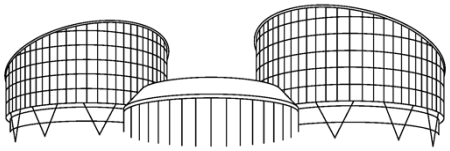

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF AREWA v. LITHUANIA

(Application no. 16031/18)

JUDGMENT

Art 6 § 1 (criminal) • Reasonable time • Sufficiently expeditious criminal proceedings lasting more than five years, in light of particularly complex international and financial nature of charges involving money laundering and document forgery, and lack of tangible practical consequences for applicant

STRASBOURG

9 March 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Arewa v. Lithuania,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Aleš Pejchal,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application 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 Nigerian national, Mr Olusegun Bamise Arewa ("the applicant"), on 30 March 2018;

the decision to give notice to the Lithuanian Government ("the Government") of the complaints concerning the applicant's right to a trial within reasonable time, under Article 6 § 1 of the Convention, and right to respect for his family life, under Article 8 of the Convention, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 2 February 2021,

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

INTRODUCTION

1. The case concerns the length of the criminal proceedings and their impact on the applicant's family rights.

THE FACTS

2. The applicant, a citizen of Nigeria, was born in 1989 and lives in Vilnius. He was represented by Mr V. Rakauskas, a lawyer practising in Vilnius.

3. The Government were represented by their Agents, Ms L. Urbaitė and Ms K. Bubnytė-Širmenė.

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

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. On 7 July 2014 a bank in Lithuania received a transfer of 1,853,800 United States dollars (USD) to the account of the Jammo company, held

with that bank. The transfer was received from a company called Sinowide Energy Limited, registered in Hong Kong, China. An attempt was then made to withdraw from that sum 100,000 euros (EUR) in cash, and to transfer the remainder to unidentified recipients in Italy. Given that the documents provided to the bank by the director of the Jammo company, Mr A.L.C., a Nigerian citizen, and the entire banking operation were suspicious, the bank froze the sum of USD 1,853,800 and alerted the Financial Crimes Investigation Service (*Finansinių nusikaltimų tyrimo tarnyba* – "the FCIS") of the Republic of Lithuania to possible criminal activity.

6. On 11 July 2014 prosecutors decided to temporarily freeze the funds in the applicant's bank account in Lithuania; this measure was lifted on 21 January 2018. On 11 July 2014 they also temporarily froze the funds in Jammo's account.

7. On 15 July 2014 the FCIS served the applicant with an official notice (*pranešimas apie įtarimą*) that he was suspected of committing the criminal acts set out in Article 216 § 1 (money laundering) and Article 300 § 3 (forgery of documents causing major damage) of the Criminal Code. The applicant had a lawyer, but refused to sign the official notice.

The FCIS established that as of 20 February 2012 the applicant had been a shareholder in Jammo, which had been registered in Vilnius in November 2011. It found that the applicant was able to give instructions to another shareholder and at the same time the director of Jammo, Mr A.L.C., and that both of them knew that in reality Jammo did not pursue any activity and had been acquired with the purpose of hiding criminal activities and laundering the proceeds of crime. They had forged a document to show that Jammo would sell wood, metal and minerals to Sinowide Energy Limited, in order to justify the transfer of the USD 1,853,800 (see paragraph 5 above).

8. On 18 July 2014 the Vilnius City District Court granted the prosecutor's request to place the applicant in detention on remand for a period of two months. The court noted that the documents from the bank in Lithuania, the material obtained during the search, information from the applicant's email account, and a statement given by another suspect, Mr A.L.C., constituted evidence against the applicant. The court considered that it was therefore reasonable to conclude that if he were not detained, the applicant would flee from the Lithuanian law-enforcement authorities. He was suspected of having committed two crimes which were punishable by more than one year of imprisonment. The court also noted that the applicant was not married and had no firm social links in Lithuania. Rather, he was a foreign citizen working in Lithuania in a company which, it was suspected, was being used as a means to commit crimes. It was also relevant that he was a citizen of Nigeria, with which Lithuania had no close legal cooperation.

9. The applicant appealed, claiming that pre-trial detention was too strict a measure to apply in his case. He did not claim that he had a family in Lithuania. On 5 August 2014 the Vilnius Regional Court dismissed the appeal.

10. On 16 September 2014 the prosecutor changed the remand measure to less restrictive ones – an obligation to register, each Monday, at the police station, and a written commitment not to leave the place of residence in Vilnius.

11. Thereafter, within the framework of the criminal proceedings, the applicant lodged a number of complaints, arguing that the pre-trial investigation had been protracted. They were all dismissed by the courts. The applicant had a lawyer during those proceedings and took part in the hearings before the first-instance court.

12. Thus, on 12 February 2015 the applicant lodged a complaint asserting that he had already been questioned as a suspect, and also claiming that all necessary investigative actions had already been performed. He mentioned that, because of the pre-trial investigation, his residence permit in Lithuania had not been extended and that his assets in Lithuania had been seized, which had prevented him from pursuing any economic activity. The applicant also argued that he was merely a shareholder in the Jammo company, had not signed any of its agreements and had not asked the banks to carry out any kind of financial operations.

13. By a decision of 5 March 2015, the Vilnius City District Court dismissed the complaint, noting that the case concerned financial crimes and was therefore complicated. It also pointed out that in October 2014 requests for legal assistance had been sent to Spain and Hong Kong, and that it was possible that new legal assistance requests would need to be sent in future. Moreover, other pre-trial investigative measures were being carried out.

14. The applicant appealed, reiterating his initial complaints and adding that the pre-trial investigation had been protracted and that the courts had not fixed a time-limit for its completion. He also pointed out that legal assistance requests had not been sent to Spain and Hong Kong until four months after the start of the pre-trial investigation, and that it was unclear when replies to those requests would be received. All of that had left him in a precarious position, since because of the criminal proceedings his residence permit had not been extended. As a consequence, he had been unable to obtain any services in Lithuania, have a job or get married. At the same time, because of the restrictions, he could not leave Lithuania either.

15. According to the Government, the applicant's appeal was dismissed by the Vilnius Regional Court on 7 April 2015. The court emphasised that the case was complex: it had an international element, concerned crimes of a financial nature and required information from foreign jurisdictions. The principle of expediency of court proceedings did not overrule the authorities' duty to properly examine the circumstances of the case. As to

the applicant's conduct, it was noteworthy that he had not been questioned because he had refused to testify. Any negative effect on the applicant, such as his being unable to leave Lithuania, was a natural consequence of his status as a suspect.

16. According to a table of chronological investigative actions undertaken in the applicant's criminal case, presented by the Government, no actions, except for those related to the remand measures, were undertaken by the Lithuanian authorities between 16 September 2014 and 23 January 2017. During that period the authorities were waiting for replies to legal assistance requests from abroad and providing foreign authorities with requested information.

17. On 25 July 2016 the applicant lodged another complaint about the length of the pre-trial investigation, relying on his rights under Article 6 of the Convention. He contended that although a son had been born to him in Lithuania (see paragraph 31 below), he had been unable to get his residence permit changed and that therefore he could not get married. He also pleaded that the ongoing criminal proceedings were affecting his right to be engaged in economic activity and do business in Lithuania. The applicant also pleaded that no pre-trial investigative actions had been performed for more than two years, and such a long pre-trial investigation could not be justified simply by reliance on the fact that legal assistance requests had been submitted to foreign jurisdictions.

18. By decisions of 19 August 2016 and 19 September 2016 the Vilnius City District Court and the Vilnius Regional Court respectively dismissed the applicant's complaints. The courts reiterated that requests for information from foreign jurisdictions were pending, and that the crimes of which the applicant was suspected had an international element, the suspects being foreign citizens. The courts also underscored that a person's right to fast proceedings was only a part of the right to a fair trial, and had to be seen in the light of Article 1 of the Code of Criminal Procedure requiring that crimes be solved. That included the requirement that only a properly prepared case file should be transferred to the court. The courts also pointed out that the applicant had not been questioned as a suspect, contrary to what he had asserted, because he had refused to testify. This had also made the investigators' job harder. As to the impact of the pre-trial investigation on the applicant's social rights, whilst there was such an effect, this was because he was a suspect in a criminal case. Overall, and relying on the Court's case-law (the courts referred to *Eckle v. Germany*, 15 July 1982, Series A no. 51, and *Kuśmierek v. Poland*, no. 10675/02, 21 September 2004), the length of the criminal proceedings was not unreasonable.

19. Subsequent complaints lodged by the applicant alleging delays in the criminal proceedings were dismissed on 10 November 2017 by the Vilnius City District Court. That decision was upheld by the Vilnius Regional Court on 11 December 2017. In his complaints the applicant reiterated that he had

a son in Lithuania and that the pre-trial investigation had had an impact on his economic and social rights – he had been unable to conduct business and get married.

From the standpoint of Article 6 § 1 of the Convention, the courts specified that the applicant, as a suspect, had exercised his right not to testify during his first questioning on 16 July 2014. He had also refused to testify on 11 August 2014. The next time an attempt had been made to question him was on 12 July 2017, and on that occasion he had given a statement. In the courts' view, during that time the prosecutor and the pre-trial investigation officers had been working "sufficiently intensively and with the purpose of direction".

The courts also pointed out that in addition to the aforementioned elements of the proceedings, such as their international element, which had affected the length of the investigation, an explanation given by the director of Sinowide Energy Limited had been inconclusive and required further investigation, given that some of the charges against the applicant were based on the transaction between that company and Jammo (see paragraph 7 above). Concerning the requests for legal assistance from several foreign countries, a request had been sent to Hong Kong on 15 September 2014. However, on 16 November 2015 and 24 March 2016 the law-enforcement authorities in Hong Kong had asked for additional information, so on 18 December 2015 and 12 April 2016 (respectively) additional requests for legal assistance had been sent out. As a result, the reply from Hong Kong had been received on 1 June 2017, and it had been translated into Lithuanian on 15 September 2017. It had then become apparent that the legal assistance request had not been fully executed, so on 25 October 2017 an additional legal assistance request had had to be prepared – it had already been translated into English and had to be sent to Hong Kong. Contrary to what had been suggested by the applicant, the additional legal assistance requests had not been abstract, but concrete. The first-instance court also pointed out that, having examined the content of the legal assistance requests, one could not hold that the Lithuanian authorities had failed to formulate them clearly which would have caused delay. In addition, the courts noted that on 4 September 2017 the applicant and the other suspect, Mr A.L.C., had asked the Lithuanian authorities to look for persons who could possibly have forged transcripts of the Jammo shareholders' meeting.

Lastly, the courts reiterated that any inconvenience the applicant experienced regarding the enjoyment of his social rights, such as that linked to his residence permit and his engagement in commercial activity, were not disproportionate. Rather, it was the consequence of his status as a suspect in criminal proceedings. Moreover, the inconvenience he had experienced could not have priority over society's interest in having criminal acts disclosed.

20. Further complaints by the applicant, including his criticism that a computer seized during the search in 2014 had not been examined by the Lithuanian authorities for four years, that there was no evidence that the applicant would have obstructed criminal investigation by his behaviour, and that during four years of criminal investigation he had had to live without a passport, taken away by the authorities, could not visit hospital, take care of his family, marry the mother of his child, were dismissed by the Vilnius City District Court on 10 May 2018 and 9 October 2018. Those decisions were upheld by the Vilnius Regional Court on 8 June 2018 and 19 November 2018. The courts noted that investigative actions had been continuing and data were being requested from Interpol in Hungary. In April 2018 another request for information had been sent to the authorities in the USA, but a reply had not yet been received. All of those measures were necessary on account of the fact that the information gathered so far had not confirmed the provenance of the money. Moreover, the way in which those legal assistance requests were carried out did not depend on the Lithuanian prosecutors or judges, and therefore there were no grounds to hold that the pre-trial investigation should be discontinued because of its length. The courts also noted that the investigators' actions had been timely: numerous procedural actions, such as searches, witness interviews, had been undertaken. In May 2018, an examination of documents (*užduotis atlikti dokumentų, blankų ir rekvizitų tyrimą*) was ordered. In reaching the conclusion that the pre-trial investigation had not exceeded the reasonable time requirement, the courts relied on the Court's judgments in *Sorvisto v. Finland* (no. 19348/04, 13 January 2009) and *Meilus v. Lithuania* (no. 53161/99, 6 November 2003).

Lastly, in its decision of 19 November 2018 the Regional Court also succinctly stated that, as the suspects had been lodging complaints about procedural actions taken in the criminal case, the pre-trial investigation materials had, for much of the time, been not with the investigators but with the prosecutors examining those complaints. That had also resulted in the pre-trial investigation being prolonged.

21. Afterwards, by a decision of 2 April 2019 the Vilnius City District Court dismissed yet another complaint lodged by the applicant, in which he had reiterated his previous grievances about the impact of the protracted proceedings on his economic and social rights, including the right to get married. On 30 April 2019 the Vilnius Regional Court upheld that decision. In so doing, it referred to the Supreme Court's case-law that the efforts of criminals and their accomplices to hide the provenance of money acquired through crime posed a danger to the stability of the entire financial system of the State. Therefore, given the objective features of the crimes at issue, it was necessary to establish the criminal provenance of the funds. The origin of the funds which had been transferred to Jammo from a company operating in China had been the main issue in the pre-trial investigation,

which was why investigative actions were being carried out. In that connection, and to establish the origin of the money, concrete investigative actions had been undertaken: in 2017 specialists had been ordered to examine Jammo's accounts, and the relevant report had been received; and a number of requests for legal assistance had already been sent to the authorities in Hong Kong, the USA and Hungary, and replies had been received. In the words of the Regional Court, "recently" such a request had also been sent to Denmark, and an additional request to Hungary. A reply to the latter had been received and was being translated into Lithuanian. The court further reasoned that the pre-trial investigation was being carried out against a background of international money laundering scheme of "a particularly large scale", which had had a clear impact on the length of the pre-trial investigation. Lastly, the Regional Court emphasised that Lithuania had international obligations stemming from the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (see paragraph 40 below), the 2000 United Nations Convention against Transnational Organized Crime (see paragraph 41 below), and Directive 2005/60/EC (see paragraph 39 below).

22. According to the latest information in the Court's possession, provided by the Government in their observations of 31 October 2019, on 22 October 2019 the applicant requested that the prosecutor lift the restrictive measure of registering at the police station. He contended that the length of the criminal proceedings had been excessive and taxing on him, but considered that the other restrictive measure – a written commitment not to leave his place of residence – could be sufficient to guarantee his participation in the criminal proceedings, and agreed that that measure be maintained.

II. ADMINISTRATIVE PROCEEDINGS CONCERNING THE APPLICANT'S REQUEST FOR A TEMPORARY RESIDENCE PERMIT

23. As noted by the Vilnius Regional Administrative Court (see also paragraph 27 below), on 16 November 2013 the Migration Department issued the applicant with a temporary residence permit under Article 40 § 1 (5) and 45 § 1 (1) of the Law on the Legal Status of Aliens, namely, on the basis that an alien is engaged in a lawful activity in Lithuania (see paragraph 35 below). The permit was valid for one year, until 15 November 2014.

24. On 14 October 2014 the applicant applied to the Migration Department for an extension of his temporary residence permit on the same basis, namely that he intended to be engaged in the lawful activity of Jammo.

25. By a decision of 14 November 2014 the Migration Department refused to extend the applicant's residence permit, basing its decision on Article 35 § 1 (1) of the Law on the Legal Status of Aliens (see paragraph 35 below). The Migration Department pointed out that as of July 2014, the FCIS had been conducting a pre-trial investigation in a case concerning money laundering and forging of documents, where the applicant had the status of a suspect (see paragraphs 5 and 7 above). Referring to information provided by the police in October 2014, the Migration Department stated that the applicant was suspected of a serious intentional crime and that his stay in Lithuania might therefore represent a threat to public order. It also stated that the threat was real and obvious, based on facts, and not merely on general presumptions or suspicions. It also considered that its refusal to extend the residence permit was proportionate to the aims of ensuring society's safety and safeguarding public order.

26. The applicant, represented by a lawyer, appealed. He argued that the Migration Department had breached the principle of presumption of innocence and that he posed no threat to public order.

27. Following a hearing in which the applicant and his lawyer took part, on 19 October 2015 the Vilnius Regional Administrative Court dismissed the applicant's appeal. The court stressed that although the notion "might represent a threat", in the context of State security (*valstybės saugumas*), was not specified either in the Law on the Legal Status of Aliens, or in any other legislation, the case-law of the Supreme Administrative Court was clear that a threat to State security could include potential danger (see paragraph 37 below). The Regional Administrative Court also referred to the Schengen Convention (see paragraph 38 below), particularly its Article 96 § 1, which stipulated that an alien may be refused entry if there was reason to believe that he posed a threat to public security. With regard to the applicant, such a threat had been tangible. Specifically, and as proven by the materials of the criminal case file, he was suspected of committing crimes under Article 216 § 1 and Article 300 § 3 of the Criminal Code (see paragraph 7 above).

28. The court observed that, according to the case-law of the domestic courts, the fact that an alien was suspected of having committed a serious or very serious criminal act was not always a basis for finding that his or her stay in Lithuania might pose a threat to public order from the standpoint of Article 35 § 1(1) of the Law on the Legal Status of Aliens (it referred to the case-law cited in paragraph 36 below). However, in the instant case, the decision to refuse to issue the applicant with a temporary residence permit, based on the information from the Lithuanian law-enforcement authorities, was well reasoned and lawful. The applicant was suspected of committing a serious intentional crime, and under Article of 96 § 2 of the Schengen Agreement a threat to public order could be precisely established when a

foreigner was reasonably suspected of having committed serious crimes. Moreover, a restrictive measure – detention – had been applied in respect of the applicant for two months in 2014, which meant that there was enough information to consider that he had committed the criminal act at issue.

29. The court also pointed out that a temporary residence permit had been issued to the applicant on the basis of Article 40 § 1 (5) of the Law (if an alien intended to engage in a lawful activity). The court pointed out that it had not been established that the applicant was involved in any social, such as family, relationship in the Republic of Lithuania. Rather, his links to the country were purely economic and he was suspected of having committed a serious intentional crime in violation of the financial system and public order. Accordingly, the Migration Department's decision had been proportionate and did not breach the balance between the interests of the State and the alien's rights and interests. The court's decision was amenable to appeal within fourteen days of its pronouncement.

30. By a letter of 20 October 2015 the Vilnius Regional Administrative Court informed the applicant's lawyer of the adopted decision.

According to the Government, the applicant did not appeal against the decision of the Vilnius Regional Administrative Court of 19 October 2015.

31. On 30 August 2015 the applicant and a Lithuanian citizen, Ms E.M., had a son, D.A.

32. According to the Government, in November 2015 the applicant and E.M. applied to the Migration Department for a change in the applicant's temporary residence permit due to the fact that they had been living together and had a child.

On 23 December 2015 the Migration Department rejected their request, referring to its earlier decision of 14 November 2014 (see paragraph 25 above). It found that the reasons for refusing to issue the applicant with a new residence permit remained valid. The decision stated that "it was amenable to appeal in compliance with the law".

33. On 24 May 2016 E.M. wrote to the Vilnius civil registry requesting that her marriage to the applicant be registered. On 15 July 2016 the civil registry replied that they had been informed by a letter of 29 June 2016 from the Migration Department that the applicant had not been issued with either a Lithuanian visa or a residence permit. Moreover, the Migration Department had also informed the municipal authority that since the applicant did not have a visa or a valid residence permit, he was in Lithuania unlawfully.

The municipal authority's letter also stated that the decision was amenable to appeal within one month of its receipt.

According to the Government, there was no information that either E.M. or the applicant had appealed against that decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

34. The Code of Criminal Procedure at the material time read:

Article 215. Terminating a protracted pre-trial investigation

"1. If a pre-trial investigation is still ongoing six months after the suspect's first questioning, the suspect's representative or advocate may lodge a complaint with the pre-trial investigation judge, arguing that the pre-trial investigation has been protracted.

2. To hear the complaint, the pre-trial investigation judge calls a hearing to which the suspect and his advocate as well as the prosecutor are invited.

3. Having examined the complaint, the pre-trial investigation judge adopts one of the following rulings:

1) to reject the complaint;

2) to oblige the prosecutor to finish the pre-trial investigation within a set time-limit;

3) to terminate the pre-trial investigation."

35. The Law on the Legal Status of Aliens (*Įstatymas dėl užsieniečių teisinės padėties*) at the relevant time provided:

Article 3. Rights and duties of aliens in the Republic of Lithuania

"3. Aliens in the Republic of Lithuania must observe the Constitution of the Republic of Lithuania, laws and other legal acts of the Republic of Lithuania. ..."

Article 4. Control of stay and residence of aliens in the Republic of Lithuania

"1. The stay and residence of aliens in the Republic of Lithuania shall be controlled by the police, the Migration Department ... in association with State and municipal institutions and agencies of the Republic of Lithuania.

2. Assessment of a threat posed by an alien to national security shall be carried out by the State Security Department ..., while assessment of a threat to public order or the community shall be carried out by the Police Department ..."

Article 6. Obligation to be in possession of a valid travel document

"1. In order to enter the territory of the Republic of Lithuania and stay therein, an alien must be in possession of a valid travel document ..."

Article 35. Grounds for refusing to issue or renew an alien's residence permit

"1. An alien shall be refused the issue or renewal of a residence permit if:

1) his residence in the Republic of Lithuania may represent a threat to national security, public order or public health; ..."

Article 39. Unlawful stay in the Republic of Lithuania

"An alien's stay in the Republic of Lithuania shall be considered unlawful if the alien:

1) stays in the Republic of Lithuania without a residence permit ...;

2) stays in the Republic of Lithuania holding an invalid residence permit;

3) stays in the Republic of Lithuania holding a withdrawn residence permit; ..."

Article 40. Grounds for issuing or renewing a temporary residence permit

"1. An alien may be issued with a temporary residence permit, or have an [existing] permit renewed, if:

...

3) it is a case of family reunification;

...

5) the alien engages and intends to continue to engage in lawful activities in the Republic of Lithuania pursuant to the provisions of Article 45 of this Law; ..."

Article 45. Issue of a temporary residence permit to an alien who engages, and intends to continue to engage, in lawful activity

"1. A temporary residence permit may be issued to an alien who engages, and intends to continue to engage, in lawful activity in the Republic of Lithuania, if he:

(1) is a participant in an enterprise which has carried out the activities indicated in its articles of incorporation in the Republic of Lithuania for at least six months prior to the alien's application for a temporary residence permit ...

2. A temporary residence permit shall be issued for a period of one year to an alien who engages or intends to continue engaging in lawful activities in the Republic of Lithuania; such permit shall be renewed for a period of two years.

...

4. Upon terminating lawful activities in the Republic of Lithuania, an alien must leave the Republic of Lithuania.

5. Before issuing or renewing a temporary residence permit to an alien on the grounds laid down in this Article, an assessment must be made ... as to whether there are serious grounds for believing that the alien is a participant, manager or member of a management board or supervisory body of a fictitious enterprise."

II. ADMINISTRATIVE COURTS' PRACTICE REGARDING ISSUING OF RESIDENCE PERMITS TO ALIENS AGAINST WHOM CRIMINAL PROCEEDINGS ARE PENDING

36. In case no. A-506-624/2015, decided on 5 February 2015, the Supreme Administrative Court examined circumstances in which the Migration Department had refused an alien, S.H., an extension of his residence permit in Lithuania on the grounds that he posed a threat to public order. He was a suspect in a criminal case concerning such crimes as

contraband and unlawful possession of excise duty. The Supreme Administrative Court held that the mere fact that the person was suspected of serious intentional crimes was not sufficient, as such, to hold that his stay in Lithuania was a threat to public order, as referred to in Article 35 § 1 (1) of the Law on the Legal Status of Aliens. When refusing a residence permit on the grounds that the person was a suspect in criminal proceedings, the Migration Department had to explain precisely why such a status was a threat to public order. The Supreme Administrative Court also pointed out that the fact that at some point during the criminal proceedings that person had been placed in detention was not relevant when overruling the decision not to grant him a residence permit, because the Migration Department's decision had not been based on that particular factual circumstance (namely, the detention).

Lastly, the Supreme Administrative Court found it "rather paradoxical" (*pakankamai paradoksali situacija*) that, as a remand measure, the person was prohibited from leaving his place of residence, but at the same time was being refused an extension of his residence permit. It ruled that, if the Migration Department failed to establish grounds for refusing to issue a residence permit, such a permit should be issued. Should the grounds referred to in Article 35 § 1 (1) of the Law subsequently materialise, the permit could be rescinded.

37. In case no. A-1814-858/2015, decided on 10 June 2015, the Supreme Administrative Court examined circumstances in which the extension of a residence permit had been refused to a foreigner, B.P., who was subject to criminal proceedings in Lithuania, suspected of committing fraud, unlawful business activity, money laundering and forgery of documents. In that case, money transfers to Lithuanian companies came from Spain, Sweden, Switzerland, Hungary and Japan. The charges against B.P. referred to "particularly large-scale criminal activity on an international level", where the damage caused by him was equal to approximately EUR 3,000,000. Apart from the crimes committed in Lithuania, B.P. had a prior conviction in Israel for setting up fake companies to defraud the State of Israel of value-added tax. In Lithuania, he had requested a residence permit on the grounds that he intended to pursue economic activity, in accordance with Article 40 of the Law on the Legal Status of Aliens.

The Supreme Administrative Court held that a threat to State security could also include a "potential threat". Since neither Article 35 § 1 (1) of the Law on the Legal Status of Aliens, nor any other laws, defined that term, it was for the courts to interpret the notion in the circumstances of each particular case.

In that decision the Supreme Administrative Court also reconfirmed its guidelines regarding the possibility to extend the residence permit, set out in ruling no. A-506-624/2015 (see paragraph 36 *in fine* above).

III. EUROPEAN AND INTERNATIONAL LAW

38. The Convention implementing the Schengen Agreement of 14 June 1985, insofar as relevant, reads as follows:

Article 96

"1. Data on aliens for whom an alert has been issued for the purposes of refusing entry shall be entered on the basis of a national alert resulting from decisions taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law.

2. Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose.

This situation may arise in particular in the case of:

...

(b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences ..."

39. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing provides that Member States shall ensure that money laundering and terrorist financing are prohibited. The Directive also points out that use of large cash payments has repeatedly proven to be very vulnerable to money laundering and terrorist financing.

40. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, which was opened for signature on 8 November 1990 in Strasbourg and which entered into force on 1 September 1993 (the "Strasbourg Convention"), provides that its parties undertake in particular to make the laundering of proceeds of crime a criminal offence and to confiscate the instruments and proceeds, or property of an equivalent value. For the purposes of international co-operation, the Convention provides for forms of investigative assistance (for example, assistance in procuring evidence, lifting of bank secrecy, and so on); provisional measures, such as freezing of bank accounts; and measures to confiscate the proceeds of crime.

These obligations were maintained in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which entered into force on 1 May 2008 (the "Warsaw Convention"). Intended to supersede the Strasbourg Convention, it has been ratified by thirty-five States (see also *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 142-44, 28 June 2018). The Republic of Lithuania signed the Warsaw Convention on 28 October 2015, but has not yet ratified it.

41. The United Nations Convention Against Transnational Organised Crime, ratified by the Republic of Lithuania on 9 May 2002, provided that its parties undertake to criminalise the laundering of the proceeds of crime (Article 6), to take measures to combat money laundering (Article 7), and afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to such offences (Article 18).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

42. The applicant complained that the criminal charges against him had not been determined within a reasonable time. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

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

A. The parties' submissions

1. The applicant

43. The applicant submitted that the pre-trial investigation, which had commenced in July 2014 and continued until at least the date on which his observations had been sent to the Court, 23 July 2019, had been carried out superficially. The authorities had not taken measures to obtain documents significant to the case within the shortest possible time or to collect evidence proving the basis of the allegations against him, despite having had fair opportunities and plenty of time to do so. Although much evidence allowing them to take a procedural decision had been collected, such as replies to their requests for legal assistance, a decision in the criminal proceedings – to discontinue the criminal investigation or to transfer the case to a court for examination – had still not been made. The applicant also argued that in 2015 and 2016 no actions had been taken whatsoever. In the applicant's view, such a high number of legal assistance requests had been unnecessary and proved that the investigators were poorly organised and lacked the relevant skills. He pleaded that none of the accused had in any way obstructed the criminal investigation and thus influenced its duration.

44. The applicant also submitted that, as a result of the pending criminal investigation, he had been in a precarious situation and could not pursue economic activity in Lithuania, find work or benefit from any other social rights and guarantees. Instead, he had been placed under an obligation to register with the police on a weekly basis and provided a written commitment not to leave his place of residence. As a result, he could not leave Lithuania either. This situation had caused him continuous stress and

insecurity regarding his rights for five years, at the time of his observations of 23 July 2019.

2. The Government

45. In their observations of 10 June 2019, the Government conceded that almost five years had already lapsed since the opening of the pre-trial investigation without a court decision convicting or acquitting the applicant. This represented quite a long period which, in some cases, might be regarded as in excess of the reasonable time requirement. However, the Government submitted that no criticism could be made of the duration of the pre-trial investigation, which had become lengthy chiefly as a result of delays attributable to its international element. The applicant was suspected of economic crimes, the solving of which required a careful assessment of different documents. The Government also referred to Lithuania's obligations under international law to solve crimes such as money laundering of which the applicant was suspected. Any delay in the criminal proceedings was not attributable to the Lithuanian authorities, who often had to wait for responses to legal assistance requests from abroad. In fact, during the pre-trial investigation, an abundance of investigative actions had been performed by the investigators. Those included searches, the examination of documents from the relevant national and international institutions, questioning, and the investigation of certain transactions.

46. As far as the applicant's conduct was concerned, the Government considered that although Article 6 of the Convention did not require him to cooperate actively with the authorities, his conduct – agreeing to testify only three years into the pre-trial investigation – had also contributed to its length. Regarding "what was at stake for the applicant", given his status as a suspect in criminal proceedings, it was only natural that he should suffer certain inconveniences due to the ensuing restrictions and the pre-trial investigation, which was the normal effect of a criminal case. In this context, the Government underlined that the applicant's request to extend his temporary residence permit had been based on the grounds that he intended to engage in some economic activity. Lastly, in the Government's view, the applicant's agreement to maintain the written commitment not to leave his place of residence meant that he had been satisfied with that measure (see paragraph 22 above).

47. The Government further submitted that in fact the length of the pre-trial investigation had been addressed by the domestic courts more than once. They had relied on the Court's case-law on the subject and reached fair and reasoned decisions that the applicant's right to a trial within a reasonable time had not been breached.

B. The Court's assessment

1. Admissibility

48. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) General principles

49. The Court's principles regarding the right to be tried within a "reasonable time" have been summed up in *Dimitrov and Hamanov v. Bulgaria* (nos. 48059/06 and 2708/09, §§ 70-73, 10 May 2011, see also the case-law cited therein).

(b) Application of the general principles to the applicant's case

50. The applicant was subject to a "charge" at least from the date on which he was served with the official notice that he was a suspect, 15 July 2014 (see paragraph 7 above; as regards the police interview and confession as a starting point, see ibid. § 74, with further references). According to the latest information in the Court's possession, the criminal proceedings were still at the pre-trial investigation stage until at least 22 October 2019 (see paragraph 22 above; see also *De Clerck v. Belgium*, no. 34316/02, § 71, 25 September 2007). The period to be considered thus lasted at least five years and three months.

51. The Court reiterates that the reasonableness of the length of the 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, and what was at stake for the applicant in the dispute. In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *Idalov v. Russia* [GC], no. 5826/03, § 186, 22 May 2012).

52. The Court accepts that the proceedings against the applicant involved a degree of complexity, given that the applicant was suspected of operating a fake company in Lithuania and participating in international money laundering in respect of the receipt of USD 1,853,800 (see paragraphs 5 and 7 above). The Court acknowledges that the scale and complexity of a criminal case concerning suspected money laundering and forgery of documents, which is often compounded further by the involvement of several suspects, may justify the extensive length of proceedings (see, *mutatis mutandis*, *Hasslund v. Denmark*, no. 36244/06, § 31, 11 December 2008, and the case-law cited therein). In the present case, inquiries had to be carried out in Hong Kong, Hungary, Spain, Denmark and the USA (see paragraphs 13, 19-21 above). Having regard to

those circumstances, and also in the light of Lithuania's international obligations (see paragraphs 38-41 above), the Court accepts that the investigation was relevant, time-consuming and difficult. Thus, for the purposes of Article 6 § 1 of the Convention the case was particularly complex (see *Frederiksen v. Denmark* (dec.), 23012/02, 16 September 2004).

53. As to the applicant's conduct, the Court observes that he had initially refused to testify, and chose to testify only three years later (see paragraph 19 above). Even so, and contrary to what has been suggested by the Government (see paragraph 46 above), given that the right to silence and the right not to incriminate oneself are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 (see *Aleksandr Zaichenko v. Russia*, no. 39660/02, § 38, 18 February 2010), the Court cannot reproach the applicant on that account. It has not been argued by the Government that the applicant otherwise hindered the criminal investigation, thus prolonging its duration. Whilst noting the Vilnius Regional Court's brief statement (see paragraph 20 above), the Court also finds that the other court decisions in the applicant's case lacked such criticism towards the applicant. Thus, the Court is not persuaded that the applicant's behaviour did, on its own, account for the length of the proceedings (see *Eckle v. Germany*, 15 July 1982, § 86, Series A no. 51, and *Panju v. Belgium*, no. 18393/09, § 89, 28 October 2014).

54. As regards the conduct of the Lithuanian authorities, the Court acknowledges that for more than two years – between 16 September 2014 and 23 January 2017 – they did not perform investigative actions while waiting for replies to their legal assistance requests from foreign jurisdictions (see paragraph 16 above). That being so, it is not insensitive to the intricacies that a criminal investigation concerning alleged money laundering on an international scale could entail. In its case-law under Article 5 § 3 of the Convention, the Court has recognised that the need to obtain evidence from many sources, including from abroad, and to determine the facts and degree of alleged responsibility of each of the co-suspects, constitutes relevant and sufficient grounds for the applicants' detention during the period necessary to terminate the investigation (see *Łaszkiewicz v. Poland*, no. 28481/03, § 59, 15 January 2008, and *Merčep v. Croatia*, no. 12301/12, § 110, 26 April 2016). The Court does not see why this reasoning would not be applicable in the present case where the applicant was one of two co-suspects in the scheme of international money laundering (see paragraphs 5, 7 and 8 above). The Court also notes that in September 2017, as their defence strategy, the applicant and the other suspect, Mr A.L.C., asked the Lithuanian authorities to look for persons who could possibly have forged transcripts of the Jammo shareholders' meeting (see paragraph 19 above), thus only adding on the list of the

Lithuanian authorities' investigative tasks. Being mindful not to substitute its view for that of the investigating officers, the Court does not see how the Lithuanian authorities could have done more to expedite the pre-trial investigation, or that some investigative measures could have been performed while the Lithuanian authorities were waiting for the replies to their legal assistance requests from abroad. The Court also observes that when holding that the proceedings in the applicant's criminal case had not been excessive, the domestic courts not only underscored the need for legal assistance requests that had been sent abroad as such, but also referred to the fact that the replies received to certain of those requests had been inconclusive, only prompting further questions, and thus requiring further correspondence with law enforcement authorities abroad. It is also clear that the criminal investigation had evolved, and evidence had to be collected from more and more jurisdictions (see paragraphs 13, 15, 16, 18, 19, 20 and 21 above). When explaining the length of the pre-trial investigation, apart from its international element, the Lithuanian courts also referred to the financial nature of the crimes, as well as the fact that other actions by the investigators – searches and witness interviews – had been undertaken in a timely manner (see paragraph 20 above).

55. As to what was at stake for the applicant, the Court notes that he had initially been detained, for two months (see paragraphs 8 and 10 above). Afterwards the measure had been changed to an obligation to register at the police station on a weekly basis and not to leave his place of residence, the latter measure having remained in force. The Court also observes the fact that the applicant had agreed to maintain the last measure as sufficient to guarantee his participation in the criminal proceedings (see paragraph 22 above).

56. Lastly, the Court notes that throughout most of the criminal proceedings against him, the applicant had been obliged to live in Lithuania without a valid residence permit (see paragraphs 24-33 above). It is not unreasonable to hold that such a state of affairs caused him certain feelings of insecurity. The Court is also mindful of the Supreme Administrative Court's case-law, pursuant to which when an alien is held in Lithuania under remand measures but without a residence permit, the situation is "rather paradoxical" (see paragraphs 36 and 37 above). That being so, the Court also observes that at no point during the criminal proceedings would a decision regarding the applicant's deportation have been taken. Therefore the Court is not ready to hold that even if there were outstanding criminal charges against him, the applicant suffered any tangible practical consequences. Moreover, as clearly stated by the criminal court, as well as by the Migration Department and afterwards by the Vilnius Regional Administrative Court, any negative effect on the applicant had been a result of him being a suspect of a serious crime (see paragraphs 15 *in fine*, 25, 28 and 30 above).

57. In the light of the foregoing considerations, the Court cannot hold that the criminal case, during the period under the Court's review (see paragraphs 7 and 22 above), did not proceed with the necessary expedition and thus failed to satisfy the reasonable time requirement.

58. There has accordingly been no violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

59. The applicant complained that the criminal proceedings against him had been unduly long, which had negatively affected his right to respect for his family life, as provided for in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Submissions by the parties

60. The Government firstly pointed out that the applicant had failed to appeal against the Vilnius Regional Administrative Court's decision of 19 October 2015 (see paragraphs 27-29 above). They emphasised that under domestic case-law, the fact that a person was suspected of having committed a serious criminal act was not always grounds to refuse him or her a residence permit (see paragraphs 36 and 37 above). This meant that an appeal to the Supreme Administrative Court offered the applicant a reasonable prospect of success. One also had to bear in mind that the applicant had had a lawyer, and by that time could have relied on the fact that he had a son and thus a family link. However, he had failed to appeal and to raise those pleas before the administrative court of highest jurisdiction. Moreover, the Vilnius Regional Administrative Court had taken into account the fact that it had not been established that the applicant had any social relations in Lithuania and his connection to the country had been purely economic (see paragraph 29 above).

61. The Government likewise submitted that the applicant had not contested in court the Migration Department's letter of 23 December 2015 (see paragraph 32 above), refusing to extend his residence permit in the light of the circumstance that he had a son in Lithuania. Lastly, the applicant could have appealed against the Vilnius municipal authority's letter of 15 July 2016 refusing his request to register his marriage (see paragraph 33

above), thus giving the national courts a chance to address his situation from that point of view.

62. In the light of the foregoing, the Government argued that the applicant's grievances under Article 8 of the Convention should be dismissed for failure to exhaust domestic remedies.

63. In the alternative, the Government considered that the applicant's complaint was unfounded. They submitted, among other things, that despite the ongoing pre-trial investigation, the applicant had created a family life, even though he had been well aware that the situation concerning his residence in the country was already precarious.

64. The applicant did not comment as regards the exhaustion of domestic remedies. His arguments regarding the breach of his right to respect for family life were extremely succinct and limited to the statement that the Vilnius city municipal authorities had refused a request to register his marriage with Ms E.M., who was the mother of his child.

B. The Court's assessment

65. At the outset, the Court observes that the applicant did not complain that he is unable to live with Ms E.M. or their child. Further, the Court shares the Government's view (see paragraphs 60 and 61 above) that the applicant should have raised an Article 8 complaint with the domestic courts, which he failed to do. It follows that this complaint must be rejected for failure to exhaust domestic remedies, in accordance with Article 35 §§ 1 and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint regarding the length of the applicant's criminal proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 9 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Jon Fridrik Kjølbro
Registrar	President