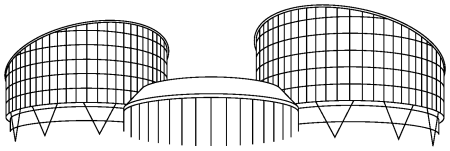

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KALĒJA v. LATVIA

(Application no. 22059/08)

JUDGMENT

STRASBOURG

5 October 2017

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 Kalēja v. Latvia,

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

Angelika Nußberger, *President,*
Nona Tsotsoria,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 12 September 2017,

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

PROCEDURE

1. The case originated in an application (no. 22059/08) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Ms Ineta Kalēja ("the applicant"), on 2 April 2008.

2. The applicant was represented by Ms E. Kalniņa, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agents, Ms I. Reine and subsequently by Ms K. Līce.

3. The applicant alleged, in particular, that the criminal proceedings against her had lasted for an unreasonably long time and that she had not had access to a lawyer.

4. On 1 December 2011 these complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Rīga.

6. She worked as an accountant in a building management company (*namu pārvalde*) from 1989. From the beginning of 1997 she also fulfilled the duties of a cashier and she was fully responsible for any shortfall in the material assets (*materiālās vērtības*) entrusted to her.

A. Pre-trial proceedings

7. On 9 December 1997 the applicant's colleagues reported to the police that illicit cash withdrawals from the company's cash registers had been made. Allegedly, the withdrawals had been made by the applicant and her colleague, B.E., by means of annulling the records of cash transactions and then taking the money received in respect of those transactions from the cash register.

8. Internal and external audits were carried out and it was discovered that certain data in the company's cash registers had been manipulated. Specific amounts of cash and dates were noted in the audits, as well as the customer numbers in respect of which this manipulation had been executed. It was later established that the data had been manipulated in order to conceal illicit cash withdrawals. Further internal and external audits were carried out in 1999 and 2001.

9. On 15 January 1998 the applicant gave a written explanation (*paskaidrojums*) to a police inspector. The applicant testified that she had annulled three cash transactions and made three cash withdrawals in the amount of 1,228 Latvian lati (LVL – approximately 1,747 euros (EUR)). She had done so at the request of the deputy head of the company and had handed the cash over to him. As concerns the remainder of the missing cash, she stated that she had not taken it. Nor had she annulled any other cash transactions.

10. On 16 January 1998 the police inspector issued a decision to institute criminal proceedings (*lēmums par krimināllietas ierosināšanu*) in respect of "the misappropriation of funds in the amount of LVL 7,559 [approximately EUR 10,756] carried out by the applicant and B.E. by annulling records of cash transactions". The applicant was not informed of this decision at that time. Instead, she was issued a summons to talks (*pārrunas*) and she was interviewed on 16 January 1998. A witness statement record (*liecinieka nopratināšanas protokols*) was drawn up. The applicant was informed of the rights and obligations of witnesses, as stipulated by Article 53 of the Criminal Procedure Code (*Kriminālprocesa kodekss*, see paragraph 24 below); she was also informed that if she refused to testify or gave false testimony she would incur criminal liability. The applicant repeated that she had annulled only three cash transactions and had made only three cash withdrawals. She had handed the cash over to the deputy head.

11. According to the applicant she appeared at the police station on 16 January 1998, accompanied by a lawyer whom she had authorised to represent her. Her request to be represented by the lawyer was refused – she was told that her status was that of a witness and that witnesses were not entitled to legal assistance. The Government contested the applicant's submission, as there was no mention of this in the witness statement record;

the Government stated that the applicant had signed the record and had made no remarks.

12. In the following years the applicant was interviewed as a witness five more times: on 21 January and 14 December 1999, 13 February 2002, and 6 January and 11 November 2004. Her rights and obligations as a witness – as well as the fact that she would render herself criminally liable if she refused to testify or gave false testimony – were explained to her (reference was made to Article 53 of the Criminal Procedure Code, see paragraph 24 below); no mention of any right to legal assistance was made. She reiterated that she had annulled only three cash transactions and had made only three cash withdrawals. She had handed the cash over to the deputy head of the company. She furthermore added that she had already repaid to the company approximately LVL 1,228 (approximately EUR 1,747).

13. A confrontation (*konfrontācija*) was also held between the applicant and B.E. on 27 January 1999 and with the deputy head of the company on 28 January 1999, who were also considered witnesses. Another confrontation between the applicant and the chief accountant was scheduled to take place on 24 May and 20 June 2002, but neither of them attended.

14. In 2000, 2001 and 2002 the police considered the case material to be sufficient for bringing charges against the applicant and referred the case to the prosecutor's office. However, several prosecutors identified various shortcomings in the investigation and transferred the case back to the police for additional investigation.

15. The identified shortcomings included the following aspects.

First, the criminal case material was found to be insufficient to establish guilt and therefore no charges could be brought. Serious breaches of the Criminal Procedure Code and other regulations were found. The criminal case material had contained uncertified copies of documents, missing pages of explanations and incomplete procedural records. In addition, the audits had not been carried out in accordance with law. Another audit had to be commissioned and more witnesses had to be questioned.

Second, there had been discrepancies in the total amount of missing cash and it was impossible to establish that a crime had been committed or to bring charges against anyone. The audit had to be carried out by a certified auditor.

A conclusion was made that the pre-trial investigation had been deficient, chaotic and had been carried out aimlessly. Moreover, the role of the chief accountant and the deputy head of the company in the cash withdrawals had not been properly investigated.

16. The police carried out further investigative measures – they commissioned another audit, collected further evidence, and questioned more witnesses (including the head, the deputy head, and the chief accountant of the company, as well as some of its customers).

17. On 20 January 2005 the police referred the case to the prosecutor's office for the fourth time. This time the case material was deemed sufficient for charges to be brought and, on 27 January 2005, the applicant was officially charged with nineteen episodes of misappropriation of funds. She thus became an accused person (*apsūdzētā persona*) in the criminal proceedings against her and was informed of her right to have a lawyer. A preventive measure – a prohibition on her changing her place of residence, which she had to acknowledge by giving her signature (*paraksts par dzīves vietas nemainīšanu*) – was imposed on her. On 26 May 2005 the charges were slightly amended in respect of the total amount of misappropriated funds.

18. On 27 January, 3 February, 26 May and 5 September 2005 the applicant was questioned as an accused person. On two occasions (on 27 January and on 26 May 2005) the applicant stated that a lawyer's presence was not necessary. On another occasion (on 3 February 2005) she stated that she would continue giving testimony without the presence of a lawyer. No remarks were made regarding the absence of a lawyer during the questioning of 5 September 2005. The applicant was given access to the criminal case file in order that she could acquaint herself with its contents. She subsequently requested that further investigative measures be taken. Some requests for further investigative measures were granted and some were refused.

19. On 5 September 2005 the final bill of indictment was served on the applicant (*uzrādīta galīgā apsūdzība*) in the presence of a lawyer. The total amount of misappropriated funds was again slightly amended. On 21 October 2005 other preventive measures – a prohibition on leaving the country and the obligation to reside at a particular place of residence (*uzturēšanās noteiktā dzīvesvietā*) – were imposed on the applicant. On the same date the prosecutor's office forwarded the case file to the Riga Regional Court (*Rīgas apgabaltiesa*).

B. Court proceedings

20. On 23 October 2006 the first hearing was held. On 20 November 2006 the Riga Regional Court convicted the applicant of nineteen episodes of misappropriation of property that had been entrusted to her. The applicant did not admit her guilt. She agreed that she had annulled three cash transactions and made three cash withdrawals in the amount of LVL 1,228 (approximately EUR 1,747), but stated that she had done so at the request of the chief accountant and the deputy head of the company with a view to paying out salaries. As concerns other cash transactions, she had not annulled those. The court, relying on witness testimony and other case material (the results of three audits, the electronic cash register records, the relevant bills and receipts, the respective employment agreements etc.),

convicted the applicant. The court did not rely on the applicant's statements made during the pre-trial investigation.

21. The applicant was given a three-year suspended prison sentence, with three years' probation (a more lenient sentence than the minimum provided by law). In setting the sentence the court took into account her state of health, the fact that she had partly compensated the company for the damage in question, and the fact that she had committed the crime nine years previously and that since then she had not committed any other crimes. The applicant lodged an appeal on 2 December 2006.

22. The first appellate hearing was scheduled for 15 August 2007. On 17 August 2007 the Criminal Chamber of the Supreme Court (*Augstākās tiesas Krimināllietu tiesu palāta*) quashed the applicant's conviction for lack of evidence in respect of five episodes of misappropriation of property. The applicant's sentence was reduced to a two-year suspended prison sentence, with one year's probation. In setting the sentence the court took into account the significantly lower number of episodes for which the applicant had been convicted, the fact that a particularly long period of time had elapsed since the commission of the crime, and the fact that there was no indication that she had committed any other crimes since then. The applicant lodged an appeal on points of law on 18 October 2007.

23. On 29 November 2007 the Senate of the Supreme Court (*Augstākās tiesas Senāts*) dismissed the applicant's appeal on points of law. The Senate indicated that the former Criminal Procedure Code (which had been in force in January 2005, when the charges had been brought against the applicant) had not excluded that a person could have the procedural status of a witness while a pre-trial investigation was in progress and could only be officially charged once there was sufficient evidence concerning that person's guilt.

II. RELEVANT DOMESTIC LAW

24. The relevant provisions of the former Criminal Procedure Code (in force until 30 September 2005) read as follows:

Article 18 – The right to legal assistance of suspects, accused persons and persons committed for trial

"The right to legal assistance shall be guaranteed for suspects, accused persons and persons commited for trial.

The court, prosecutor and investigating authority shall guarantee the possibility for suspects, accused persons and persons committed for trial to defend [themselves] by means and facilities established in accordance with law and shall guarantee the protection of their personal and property rights."

Article 53 – Rights and obligations of a witness

"A person invited to appear before the investigating authority (*izziņas izdarītājs*), prosecutor or court as a witness shall explain all he/she knows about the case, [shall]

testify truthfully, and [shall] answer any questions raised in accordance with this Code. A witness shall have the right not to testify against him/herself or against his/her family members.

A witness shall have the right to testify in his/her mother tongue, to acquaint him/herself with a witness statement ... given in the pre-trial proceedings, to ask that additions be made to or amendments be made in that record, [and] to submit complaints regarding the conduct of the person who is conducting the interview. ..."

Article 54 – Responsibility of a witness

"A witness shall be held criminally liable under section 302 of the Criminal Law for refusing to testify and under section 300 of the Criminal Law for giving false testimony. ...

If a witness fails to appear without a good reason, the investigating authority, prosecutor or judge may order that he/she be forcibly conveyed [to them]. The investigating authority or prosecutor may draw up a record of a witness's failure to appear without a good reason and send it to a court for a judge to decide on whether to hold the witness liable, in accordance with the law. ..."

25. The new Criminal Procedure Law, which took effect on 1 October 2005, expressly provides the right of witnesses to legal assistance (section 110(3)(5)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF PROCEEDINGS

26. The applicant complained about the length of the criminal proceedings against her. She relied on Article 6 § 1 of the Convention, which reads as follows:

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

27. The Government contested that argument.

A. Admissibility

1. The parties' submissions

28. While the Government did not deny that the criminal proceedings had lasted for almost ten years, they argued that the applicant could not be considered a victim in that regard as the criminal proceedings had not directly affected her in 1998, when the criminal investigation was launched. She was only one of many witnesses who had been called to testify and only

one of the persons whose actions had been examined in order to establish whether a crime had been committed.

29. The applicant did not make any comment.

2. The Court's assessment

30. The Court considers that the Government's objection is closely related to the merits of the applicant's complaint under Article 6 § 1 of the Convention. It will therefore examine it together with the merits of this complaint.

31. The Court 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' submissions

(a) Period to be taken into consideration

32. The applicant considered that the criminal proceedings against her had lasted for more than nine years – from 16 January 1998 (when the investigation against her had been opened) until 29 November 2007 (when her appeal on points of law had been dismissed), a period which she considered too long. She had been subjected to various limitations and constant stress during that period.

33. The Government argued that the applicant had not been subject to "a criminal charge" in 1998. They insisted that the official charges had only been brought against her on 27 January 2005. Prior to that date she had not been officially informed of any charges against her, nor had she been substantially affected. The Government also relied on the Court's decision in the case *Dementjeva v. Latvia* ((dec.) [Committee], no. 17458/10, § 20, 13 March 2012).

(b) Reasonableness of the length of proceedings

34. The applicant maintained that the criminal proceedings had been too long, without providing any further argument.

35. The Government argued that the case was factually and legally complex. It related to financial and accounting manipulation, allegedly carried out by two persons, although the possible involvement of others had also been investigated. Many investigative measures had been taken: twelve witnesses had been questioned (some of them repeatedly) and three audits commissioned. The material in the case file had been substantial (ten volumes). The Government pointed out that during the pre-trial

investigation the applicant had been placed in hospital for twelve days, that one further month had been necessary for her to acquaint herself with the case material, and that another period of two months had been necessary for her requests for further investigative measures to be examined. Although the first- and second-instance courts had not scheduled hearings in a speedy manner, the overall length of proceedings before the domestic courts had been reasonable.

2. The Court's assessment

(a) Period to be taken into consideration

36. The Court reiterates that in criminal matters, the "reasonable time" referred to in Article 6 § 1 begins to run as soon as a person is "charged". A "criminal charge" exists from the moment that an individual is officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 110, ECHR 2017 (extracts), and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 249, ECHR 2016).

37. The Court observes that although the criminal proceedings were instituted in respect of the fact that funds of the company had been misappropriated, the decision of 16 January 1998 to institute criminal proceedings contained a specific allegation that the applicant and B.E. had misappropriated funds in the amount of LVL 7,559 (approximately EUR 10,756). That decision indicates that there was in fact a suspicion against the applicant that she had committed the criminal offence in question (see paragraph 10 above). The applicant was eventually convicted of the same offence. Although the applicant was not informed of the decision of 16 January 1998, she was nevertheless questioned in relation to those specific facts and she gave a statement in that regard on the same day. She admitted to having withdrawn cash on three occasions, but denied that she had misappropriated it. In her submission – which she continuously upheld throughout the criminal proceedings – she stated that she had handed the cash over to the deputy head of the company. During the trial she added that she had also handed the cash over to the chief accountant with a view to paying out salaries. It is true that the applicant was not officially informed about any charges against her before 2005. However, as can be seen from the statements that the applicant made on 16 January 1998, the domestic authorities were looking into allegations that she had committed the criminal offence of misappropriating the company's funds from the very beginning of the criminal investigation (see paragraph 10 above).

38. The Court notes that the applicant was not officially declared a suspect in the criminal proceedings where her actions were being

investigated and where she was questioned (contrast with *Lavents v. Latvia*, no. 58442/00, §§ 10 and 85, 28 November 2002). Rather her procedural status – until the official charges were brought against her – was a witness. However, this is not a decisive factor to be taken into consideration. Indeed, the Court is compelled to look behind the appearances and investigate the realities of the procedure in question (*Deweer v. Belgium*, 27 February 1980, § 44, Series A no. 35). The police summoned the applicant not only on 16 January 1998, but also on five more occasions in subsequent years, for her to give further statements – all in relation to the various episodes of the alleged misappropriation of the company's funds (contrast with *Larionovs and Tess v. Latvia* (dec.), nos. 45520/04 and 19363/05, §§ 183 and 187, 25 November 2014). She was also summoned twice for a confrontation. The Court agrees with the Government that the applicant was not the only person whose actions were examined within the framework of the criminal proceedings. However, the fact remains that the domestic authorities were looking into specific allegations against the applicant from the very first day of the criminal investigation. Overall, the actions taken by the police indicate that they did in fact consider the applicant a suspect from the start of the criminal investigation and throughout the pre-trial proceedings although her procedural status remained that of a witness.

39. The Court distinguishes the present case from the case referred to by the Government (see paragraph 33 above), as in that case the applicant had first been questioned and had then fled to Australia.

40. Taking into account that there was a suspicion against the applicant, as evidenced, *inter alia*, by the decision of 16 January 1998 to institute criminal proceedings, and that she was questioned about her involvement in the various episodes of the alleged misappropriation of the company's funds from the start of the criminal investigation and throughout it, the Court considers that the applicant was substantially affected on 16 January 1998 (see *Howarth v. the United Kingdom*, no. 38081/97, § 20, 21 September 2000, and *Simeonovi*, cited above, § 111, with further references to cases which concern a suspect questioned about his involvement in acts constituting a criminal offence). The Court, accordingly, dismisses the Government's objection in this regard.

41. The period to be taken into consideration, accordingly, began on 16 January 1998 and ended on 29 November 2007, when the Senate of the Supreme Court dismissed her appeal on points of law. The criminal proceedings thus lasted nine years and ten months at three levels of jurisdiction.

(b) Reasonableness of the length of proceedings

42. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the

conduct of the applicant and of the relevant authorities, and what was at stake for the applicant (see, among many other cases, *McFarlane v. Ireland* [GC], no. 31333/06, § 140, 10 September 2010).

43. The Court can accept that the proceedings against the applicant involved a certain degree of complexity. She was charged with nineteen episodes of misappropriation of funds. The case involved two defendants. However, the Court finds that the complexity of the case alone cannot justify the overall length of the proceedings.

44. As regards the applicant's conduct, the Court finds that the applicant did not significantly contribute to the length of the proceedings, and that in any event the delay, if any, attributable to her on the grounds mentioned by the Government was negligible (see paragraph 35 above).

45. As regards the conduct of the authorities, the Court notes that it took more than seven years and nine months for the domestic authorities to complete the pre-trial investigation. Many witnesses were questioned and other investigative measures were taken during that period. However, a large majority of those measures were taken only after the prosecutors had made repeated requests for further investigation to be undertaken (see paragraph 15 above). Serious deficiencies in the investigation were eliminated only after the case had been sent back three times for further investigative measures. It is precisely because of those deficiencies – which were not resolved in a timely manner – that the pre-trial investigation lasted for an exceptionally long period and not because – as suggested by the Government – the case was complex or involved many witnesses.

46. There were also certain periods of inactivity on the part of the domestic courts. The case was pending for one full year before the first-instance court and a further eight months before the appellate court, during which periods no hearings were held. While it is true that the case was speedily decided once the hearings were held, long periods of inactivity on the part of the domestic courts weigh heavily in circumstances in which a preliminary investigation has not been carried out expeditiously.

47. As to what was at stake for the applicant, the Court notes that although the applicant was not kept in detention pending the determination of criminal charges against her, the charges against her did carry the weight of a prison sentence.

48. Having examined all the material and arguments submitted and having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the criminal proceedings against the applicant was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 (c) OF THE CONVENTION IN RESPECT OF LEGAL ASSISTANCE

49. The applicant complained that prior to 27 January 2005 she had been interviewed as a witness and that because of her status as a witness she had not had the right to legal assistance. The Court will examine this complaint under Article 6 §§ 1 and 3 (c) of the Convention, the relevant part of which reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ..."

50. The Government contested that argument.

A. Admissibility

1. The parties' submissions

51. The Government reiterated that the criminal proceedings had not directly affected the applicant in 1998 as she had been a witness. Her complaint concerning the lack of legal assistance prior to 27 January 2005 was accordingly incompatible *ratione materiae*.

52. The applicant did not make any comment.

2. The Court's assessment

53. The Court refers to its previous finding that the applicant was substantially affected already on 16 January 1998 when the applicant was first questioned within the framework of the criminal proceedings against her (see paragraphs 36-41 above). Accordingly, the Court considers that the guarantees of Article 6 of the Convention became applicable on 16 January 1998 in respect of the applicant. The Court dismisses the Government's objection in this regard.

54. The Court 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' submissions

55. The applicant submitted that prior to 27 January 2005 she had not had the right to legal assistance. Domestic law, as then in force, had not provided the right of legal assistance in respect of a witness, which had been her procedural status from 16 January 1998 until 27 January 2005 – that is to say for more than seven years.

56. The applicant maintained that on 16 January 1998 she had come to her first round of police questioning accompanied by a lawyer, but that she had not been allowed to be assisted by that lawyer (see paragraph 11 above).

57. The Government submitted that legal assistance for witnesses under domestic law had not been obligatory as it had been, for example, for suspects, accused persons or persons committed for trial. However, domestic law had not contained an express or implied prohibition of the involvement of a legal representative of a person's own choosing at any stage of proceedings, even if the person concerned was a witness.

58. The Government contested the applicant's submissions concerning the denial of a lawyer on 16 January 1998. There was no information that the applicant had requested that a lawyer be present during questioning at any time in the pre-trial stage or that such a request had been refused (see paragraph 11 above). The Government emphasised that none of the witness statement records indicated that the applicant had made any objections or remarks in that regard. One of those records (in November 2004) indicated that the applicant had refused the possibility of legal assistance. Lastly, the applicant had not lodged any complaints with the prosecutor as concerns her legal representation.

2. The Court's assessment

59. The Court has recently reiterated the applicable principles as concerns the right to legal assistance and the overall fairness of criminal proceedings, a waiver of the right to legal assistance, the temporary restriction of access to a lawyer for "compelling reasons", the right to be informed of the right to legal assistance, and the relevant factors for the assessment of the overall fairness of proceedings (see *Simeonovi*, cited above, §§ 112-20).

60. Turning to the facts of the present case, the Court refers to its previous analysis leading to the conclusion that the applicant was already substantially affected on 16 January 1998 (see paragraphs 36-41 above). It was therefore on 16 January 1998 that the right to legal assistance provided in Article 6 § 3 (c) became applicable.

61. The Government argued that there was no evidence to corroborate the applicant's submission that her request made on 16 January 1998 for her lawyer to be allowed to assist her had been refused.

62. In this regard, the Court notes that the domestic law at the material time did not provide the right to legal assistance for witnesses (see paragraph 24 above), which the Government did not deny. The Government referred to the witness statement record made in November 2004; however, that record did not contain any reference to legal assistance (see paragraph 12 above). It is undisputed that the applicant, while having the procedural status of a witness, was not informed of any right to legal assistance. There can be no question of the applicant having waived her right to legal assistance if such a right was not available under domestic law to the applicant and if she was not informed about it (see *Simeonovi*, cited above, §§ 115, 119 and 128).

63. The Court notes a development in domestic law – since 1 October 2005 the right to legal assistance has also applied to witnesses (see paragraph 25 above). The present applicant, however, was not able to benefit from this development as she was no longer a witness by the time the new Criminal Procedure Law took effect. The Court, accordingly, concludes that the applicant's right to legal assistance was restricted from the start of the criminal proceedings, where her actions were being investigated and where she was questioned, until the day on which she was declared an accused person in those proceedings, that is to say from 16 January 1998 to 27 January 2005.

64. The Government have not argued that there were any exceptional circumstances justifying the restriction of the applicant's access to a lawyer during that period of time. It is not the Court's task to assess of its own motion whether such exceptional circumstances existed. The Court therefore sees no "compelling reason" that could have justified restricting the applicant's access to a lawyer from 16 January 1998 until 27 January 2005.

65. In the absence of "compelling reasons", the Court must apply a very strict scrutiny to its overall fairness assessment (see *Simeonovi*, cited above, § 118, and *Ibrahim and Others*, cited above, § 265). In the present case the Court must seek to ascertain whether the absence of a lawyer from 16 January 1998 until 27 January 2005 had the effect of irretrievably prejudicing the overall fairness of the criminal proceedings against the applicant (see also *Simeonovi*, cited above, § 132).

66. When examining the proceedings as a whole in order to assess the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings, the Court has indicated a number of factors, drawn from its case-law, to be taken into account, where appropriate (see *Ibrahim and Others*, cited above, § 274):

(a) Whether the applicant was particularly vulnerable, for example, by reason of age or mental capacity.

(b) The legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with; where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair.

(c) Whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use.

(d) The quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion.

(e) Where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found.

(f) In the case of a statement, the nature of the statement and whether it was promptly retracted or modified.

(g) The use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case.

(h) Whether the assessment of guilt was performed by professional judges or lay jurors, and in the case of the latter the content of any jury directions.

(i) The weight of the public interest in the investigation and punishment of the particular offence in issue.

(j) Other relevant procedural safeguards afforded by domestic law and practice.

67. The Court observes that the applicant's statements remained unchanged during the pre-trial investigation and trial. She did not confess to the crime in question at any stage of the proceedings. The applicant admitted only to three instances of her taking cash and annulling the relevant cash transactions. She denied having misappropriated those funds. Her submission was that she had handed them over to the deputy head of the company (see paragraphs 9-10 and 12 above). During the trial she added that she had also handed the cash over to the chief accountant with a view to paying out salaries. The applicant's statements were not cited as evidence when convicting the applicant. Instead, her conviction was based on the testimony of numerous witnesses and other case material (see paragraph 20 above).

68. While the applicant could not benefit from the rights provided for suspects under domestic law (including the right to legal assistance), she did enjoy other procedural safeguards. In particular, from the start of the investigation and throughout it she was informed of her rights as a witness, which included a right not to testify against herself (see paragraphs 10, 12

and 24 above). The lack of legal assistance may undermine a full use of the right not to testify against oneself. However, the applicant's defence position did not change throughout the proceedings (see paragraph 67 above). Besides, she was not held in detention during the criminal investigation, therefore, she was not prevented from receiving legal assistance before and after her questioning by the police, if she wished so. The applicant was also given ample opportunity to contest the evidence used against her during the pre-trial investigation and trial. She exercised her rights in that regard at all stages of the proceedings. It is notable that on appeal the applicant's conviction was quashed for lack of evidence in relation to five (out of nineteen) episodes. Lastly, although the applicant could not benefit from legal assistance until 27 January 2005, on this date she was officially charged and became an accused person, who could benefit from legal assistance. In subsequent interviews she did not request that a lawyer be present (see paragraph 18 above). The final bill of indictment, nevertheless, was served on the applicant in the presence of a lawyer (see paragraph 19 above).

69. While it is regrettable that the applicant could not benefit from legal assistance during the pre-trial stage from 16 January 1998 until 27 January 2005, the Court finds that the overall fairness of the criminal proceedings against the applicant had not been irretrievably prejudiced by the absence of legal assistance during that stage.

70. In view of the above considerations, the Court concludes that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. The applicant further invoked Articles 2 and 6 §§ 1, 2 and 3 (b) of the Convention and complained that her conviction had been unlawful and that at one hearing of the appeal court she had only been given fifteen minutes in which to familiarise herself with the contents of the large number of documents in the case file.

72. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

73. Accordingly, these complaints are manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

75. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

76. The Government disagreed and considered this claim unsubstantiated.

77. The Court considers that the applicant must have sustained non-pecuniary damage on account of the unreasonable length of the criminal proceedings against her. Ruling on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant did not submit a claim for the costs and expenses incurred before the domestic courts and the Court. Accordingly, the Court will not award her any sum on that account.

C. Default interest

79. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* the Government's objection as concerns the applicant's complaint under Article 6 § 1 of the Convention in respect of the length of proceedings and *dismisses* it;

2. *Declares* the complaints under Article 6 § 1 in respect of the length of proceedings and under Article 6 §§ 1 and 3 (c) in relation to legal assistance admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of proceedings;

4. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of legal assistance;

5. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President