithuania (see, most recently, *Šulcas v. Lithuania*, no. 35624/04, §§ 60 and 62, 5 January 2010, and *Norkūnas v. Lithuania*, no. 302/05, §§ 29-30, 20 January 2009). Consequently, the Government's objection as to non-exhaustion of domestic remedies was dismissed.

Secondly, the Court was examining the merits of the cases. The Court reiterated that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

Turning to the facts of the above mentioned cases, the Court considered that the proceedings may be deemed complex, owing *inter alia* to the number of the accused and the nature of the alleged offences, i.e. the financial impropriety allegedly committed by the applicants. Furthermore, having examined the materials presented to it, the Court noted that in some cases there were some delays not entirely imputable to the authorities, for example in Case of *Maneikis* the failure of some of the co-accused or their lawyers, as well as the lawyer of the applicant, to attend court hearings. Neither can the Court overlook the fact that the proceedings had been prolonged by nearly one year due to the applicants' wish to be fully exculpated of criminal charges (Cases of *Stasevičius* and *Zabulėnas*). However, the Court also noted some omissions in handling the case by the domestic authorities. In particular, in the cases of *Stasevičius* and *Zabulėnas* their cases were remitted for retrial by the cassation court, then returned for additional investigation by the trial court twice and subsequently discontinued because the statutory time-limit had lapsed. In the case of *Kravtas* the case had to be remitted for further investigation by the Supreme Court, thereby prolonging the proceedings by two years. In the case of *Maneikis* it took the District Court six years to decide the case on first instance. Having regard to all these elements, the Court considered that in the instant cases the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

It should be mentioned that all applicants also were complaining of the violations of other rights guaranteed in the Convention (for instance, right to liberty and security (Article 5), right to an effective remedy (Article 13), etc.), but all those complaints were dismissed for failure to satisfy all admissibility criteria provided in Article 35 of the Convention.

2.2. Length of Tax Dispute: *Rikoma Ltd. v. Lithuania*¹⁵

The applicant Rikoma Ltd., a company registered in Lithuania lodged the application with the Court complaining that the length of the tax litigation proceedings had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1. The present case concerned tax litigation in which the applicant company was found liable to pay tax arrears and fines. It should be mentioned that the litigation proceedings started in 1997 after the investigation of the applicant’s declaration and payment of taxes by Vilnius City tax inspectorate and ended on 4 October 2005, when the Supreme Administrative Court adopted its decision. Thus, for the purposes of Article 6 § 1, the period to be taken into consideration lasted nearly eight years for three levels of jurisdiction.

Firstly, the Court had to decide the question of admissibility. The Government argued that the application is inadmissible, because the proceedings at issue concerned tax litigation and Article 6 § 1 was not applicable to the present case. Alternatively, they submitted that the applicant company had, at least in theory, domestic remedies as regards the complaint about the length of the tax dispute, but had failed to exhaust them. Lastly, the Government contended that the length of the proceedings was reasonable.

The Court dismissed all objections of the Government and declared application admissible. The Court has consistently held that, generally, tax disputes fall outside the scope of “civil rights and obligations” under Article 6 of the Convention, despite the pecuniary effects which they necessarily produce for the taxpayer (see *Ferrazzini v. Italy* [GC], no. 44759/98, § 29, ECHR 2001-VII). However, having considered the circumstances of the present case, the Court found that the general character of the legal provisions imposing fines for persistent tax law violations, the purpose of the penalties, which was both deterrent and punitive, as well as their severity, suffice to show that, for the purposes of Article 6 of the Convention, the applicant company was charged with a criminal offence (see, most recently, *Impar Ltd v. Lithuania*, no. 13102/04, § 22, 5 January 2010). It follows, that the Government’s plea that the complaint is incompatible *ratione materiae* must be dismissed. As to the Government’s submission that the applicant company did not exhaust the available domestic remedies to obtain redress for the length of proceedings, the Court recalled its case law to the effect that at the time when the present application was lodged with the Court, no such effective domestic remedies were available in Lithuania.

In the light of its case-law on the subject, the Court considered that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement. There has accordingly been a breach of Article 6 § 1.

15 *Rikoma Ltd. v. Lithuania*, no. 9668/06, ECHR 18 January 2011.

2.3. “Agent provocateur”: *Lalas v. Lithuania*¹⁶

The applicant lodged the application with the Court complaining that the State had violated his right to a fair trial laid down in Article 6 § 1. Lalas complained that he had been subjected to entrapment and thus had been unfairly convicted of drug-dealing. He further complained about the non-disclosure at his trial of certain evidence relating to the authorisation and use of the Criminal Conduct Simulation Model.

On 19 February 2003 the Kaišiadorys District Court convicted the applicant, together with his accomplice M. (Malininas¹⁷), of attempted drug dealing in large quantities. The offence had been disclosed using a “criminal conduct simulation model” (“the model”), which had been authorised against M. by the Prosecutor General. The court found that in June 2002 V., a policeman acting as an undercover agent under the model, had approached M. and, during their conversation on various topics, asked where he could get psychotropic drugs. M. had said that he could procure and sell samples to the policeman straight away and more thereafter if the samples were good. On an unknown date, M. had contacted the applicant with a request to obtain the drugs (0,5 kg), as V. liked the samples. The applicant had agreed to procure the narcotics. On 25 June the applicant and M. had provided V. with 250 grams of amphetamines. The applicant and his accomplice had been arrested immediately.

The documents relating to the use of the model were classified as secret and were not disclosed to the defence because they would have disclosed the identity of the police officers involved and the operational methods of the drug squad. The Government contended that the applicant was not, however, denied access to information about the execution of the model.

The European Court of Human Rights declared the application admissible and examined the merits of the case. The Court recalled its recent *Ramanauskas*¹⁸ judgment in which it elaborated the concept of entrapment in breach of Article 6 § 1 of the Convention, as distinguished from the use of legitimate undercover techniques in criminal investigations. In respect of the former, there must be adequate safeguards against abuse, as the public interest cannot justify the use of evidence obtained as a result of police incitement (*Teixeira de Castro v. Portugal*, 9 June 1998, §§ 34-36, *Reports of Judgments and Decisions* 1998-IV).

The Court agreed with the Government’s position that the Criminal Conduct Simulation Model had been authorised only in respect of M. Nevertheless, during the execution of the model, the police officers uncovered the persons committing crimes, including the applicant. Even if the undercover agent V. had no direct contacts with the applicant, it was foreseeable for the police that in the execution of the model M. was likely to contact other people to participate in the crime because of the associational nature of drug-related crimes. Moreover, the applicant and M. were considered by the national courts as accomplices in the same crime, in which they acted with the same goal

16 *Lalas v. Lithuania*, no. 13109/04, ECHR 1 March 2011.

17 *Malininas v. Lithuania*, no. 10071/04, ECHR 1 July 2008.

18 *Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 49-74, 5 February 2008.

and for which both were convicted in the same criminal proceedings using the evidence obtained in execution of the model. Significant sum of money offered by V. to the applicant's accomplice M. then represented an inducement to produce narcotics also in respect of the applicant, as the subsequent activities of the applicant and his accomplice M. were in part determined by the conduct of the police officer. In the Court's view, these elements extended the role of the police beyond that of undercover agents to that of "agents provocateurs". They did not merely "join" an on-going offence; in the circumstances of the present case, they instigated it also in respect of the applicant (see *Malininas*, § 37). Furthermore, the Court noted that the domestic courts when convicting the applicant and his accomplice M. did not make any distinction as regards the fact that the model was authorised only in respect of M.

The Court noted that there was no evidence that either the applicant or his co-defendant had committed any drug offences beforehand. Moreover, the officers had no data about the applicant's involvement in drug dealing or about his prior knowledge of M.'s illegal activity before the moment the police officers initiated their operation. In particular, it appears that the criminal conduct simulation model available to the trial court was not fully disclosed to the applicant, particularly regarding suspicions about the co-defendants' previous conduct. This relevant evidence was thus not put openly before the trial court or tested in an adversarial manner. It follows that the applicant's plea of incitement was not adequately addressed by the domestic courts.

In the light of the foregoing considerations, the Court concluded that the aggregate of these elements undermined the fairness of the applicant's trial. Consequently, there has been a violation of Article 6 § 1 of the Convention¹⁹.

The Court was of the view that, where an individual, as in the instant case, has been convicted by a court in proceedings which did not meet the Convention requirement of fairness, a retrial or a reopening of the case, if requested, represents in principle an appropriate way of redressing the violation.

2.4. Procedural Rights: *Jelcovas v. Lithuania*²⁰

The applicant lodged the application against the Republic of Lithuania invoking violations of different aspects of the right to a fair trial (Article 6 of the Convention) during his criminal proceedings.

On 26 April 2001 the applicant was arrested on suspicion of robbery and on 29 July 2002 was detained again on suspicion of murder. The trial court convicted the applicant

19 It should be mentioned that the Court by five votes to two held that there had been a violation of Article 6 § 1 of the Convention. Judges Cabral Barreto and David Thór Björgvinsson provided their dissenting opinions and disagreed with the majority that there had been a violation of Article 6 § 1. Judge Björgvinsson noted that the applicant was clearly predisposed to commit a drug offence before the Model was implemented against Mr Malininas since he was ready and able to fulfil Mr Malininas requests for psychotropic drugs worth of 3000 US dollars at relatively short notice. It is hardly conceivable that someone, to whom the world of drug trade was unknown before, would be able push through a deal of this magnitude so quickly.

20 *Jelcovas v. Lithuania*, no. 16913/04, ECHR 19 July 2011.

of the robbery and sentenced him to three years of deprivation of liberty. The applicant lodged an appeal and cassation appeal, but the Supreme Court rejected the applicant's appeal on points of law. The prosecutor took part in the hearing and requested that the applicant's appeal be rejected, which was granted by the court. The applicant did not take part in the hearing, nor was he represented by a lawyer.

In another criminal proceeding the trial court convicted the applicant of murder, sentencing him to eight years' imprisonment. The applicant took part in the hearings before the trial court and was also represented by officially appointed defence counsel. The prosecutor was also present. The Court of Appeal upheld the judgment, the applicant being present. The applicant decided to defend his interests himself and refused to be represented by the officially appointed lawyer. The applicant himself lodged two appeals on points of law, complaining that the courts had failed to examine all the relevant evidence and call certain witnesses, that the courts had been biased, and that their decisions had been arbitrary. The applicant refused the assistance of a lawyer at the cassation court, however, he explicitly requested to be present at the hearing. The Supreme Court dismissed the applicant's appeal in his absence. The prosecutor was present at the hearing. Having heard the prosecutor, the Supreme Court found that all the relevant evidence had been carefully assessed by the courts, and that their decisions had been duly substantiated. No violation of the applicant's procedural rights was detected.

The applicant complained that he was not taken to the hearing when the Supreme Court examined his appeals on points of law in both sets of criminal proceedings against him, despite the fact that the prosecutor was present. He invoked the right to equality of arms, inherent in the Article 6 § 1 of the Convention.

Firstly, the European Court of Human Rights had to decide on the admissibility of the application. The Court considered that the applicant had himself waived his right to take part in the examination of his robbery case at the cassation court. Therefore this part of the complaint was dismissed as manifestly ill-founded. But the part concerning the hearing on appeal in murder case was declared admissible and the merits of the case were examined.

The Court has previously held that although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing (see *Sejdovic v. Italy* [GC], no. 56581/00, § 81, ECHR 2006-II). The Court also reiterated that the principle of "equality of arms" is included in the notion of fair trial mentioned in Article 6 § 1 of the Convention (see *Neumeister v. Austria*, 27 June 1968, § 22, Series A no. 8).

Although refusing to be represented by a lawyer, the applicant clearly requested in writing to attend the hearing on appeal in murder case. In the instant case it must be recalled that the applicant had been convicted of murder and sentenced to eight years' imprisonment. Taking into account the gravity of what was at stake for the applicant, the Court considered that respect for the right to a fair trial, required that the applicant be taken to the hearing at the Supreme Court, especially when the applicant had expressly requested to be present (see, in this connection, *Sejdovic*, §§ 83 *in fine* and 86). Court

further noted that the prosecutor took part in the hearing, which enabled him to raise arguments as to the merits of the applicant's cassation appeal.

In the light of the foregoing considerations, the Court concluded that there was an infringement of the applicant's right to equality of arms and adversarial proceedings. Accordingly, there has been a violation of the right to a fair hearing enshrined in Article 6 § 1 of the Convention.

The applicant further complained that the legal assistance he had received within the framework of criminal proceedings for robbery was ineffective. He noted in particular that he was not provided with legal aid to prepare the appeal on points of law and alleged a breach of Article 6 § 1 read in conjunction with Article 6 § 3 (c) of the Convention.

The Court reiterated that while Article 6 § 3 (c) confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance ...", it does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Quaranta v. Switzerland*, 24 May 1991, § 30, Series A no. 205). In that connection it must be borne in mind that the Convention is intended to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that assigning counsel does not in itself ensure the effectiveness of the assistance he or she may afford an accused (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37, and *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275).

The Court also observed that a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal-aid scheme or privately financed. The relevant national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168).

The Court noted that in instant case it was thus clear that for the domestic courts the case was difficult enough to require the assistance of a professional lawyer. Keeping in mind the complexity of the issues raised before both appeal courts (the applicant's inability to question two witnesses against him, his allegation that he had been questioned without a lawyer at the pre-trial investigation stage, to name a few), the Court concluded that the assistance of a lawyer was essential for the applicant in the appeal and the appeal on points of law proceedings. Assessing further, the Court noted that in the appeal on points of law, which the applicant, being a lay person with no legal training, had himself drafted, he explicitly informed the Supreme Court of not having been provided with legal assistance for preparation thereof.

It should be reminded that the applicant refused a lawyer's presence at the hearing before the Supreme Court, but it is natural that the applicant perceived as a mere formality participation at the hearing of a lawyer who had not helped him with drafting the appeal

on points of law. Taking into account that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the circumstances of the case required that the applicant would be provided with proper and genuine legal backing.

Given all these foregoing considerations, the Court found that the applicant had put the competent authorities on notice of ineffective legal representation but the arrangements made by them were insufficient and did not secure effective legal assistance to the applicant during the appeal on points of law proceedings. The Court concluded that there has been a violation of Article 6 § 1 of the Convention taken in conjunction with Article 6 § 3 (c) thereof.

It could be mentioned that the applicant as well argued a breach of prohibition of torture stating that the conditions of his detention and the medical treatment he had received while detained were not adequate. But the Court rejected this part of the application relying on the rule of exhaustion of domestic remedies.

3. Right to Respect for private and Family Life (Article 8):

*Borisov v. Lithuania*²¹

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

On 1 November 1991, the applicant made a pledge to the Republic of Lithuania and was subsequently granted Lithuanian citizenship. On 18 June 2002 the President of the Russian Federation granted the applicant Russian citizenship and he had lost his Lithuanian citizenship, since he had acquired the citizenship of another State. In June 2002, the applicant participated in the 2002 Lithuanian Presidential election campaign by providing financial and other support to one of the candidates, Rolandas Paksas, who later was elected President of the Republic of Lithuania. On 24 March 2003, the applicant asked R.Paksas to grant him Lithuanian citizenship by way of exception. On 11 April 2003 R.Paksas issued Decree No. 40 “On Granting Citizenship of the Republic of Lithuania by Way of Exception”, whereby he granted Lithuanian citizenship to the applicant by way of exception, that is, for the applicant’s “special merits” to the Lithuanian State and without applying the general conditions of naturalisation. On 30 December 2003 the Constitutional Court found that the President’s decree was in breach of the Law on Citizenship and the Constitution, effectively annulling it and the applicant lost his Lithuanian citizenship.

21 *Borisov v. Lithuania*, no. 9958/04, ECHR 14 June 2011.

On 1 November 2003 the applicant was accused of having threatened the State President. It was established that in March 2003, and from January to March 2004, the applicant had demanded that the President appoint him as an advisor, grant him Lithuanian citizenship and grant other favours, failing which the applicant threatened to disclose certain information which could damage the President's reputation. The applicant lodged the appeal and cassation appeal, but the Supreme Court reinstated the judgment of first instance court.

Following the withdrawal of the applicant's Lithuanian citizenship, on 2 January 2004 he applied for a permanent residence permit. On 9 January 2004 the Migration Department of the Ministry of the Interior refused the applicant's request and decided to deport him from Lithuania to the Russian Federation, barring his access to Lithuanian territory for a year. The Migration Department's decision was based on the Law on the Legal Status of Aliens and stipulated that the applicant was a threat to national security. The applicant appealed and his case was examined by Vilnius Regional administrative Court and the Supreme Administrative Court. The case several times was returned for a fresh examination and judicial proceedings ended only in 2010. On 13 August 2010 the Migration Department issued the applicant with a permanent residence permit.

The applicant argued that the decision to deport him from Lithuania, linked to the coercive deprivation of Lithuanian citizenship, was in breach of his right to respect for his family life, guaranteed by Article 8 of the Convention.

The Government submitted, among other arguments, that during the whole period at issue the applicant was afforded the opportunity to lead his normal and family life. Most importantly, the administrative proceedings in connection with the decision to expel the applicant from Lithuania had come to an end. The applicant was issued with a permanent residence permit.

Although, the Court found the applicant's complaint about a violation of his rights under Article 8 of the Convention admissible. However, in the light of the decisions granting him a permanent residence permit, the Court considered that there was no longer any justification for examining the merits of the case.

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

With reference to the first question, the Court observed that the authorities' request for the applicant's deportation has been dismissed by a final court decision and that, as

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

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

The Court noted that pending the administrative litigation the applicant was effectively able to remain in Lithuania on the basis of temporary residence permits. Consequently, at no stage was the applicant actually deported or otherwise restricted in the enjoyment of his private and family life in Lithuania. This reduces considerably the extent of the redress which needs to be afforded in the present case. Lastly, the Court noted the Supreme Administrative Court’s suggestion to the effect that the applicant could address the domestic courts with a claim for damages, should he consider that the administrative proceedings had lasted too long.

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

Having regard to all the above considerations, the Court concluded that both conditions for the application of Article 37 § 1 (b) of the Convention were met and the matter giving rise to this complaint could therefore now be considered to be “resolved” within the meaning of Article 37 § 1 (b). Accordingly, the Court decided to strike the application out of the list of cases.

4. Right to Free Elections (Article 3 of Protocol No. 1):

*Paksas v. Lithuania*²²

Former president of the Republic of Lithuania Rolandas Paksas lodged the application with the Court complaining of his lifelong disqualification from elected office, arguing that permanently denying him the opportunity to stand for election although he was a politician enjoying considerable popular support was contrary to the very essence of free elections and was a wholly disproportionate measure. In the supplement of 30 November 2006 to his application he further submitted that the amendment of electoral

22 *Paksas v. Lithuania* [GC], no. 34932/04, ECHR 6 January 2011.

law passed following his removal from office had been arbitrary and designed to bar him from holding any public office in future. He relied on Article 3 of Protocol No. 1²³.

The factual circumstances of the case could be summarized as follows. On 5 January 2003 the applicant was elected President of the Republic of Lithuania. On 11 April 2003 the applicant issued Decree no. 40, countersigned by the Minister of the Interior, granting Lithuanian citizenship “by way of exception” to a Russian businessman, J.B. (see the case of *Borisov v. Lithuania*).

On 6 November 2003 the Seimas (the Lithuanian Parliament) requested the Constitutional Court to determine whether Presidential Decree no. 40 was in compliance with the Constitution and the Citizenship Act. On 30 December 2003 the Constitutional Court gave its ruling, finding that Decree no. 40 was not in compliance with the Constitution, the constitutional principle of the rule of law and the Citizenship Act.

On 18 December 2003, the impeachment proceedings against the applicant were initiated. The special investigation commission concluded that some of the charges levelled against the applicant were founded and serious. Accordingly, it recommended that the Seimas institute impeachment proceedings. The Seimas requested the Constitutional Court to determine whether the specific acts of the applicant cited by the commission had breached the Constitution. On 31 March 2004 the Constitutional Court concluded that the applicant had committed gross violations of the Constitution and a breach of his constitutional oath. On 6 April 2004 the Seimas decided to remove the applicant from the office of President on account of the gross violations of the Constitution found by the Constitutional Court.

The applicant wished to stand as a candidate in the presidential election called for 13 June 2004. However, on 4 May 2004 the Seimas amended the Presidential Elections Act by inserting the following provision: “A person who has been removed from parliamentary or other office by the Seimas in impeachment proceedings may not be elected President of the Republic if less than five years have elapsed since his removal from office.” Following this amendment, the Central Electoral Committee refused to register the applicant as a candidate in the forthcoming election.

On an unspecified date, a number of members of the Seimas requested the Constitutional Court to review the constitutionality of the amendment to the Presidential Elections Act, arguing that barring a person who had been removed from office from running for election as President was in itself in breach of the Constitution. The Constitutional Court held on 25 May 2004 that disqualifying a person who had been removed from office from standing in presidential elections was compatible with the Constitution, but that subjecting such a restriction to a time-limit was unconstitutional. “Where a person has been removed from the office of President ... for a gross violation of the Constitution or a breach of the oath ... he may never again be elected President of the Republic [or] a member of the Seimas; [he] may never hold office as ... a member of the Government, [or] the National Audit Officer, that is, [he] may not hold an office

23 *Article 3 of Protocol No. 1*: The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

provided for in the Constitution for which it is necessary to take an oath in accordance with the Constitution ...” On 15 July 2004 the Seimas passed an amendment to the Seimas Elections Act, to the effect that any official who had been removed from office following impeachment proceedings was disqualified from being a member of parliament.

Firstly, the European Court of Human Rights had to decide the question on admissibility of the application. The Court reiterated that Article 3 of Protocol No. 1 applies only to the election of the “legislature”. Thus it is not in doubt that Article 3 of Protocol No. 1 is applicable to the election of members of the Seimas and the reverse is true, however, as regards the election of the President of Lithuania. In so far as the applicant’s complaint concerns his removal from office or his disqualification from standing for election as President of Lithuania, this part of the application was rejected.

The Government raised the issues of non-exhaustion of the domestic remedies, since the applicant had not expressed the wish to be a candidate in the parliamentary elections which had been held in 2004 and 2008. Had his candidacy been refused, it would have been open to him to apply to the administrative courts, which could then have requested the Constitutional Court to review the constitutionality of the Seimas Elections Act as amended on 15 July 2004. However the Court observed that in its ruling of 25 May 2004 the Constitutional Court held that a person who had been removed from the office of President for a gross violation of the Constitution or a breach of the oath could never again be elected President of the Republic or a member of the Seimas or hold an office for which it was necessary to take an oath in accordance with the Constitution. It follows from Article 107 of the Lithuanian Constitution that decisions of the Constitutional Court have statutory force and are final. The Court decided that the Government had not shown that a domestic remedy was available to the applicant.

The Government submitted that the applicant had raised his complaint under Article 3 of Protocol No. 1 for the first time in a supplement to his application dated 30 September 2005, more than six months after the final domestic decision (the Constitutional Court’s ruling of 25 May 2004). They accordingly contended that this part of the application was out of time and, as such, inadmissible. The Court agreed that this complaint was lodged more than six months after the Constitutional Court’s ruling. However, the Court noted in this connection that, in so far as the right under Article 3 of Protocol No. 1 to stand in parliamentary elections was in issue here, the applicant’s complaint concerned general provisions which did not give rise in his case to an individual measure of implementation subject to an appeal that could have led to a “final decision” marking the start of the six-month period provided for in Article 35 § 1 of the Convention. Consequently, the Court decided that the part of application as it concerns the inability of the applicant to stand for election to the Seimas, must therefore be declared admissible²⁴.

Secondly, the Court had to decide on the merits of the case. First of all, the Court referred to the general principles concerning Article 3 of Protocol No. 1, as set out in the case-law (see in particular, *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987,

24 It should be mentioned that judge Costa joined by judges Tsotsoria and Baka provided a partly dissenting opinion in which criticized the decision of majority to declare this part of application admissible. According to judge Costa, the complaint was out of time and had to be rejected.

§§ 46-54, Series A no. 113; *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, §§ 56-62, ECHR 2005-IX; *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 102-15, ECHR 2006-IV; *Ādamsons v. Latvia* (no. 3669/03, § 111, ECHR 2008-...); and *Tănase v. Moldova* [GC], no. 7/08, §§ 154-162, ECHR 2010-...)).

The Court noted that Article 3 of Protocol No. 1, which enshrines a fundamental principle of an effective political democracy and is accordingly of prime importance in the Convention system, implies the subjective rights to vote and to stand for election. Although those rights are important, they are not absolute. There is room for “implied limitations”, and Contracting States must be given a margin of appreciation in this sphere (see *Mathieu-Mohin and Clerfayt*, § 52; *Hirst*, § 60; and *Ždanoka*, § 103). The margin in this area is wide, seeing that there are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe, which it is for each Contracting State to mould into its own democratic vision (see *Hirst*, § 61, and *Ždanoka*, *loc. cit.*).

Thus, for the purposes of applying Article 3 of Protocol No. 1, any electoral legislation or electoral system must be assessed in the light of the political evolution of the country concerned; features that would be unacceptable in the context of one system may accordingly be justified in the context of another, at least so long as the chosen system provides for conditions which will ensure the “free expression of the opinion of the people in the choice of the legislature” (see *Mathieu-Mohin and Clerfayt*, § 54; *Ždanoka*, §§ 106 and 115; and *Tănase*, § 157). In particular, the Contracting States enjoy considerable latitude in establishing criteria governing eligibility to stand for election, and in general, they may impose stricter requirements in that context than in the context of eligibility to vote (see *Ždanoka*, § 115; *Ādamsons*, § 111; and *Tănase*, § 156).

However, while the margin of appreciation is wide, it is not all-embracing. It is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with. It has to satisfy itself that the restrictions imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness; that they pursue a legitimate aim; and that the means employed are not disproportionate. In particular, such restrictions must not thwart “the free expression of the opinion of the people in the choice of the legislature” (see *Mathieu-Mohin and Clerfayt*, § 52; *Hirst*, § 62; *Ždanoka*, § 104; and *Tănase*, §§ 157 and 161).

Court examined whether in instant case had been interference with the applicant’s rights under that Article, adding that such interference would constitute a violation unless it met the requirements of lawfulness, pursued a legitimate aim and was proportionate; it then sought to ascertain whether those conditions were satisfied. The Court noted that the applicant, as a former President of Lithuania removed from office following impeachment proceedings, belongs to a category of persons directly affected by the rule set forth in the Constitutional Court’s ruling of 25 May 2004 and the Act of 15 July 2004. Since he has thereby been deprived of any possibility of running as a parliamentary candidate, he is entitled to claim that there has been interference with the exercise of his right to stand for election.

As to whether the interference was lawful, the Court observed that the principle that a person removed from office as President following impeachment proceedings is no longer entitled to stand for election to the Seimas is clear from the Constitutional Court's ruling of 25 May 2004 and the Act of 15 July 2004. As to the aim pursued, given that Article 3 of Protocol No. 1 does not contain a list of "legitimate aims" capable of justifying restrictions on the exercise of the rights it guarantees and does not refer to those enumerated in Articles 8 to 11 of the Convention, the Contracting States are free to rely on an aim not mentioned in those Articles, provided that it is compatible with the principle of the rule of law and the general objectives of the Convention (see, for example, *Ždanoka*, § 115). The Court accepted that this was the position in the present case. As the Government submitted, the measure is thus intended to preserve the democratic order, which constitutes a legitimate aim for the purposes of Article 3 of Protocol No. 1 (see, for example, *Ždanoka*, § 118).

However, that is not sufficient to persuade the Court that the applicant's permanent and irreversible disqualification from standing for election as a result of a general provision constitutes a proportionate response to the requirements of preserving the democratic order. It reaffirms in this connection that the "free expression of the opinion of the people in the choice of the legislature" must be ensured in all cases. Thus, in assessing the proportionality of such a general measure restricting the exercise of the rights guaranteed by Article 3 of Protocol No. 1, decisive weight should be attached to the existence of a time-limit and the possibility of reviewing the measure in question. In the present case, not only is the restriction in issue not subject to any time-limit, but the rule on which it is based is set in constitutional stone. The applicant's disqualification from standing from election accordingly carries a connotation of immutability that is hard to reconcile with Article 3 of Protocol No. 1.

Having regard to all the above factors, especially the permanent and irreversible nature of the applicant's disqualification from holding parliamentary office, the Court found this restriction disproportionate and thus concluded that there had been a violation of Article 3 of Protocol No. 1.

The Court pointed out that its finding of a violation of Article 3 of Protocol No. 1 does not relate to the manner in which the impeachment proceedings against the applicant were conducted or to his removal from office as President, but solely to his permanent and irreversible disqualification from standing for election to Parliament. The Court considered having regard to the particular circumstances of the case, that non-pecuniary damage is sufficiently compensated by its finding of a violation of Article 3 of Protocol No. 1²⁵.

25 It should be mentioned that on 22 March 2012 the Seimas of the Republic of Lithuania adopted the amendment of the Seimas Elections Act, in which laid down 4 year time-limit restriction for the persons who had been removed from the office following the impeachment proceedings. Law on Amendment of the Article 2 of the Seimas Elections Act. *Official Gazette*. 2012, No. 42-2042. More about the execution of Paksas judgment in Lithuania, see Sinkevičius, V. *Byla Paksas prieš Lietuvą arba mėginimas įveikti Konstitucinio Teismo nutarimą* [The Case *Paksas V. Lithuania* or an Attempt to Overcome a Ruling of the Constitutional Court]. *Socialinių mokslų studijos*. 2012, 4(1): 193-213.

Conclusions

The judgments adopted by the European Court of Human Rights in the cases against the Republic of Lithuania in 2011, could be summarized as follows:

1. In 9 judgments out of 10 the Court found at least one violation of rights and freedoms guaranteed by the European Convention on Human Rights. The right to a fair trial remains dominant in the applications against Lithuania, since in 7 out of 10 delivered judgments the Court declared violations of this right.

2. In the case of *Iljina and Saruliene* the Court found the State responsible for degrading treatment under Article 3 of the Convention on account of the physical and mental violence, considered as a whole, committed against the applicants as well as the lack of an effective investigation into the incident, and that therefore there has been a violation of this provision.

3. In the cases of *Stasevičius; Zabulėnas; Maneikis; Kravtas and Rikoma Ltd.* the Court concluded that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement laid down in the Article 6 § 1.

4. In the case of *Lalas* the Court noted that the applicant was provoked to commit an offence and fairness of the applicant’s trial was breached (violation of Article 6 § 1).

5. In the case of *Jelcovas* the Court concluded that there was an infringement of the applicant’s right to equality of arms and adversarial proceedings guaranteed by the Article 6 § 1 of the Convention. The Court as well found violation of Article 6 § 1 in conjunction with Article 6 § 3 on account of quality of legal representation.

6. In the case of *Borisov* the Court decided to strike the application out of the list of cases because the matter giving rise to the complaint was considered to be “resolved” by national institutions (Borisov was issued with a permanent residence permit).

7. In the case of *Paksas* the Court found applicant’s disqualification from holding parliamentary office disproportionate restriction and thus concluded that there had been a violation of Article 3 of Protocol No. 1. The execution of the judgment in this case raised important legal discussions regarding the amendments of national legislation. The amendment of the Seimas elections Act has been recently adopted, but proposals to amend the Constitution of the Republic of Lithuania are still under considerations.

References

Alzuhari v. Lithuania (dec.), no. 16688/06, ECHR 18 October 2011.
Analysis of statistics 2011. European Court of Human Rights, 2012 [interactive]. [accessed on 01-03-2012]. <http://www.echr.coe.int/NR/rdonlyres/11CE0BB3-9386-48DC-B012-AB2C046FEC7C/0/STATS_EN_2011.PDF>.

Beržinis v. Lithuania (dec.), nos. 45073/07, 20508/08, 20510/08, 20513/08, ECHR 13 December 2011.

Borisov v. Lithuania, no. 9958/04, ECHR 14 June 2011.

Česnulevičius v. Lithuania (dec.), no. 419922/06, ECHR 10 May 2011.

- Iljina and Sarulienė v. Lithuania*, no. 32293/05, ECHR 15 March 2011.
- Jakimčikas v. Lithuania* (dec.), no. 15518/08, ECHR 13 December 2011.
- Jankauskas v. Lithuania* (dec.), no. 21978/07, ECHR 6 December 2011.
- Jelcovas v. Lithuania*, no. 16913/04, ECHR 19 July 2011.
- Kravtas v. Lithuania*, no. 12717/06, ECHR 18 January 2011.
- Lalas v. Lithuania*, no. 13109/04, ECHR 1 March 2011.
- Law on Amendment of the Article 2 of the Seimas Elections Act. *Official Gazette*. 2012, No. 42-2042.
- Loveika v. Lithuania* (dec.), no. 31244/06, ECHR 18 October 2011.
- Malininas v. Lithuania*, no. 10071/04, ECHR 1 July 2008.
- Maneikis v. Lithuania*, no. 21987/07, ECHR 18 January 2011.
- Paksas v. Lithuania* [GC], no. 34932/04, ECHR 6 January 2011.
- Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 49-74, 5 February 2008.
- Rikoma Ltd. v. Lithuania*, no. 9668/06, ECHR 18 January 2011.
- Sanian v. Lithuania* (dec.), no. 23562/05, ECHR 18 October 2011.
- Sinkevičius, V. *Byla Paksas prieš Lietuvą arba mėginimas įveikti Konstitucinio Teismo nutarimą* [The Case *Paksas V. Lithuania* or an Attempt to Overcome a Ruling of the Constitutional Court]. *Socialinių mokslų studijos*. 2012, 4(1): 193–213.
- Stasevičius v. Lithuania*, no. 43222/04, ECHR 18 January 2011.
- Violations by Article and by State, 2011. European Court of Human Rights [interactive]. [accessed on 01-03-2012]. <http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_EN_2011.pdf>.
- Zabulėnas v. Lithuania*, no. 44438/04, ECHR 18 January 2011.

EUROPOS ŽMOGAUS TEISIŲ TEISMO 2011 M. PRIIMTŲ SPRENDIMŲ BYLOSE PRIEŠ LIETUVOS RESPUBLIKĄ APŽVALGA

Justinas Žilinskas, Dovilė Gailiūtė

Mykolo Romerio universitetas, Lietuva

Santrauka. *Apibendrinant Europos Žmogaus Teisių Teismo (toliau – EŽTT arba Teismas) 2011 m. statistiką, galima daryti išvadą, kad pateikiamų individualių peticijų skaičius nuolat didėja, o 2011 m. pabaigoje nagrinėjimo Teisme jau laukė daugiau nei 151 tūkst. individualių peticijų.*

Palyginti su 2010 m. statistika, peticijų prieš Lietuvą skaičius taip pat išaugo. Per 2011 m. Teismui buvo pateiktos 305 naujos peticijos (atitinkamai 2010 m. – 242), o nagrinėjimo metų pabaigoje laukė 586 peticijos (atitinkamai 2010 m. – 443). 2011 m. 152 peticijos prieš Lietuvą buvo pripažintos nepriimtynomis arba išbrauktos iš bylų sąrašo (142 peticijos buvo nagrinėjamos vieno teisėjo Teisme, ir po 5 peticijas išnagrinėjo Komitetas bei Kolegija). Pažymėtina, kad 2011 m. Teismas pirmą kartą išbraukė peticiją prieš Lietuvą iš bylų sąrašo, atsižvelgęs į Vyriausybės pateiktą vienašalę deklaraciją.

2011 m. Teismas iš esmės išnagrinėjo ir sprendimus priėmė 10 bylų prieš Lietuvą, iš kurių 9 bylose Lietuva buvo pripažinta pažeidusi bent vieną Europos Žmogaus Teisių Konven-

cijoje (toliau – EŽTK arba Konvencija) įtvirtintą teisę ar laisvę. Tendencijos išlieka tos pačios kaip ir ankstesniais metais ir didžioji dalis bylų prieš Lietuvą yra susijusi su Konvencijos 6 straipsnio (teisė į teisingą bylos nagrinėjimą) pažeidimais. Iš minėtų 10 sprendimų bylose prieš Lietuvą, net septyniuose Lietuva buvo pripažinta pažeidusi 6 Konvencijos straipsnį, o iš jų 5 bylos susijusios su pernelyg ilgu teisiniu procesu. Taip pat Teismas nagrinėjo bylą dėl nusikalstamus veiksmus imituojančio modelio naudojimo ir pripažino, kad pareiškėjas (Lalas) buvo išprovokuotas padaryti nusikaltimą, todėl Lietuva pažeidė Konvencijos 6 str. 1 d.

Vienas iš Lietuvai svarbesnių sprendimų buvo priimtas Pakso byloje, kurią nagrinėjo Teismo Didžioji Kolegija. Šioje byloje Lietuva buvo pripažinta pažeidusi Konvencijos Pirmojo protokolo 3 straipsnį (teisė į laisvus rinkimus) dėl Seimo rinkimų įstatyme įtvirtinto draudimo asmenims, kuriuos Seimas apkaltos proceso tvarka pašalino iš užimamų pareigų ar panaikino jo Seimo nario mandatą, būti renkamiems Seimo nariais. Įgyvendinant Teismo sprendimą jau buvo pakeistas Seimo rinkimų įstatymas bei svarstomi pasiūlymai dėl Konstitucijos keitimo. Deja, bet Lietuva buvo pripažinta pažeidusi ir Konvencijos 3 str., kuris įtvirtina kankinimo ir nežmoniško ar žeminančio orumą elgesio draudimą, byloje dėl policijos pareigūnų veiksmų. Tačiau Borisov prieš Lietuvą byloje Teismas nusprendė išbraukti peticiją ir jos nenagrinėti, kadangi Lietuva suteikdama Borisovui leidimą nuolat gyventi Lietuvoje, išsprendė pareiškėjo peticijoje keltą klausimą dėl Konvencijos 8 str. pažeidimo.

Reikšminiai žodžiai: Europos Žmogaus Teisių Konvencija, Europos Žmogaus Teisių Teismas, bylos prieš Lietuvą.

Justinas Žilinskas, Mykolo Romerio universiteto Teisės fakulteto Tarptautinės ir Europos Sąjungos teisės katedros profesorius. Mokslinių tyrimų kryptys: tarptautinė humanitarinė teisė, naujieji ginkluotieji konfliktai, Tarptautinis baudžiamasis teismas.

Justinas Žilinskas, Mykolas Romeris University, Faculty of Law, Department of International and European Union Law, Professor. Research interests: international humanitarian law, modern armed conflicts, International Criminal Court.

Dovilė Gailiūtė, Mykolo Romerio universiteto Teisės fakulteto Tarptautinės ir Europos Sąjungos teisės katedros doktorantė, lektorė. Mokslinių tyrimų kryptys: tarptautinė žmogaus teisių apsauga, socialinės teisės, teisė į tinkamą būstą.

Dovilė Gailiūtė, Mykolas Romeris University, Faculty of Law, Department of International and European Union Law, Doctoral Student, Lecturer. Research interests: international protection of human rights, social rights, right to adequate housing.