

## **CASE OF LALAS v. LITHUANIA - Application no. 13109/04 (2011)**

In the Chamber's judgment in the case of **LALAS v. LITHUANIA** (01.06.2011) the European Court of Human Rights:

- **held by five votes to two that there has been a violation of Article 6 § 1 of the Convention;**
- **held by five votes to two that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.**

### **I. Principal facts**

The Applicant, Mr Marius Lalas, is a Lithuanian national. The place where the Applicant lives is unknown, as he is in hiding.

On 19 February 2003 the Kaišiadorys District Court convicted the Applicant, together with his accomplice M., of attempted drug dealing in large quantities. The offence had been disclosed using a "criminal conduct simulation model" (model), which had been authorised against M. by the Prosecutor. The Court found that the Applicant was caught on selling psychotropic drugs to an undercover agent under the model. The Applicant and his accomplice, M., had been arrested immediately after the incident and both had pleaded guilty to the attempted drug offence. The identity of V was left uncovered in order to protect him and the proper functioning of the police drug squad. However, the Government contended that the Applicant has never been denied access to information about the execution of the model. Various arguments have been adduced for the defense of the accused – i.a. that the undercover police officer V. had acted unlawfully and the Applicant had been incited to commit the offence. Furthermore, counsel contended that Mr Lalas had never been involved in drug dealing before. The trial court concluded that the use of the model in the case had been lawful.

The Applicant was sentenced to three years' imprisonment and to the confiscation of LTL 2,000. Mr Lalas appealed to the Kaunas Regional Court. On 10 June 2003 the Kaunas Regional Court upheld the conviction, considering that the Applicant was guilty of a completed offence. The court also re-classified the conviction and set the sentence at eight years of imprisonment.

The Applicant lodged a cassation appeal. He alleged that the police actions had been unlawful. In 2003 the Supreme Court dismissed the Applicant's cassation appeal. Mr Lalas's conviction was again re-classified as an attempt to sell drugs in large quantities and the sentence of eight years' imprisonment was maintained.

On 3 March 2004, the Applicant's defence counsel submitted a request to the Supreme Court for reopening the case, claiming that the courts' decisions were based on inappropriate evidence which had been gathered unlawfully. This request was dismissed by the Supreme Court.

## **II. Complaints and procedure**

The Applicant complained that the State had violated Article 6 § 1 of ECHR (right to fair trial). He submitted that he had been subjected to entrapment and thus had been unfairly convicted of drug-dealing. L alas further complained about the non-disclosure at his trial of certain evidence relating to the authorisation and use of the Criminal Conduct Simulation Model.

## **III. Decision of the Court**

In accordance with a concept of entrapment in a breach of Article 6 § 1 of the Convention, the Court recalled the *Ramanauskas* judgement. “In respect of the former, there must be adequate safeguards against abuse, as the public interest cannot justify the use of evidence obtained as a result of police incitement. The Court held that its function under Article 6 § 1 is to review the quality of the domestic courts’ assessment of the alleged entrapment and to ensure that they adequately secured the accused’s rights of defence”.

The Court had taken into account i.a. the following circumstances: there was no evidence that M. had committed any drug offences beforehand. Secondly, the Criminal Conduct Simulation Model was not fully disclosed before the trial court, particularly regarding the purported suspicions about M.’s previous conduct. Moreover, it was Officer V. who took the initiative when he first approached M., asking where he could acquire illegal drugs, and M. then offered to supply them himself. Furthermore, as the transaction progressed, M. was offered a significant sum of money – USD 3,000 – to supply a large amount of narcotics – this obviously represented an inducement to produce the goods. Finally, the first instance court recognised the decisive role played by the police.

The Court agrees with the Government’s position that the Criminal Conduct Simulation Model had been authorised only in respect of M. Nevertheless, during the execution of the model, the police officers uncovered the persons committing crimes, including the Applicant. Thereafter, the Court elaborates former arguments and reflections.

Finally, the Court concluded that such aggregate considerations undermined the fairness of the Applicant’s trial and, consequently, there has accordingly been a violation of Article 6 § 1 of the Convention.

## **IV. Just satisfaction**

The Court held that the finding of a violation constitutes in itself a sufficient just satisfaction (non-pecuniary damage). The Court also recalled that, where an individual had been convicted by a court in unfair proceedings, a retrial or reopening of the case represented in principle an appropriate way of redressing the violation.