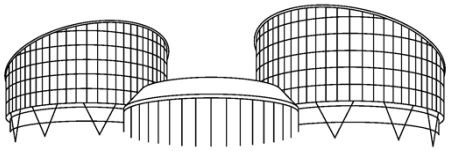

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SIGRÍÐUR ELÍN SIGFÚSDÓTTIR v. ICELAND

(Application no. 41382/17)

JUDGMENT

Art 6 (criminal) • Impartial tribunal • Senior bank manager convicted of offences related to bank collapse by panel of five judges, one of whom had suffered significant loss in that collapse • Lack of objective impartiality • No issue in respect of another judge who had sustained modest losses in that same collapse • No issue in respect of a third judge who had suffered losses as a result of another bank's collapse

STRASBOURG

25 February 2020

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 Sigríður Elín Sigfúsdóttir v. Iceland,

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

Marko Bošnjak, *President,*
Robert Spano,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli,
Peeter Roosma, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 4 February 2020,

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

PROCEDURE

1. The case originated in an application (no. 41382/17) against the Republic of Iceland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Icelandic national, Ms Sigríður Elín Sigfúsdóttir ("the applicant"), on 2 June 2017.

2. The applicant was represented by Mrs Helga Melkorka Óttarsdóttir, a lawyer practising in Reykjavik. The Icelandic Government ("the Government") were represented by their Agent, Mr Einar Karl Hallvarðsson, the State Attorney General.

3. The applicant alleged, in particular, a violation of her right to be heard by an independent and impartial tribunal and of her right to be presumed innocent until proven guilty, under Article 6 §§ 1 and 2 of the Convention.

4. On 18 April 2018 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Selfoss.

A. The background of the case

6. In the autumn of 2008, the global liquidity crisis hit the Icelandic financial sector. Over the course of two days, 7-9 October 2008, the Financial Supervisory Authority (*Fjármálaeftirlitið*, hereinafter "the FME") appointed a resolution committee for each of the three largest Icelandic banks, which took over their operations; the collapse of each bank had major effects for the others left standing. One of those banks that failed was Landsbanki Islands hf. (hereinafter "Landsbanki"), which collapsed on 7 October 2008. Following these events, the office of a Special Prosecutor (hereinafter "the Special Prosecutor") was established.

7. The applicant held the position of director of corporate banking at Landsbanki from 2003 until 9 October 2008, when she was hired as CEO of the New Landsbanki hf. (a new bank that took over the domestic operations of Landsbanki), a position she held until February 2009.

8. On 30 September 2008 the company Imon ehf., owned by an investor, Mr M.A., had purchased 250,000,000 shares in Landsbanki, financed by a loan granted by Landsbanki (hereinafter "the Imon transaction"). The loan had been secured through pledging (*handveð*) of the purchased shares as well as Imon's capital certificates (*stofnfjárbréf*) in Byr Savings Bank. The applicant, as a member of Landbanki's credit committee, had approved the loan on 3 October 2008, four days before the bank's collapse.

B. The criminal proceedings against the applicant

9. By letter dated 20 May 2009, the FME sent a complaint to the Special Prosecutor regarding the Imon transaction. By letter dated 19 October 2010, the FME sent a complaint to the Special Prosecutor, requesting an investigation into suspected market manipulation in Landsbanki between May 2003 and October 2008. Amongst the transactions mentioned in the second letter were Imon's purchase of Landsbanki shares on 30 September and 3 October 2008.

10. On 15 March 2013 the Special Prosecutor indicted the applicant on charges of fraud by abuse of position (*umboðssvik*) in accordance with Article 249 of the Criminal Code (Law No. 19/1940), and market manipulation (*markaðsmisnotkun*) in accordance with section 117 of Act no. 108/2007 on Securities Transactions, alongside Mr S.Á., who had been one of the two CEOs of Landsbanki at the time of the Imon transaction, and Mr S.G., the former manager of Landsbanki's securities brokerage.

11. On 5 June 2014 the District Court of Reykjavik acquitted both the applicant and Mr S.Á. of the charges against them, while Mr S.G. was found guilty of market manipulation.

12. On 8 October 2015 the Supreme Court overturned the District Court's acquittal of the applicant and Mr S.Á. The Supreme Court convicted

the applicant of fraud by abuse of position and of aiding and abetting in market manipulation and sentenced her to a prison sentence of 18 months. The judges who sat on the panel in the case were Justices M.S., V.M.M., E.T., H.I.J. and Þ.Ö.

C. Appearance of new information

13. On 5 December 2016 confidential financial information first came to light in the media regarding the Justices of the Supreme Court. In a series of news reports on television, in newspapers and on the Internet, it was disclosed that some of them had owned shares in the Icelandic banks before their crash in 2008. The news coverage was in broad terms focused on two main issues. First, attention was given to the fact that these shareholdings had, at least in some cases, not been disclosed to the Committee on Judicial Functions (*Nefnd um dómarastörf*). Secondly, there was discussion about the possible conflict of interests of the Justices arising from their investments in Icelandic stocks and funds and whether the Justices in question had adjudicated cases despite such possible conflicts. The news coverage included coverage on some of the Supreme Court Justices who had adjudicated in the applicant's case. According to the applicant, this was the first time that she learned about their shareholdings.

14. On 9 December 2016 the former Chairman of the Committee on Judicial Functions published an article in a daily newspaper, explaining that the duty to notify one's shareholdings rested with the judge concerned and that the Committee did not perform any enquiries on a regular basis. The Committee would not reply to such notifications, except in those situations where it was deemed that the judge was not authorised to own shares exceeding 3 million Icelandic *krónur* (ISK, approximately 22,300 euros (EUR)) in a company or undertaking with a listed rate of share transactions, or 5% in an unlisted company. The Committee's archives contained the notification by Justice M.S. from 2007, indicating that he had sold his shares in Glitnir Banki hf. (hereinafter "Glitnir") of which he had become owner a few years earlier. His notification upon the receipt of the shares had been available in the archives of the Committee since 2010.

15. Following the news reports, on 22 December 2016, the applicant requested information from the Committee on Judicial Functions on the reported financial interests of those Supreme Court Justices who had sat as judges in her trial.

16. The Committee replied to the applicant by letter dated 31 December 2016. In a second letter of 15 February 2017, the Committee explained that Justice M.S. had inherited shares in 2002 but had sold them in 2003 and 2007, and thus no longer owned any shares in Glitnir at the end of 2013. Justices V.M.M. and E.T. had been appointed as judges only in September 2010 and September 2011 respectively and they had thus had not been

under an obligation to notify their previous shareholdings which had been lost in the collapse of the banks. The two remaining judges had notified the Committee in 1998 and 2013 respectively that they did not own any shares. Moreover, the Committee informed the applicant that, at its meeting on 15 December 2016, it had decided that assets in trusts and similar funds were not subject to the duty of notification.

17. At the beginning of 2017, following the news coverage, the Supreme Court published information about the Supreme Court Justices' shareholdings on its website. The court invited all parties to the cases that had been adjudicated by the Supreme Court to submit questions to the court, if needed, *inter alia* about the holdings of each Justice, so that the parties could receive more specific information from earlier periods directly from the Supreme Court.

18. On 7 March 2017 the applicant sent a letter to the Supreme Court, requesting certain information regarding the Supreme Court Justices who had participated in her case, regarding any holdings in stocks and funds, among other things, that they or their close relatives or companies related to them had had between 2001 and 2015.

19. By letter dated 21 March 2017 the Supreme Court delivered to the applicant and others convicted in the case detailed information about the assets of the three Supreme Court Justices in the three collapsed banks, Landsbanki, Kaupþing and Glitnir. The Supreme Court emphasised that the duty to notify shareholdings did not apply to close relatives of judges.

D. Request for the reopening of the case

20. On 2 December 2016 the applicant applied to the Committee on Reopening of Judicial Proceedings for the reopening of the proceedings against her. She presented several arguments relating mainly to the substance of the case against her. By letter of 3 March 2017, the applicant presented additional grounds for her reopening application. In the letter, she cited the financial interests of three of the five judges who had sat on the panel in her case, namely Justices E.T., M.S. and V.M.M. She submitted that those interests had rendered the proceedings against her in violation of Article 70 of the Icelandic Constitution and Article 6 of the Convention, and that the requirements for reopening pursuant to section 228 (1) of the Criminal Procedures Act (see paragraph 24 below) were fulfilled in that respect.

21. By letter of 15 December 2017, the Director of Public Prosecutions informed the Committee that Justices E.T. and V.M.M. wished to intervene in the matter and submit observations. Their observations, dated 23 and 24 April 2018 respectively, were subsequently submitted to the Committee. In his submission, E.T. stated that the nominal value of his Landsbanki shares had been ISK 87,383; thereof 85,041 had been acquired between

2003 and 2005 and 2,342 had been acquired by a capital stock increase in 2008. The purchase price had been ISK 374,112, but on 3 October 2008 the shares had been valued at ISK 1,738,922. Furthermore, E.T. stated that the nominal value of his Glitnir shares had been ISK 287,124 in 2008. Their purchase price had been ISK 772,817. In his submission, V.M.M. stated that he had acquired shares in Landsbanki of a total nominal value of ISK 428,075, from 8 March to 26 September 2007. The purchase price had been ISK 14,753,256, but on 3 October 2008 the shares had been valued at ISK 8,518,692.

22. By a ruling of 12 May 2019, the Committee on Reopening of Judicial Proceedings accepted the applicant's request for reopening. Relying on section 228 (1)(d) of the Criminal Procedures Act and citing the applicant's right under the Constitution and the Convention to a fair trial by an independent and impartial tribunal, as interpreted by the Court in its jurisprudence, the Committee stated that V.M.M.'s financial interests in Landsbanki had been such as to reasonably justify fears that the panel in the applicant's case lacked the requisite impartiality. At the outset, the Committee noted that it was undisputed that Justices E.T. and V.M.M. had owned shares in Landsbanki, both during the time of the events which the applicant's prosecution concerned and during the time when the bank was taken over by the Icelandic State, and that they had suffered financial losses as a result. In this respect, the Committee noted in particular that V.M.M.'s interests had been substantial, the purchase price of his shares amounting to ISK 14,753,256 at the time of purchase and their last registered estimated value amounting to ISK 8,518,692, all of which had become worthless when Landsbanki had been taken over by the Icelandic State. Such a financial loss had to be considered significant, despite it having occurred several years before the judge sat on the panel. The Committee attached significance to the fact that in its conclusions in the applicant's case, the Supreme Court had stated that "[The applicant's] imprudent decisions on the granting of loans could thus have caused shareholders in Landsbanki Islands, large and minor, as well as the public at large, financial loss." The Committee furthermore noted that the information on V.M.M.'s holdings had not been available at the time of the trial, and had thus been unknown to the applicant. Being satisfied that V.M.M.'s interests in Landsbanki were sufficient to permit the reopening of the case against the applicant, the Committee did not take a position on the alleged lack of impartiality of other Justices.

The proceedings for the reopening of the applicant's case are currently pending before the Supreme Court (see paragraphs 24 and 37 below).

II. RELEVANT DOMESTIC LAW

A. Constitution

23. Article 70 of the Constitution of the Republic of Iceland provides that everyone shall, for the determination of his rights and obligations or in the event of a criminal charge against him, be entitled, following a fair trial and within a reasonable time, to the resolution of an independent and impartial court of law.

B. Criminal Procedures Act (Law no. 88/2008)

24. According to section 6, subsection 1 (g) of the Criminal Procedures Act, a judge, including an assessor, is disqualified from conducting a case if, *inter alia*, there are other conditions or circumstances which are likely to cast reasonable doubt on his/her impartiality. Section 7, subsection 1 of the Act provides:

> "A judge shall be responsible for ensuring his own eligibility to hear a case. Parties may, however, require a judge to recuse himself. In the same manner, the presiding chief judge shall ensure the eligibility of expert associate judges."

According to the Criminal Procedures Act no. 88/2008, judicial proceedings can be reopened under certain conditions. Section 228 of the Act states that when a District Court judgment has not been appealed or the time-limit to appeal has passed, the Committee on Reopening of Judicial Proceedings can approve a request of a person who considers that he or she has been wrongly convicted or convicted of a more serious offence than he or she committed to reopen the judicial proceedings before the District Court, if certain conditions are fulfilled. The conditions are, *inter alia*, that there were serious defects in the processing of the case which affected its conclusion (item d). The State Prosecutor can request a reopening to the advantage of the convicted person if he considers that the conditions in paragraph 1 of section 228 of the Act are fulfilled. In accordance with section 229 of the Act, the request for reopening shall be in writing and sent to the Committee on Reopening of Judicial Proceedings. It shall include detailed reasoning on how the conditions for reopening are considered to be fulfilled. According to section 231 of the Act, the Committee on Reopening of Judicial Proceedings decides whether proceedings will be reopened. If a request for reopening is approved the first judgment remains in force until a new judgment is delivered in the case. Section 232 of the Act states that the Committee on Reopening of Judicial Proceedings can accept a request for the reopening of a case which has been finally decided by the Court of Appeal or the Supreme Court and a new judgment will be delivered if the conditions of section 228 are fulfilled.

By judgments of the Supreme Court of 25 February 2016 (no. 628/2015) and 27 September 2018 (no. 521/2017), the national court concluded that the Committee on Reopening of Judicial Proceedings was an administrative organ falling under the Executive branch of Government. Therefore, in accordance with Article 60 of the Icelandic Constitution, the Committee's decisions on reopening were subject to judicial review. It would therefore be for the domestic courts ultimately to decide whether the Committee had correctly concluded that a case, subject to a final judgment, should be reopened.

C. The Judiciary Act no. 15/1998

25. Section 26 of the Judiciary Act (Act no. 15/1998), as in force at the time, provided the following:

> "A judge may not accept an occupation or become the owner of a share in a company or enterprise if this is not compatible with his office or carries a risk that he will not be able to discharge his official duties properly.
>
> ...
>
> The Committee on Judicial Functions shall issue general rules concerning the extent to which ownership of a share in a company or enterprise is compatible with the office of a judge. A judge shall report any share acquired by him in a company or enterprise to the Committee. If the general rules issued by the Committee do not provide for his right to own such a share, the judge shall seek its permission in advance.
>
> The Committee on Judicial Functions can, by a reasoned decision, prevent a judge from discharging an additional function or owning a share in a company or enterprise. A judge shall be obliged to heed such prohibition, but is entitled to seek a judicial resolution on its legality."

D. Rules no. 463/2000 in force at the material time

26. Section 7 of Rule no. 463/2000, on Additional Functions of District Court and Supreme Court Justices and their Ownership in Companies and Enterprises of 20 June 2000, provided that:

> "A judge may own shares in companies or undertakings other than those to which special statutory restrictions apply in terms of ownership.
>
> A judge is obligated to notify the Committee on Judicial Functions about his shareholdings in a company that has a listed exchange rate up to the value of ISK 3,000,000. The same applies to other companies in which a judge may hold up to 5% shares.
>
> The Committee's authorisation shall be sought for a judge's holding in a company exceeding the limits stipulated above."

27. Section 9 of the same Rule provided that a party to a court case had the right to seek information from the Committee on Judicial Functions

regarding a judge's specified extra work or ownership of shares in a company if this might in the opinion of the Committee, be significant in respect of the matter of disagreement under resolution or as judged.

THE LAW

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

28. The applicant complained that her right to be heard by an independent and impartial tribunal had been violated under Article 6 § 1 of the Convention, which reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

29. The Government contested that argument.

A. Admissibility

30. The Government argued that the applicant had not lodged her application within the six-month time-limit. The final Supreme Court judgment had been rendered on 8 October 2015 but the application had been lodged with the Court only on 2 June 2017. The applicant could have obtained information on the shareholdings of Justice M.S. from the Committee on Judicial Functions had she made a request to that effect, as this information was available. However, Justices V.M.M. and E.T. had only become Supreme Court Justices in 2010 and 2011 respectively and thus had not been obliged to notify their shareholdings in the collapsed banks. The applicant had never requested any information from the Committee and had not therefore exhausted the domestic legal remedies available to her. Therefore the six-month time-limit had started to run on 8 October 2015.

31. The Government pointed out that the applicant had requested the Committee on Reopening of Judicial Proceedings to reopen her case on 2 December 2016, that was, before the news coverage on the judge's shareholdings had been aired. A request for reopening before the Committee entailed an effective remedy according to Icelandic law. There were realistic possibilities that the Committee would decide to accept the applicant's request for reopening.

32. The applicant stressed that, according to the case-law of the Court, she was not required to seek recourse to extraordinary remedies, such as the Committee on Reopening of Judicial Proceedings. That remedy could not be considered effective for the purposes of the Convention, as there were

undue delays in the procedure and uncertainty as to the conclusions. The functions of the Committee were also incompatible with the separation of powers under the Icelandic Constitution and its decisions were not final. Moreover, she argued that she had not known or could not have known before 21 March 2017 or 5 December 2016 of the factors giving rise to the lack of impartiality of the judges since this information was not public knowledge. She had thus satisfied the requirement of exhausting domestic remedies.

33. The applicant also maintained that her application had been lodged within the six-month time-limit. It had been only on 5 December 2016 that new information about the financial interests of the Justices had come to light and on 21 March 2017 that she had received specific information on this issue from the Supreme Court. Her application had been lodged within the six-month time-limit irrespective of which of these dates was taken as the starting point.

34. The Court notes that, while in the context of the legal machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at the international level should have been raised before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities*, Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I; *Azinas v. Cyprus* [GC], no. 56679/00, § 38, ECHR 2004-III; and *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 71-73, 25 March 2014).

35. The Court considers that, even assuming that an objection to a judge's participation in a trial on account of his alleged lack of impartiality constitutes an effective remedy to be exhausted for the purposes of Article 35 § 1 of the Convention (cf. *Sigurður Einarsson and Others v. Iceland*, no. 39757/15, § 45, 4 June 2019), it would impose an unreasonable burden on an accused person to require that he or she make enquiries as to potential impediments to a judge's participation in his or her trial of which the accused cannot reasonably be aware of, be it on account of family relations, links with persons involved in the trial, or, as in this case, the judge's financial interests. It recalls in this context that it has held that presumed general knowledge is not sufficiently certain to put the defence on notice of a potential issue of lack of impartiality of a judge (ibid., § 50). In such circumstances, it is the responsibility of the individual judge to identify any impediments to his or her participation and either to withdraw or, when faced with a situation in which it is arguable that he or she should be

disqualified, although not unequivocally excluded by law, to bring the matter to the attention of the parties in order to allow them to challenge the participation of the judge. Indeed, the Court observes that under Icelandic law a judge is responsible for ensuring his own eligibility to hear a case (see paragraph 24 above).

36. Consequently, it considers that the application cannot be rejected for non-exhaustion of domestic remedies on account of the applicant's failure to submit a request to the Committee on Judicial Functions for information about Justice M.S.'s shareholdings. This conclusion is not altered by the fact that she made such a request once she became aware of a possible issue following media reports published after she had been convicted. As regards Justices V.M.M. and E.T., they became Supreme Court Justices only in 2010 and 2011 respectively and, according to the domestic law, they were not obliged to notify any shareholdings they may have had previously, in particular at the time of the collapse of the banks. Thus, any request for information by the applicant during the proceedings would not have resulted in disclosure about their shareholdings and corresponding losses.

37. Finally, the Court recalls that a request for reopening cannot be regarded as an effective remedy for the purposes of exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention (see, for example, *Korkmaz v. Turkey* (dec.), no. 42576/98, 17 January 2006, and *Nenkov v. Bulgaria* (dec.), no. 24128/02, 7 October 2008). Consequently, the fact that the Committee on Reopening of Judicial Proceedings has accepted the applicant's request, and the question of reopening is currently before the Supreme Court, does not constitute a ground for dismissing the application as premature. The Government's objections based on non-exhaustion of domestic remedies must therefore be dismissed.

38. As to compliance with the six-month time-limit, the Court notes that during the applicant's trial in the Supreme Court none of the judges in question raised any issue of a potential impediment to their participation on account of their having sustained financial loss as a result of the collapse of the banks. Moreover, as found above, the applicant was not under any obligation to enquire about their financial situation. Consequently, the applicant only became aware of a possible issue on 5 December 2016 when the matter was reported in the media. In these circumstances, as the applicant did not have any effective remedy at the national level, the Court finds that the six-month time-limit started to run, at the earliest, on that date. As her application was lodged with the Court on 2 June 2017, it has been lodged in time. It follows that the Government's objection in this respect must be rejected. Moreover, the Court finds that this part of the application 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. Submissions by the parties

(a) The applicant

39. The applicant argued that both the subjective and objective tests were satisfied in the present case. There were grounds to conclude that Justices M.S., V.M.M. and E.T. had had personal prejudice and bias towards the applicant which had been visible from the wording of their judgment. Those Justices had figured among the victims of the applicant's activities and their financial losses had been significant when considering their general financial situation.

40. As to the objective test, the applicant maintained that the impartiality of Justices M.S., V.M.M. and E.T. was under a legitimate doubt due to their significant financial interests in the case and their failure to disclose their financial interests as required by Icelandic law. Justices V.M.M. and E.T. had been willing to disclose only certain information and the information they had disclosed had not given an accurate picture of their overall financial situation. None of the Justices had disclosed information relating to their financial situation at the time when the applicant's case was pending before the Supreme Court. The fact that Justices V.M.M. and E.T. had not been obliged to request authorisation from the Committee on Judicial Functions and Justice M.S. had not been obliged to notify his holdings in investment and trust funds demonstrated gross inadequacies in the mechanisms under Icelandic law to safeguard the impartiality of judges.

41. The applicant pointed out that Justice V.M.M. had owned shares in Landsbanki at the nominal value of ISK 428,075 which he had acquired in 2007 for the purchase price of ISK 14,753,256 and which he had lost in the collapse. The amount lost constituted more than 1.5 times the annual salary of a Supreme Court Justice or 73 per cent of Justice V.M.M.'s annual income in 2008, meaning that the loss had had a substantial impact on his personal finances, yet he had not disclosed this fact to any party to the proceedings. Such extensive loss in a single instance raised a significant and legitimate doubt as to his impartiality. Justice E.T. had owned shares in Landsbanki at the nominal value of ISK 87,383 which had had a value of ISK 1,738,922 (approximately EUR 12,830) at the time when the bank had collapsed and his shares had become worthless. He should have withdrawn from the applicant's case or at least informed the parties of his financial interests. Finally, Justice M.S. had owned shares in Glitnir at the nominal value of ISK 13,832 which had had a market value of about ISK 350,000 when the bank had collapsed. In addition, he had had substantial investments in Icelandic financial markets, amounting to ISK 61,450,000, of which he had lost ISK 7,607,000 during the financial crisis. His losses were equivalent to 9.4 times his monthly salary as a Supreme Court Justice at the

time. Also, his minor children had most likely suffered extensive losses as a result of the collapse of Landsbanki. There was thus a significant and legitimate doubt as to his impartiality. The applicant emphasised that other, impartial Supreme Court Justices had been available to sit in her case. There had thus been a violation of Article 6 § 1 of the Convention.

(b) The Government

42. The Government maintained that there were no objective reasons for the applicant to fear that Justices M.S., V.M.M. and E.T. had not been impartial and independent in her case. As to the subjective approach, these Justices had clearly stated to the Committee on Reopening of Judicial Proceedings that they had borne no resentment towards the applicant or the other defendants in the case. They had also presided over another, similar case against the applicant a few months later in which they had acquitted her. Concerning the objective approach, seven years had passed since the Justices' shareholdings had become worthless. Their loss was thus not recent. Moreover, their financial position as law professors before the collapse had been good and therefore their loss of shares had had little, if any, bearing on their finances. Owning shares had been a very common thing before the collapse and everyone knew that purchasing shares was a risk investment. The Supreme Court's conclusions had entailed no resentment or partiality towards the applicant.

43. Moreover, the Government argued that Justice M.S. had satisfied his obligation to notify the Committee on Judicial Functions of his shareholdings exceeding ISK 3,000,000 already in 2002. When the Justices had been examining the applicant's case, none of them had had any connection to Landsbanki. There were no indications of the three Justices not having been impartial. They had rendered a unanimous judgment, including those Justices who had owned no shares in the collapsed banks. Moreover, upon a request by the Government, Justice M.S. had provided information on 11 January 2019 about the financial losses of his relatives. It appeared that only his minor children at the time had suffered minor losses and that none of his other close relatives even owned any shares. There had thus been no violation of Article 6 § 1 of the Convention.

44. The Government maintained that Justice M.S. had never had any financial interests in Landsbanki and Kaupþing but he had owned shares in Glitnir at the nominal value of ISK 13,832 and that their market value in 2008 had been less than ISK 300,000. These shares had become worthless on 7 October 2008. Moreover, he had placed ISK 61,450,000 under asset management to be used for trading in shares in local and foreign investment funds. In 2007 he had withdrawn ISK 6,165,000 and in 2008 ISK 3,800,000 from the asset management, the remaining principal amount thus being ISK 51,485,000. By the end of 2008, this capital had shrunk by ISK 7,607,000. His loss in the wake of the collapse of the banks had thus

amounted to ISK 7,950,000 in total. As to Justice V.M.M., he had owned shares with a nominal value of ISK 428,075 in Landsbanki, which had been lost on 8 October 2008, thus before his appointment as a Supreme Court Justice in 2010. His loss was thus ISK 8,518,692 (approximately EUR 62,860) in total. Finally, Justice E.T. had owned shares at a nominal value of ISK 87,383 in Landsbanki and of ISK 287,124 in Glitnir which had been lost in October 2008, thus before his appointment as a Supreme Court Justice in 2011. His loss was thus ISK 6,246,769 in total.

2. The Court's assessment

(a) General principles

45. The Court reiterates that impartiality normally denotes the absence of prejudice or bias, and that its existence or otherwise can be tested in various ways. According to the Court's settled case-law, the existence of impartiality for the purposes of Article 6 § 1 must be determined according to (i) a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge – that is to say whether the judge held any personal prejudice or bias in a given case, and (ii) according to an objective test – that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see *Morice v. France* [GC], no. 29369/10, § 73, ECHR 2015, with further references).

46. As to the subjective test, the principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the Court's case-law. The personal impartiality of a judge must be presumed until there is proof to the contrary. As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility or ill will for personal reasons (ibid., § 74).

47. As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there was a legitimate reason to fear that a particular judge or bench lacked impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (ibid., § 76, and *Pétur Thór Sigurðsson v Iceland*, no. 39731/98, § 37, 10 April 2003).

48. The objective test mostly concerns hierarchical or other links between the judge and other protagonists in the proceedings or the exercise of different functions within the judicial process by the same person (see *Kyprianou v. Cyprus* [GC], no. 73797/01, § 121, ECHR 2005-XIII). It must therefore be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see *Morice*, cited above, § 77).

49. In this connection, even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (see *Micallef v. Malta* [GC], no. 17056/06, § 98, ECHR 2009).

50. Moreover, in order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor. Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public. The Court will take such rules into account when making its own assessment as to whether a tribunal was impartial and, in particular, whether an applicant's fears can be held to be objectively justified (ibid., § 99).

(b) Application of these principles in the present case

51. As concerns subjective impartiality, the Court notes that there is no indication in the case file that any of the three Justices, M.S., V.M.M. and E.T., displayed hostility or ill will towards the applicant for personal reasons. It is not possible to conclude from the language adopted in the reasoning of the Supreme Court judgment that the Justices in question demonstrated actual bias towards the applicant. As there is no proof to the contrary, the personal impartiality of the Justices must be presumed (see paragraph 46 above).

52. Turning to their objective impartiality, the Court is called upon in the present case to determine whether the shareholdings of the Justices in Landsbanki – the bank by which the applicant was employed – and their corresponding losses at the time of its collapse were of such a nature and degree as to indicate a lack of impartiality on the part of the Supreme Court in the applicant's case. In its assessment, the Court must in particular take account of the fact that the Supreme Court was called upon to decide on the guilt or innocence of the applicant, *inter alia*, of the charge of aiding and abetting in market manipulation in relation to the shares in Landsbanki, a charge she had been acquitted of at first instance (see paragraph 11 above).

53. The Court observes firstly that according to the information provided by the parties (see paragraphs 41 and 44 above), Justice M.S. did not at any time own shares in Landsbanki. In the Court's view, in order for a judge's impartiality to be called into question in this context, the financial interests of the judge concerned must be directly related to the subject matter of the

dispute at the domestic level. As in the present case the subject matter of the proceedings was the criminal conduct with which the applicant was charged, which related to her position as director of corporate banking and a member of the credit committee of Landsbanki, and M.S. did not have any shareholdings in that bank, the latter had no direct interest in the outcome of the trial and there were therefore no grounds for calling his impartiality into question. The fact that he had shareholdings in another bank, Glitnir, as well as other investments which he lost as a result of the banking crisis in general does not alter this conclusion. Finally, the applicant's submission that M.S.'s children had most likely suffered extensive losses as a result of the collapse of Landsbanki is a speculative assertion which, without any substantiation whatsoever, cannot be taken into account. It may be noted in this connection that Justice M.S. himself submitted to the Government that his childrens' losses had been minor (see paragraph 43 above) and that there is no indication that those losses related to Landsbanki. Consequently, the Court concludes that the applicant's fears as to M.S.'s lack of impartiality were not justified.

54. The Court notes that Justice E.T. owned shares in Landsbanki at the nominal value of ISK 87,383 which, according to the applicant, had a value of ISK 1,738,922 (approximately EUR 12,830) at the time when the bank collapsed and his shares became worthless. According to Icelandic law, the threshold triggering the authorisation by the Committee on Judicial Functions is a shareholding of a value of ISK 3,000,000 in a given company (see paragraph 26 above). The value of Justice E.T.'s shares in Landsbanki at the moment of its collapse did not reach that threshold, which the Court does not find to be an unreasonable one.

55. Moreover, according to domestic law, Justice E.T. was not obliged to notify to the Committee on Judicial Functions any of his shareholdings he had had before he was appointed as a Supreme Court Justice in 2011. Taking into account the circumstances of the case, the Court considers that Justice E.T.'s shareholdings in Landsbanki and their loss in October 2008 does not rise to a level which would give the applicant an objectively justified fear of a lack of impartiality. Furthermore, as with Justice M.S., the fact that Justice E.T. also owned shares in another bank, Glitnir, is not relevant to the assessment of his impartiality in the present case. It follows that the applicant could not reasonably call into question E.T.'s lack of impartiality when deciding her case.

56. As to Justice V.M.M., the Court notes that he owned shares in Landsbanki amounting to the nominal value of ISK 428,075 which were lost on 8 October 2008, thus before his appointment as a Supreme Court Justice in 2010. According to the Government, his loss was ISK 8,518,692 (approximately EUR 62,860) in total. His loss, the amount of which the Court cannot call into question, was almost three times the amount which would have triggered the need for an authorisation by the Committee on

Judicial Functions (see paragraph 26 above). His loss was thus substantial in absolute terms. His loss was also substantial vis-à-vis his annual earnings as a law professor in 2008 and 2009. Moreover, it has to be kept in mind that the applicant's case directly concerned the behaviour of the management of Landsbanki immediately before the collapse of the bank in October 2008. In that respect, it is the loss at the time of the collapse which is relevant and not the judge's financial position at the time of the trial. The matter at stake was thus such that the applicant could justifiably consider that it was of great significance for those shareholders who had suffered losses at the material time, including Justice V.M.M. In this regard, the Court recalls that the Committee on Reopening of Judicial Proceedings indeed considered that Justice V.M.M.'s financial interests in Landsbanki had been such as to reasonably justify fears that the panel in the applicant's case lacked the requisite impartiality due to the losses sustained by Justice V.M.M. and that reopening of the proceedings against the applicant was therefore justified.

57. The foregoing considerations are sufficient to enable the Court to conclude that the participation of Justice V.M.M. in the case rendered the Supreme Court proceedings partial. In this regard, the Court lastly notes that the fact that V.M.M. was sitting on a bench comprising five Supreme Court Justices is not decisive for the objective impartiality issue under Article 6 § 1 of the Convention. In view of the secrecy of the deliberations, it is impossible to ascertain V.M.M.'s actual influence on that occasion (see *Morice*, cited above, § 89). Therefore, in the context of the present case, the impartiality of the Supreme Court could have been open to genuine doubt. There has therefore been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

58. The applicant further complained that her right to be presumed innocent until proven guilty had been violated under Article 6 § 2 of the Convention, which reads as follows:

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

1. Submissions by the parties

(a) The applicant

59. The applicant pointed out that she had been acquitted by a panel of three judges before the Reykjavík District Court but convicted by the Supreme Court panel of five Justices of whom three had been partial. She claimed that the Supreme Court had had a preconceived idea that she had committed the crimes she was charged with. The burden of proof had been shifted to the defence and the Supreme Court had interpreted the lack of

evidence to the disadvantage of the applicant. There had thus been a violation of Article 6 § 2 of the Convention.

(b) The Government

60. The Government contested that the Supreme Court had had a preconceived idea of the applicant's guilt or that the burden of proof had shifted to the defence. After an overall assessment of all evidence in the case, the Supreme Court had found that this evidence was sufficient to convict the applicant. There was no preconception since the applicant and her co-defendants were acquitted by the Supreme Court in a similar case in March 2016. There had thus been no violation of Article 6 § 2 of the Convention.

2. The Court's assessment

61. The Court does not consider that the mere fact that the applicant's acquittal at first instance by a panel of three judges was overturned by the Supreme Court can be regarded as raising an issue of presumption of innocence. Moreover, her assertion that the Supreme Court had a preconceived idea of her guilt and shifted the burden of proof to the defence is not supported by any material in the case-file. In that respect, the Court recalls that it has concluded that no issue arises as to the judges' subjective impartiality (see paragraph 51 above). It therefore concludes that this complaint is manifestly ill-founded and must be declared inadmissible pursuant to Article 35 §§ 3(a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed ISK 354,296,499 (approximately EUR 2,500,000) plus interest in respect of pecuniary damage and ISK 354,296,499 (approximately EUR 2,500,000) plus interest in respect of non-pecuniary damage.

64. The Government objected to the applicant's claims as being excessive as to quantum. Concerning the pecuniary damage, the applicant had been the CEO of Landsbanki only for a few months and could not expect to keep her position as CEO until her retirement. The finding of a

violation should constitute in itself just satisfaction for any non-pecuniary damage in this case, or the amount awarded should be significantly reduced.

65. The Court considers that the applicant has failed to demonstrate a causal link between the violation and the alleged pecuniary damage. The claim under this head must therefore be dismissed. However, it awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant also claimed ISK 28,067,233 (approximately EUR 205,100) plus interest for the costs and expenses incurred before the domestic courts and before the Court.

67. The Government considered the applicant's claim excessive as to quantum. Her fees to her counsel before the domestic courts had been paid by the Treasury. No costs and expenses incurred during the procedure before the Committee on Reopening of Judicial Proceedings should be reimbursed either since these proceedings were still pending.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and bearing in mind that the violation occurred in the proceedings before the Supreme Court and only came to light after the domestic proceedings had ended, the Court rejects the claim in respect of the costs of the domestic proceedings. It considers it reasonable to award the sum of EUR 5,000 in respect of the costs of the proceedings before the Court.

C. Default interest

69. 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. *Declares* the complaint under Article 6 § 1 concerning the right to an impartial tribunal admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:

(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 25 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Marko Bošnjak
President