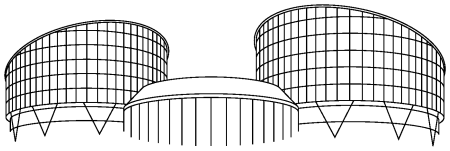

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF USPASKICH v. LITHUANIA

(Application no. 14737/08)

JUDGMENT

STRASBOURG

20 December 2016

FINAL

20/03/2017

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Uspaskich v. Lithuania,

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

Vincent A. De Gaetano, *President,*
Angelika Nußberger,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Iulia Motoc,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 6 December 2016,

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

PROCEDURE

1. The case originated in an application (no. 14737/08) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Viktor Uspaskich ("the applicant"), on 14 March 2008.

2. The applicant was represented by Mr A. Miškinis, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

3. The applicant alleged, in particular, that his house arrest had interfered with the free expression of the opinion of the people on the choice of legislature. He relied on Article 3 of Protocol No. 1 to the Convention.

4. On 2 February 2015 the complaint concerning the applicant's right to participate in elections to the Lithuanian Parliament (the Seimas) was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. Mr Egidijus Kūris, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28 § 3 of the Rules of Court). Accordingly, on 13 October 2016 the President of the Section selected Ms Angelika Nußberger as an *ad hoc* judge from the list of three persons designated by the Republic of Lithuania as eligible to serve as such a judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1959 in Urdoma, the Russian Federation. He lives in Kėdainiai, a town in Lithuania.

7. The applicant is a businessman. He used to be a politician. In 2003 he established and was chairman of the Labour Party (*Darbo partija*) in Lithuania. In the parliamentary elections of 2004, the Labour Party obtained more votes than any other political party. Between December 2004 and June 2005 the applicant was Minister of the Economy, but resigned from that post after the Chief Official Ethics Commission (*Vyriausioji tarnybinės etikos komisija*) found that he had breached the principle of not mixing private and public interests.

1. Pre-trial investigation in respect of the applicant, three other persons and the Labour Party

8. In May 2006 a criminal investigation was opened on suspicion of fraudulent accounting by the Labour Party. The authorities suspected that the applicant, acting in complicity with three other members of that party - the party treasurer and two high-level administrators – as well as one other person, had doctored the Labour Party's accounts. The Labour Party, as a legal entity, was also a suspect in the case.

Later that month the authorities searched the applicant's home in Kėdainiai town, as well as the Labour Party's headquarters.

9. In June 2006 the prosecutor attempted to call the applicant for questioning. However, the applicant could not be reached on his telephone, nor summoned. The applicant's wife explained to the prosecutor that the last time she had seen her husband was in May 2006, when he had left for the Russian Federation. The applicant's wife refused to give any other testimony related to her husband.

10. On 23 June 2006 the applicant sent the Lithuanian Attorney General a letter to the effect that he was aware of the ongoing pre-trial investigation regarding him and the Labour Party, and that some of his party colleagues had already been questioned. He claimed that he was staying in the Russian Federation, without disclosing his exact address. He asserted that the criminal case was "a dirty political game" (*teisinės institucijos dalyvauja nešvariame politiniame žaidime*) and had no basis, and expressed his intention to involve international organisations in his case. He also stated that he would return to Lithuania when his family circumstances permitted. In particular, his brother had recently died in Russia and his mother needed support.

11. On 28 June 2006 the applicant resigned from the post of Labour Party chairman.

12. On 17 July 2006 the Labour Party website made public the applicant's "Letter to the People of Lithuania" (*Laiškas Lietuvos žmonėms*), in which he stated that he would not hurry to return to Lithuania because he was expecting the [Lithuanian] authorities to start a search for him. He did not wish to be questioned in the Republic of Lithuania, and wanted international organisations to be involved in his proceedings.

13. On 23 August 2006 the prosecutor decided to declare the applicant a suspect in the criminal case. The prosecutor found that, as chairman of the Labour Party and also acting in an organised group with other members of that party, the applicant had sought to finance the party unlawfully and to avoid the financial supervision of the party and its political campaigns, by organising the party's fraudulent accounting from 2004 to 2006. As a result, it had been impossible to establish the structure of the party's assets and expenditure for those years. In particular, the Labour Party had omitted from its accounts some 8,000,000 Lithuanian litai (LTL – approximately 2,300,000 euros (EUR)) worth of income, and some LTL 7,300,000 (approximately EUR 2,100,000) worth of expenditure. The applicant had also provided inaccurate data to the Central Electoral Commission and the tax authorities. This was in breach of a number of Criminal Code provisions (see paragraph 71 below), as well as the Law on the Funding of Political Parties and Political Campaigns (see paragraph 70 below).

14. On 25 August 2006 the Vilnius City Second District Court sanctioned, *in absentia*, the applicant's arrest and remand in custody on the grounds that he had known about the criminal proceedings but was hiding in the Russian Federation and had failed to present himself to the prosecutors to take part in the criminal proceedings. It was reasonable to assume that the applicant would continue to hide from the Lithuanian authorities, thus obstructing the investigation. On the same day the prosecutor ordered a search for the applicant.

In September 2006 both decisions were made available to the applicant's lawyer.

15. On 26 August 2006 at the Labour Party congress, another person was elected as chairman of the Labour Party in the applicant's place.

16. On 15 September 2006 the authorities of the Russian Federation arrested the applicant in Moscow. On the same day he asked for political asylum in Russia and was immediately released. On the basis of information that reached them by Interpol, the Lithuanian prosecutors then asked their colleagues in the Russian Federation to arrest the applicant and to extradite him to Lithuania.

By a letter of 22 January 2007, the Deputy Attorney General of the Russian Federation refused the request, relying on Article 3 of the European Convention on Extradition, which states that extradition will not be granted

if the offence in respect of which it is requested is regarded by the requested State as a political offence or as an offence connected with a political offence.

17. Having taken into account the criminal charges in respect of the Labour Party, including evidence by independent auditors, on 14 November 2006 the Central Electoral Commission decided not to allocate it appropriations from the State budget.

2. The applicant's election to the Kėdainiai municipal council in 2007

18. In January 2007 the Central Electoral Commission confirmed the applicant as a Labour Party candidate in elections to the municipal council of the Kėdainiai district. Given that electoral candidates in municipal elections had immunity from prosecution, the prosecutor asked the Central Electoral Commission to permit the restriction of the applicant's freedom and his prosecution (see Article 49 § 1 of the Law on the Elections to the Seimas, cited in paragraph 67 below). At a hearing attended by the applicant's lawyer, the prosecutor and representatives of the media and the Labour Party, the Central Electoral Commission granted that request.

19. On 12 February 2007 the Supreme Administrative Court dismissed an appeal lodged by the applicant's lawyer, who asserted that the restriction of his client's liberty was in breach of Article 3 of Protocol No. 1 to the Convention because he would then be unable to meet potential voters and proclaim his electoral programme. The Lithuanian court had regard to the Court's case-law on the subject and emphasised that the right to stand for elections was not absolute (the Supreme Administrative Court referred to *Sukhovetskyy v. Ukraine*, no. 13716/02, §§ 50 and 51, ECHR 2006-VI). Moreover, according to the Venice Commission guidelines, fundamental rights and freedoms, including the freedom to move within a State, could be limited in order to protect the public interest (see paragraph 74 below). In the applicant's case, he had not been denied the very essence of his right to be elected. The State, for its part, had an obligation to prosecute criminal acts and to take measures to ensure that criminal proceedings were not unduly protracted. The applicant had been hiding from prosecution in Russia, which showed that he had deliberately breached Lithuanian law by avoiding arrest which had earlier been sanctioned by a court (see paragraph 14 above). The Supreme Administrative Court did not find erroneous the argument put forward by the Central Electoral Commission that "the applicant sought immunity status as a candidate in his own interests, which essentially had no connection with his electoral rights". One could not dismiss the likelihood that if immunity from prosecution was granted, the applicant could return to Lithuania, and would leave the country before his immunity expired [elected members of municipal councils do not have immunity from prosecution, see paragraph 69 below]. This would undermine society's trust in the State and in the authorities'

duty to investigate crimes and prosecute perpetrators to protect society from attempts to commit crime.

20. The Supreme Administrative Court also emphasised that the prosecutor's request to lift the applicant's immunity had no connection with his participation in the municipal elections; nor was it intended to prevent the applicant from being elected. In fact, the criminal proceedings had started long before the municipal elections, the date of which was not announced by the Seimas until July 2006. The applicant therefore had plenty of time to return to Lithuania from hiding in Russia and to testify in the criminal case, thus also being able to fully take part in the municipal elections.

21. Whilst *de facto* residing in the Russian Federation, the applicant took part in the municipal elections in Lithuania on 25 February 2007, and was successfully elected.

22. On 23 April 2007 the Central Electoral Commission granted a request submitted by the applicant to annul his powers as a member of the municipal council.

3. Parliamentary elections to the Dzūkija single-member constituency in 2007

23. In the spring of 2007, A.V., a member of the Homeland Union (*Tėvynės Sąjunga*) political party, who was elected to the Seimas for the term from 2004 to 2008 representing the Dzūkija constituency, became mayor of the Alytus district municipality and therefore resigned from the Seimas.

In April 2007 the Central Electoral Commission consequently announced new elections to the Seimas in that constituency.

24. In July 2007, the Labour Party decided to take part in the parliamentary elections in the Dzūkija constituency, which were to take place on 7 and, if necessary, on 21 October (second round of voting). The Labour Party confirmed the applicant as its candidate in that constituency.

25. On 4 September 2007, the Central Electoral Commission confirmed the applicant as a candidate in the Seimas elections.

26. On 5 September 2007, the Central Electoral Commission announced the list of ten candidates who were to stand in that single-member constituency. The applicant's name was among those listed, and the electoral campaign started on that day.

27. On the same day, a spokesperson for the State President stated that the President found it 'odd that a person who had asked for political asylum in Russia, decried the Lithuanian institutions and was being searched for by the Lithuanian law-enforcement authorities, could be registered as a candidate in the parliamentary elections'.

28. On the basis of a request by the prosecutor, on 6 September 2007 the Central Electoral Commission decided that the applicant could be arrested

or his liberty could be otherwise restricted during the electoral campaign, until he was elected and took the oath as a parliamentarian.

The applicant appealed through his lawyer. He relied, *inter alia*, on Article 3 of Protocol No. 1 to the Convention.

29. By a final decision of 13 September 2007, the Supreme Administrative Court dismissed the appeal. It noted that the immunities of candidates in municipal elections were analogous to those applied in the context of elections to the Seimas. The grounds for lifting the applicant's immunity had already been decided by the *res judicata* Supreme Administrative Court decision of 12 February 2007 (see paragraphs 19 and 20 above). No new factual circumstances had been brought to the court's attention to justify a different ruling.

30. The applicant, accompanied by a group of Labour Party Members of Parliament, returned to Vilnius from Moscow on 26 September 2007. On the same day he was arrested, signed the notice of the offences of which he was suspected, was questioned and remanded in custody.

31. At a hearing before the Vilnius City Second District Court of 27 September 2007, at which the applicant was present, the court decided to vary the remand measure to house arrest. The court noted that the earlier court order to arrest and detain the applicant had been adopted whilst he was being searched for (see paragraph 14 above). Now, that he had returned to Lithuania from Russia, and was not refusing to testify, a milder remand measure could be imposed. The court thus ordered the applicant to stay at his home in Kėdainiai town from 8 p.m. to 8 a.m., not to leave the Kėdainiai town area, not to communicate with the three other suspects in his criminal case, and not to attend public places (*nesilankyti viešosiose vietose*).

32. On 1 October 2007 the applicant requested the Vilnius Regional Court to release him from house arrest, claiming that such a remand measure interfered with his electoral rights, in particular, to meet with voters in the Dzūkija electoral district. The applicant relied on Article 3 of Protocol No. 1. He also mentioned that he wished to leave Kėdainiai town so that he could visit a medical establishment in another town.

For his part, the prosecutor lodged an appeal with the Vilnius Regional Court, urging it to impose pre-trial detention on the applicant.

33. During the first round of voting in the Dzūkija single-member constituency, which took place on 7 October 2007, the applicant and another candidate received, respectively, 20 and 30 per cent of the votes. They would thus compete in a second round of elections, which was scheduled for 21 October.

34. By a final ruling of 8 October, the Vilnius Regional Court upheld the lower court's decision to place the applicant under house arrest, with the exception that he was now allowed to visit public places from 8 a.m. to 8 p.m. The prohibition on his leaving Kėdainiai town remained effective. The court held that the applicant should be kept under house arrest in order

to protect interests important to society: he had earlier been hiding from the prosecutor, the sums not accounted for by the Labour Party amounted to millions of Lithuanian litai, and there was reason to believe that he could obstruct the investigation. The court also considered that house arrest would not interfere with the applicant's electoral rights or with his business or family interests.

35. On 9 October 2007, the Labour Party asked the Central Electoral Commission to intervene as an intermediary with a view to the prosecutors mitigating the remand measure, house arrest, so that the applicant could compete in the parliamentary electoral campaign on equal grounds.

On 11 October 2007 the Central Electoral Commission answered in the negative: should it express any opinion about the reasonableness of the applicant's remand measure, this could be interpreted as undue interference with the courts' competence and a breach of the principle of separation of powers.

36. On 10 October 2007, the applicant himself asked the prosecutors to modify the remand measure for the period of 10-21 October, and to allow him to leave Kėdainiai town so that he could go to the Dzūkija constituency, situated about 115 kilometres away, to meet the voters and compete with the other candidate on equal terms. The applicant stated that his meetings with the voters during the second round of elections would start on 12 October. He also added a two-page document describing the schedule of meetings between members of his party, including some renowned party members, and voters. From the documents in the Court's possession it transpires that those meetings had already taken place from 28 September to 7 October, that is, before the first voting round, in the Dzūkija constituency. The schedule indicated that the applicant would have taken part in those meetings had the prosecutors allowed him to meet the voters.

37. By a decision of 15 October 2007, the prosecutor rejected the applicant's request. He noted that the applicant had earlier made public statements that he could lead the electoral campaign even without physically being in Lithuania. For the prosecutor, the applicant could also take part in the electoral campaign by other means provided for by law, and without violating the conditions of his house arrest. The prosecutor stressed that house arrest had been imposed on the applicant by a court ruling of 27 September 2007 and had been upheld by a higher court on 8 October 2007. Accordingly, the applicant must have known in advance, and before making plans for meeting voters, about the limitations his house arrest entailed.

38. On 16 October 2007 the Labour Party asked the prosecutor to permit the applicant to leave Kėdainiai town for the Dzūkija constituency during the electoral campaign. The following day the prosecutor rejected that request, relying on the grounds set out by the earlier court rulings of 27 September and 8 October, and the prosecutor's decision of 15 October.

39. On 17 October 2007 the applicant also lodged an appeal with the higher prosecutor, asking him to modify the remand measure, house arrest, and to permit him to meet voters "eye-to-eye" in order to compete in the elections on equal grounds with the other candidate. The applicant also insisted that he wanted permission to leave Kėdainiai town in order to visit doctors in other towns and for his business interests. Quoting certain information in the press, the applicant insisted that there had been a political decision to prevent him from becoming elected.

40. The applicant's appeal was dismissed by the higher prosecutor on 19 October. The prosecutor noted that the applicant had known of the final Vilnius Regional Court ruling of 8 October 2007, which was not amenable to appeal, but had ignored it. Despite the adoption of that ruling, he had drawn up a schedule of meetings with voters. There were no new circumstances warranting a change in the applicant's remand measure. The prosecutor's decision was sent to the applicant on 19 October 2007, and could have been appealed against to the court.

The applicant claimed that he had received that decision on 26 October 2007.

41. During the second round of voting in the Dzūkija constituency on 21 October 2007, the applicant received 5,094 votes (or 44 per cent of the votes cast). The other candidate, who was a member of the Homeland Union political party, received 6,596 votes (or 56 per cent of the votes cast), and thus became a member of the Seimas.

42. On 17 November 2007 the applicant was re-elected as chairman of the Labour Party.

43. After the parliamentary elections, the prosecutor granted or refused a number of the applicant's requests to leave his home in Kėdainiai. In particular, in October 2007 the prosecutor permitted the applicant to leave Kėdainiai town so that he could visit, during the daytime – between 8 a.m. and 8 p.m. – a cemetery in a village situated in Kėdainiai district for All Saints Day on 1 November 2007.

44. In November 2007 the applicant asked the prosecutor for permission to visit the Kėdainiai sports school, situated in Vilainiai village in the Kėdainiai district, where the Labour Party congress (*rinkiminis suvažiavimas*) was to take place. The applicant pointed out that Vilainiai village and Kėdainiai town "touched each other on the map" (*Vilainių kaimas ir Kėdainių miestas ribojasi, todėl Kėdainių sporto mokykla yra praktiškai ant kaimo ir miesto ribos*). He also asked the prosecutor for permission to attend the same sports school to play tennis four times a week, a sport that the applicant had practised previously. The prosecutor granted those requests.

45. In November 2007 the prosecutor permitted the applicant to leave Kėdainiai town to visit, later that month, doctors in Kaunas, a town situated approximately 50 kilometres from Kėdainiai town.

46. On 26 November 2007 the applicant also asked the prosecutor for permission to take part in a live show, "Dancing with the Stars", which was to be filmed between 7 p.m. and 10 p.m. on 30 November 2007 in the Vikonda leisure and entertainment centre (*pramogų centre*) in Kėdainiai. The prosecutor declined the request, holding that the timing was incompatible with the house arrest, which was imposed on the applicant from 8 p.m. to 8 a.m. The prosecutor pointed out that the applicant had known beforehand about the house arrest conditions, which did not match those of the television show.

47. In December 2007 the prosecutor also refused a request made by the applicant two days previously to be permitted to travel to Brussels to attend a meeting of the Alliance of Liberals and Democrats for Europe Party (*Europos demokratų partija*), scheduled for later that month. The prosecutor referred to the ruling of the Vilnius Regional Court of 8 October 2007 and noted that such a request could not be granted because the applicant had been avoiding justice for a long time. Moreover, "the house arrest prohibited the applicant from even leaving the area of Kėdainiai town'.

48. With the prosecutor's permission, in December 2007 the applicant visited a cardiology clinic in Kaunas. The doctors there recommended that the applicant return to that clinic for consultations and for more profound tests in January 2008. Having obtained a fresh authorisation by the prosecutor, in January 2008 the applicant stayed in the Kaunas clinic for one night and underwent several more tests later that month.

49. In February 2008, the applicant asked the prosecutor to permit him to stay eleven days in a convalescence sanatorium in Druskininkai (a town situated approximately 180 kilometres from Kėdainiai). The applicant referred to the Kaunas cardiologists' recommendations and stated that the necessary procedures could be performed only in that particular sanatorium. The prosecutor granted the request, also stressing that the applicant had earlier requested to see the material in the case file, but had never come to the prosecutor's office to see them. The applicant had until 22 February 2008 to do so (see the following paragraph).

5. The applicant's subsequent elections and his conviction

50. The pre-trial investigation in the criminal case was terminated on 28 December 2007, and the applicant was then allowed to see the material in the case file until 22 February 2008 and, if necessary, to make requests to supplement the file.

51. According to a survey of the press carried out at the applicant's request, from April 2006 until February 2008, the words "Labour Party ... suspect", "Uspaskich ... suspect" had been mentioned in 210 press articles.

52. On 14 April 2008 the criminal case was transferred to the Vilnius Regional Court for examination.

53. On 29 April 2008 the Vilnius Regional Court released the applicant from house arrest. The court modified that remand measure to an obligation not to leave his place of residence in Kėdainiai town for longer than seven days without informing the authorities, and to pay bail of LTL 1,500,000. The applicant also signed an agreement not to communicate with the four other persons suspected in the criminal case.

54. During the parliamentary elections of October 2008, the applicant and another member of his political party, who was a co-accused in the criminal case, were elected to the Seimas from 2008 to 2012 for the Labour Party. They therefore obtained immunity from prosecution. In December 2008 the Seimas allowed the applicant's prosecution and the restriction of his freedom. The Seimas also permitted the prosecution of the applicant's co-accused.

55. By a ruling of 26 June 2009 of the Court of Appeal, the remand measure – the obligation not to leave the applicant's place of residence – was revoked. The other remand measure, bail, remained in force.

56. On 7 June 2009, the applicant was elected to the European Parliament as a Labour Party's Member. He resigned his parliamentary seat in Lithuania, because under Lithuanian law a Member of the European Parliament could not be a member of the Seimas at the same time (see paragraph 68 below). The Lithuanian authorities then asked the European Parliament to lift the applicant's immunity in order to allow his prosecution. The prosecutor stated, *inter alia*, that as a result of fraudulent book-keeping of the Labour Party and the submission of such information to the Central Electoral Commission and the tax authorities in 2005-07, the State had suffered serious pecuniary damage in the sum of about LTL 6,000,000 (approximately EUR 1,700,000), because appropriations had been allocated to the Labour Party from the State budget.

57. Having heard the applicant, and having had regard to a report by its Committee on Legal Affairs, in September 2010 the European Parliament lifted the applicant's immunity, thus allowing the criminal proceedings in Lithuania to continue (decision P7_TA-PROV(2010)0296). The European Parliament noted that the applicant had been charged with offences of false accounting in relation to the financing of a political party during a period prior to his election to the European Parliament. No cogent evidence had been adduced as to the existence of any *fumus persecutionis* and the offences with which the applicant had been charged had nothing to do with his activities as a Member of the European Parliament.

58. In October 2012 the applicant and two of his co-accused were all elected to the Seimas of 2012-16 for the Labour Party. The applicant then asked the Central Electoral Commission in Lithuania to annul his mandate as a Member of the European Parliament. His request was granted. At the prosecutors' request, the Seimas lifted the applicant's immunity and the criminal proceedings resumed.

59. By a judgment of 12 July 2013 the Vilnius Regional Court found the applicant guilty of fraudulent accounting committed in complicity with three other persons, under Articles 24 § 4, 205 § 1, 220 § 1 and 222 § 1 of the Criminal Code. The court sentenced the applicant to four years' imprisonment.

The applicant and the prosecutor appealed against the conviction.

60. Following reorganisation of the Labour Party, the criminal case against it was discontinued by the same judgment of the Vilnius Regional Court, applying by analogy Article 3 § 1 (7) of the Code of Criminal Procedure, which provides that criminal proceedings cannot be conducted in respect of a deceased person. In particular, on 14 May 2013 the legal personality of the Labour Party ceased to exist after its reorganisation, and on the same day it was struck from the Register of Legal Entities. The Labour Party merged with the *Leiboristai* political party, and on the same day a new legal entity was registered under the name of the Labour Party (*Darbo partija* (*Leiboristai*)). Later that year the latter party merged with another political party – the Christians Party (*Krikščionių partija*). It was registered as a new legal entity but under the previous name, the Labour Party (*Darbo partija*).

According to the Government, that new party continued to use the same logo as it had used before May 2013.

61. On 25 May 2014 the applicant was again elected to the European Parliament as a Labour Party member. In June 2014 the Central Electoral Commission in Lithuania granted the applicant's request to resign his seat in the Seimas.

62. At the request of the Lithuanian courts, in March 2015 the European Parliament lifted the applicant's immunity. This time the European Parliament noted, *inter alia*, that the criminal proceedings at issue were identical, in terms of content, to the proceedings in respect of which it had already lifted the applicant's immunity in 2010 (see paragraph 57 above). At that time the applicant had been charged with, in essence, heading an organised group with the aim of committing a number of criminal offences, with disregard for his duty, as party chairman, to monitor the party's finances. For example, fictitious books were allegedly kept in order to conceal revenue and expenditure. In general, he was alleged to have frequently given instructions not to officially declare or record various business and financial transactions. From the documents in the European Parliament's possession it was clear that the definition of the offences giving rise to the charges against the applicant had always remained the same. Moreover, no convincing evidence was available to demonstrate *fumus persecutionis*. The offences of which the applicant was accused had nothing to do with his work as a Member of the European Parliament. Lastly, the European Parliament noted that the decision on the waiver of immunity in no way constituted a statement of opinion regarding the

applicant's guilt or innocence, as this was the subject of national proceedings.

63. On 1 February 2016 the Court of Appeal upheld the applicant's conviction under Article 222 of the Criminal Code for fraudulent management of the Labour Party's accounts, having acted in an organised group. He was acquitted under Article 182 of the Criminal Code. The criminal case under Article 220 of the Criminal Code was discontinued because of prescription.

64. On the basis of an appeal on points of law lodged by the prosecutor, the criminal case is currently pending before the Supreme Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

65. Under Article 62 of the Constitution, a member of the Seimas may not be held criminally liable, may not be arrested, nor may his freedom be otherwise restricted without the consent of the Seimas.

66. The Law on the Elections to the Seimas (*Seimo rinkimų įstatymas*) provides that members of the Seimas are elected for a term of four years in single-member constituencies and a multi-member constituency by universal and equal suffrage, in a secret ballot, during direct, mixed-system elections. For the organisation and conduct of elections, the territory of the Republic of Lithuania is divided into seventy-one single-member constituencies, taking into consideration the number of inhabitants in the constituency and the administrative-territorial division of the Republic of Lithuania. One multi-member constituency will also be formed where all citizens of the Republic of Lithuania eligible to vote will cast their votes. Seventy Members of Seimas will be elected in that constituency in accordance with the proportional representation system (Article 9).

67. The Law on the Elections to the Seimas at the relevant time read:

Article 46. The right of parliamentary candidates to speak at meetings and use the mass media

"1. After the commencement of an electoral campaign, parliamentary candidates shall have equal rights to speak at voters' meetings in constituencies or any other meetings, gatherings and conferences, as well as through the State mass media, and to announce their respective election programmes. ...."

Article 49. Immunity of parliamentary candidates

"1. Without the consent of the Central Electoral Commission, during the electoral campaign as well as until the first meeting of the newly elected Seimas ... parliamentary candidates may not be found criminally liable or arrested, and their freedom may not be restricted in any other way.

2. The provisions of paragraph 1 of this Article shall not apply to parliamentary candidates who perform the duties of a Seimas member, a member of the Government

or a judge. Any issue of immunity of such persons during the election campaign shall be resolved in the manner prescribed by the Constitution and the law."

Article 50. Basic principles of an electoral campaign

"1. The conditions prescribed by this Law to start an electoral campaign shall be provided (*sudaromos*) for parties and candidates who have nominated themselves from the day the election campaign starts. Election campaign expenses and political advertising expenses incurred before the start of the election campaign must be declared in the manner prescribed by law and may not exceed the maximum permissible amount of campaign expenses set by law.

2. An electoral campaign may be conducted in any form or manner, provided that it does not violate the Constitution and the laws of the Republic of Lithuania, conflict with morals, justice or societal cohesion, or contravene the principles of fair and respectable elections."

Article 51. Conditions and procedure for the use of the mass media

"1. Parties that have submitted lists of candidates for election and candidates in single-member constituencies shall be granted the right to use the State mass media free of charge. ... The Central Electoral Commission shall allocate the timing of programmes, distributing it in such a manner that the principle of equality is preserved.

...

3. The election programme of a candidate standing for election in a single-member constituency shall be published by the electoral commission of the constituency no later than fifteen days prior to the election. ...

4. Electoral campaigns in the commercial mass media shall be restricted only by the size of special election accounts. ...

7. In order for political advertising to comply with the principle of equality of candidates and lists of candidates, each candidate shall be provided with at least one special place within the territory of every polling district. ... Outdoor political advertising shall be produced and communicated with the funds of independent participants of the political campaign. ..."

Article 55. Financing of political campaigns for parliamentary elections

"Financing of political campaigns for elections to the Seimas shall be regulated by the Law on Political Parties' and Political Campaigns' Funding and Control of that Funding."

Article 56. Prohibition of electoral campaigning on election day

"1. Electoral campaigning, irrespective of its methods, forms and measures, shall be prohibited thirty hours before the beginning of an election and on election day until the closing of the polls, with the exception of permanent visual election campaign material in the places intended for this, provided that it was displayed at least forty-eight hours prior to the beginning of the election. ..."

68. The Law on the Elections to the European Parliament (*Rinkimų į Europos Parlamentą įstatymas*) at the relevant time read as follows:

Article 48. The Immunity of candidates

"1. During an electoral campaign as well as until the first meeting of a newly elected European Parliament, a candidate may not be arrested or found criminally liable, nor may his or her freedom be restricted in any other way without the consent of the Central Electoral Commission.

2. The provisions of paragraph 1 of this Article shall not apply to candidates who perform the duties of President of the Republic, Member of the European Parliament or Seimas Member, or member of the Government. Any issue concerning the immunity of such persons during the election campaign shall be resolved in the manner prescribed by the Constitution and the laws of the Republic of Lithuania."

Article 94. Incompatibility between the mandate of Member of the European Parliament with certain duties

"1. The mandate of Member of the European Parliament shall be incompatible with the duties of the President of the Republic, a Member of the Seimas of the Republic of Lithuania, a member of the Government of the Republic of Lithuania, and a municipal councillor. ..."

69. The Law on the Elections to the Municipal Councils (*Savivaldybių tarybų rinkimų įstatymas*) in force at the relevant time provided that members of municipal councils would be elected for a four-year term in multi-member constituencies, in accordance with a proportional representation system (Article 1). During the election campaign as well as until the first sitting of a newly elected municipal council, an electoral candidate may not be prosecuted or arrested, nor may his freedom be otherwise restricted without the consent of the Central Electoral Commission (Article 46).

On 24 December 2002 the Constitutional Court made the following ruling on the absence of immunity of elected members of municipal councils:

"The same persons may not discharge functions in the implementation of State authority and, at the same time, be members of municipal councils, through which the right of self-government is implemented. The Constitution consolidates the principle of prohibition of dual mandates. Moreover, it needs to be noted that in order that they might be able to discharge the functions prescribed in the Constitution in the implementation of State authority, the Constitution provides for a special legal status for the President of the Republic, members of the Seimas, members of the Government and judges, which, *inter alia*, includes limitations on work, remuneration and political activities, and a special procedure for removal from office or revocation of the mandate and/or immunities: the inviolability of the person and a special procedure for application of criminal and/or administrative liability. Members of municipal councils, under the Constitution, do not enjoy the aforesaid immunities. Therefore, under the Constitution there may not be any such legal situation where persons enjoying the said immunities are members of municipal councils. Under the Constitution, the legal status of members of municipal councils must be equal."

70. The Law on Political Parties' and Political Campaigns' Funding and Control of that Funding (*Politinių partijų ir politinių kampanijų finansavimo bei finansavimo kontrolės įstatymas*) at the relevant time read

that its aim was to ensure that political campaigns were democratic and legal and that the funding of political parties and political campaigns was transparent. It laid down the procedures for the funding of political parties and political campaigns, and for the control of such funding (Article 1).

71. The Criminal Code provides for criminal liability for making misleading declarations about the activities or assets of a legal entity (Article 205), for providing inaccurate data on income, profit and assets in order to evade payment of taxes (Article 220), and for the fraudulent management of accounts (Article 222). Legal entities may also be held criminally liable for such acts.

Forms of complicity in the commission of crime are set out in Article 24.

III. RELEVANT INTERNATIONAL MATERIAL

72. On 6 November 1997 the Committee of Ministers of the Council of Europe adopted Resolution (97) 24 on twenty guiding principles for the fight against corruption. The principles included:

> "1. to take effective measures for the prevention of corruption and, in this connection, to raise public awareness and promoting ethical behaviour;
>
> ...
>
> 3. to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;
>
> ...
>
> 5. to provide appropriate measures to prevent legal persons being used to shield corruption offences;
>
> 6. to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society;
>
> ...
>
> 12. to endorse the role that audit procedures can play in preventing and detecting corruption outside public administrations;
>
> 13. to ensure that the system of public liability or accountability takes account of the consequences of corrupt behaviour of public officials;
>
> ...
>
> 15. to encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption;
>
> 16. to ensure that the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society;
>
> ...

20. to develop, to the widest extent possible, international co-operation in all areas of the fight against corruption."

73. In Recommendation Rec(2003)4 of 8 April 2003 on common rules against corruption in the funding of political parties and electoral campaigns, the Committee of Ministers of the Council of Europe noted that corruption represented a serious threat to the rule of law, democracy, human rights, equity and social justice, that it endangered the stability of democratic institutions and undermined the moral foundations of society. The Committee of Ministers thus set out common rules against corruption in the funding of political parties and electoral campaigns, which included the requirement for political parties to keep proper books and accounts to enhance transparency (Article 11). The States were also required to provide effective, proportionate and dissuasive sanctions for breach of the rules on political parties' funding. It was for the States to determine what those sanctions should be – they could be administrative or criminal in nature. The Committee of Ministers noted that effective use of sanctions was important in dissuading political parties and electoral candidates from breaching the rules regarding political funding and in reinforcing public confidence in the political process (Article 16).

74. The European Commission for Democracy through Law (the Venice Commission) adopted the Code of Good Practice in Electoral Matters (Opinion no. 190/2002), which states the following:

1. Respect for fundamental rights

"a. Democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties.

b. Restrictions of these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality."

75. The European Convention on Extradition, in force in respect of the Republic of Lithuania as of 18 September 1995, and in respect of the Russian Federation as of 9 March 2000, in so far as relevant reads as follows:

Article 3 – Political offences

"1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.

2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

...

4. This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

76. The applicant complained that he had been unable effectively to take part in the electoral campaign in the Dzūkija single-member constituency during the parliamentary elections of 2007, particularly because of his house arrest and negative opinion by the media. He relied on Article 3 of Protocol No. 1 to the Convention, which reads as follows:

"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."

A. Admissibility

1. The parties' arguments

77. The Government argued that the applicant had failed to exhaust the available domestic remedies by not having appealed against the prosecutor's decision of 19 October 2007. They also submitted that the applicant could have started civil court proceedings for damages, if he considered that the authorities had breached his right to take part in the parliamentary elections.

78. The applicant stated having appealed against all the decisions regarding his house arrest. He also submitted that he had not received the prosecutor's decision of 19 October until 26 October 2007. Given that the second round of voting took place on 21 October 2007 and that electoral campaigning was prohibited thirty hours before the beginning of an election and on election day (see paragraph 67 *in fine* above), it would have been futile to have appealed against the aforementioned decision by the prosecutor.

2. The Court's assessment

79. The Court observes that the applicant indeed did not appeal against the prosecutor's decision of 19 October 2007 (see paragraph 40 above). Nonetheless, it shares the applicant's view that by that time contesting that decision would have been devoid of purpose, given that the second round of

voting took place on 20 October 2007 and active electoral campaigning was prohibited thirty hours before the beginning of voting (see paragraphs 41 and 67 *in fine* above). Similarly, the Court does not consider that a civil claim for damages was a remedy to be exhausted, in the light of the fact that the applicant pursued a criminal-law avenue to contest his house arrest, which he saw as interference with his right to compete in parliamentary elections on equal basis. The Government's objection must therefore be dismissed.

80. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

81. The applicant argued that because of his house arrest, he had been unable to take part on equal grounds in parliamentary elections in the Dzūkija single-member constituency. Without the appropriate direct communication with voters, the electoral campaign had not been effective and his right to stand for elections had only been declarative and illusory (the applicant relied on *Podkolzina v. Latvia*, no. 46726/99, § 35, ECHR 2002-II). He asserted that he had had all the relevant opportunities to win the election, but because of his inability to meet voters he had come second. For the applicant, permission to meet voters could easily have been reconciled with the purpose of the pre-trial investigation. The scheduled meetings with voters, of which the authorities had been informed in advance, did not automatically mean that the applicant would avoid the criminal proceedings. Moreover, the authorities did not consider the fact that the applicant had returned from Russia of his own free will, and there were no circumstances to suggest that he would attempt to evade the criminal proceedings. However, the ongoing pre-trial investigation in his case became a convenient way to restrict his electoral rights.

82. The applicant also insisted that the State's fears that because of his business connections in Russia he was dangerous to Lithuanian democracy were unfounded and speculative. The nature of the criminal acts of which he was suspected bore no relation to the instant case, which concerned breach of his electoral rights. During the election campaign the media, influenced by the State authorities' will, formed a negative opinion about the applicant and his political party. As a result of his house arrest, he had been unable to explain his situation directly to the voters in order to defend his good name. Furthermore, once the parliamentary elections were over, the prosecutor

permitted him to temporarily depart from the conditions of his house arrest. For the applicant, that was proof of prior political manipulation by the Lithuanian authorities. The applicant also argued that he was "a well-known politician, whose main activity was to participate in elections and to represent the voters". He disputed the Government's suggestion that he had taken part in the elections only to obtain immunity, because the immunity was not absolute. It could always be lifted.

(b) The Government

83. The Government considered it crucial to note the general context and "exceptional nature" of the criminal acts of which the applicant, among others, had been suspected and with which he had been charged. This was a major case of political corruption by one of the biggest political parties in Lithuania at that time. The Council of Europe had clear recommendations and guidelines on the States' obligation to deter and combat such crime. Democratic principles required the State to ensure the right to free elections. At the same time, they also required politicians standing for election to act in good faith, but not to weaken or destroy the ideals and values of a democratic society.

84. The Government acknowledged that the applicant's house arrest had constituted an interference with his electoral rights during the parliamentary elections of October 2007. Even so, the facts justifying the house arrest spoke for themselves. Facing serious charges of corruption where sums unaccounted for by the applicant's political party amounted to millions of Lithuanian litai, the applicant had fled to Russia. Upon his return, there was a legitimate aim to ensure that a pre-trial investigation could take place without hindrance. The restrictions were also in compliance with the domestic law, namely Article 49 of the Law on the Elections to the Seimas.

85. The Government also argued that house arrest had been imposed without arbitrariness and was a proportionate remand measure. The pre-trial investigation in the applicant's case had started well before his political party had decided to put forward his candidature in the parliamentary elections. Above all, meeting the voters was not the only way for the applicant to conduct his electoral campaign. He could have used the media and outdoor advertising, and could have communicated his electoral message through his party representatives. On this last point, the Government submitted that many members of the Labour Party had actively assisted the applicant to run his campaign by visiting voters at their homes and distributing printed material. It was also pertinent to stress that the applicant's inability to meet his voters during the campaign for the municipal elections, which had taken place earlier the same year, did not prevent him from being elected.

86. In reply to the applicant's suggestions that the Lithuanian authorities' had made concerted efforts to prevent him from effectively

running for the Seimas, the Government argued that in fact it was the applicant whose conduct was inherently contradictory to the principles and values of democratic constitutional order. Facing criminal charges for political corruption, the applicant was striving to hide by exploiting the very measures which were applied to ensure free and unhindered democratic elections, namely, a parliamentarian's immunity from prosecution. Taking into account all the circumstances of the case, one could not exclude the possibility that the applicant might have exploited the passive electoral right in this case to acquire immunity from prosecution. On this point, the Government indicated that the applicant had taken part in the parliamentary elections of October 2007 immediately after being elected to the municipal council in February 2007. He refused the post of municipal councillor, presumably because members of municipal councils do not enjoy immunity from prosecution. The Government lastly pointed out that Lithuania was one of a few countries with such an extensive safeguard regulation – immunity for parliamentary candidates – whereas the immunity of electoral candidates was rarely accepted in Europe.

2. The Court's assessment

87. The general principles regarding Article 3 of Protocol No. 1 to the Convention have been set out in *Namat Aliyev v. Azerbaijan* (no. 18705/06, §§ 70-73, 8 April 2010). The Court has constantly held that democracy constitutes a fundamental element of the "European public order", and that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see, among many other authorities, *Ždanoka v. Latvia* [GC], no. 58278/00, §§ 98 and 103, ECHR 2006-IV; *Tănase v. Moldova* [GC], no. 7/08, § 154, ECHR 2010; *Karácsony and Others v. Hungary* [GC], no. 42461/13, § 141, ECHR 2016 (extracts)).

88. The Court considers that what is at stake in the present case is not the applicant's right to win the parliamentary election in the Dzūkija single-member constituency, but his right to stand freely and effectively for it, this right being inherent in the concept of a truly democratic regime (see *Gahramanli and Others v. Azerbaijan*, no. 36503/11, § 68, 8 October 2015). The applicant was entitled under Article 3 of Protocol No. 1 to stand for election in fair and democratic conditions, regardless of whether ultimately he won or lost. In the present case, Article 3 of Protocol No. 1 therefore requires the Court to verify that the applicant's individual right to stand for election was not deprived of its effectiveness and that its essence was not impaired (see *Namat Aliyev*, cited above, § 75; also see *Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, § 64, ECHR 2012).

89. The Court shares the Government's preliminary argument that the State was under an obligation to act once the authorities came across information that the Labour Party could have doctored its accounts (see

paragraph 8 above; also see the Council of Europe guidelines on the fight against political corruption, cited in paragraph 72 above). As later indicated by the prosecutor and noted by the Central Electoral Commission, it was suspected that the damage done to the State budget amounted to millions of Lithuanian litai. The Central Electoral Commission refused, on the basis of auditors' evidence and the charges in that respect, to allocate appropriations to the Labour Party (see paragraphs 13 and 17 above; also see point 12 in paragraph 72 above). The Court further observes that the Committee of Ministers has stressed the need to tackle corruption in order to reinforce public confidence in the political process. This includes the requirement for political parties to keep proper books and accounts, precisely the crimes with which the applicant and his political party had been charged (see paragraph 73 above).

(a) As to the applicant's possibility to effectively take part in the Seimas' electoral campaign

90. Turning to the particular situation of the applicant, the Court observes that once the Lithuanian authorities opened a criminal investigation on suspicion of financial fraud by the Labour Party, of which the applicant was the chairman, the applicant, facing suspicions of political corruption, fled to Russia. The Lithuanian prosecutors' attempts to obtain his extradition to Lithuania were to no avail (see paragraphs 8-10, 12 and 16 above). Although the applicant argued that in September 2007, just before the parliamentary elections, he had voluntarily returned to Lithuania, thus making himself available to the prosecutors, the Court is not called upon to attempt to determine the applicant's motives. The Court however considers it established that in July 2007, when the applicant's political party named him as a candidate in the parliamentary elections (see paragraph 24 above), the applicant must have been clearly aware that he was a suspect in a criminal investigation. Even more importantly, the applicant must have known that a court order for his arrest and detention had been issued (see paragraph 14 above). Accordingly, he could not have reasonably expected to take part in those elections without any constraints, on equal terms with any other candidate, which was not an object of the criminal proceedings.

91. The Court further observes that following the applicant's return from the Russian Federation, pre-trial detention was immediately replaced by a milder remand measure, house arrest, thus improving his situation (see paragraphs 30 and 31 above). It is not unreasonable to say that the applicant was therefore permitted to run his electoral campaign from his home, for example, by discussing that campaign with members of his political party, who in turn could spread his message to the voters (see paragraph 36 above). Any such opportunities would hardly have been available to the applicant had the Lithuanian authorities kept him in detention. Moreover, taking into account that the applicant was, in his own words, a well-known

politician (see paragraph 82 above) and that the members of his political party took part in meetings with the voters in person (see paragraph 36 above), the Court does not find the restriction particularly burdensome on the applicant's right to participate in the elections to the extent that it would be decisive for its ultimate result.

92. Finally, without disregarding the fact that in Lithuania the electoral system in municipal elections differs from that in parliamentary single-member constituencies – in the former, voters vote for a party list, whereas in the latter they vote directly for a candidate when electing half of the Seimas – the Court gives certain weight to the Government's argument that in February 2007, while he was abroad in the Russian Federation and thus without being able to meet voters, the applicant took part in the municipal elections and was elected on the Labour Party's list (see paragraphs 18 and 21 above).

(b) As to the applicant's ability to challenge the remand measure in the context of his complaint under Article 3 of Protocol No. 1

93. Having regard to the principles developed by its case-law on Article 3 of Protocol No. 1, the Court has held that the existence of a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections. Such a system ensures an effective exercise of individual rights to vote and to stand for election, maintains general confidence in the State's administration of the electoral process and constitutes an important device at the State's disposal in achieving the fulfilment of its positive duty under Article 3 of Protocol No. 1 to hold democratic elections. Indeed, the State's solemn undertaking under Article 3 of Protocol No. 1 and the individual rights guaranteed by that provision would be illusory if, throughout the electoral process, specific instances indicative of failure to ensure democratic elections were not open to challenge by individuals before a competent domestic body capable of effectively dealing with the matter (see *Namat Alijev*, cited above, § 81). The Court therefore must examine whether the decisions of the domestic courts in the instant case were compatible with the applicant's right to stand for election (see *Melnychenko v. Ukraine*, no. 17707/02, § 60, ECHR 2004-X and the case-law referred to therein).

94. The Court observes that Lithuanian law provides for a system of examination of individual election-related complaints and appeals, consisting of the Central Electoral Commission and the courts. The applicant made full use of that system. As to the municipal elections of February 2007, the applicant's argument that the remand measure imposed on him would unjustifiably interfere with his electoral rights was dismissed firstly by the Central Electoral Commission and then by a reasoned decision of the Supreme Administrative Court. Although, for reasons attributable

only to the applicant, he did not take part in those proceedings in person, his interests were defended by a lawyer of his choice (see paragraphs 18, 19 and 20 above). Thereafter, in the parliamentary elections of 2007, the applicant had the opportunity to appeal to the Central Electoral Commission against the decisions to place him under house arrest, as well as to the administrative and criminal courts, where he also relied on Article 3 of Protocol No. 1 (see paragraphs 28, 29, 32 and 34 above). There is nothing in the facts brought to the Court's knowledge to indicate that, in assessing the reasonableness of the remand measure of house arrest, the Central Electoral Commission or the Lithuanian courts acted arbitrarily. To the contrary, they relied on their earlier decisions and maintained that it was still in the public interest to keep applying remand measures in respect of the applicant, whilst balancing that restriction against his right to stand for election (see paragraphs 19, 20, 29, 34 and 74 above). Last but not least, the absence of any political basis in the criminal charges against the applicant was noted more than once by the European Parliament, which the applicant had all the possibilities to persuade otherwise (see paragraphs 57, 61, and 62 above; also principle 20 in paragraph 72 above, and paragraph 98 below).

95. As to the decision-making process regarding the applicant's electoral rights, the Court also notes that the Central Electoral Commission refused the Labour Party's request to interfere with the court order for the applicant's detention, on the grounds that any such attempt would be in breach of the principle of separation of powers. This also seems consistent with the States' duty to ensure that those in charge of prosecution and adjudication of corruption offences enjoy independence and autonomy (see paragraph 35 above, also see point 3 in paragraph 72 above). The Court likewise has had occasion to emphasise that it is important for the authorities in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation (see, *mutatis mutandis*, *The Georgian Labour Party v. Georgia*, no. 9103/04, § 101, ECHR 2008).

96. The applicant also insisted that after the parliamentary elections were over, the Lithuanian authorities loosened their grip on him. However, this does not appear to be based on the facts of his criminal case. It is true that between November 2007 and January 2008 the prosecutor granted several requests by the applicant to visit medical establishments in Kaunas and Vilnius, which were outside the area designated in the court order of 8 October 2007 setting out the conditions for the applicant's house arrest (see paragraph 34 above and paragraphs 45 and 49 above). That being so, the Court does not consider that the State should be blamed for granting those requests, for it is clear that it would not have been in the applicant's best interests to have refused them. Furthermore, refusing to allow the applicant to see doctors could alternatively have led to his lodging complaints that the authorities had prevented him from obtaining medical

care, which, in turn, could have raised an issue under Article 3 of the Convention. It is also pertinent to stress that some of the other requests granted by the prosecutor concerned the applicant visiting places such as the Kėdainiai sports school to take part in the Labour Party congress, that school being on the border of Kėdainiai town and thus within the area specified in the court ruling for his house arrest (see paragraph 44 above). On the other hand, the prosecutor did not allow the applicant to leave Lithuania for Belgium, or to take part in the television show "Dancing with the Stars", because the first event was to take place outside Lithuania, and the second was to take place outside the hours set by the court for him to be in his home (see paragraphs 46 and 47 above). Lastly, the Court notes that the applicant was released from house arrest once the pre-trial investigation was terminated and the applicant had been able to acquaint himself with the criminal case file (see paragraphs 49, 20, 52 and 53 above). In conclusion, no inconsistency can be established in the manner in which the prosecutor examined the applicant's requests to travel within Lithuania after the parliamentary elections of 2007.

(c) As to the attention of the press to the applicant's and the Labour party's case

97. The applicant was also dissatisfied with the attention his and the Labour Party's case had received in the press pending the criminal proceedings (see paragraphs 51 and 82 above). On this point the Court cannot but reiterate its constant position that the press plays an essential role in a democratic society. Although it must not overstep certain bounds, regarding in particular protection of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, including those relating to justice. Not only does it have the task of imparting such information and ideas, but the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Perna v. Italy* [GC], no. 48898/99, § 39, ECHR 2003-V, and the case-law cited therein). Having regard to the Government's argument about the "exceptional nature" of criminal case concerning political corruption (see paragraph 83 above; also see principle 16 in paragraph 72 above), as well as noting that the sums unaccounted for by the Labour Party amounted to millions of Lithuanian litai (see paragraph 13 above), the Court finds nothing with which to reproach the State on this point.

(d) As to the applicant's immunity from prosecution

98. In the light of the applicant's argument about alleged breach of his electoral rights despite his intention to pursue his "main activity to

participate in elections and to represent the voters" (see paragraph 82 above), the Court does not overlook the question of the applicant's immunity from prosecution. The guarantees offered by the different forms of parliamentary immunity serve to ensure the independence of Parliament in the performance of its tasks (see *Karácsony and Others*, cited above, § 138). That being so, the Court nevertheless notes that when persecuting corruption offences, the States are encouraged to limit immunity to the degree necessary in a democratic society (see principle 6 in paragraph 72 above). On the facts of the case the Court observes that during his political career the applicant held a number of elected posts. However, each time his immunity expired or was lifted, he would refuse the post. In particular, in February 2007, after being elected to the Kėdainiai city municipal council, given that municipal council members do not enjoy immunity from prosecution, the applicant refused his mandate, choosing just months later to run for the Seimas (see paragraphs 18, 21 and 22 above). When he was elected to the Seimas on the Labour Party's list in autumn 2008, and his immunity was soon lifted by the Seimas, the applicant again did not spend much time in the Lithuanian Parliament. In summer 2009 he was elected to the European Parliament, and resigned from the Seimas (see paragraphs 54 and 56 above). In 2010 the European Parliament rejected the applicant's plea to shield him from prosecution in Lithuania (see paragraph 57 above). He was then elected to the Seimas in 2012, and resigned his seat in the European Parliament. It was for the Seimas then to permit the applicant's prosecution (see paragraph 58 above), which again were perturbed when he was re-elected to the European Parliament two years later (see paragraph 61 above). This sequence of the applicant sidestepping the system lasted until the European Parliament again lifted his immunity in 2015, and terminated with the applicant's conviction being upheld by the Court of Appeal (see paragraphs 62 and 63 above). The Government's argument that the applicant sought each time to take part in elections to a different elected body and then moved on once he lost immunity in order to avoid prosecution does not appear to be without basis. This argument was also endorsed by the Central Electoral Commission and the Supreme Administrative Court (see paragraph 19 above).

99. The Court lastly reiterates that the States are required to provide appropriate measures to prevent legal entities from being used to shield corruption offences (see principle 5 in paragraph 72 above). In the present case, however, it transpires that the applicant's political party, which itself avoided prosecution by formally changing its status (see paragraph 60 above), indeed shielded him from prosecution by systematically presenting him as a candidate in municipal, parliamentary and European Parliament elections, all of which meant that at least for a certain time the applicant could enjoy immunity from prosecution (see paragraphs 18, 24, 56, 58, 61 and 63 above).

(e) Conclusion

100. In the light of the foregoing, the Court does not find that in this case there were irregularities capable of thwarting the applicant's right to stand for election effectively. There has accordingly been no violation of Article 3 of Protocol No. 1 to the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 3 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 20 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Vincent A. De Gaetano
President