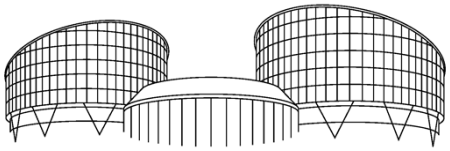

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ANŽELIKA ŠIMAITIENĖ v. LITHUANIA

(Application no. 36093/13)

JUDGMENT

Art 6 § 1 (civil) • Independent and impartial tribunal • Proceedings challenging the decree of the President of the Republic for a judge's dismissal Art 1 P1 • Peaceful enjoyment of possessions • Refusal to compensate a judge for unpaid salary for the period of suspension from judicial office • Lack of foreseeability

STRASBOURG

21 April 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 Anželika Šimaitienė v. Lithuania,

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

Jon Fridrik Kjølbro, *President,*
Paulo Pinto de Albuquerque,
Faris Vehabović,
Iulia Antoanella Motoc,
Carlo Ranzoni,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having deliberated in private on 26 March 2019 and 3 March 2020,

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

PROCEDURE

1. The case originated in an application (no. 36093/13) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Anželika Šimaitienė ("the applicant"), on 27 May 2013.

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

3. The applicant alleged, in particular, that she had not had a right to an independent and impartial tribunal, in breach of Article 6 § 1 of the Convention. She also complained that although the criminal proceedings against her had been discontinued, she had not been paid a salary for the period while she had been suspended from her judicial office, in breach of Article 6 § 2 of the Convention and Article 1 of the Protocol No. 1 to the Convention.

4. On 27 January 2017 notice of the complaints concerning the right to an independent and impartial tribunal, the right to the presumption of innocence and the right to the protection of property was given to the Government, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. Mr Egidijus Kūris, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28 § 3 of the Rules of Court). Accordingly, on 5 March 2019 the President of the Section selected Mr Paulo Pinto de Albuquerque as an *ad hoc* judge from the list of three persons designated by the Republic of Lithuania as eligible to serve as such a judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1970 and lives in the village of Pašilaičiai, in the Vilnius region.

7. On 11 May 1995 the President of the Republic, President A.B., appointed the applicant as a judge of the Vilnius City Third District Court (hereinafter also referred to as "the District Court").

A. Criminal proceedings against the applicant

8. By a decree of 21 February 2006, and on the basis of Article 114 § 2 of the Constitution and Articles 47 § 3 and 89 § 1 of the Law on Courts (see paragraphs 57, 58 and 60 below), and on the basis of a proposal by the Prosecutor General, the President of the Republic, President V.A., suspended the applicant from her judicial duties and allowed a prosecution against her in connection with criminal charges of abuse of office (Article 228 § 1 of the Criminal Code) and forgery of documents (Article 300 § 2 of the Criminal Code) to proceed. It was suspected that the applicant had committed those crimes whilst performing her judicial duties in a civil case she had examined in June 2002 and which concerned the privatisation of an apartment.

9. By a judgment of 15 March 2010 the Kaunas Regional Court acquitted the applicant of both criminal charges.

10. On 1 July 2011 the Court of Appeal quashed the first-instance court's judgment as unlawful and unfounded on the grounds that that court had erred in examining and evaluating the facts. The Court of Appeal considered that, by her actions when dealing with the apartment privatisation case, the applicant "had discredited the title of judge and the authority of the judiciary, [and] adopted an unlawful and unfounded court decision", and thus "[had] caused serious damage to the State", and that such actions by her "corresponded to Article 228 § 1 and Article 300 § 2 of the Criminal Code". Even so, the Court of Appeal discontinued the criminal proceedings because the prosecution had become time-barred.

11. The applicant lodged an appeal on points of law, arguing a breach of the principle of the presumption of innocence.

12. By a ruling of 8 May 2012, the Supreme Court, sitting in a plenary session of sixteen judges (*plenarinė sesija*), concurred with the appellate court's finding that the applicant's prosecution was time-barred due to the statute of limitations. The Supreme Court nevertheless stressed that certain phrases in the Court of Appeal's ruling (see paragraph 10 above) had been in breach of the applicant's right to the presumption of innocence, for they could be understood as establishing that the applicant was guilty of a crime.

This had been an essential breach of criminal procedure. For that reason, the Supreme Court quashed the Court of Appeal ruling in its entirety.

13. As to the question of the presumption of innocence, the Supreme Court also pointed out that when criminal proceedings were discontinued because of the statute of limitations, the question of a person's guilt was not decided. The Criminal Code prohibited passing a judgment of conviction after the statute of limitations rendered a prosecution time-barred. Should the court, when discontinuing the criminal proceedings, also declare the person guilty of a certain crime, this would be in breach of the principle of the presumption of innocence, established in Article 31 of the Constitution. It was also paramount that the principle of the presumption of innocence be upheld by State institutions and officials. The fact that a person may not be declared guilty of a crime in the absence of a final court decision had also been underlined by the European Court of Human Rights. For the Supreme Court, it followed that when a judgment of acquittal was quashed whilst at the same time criminal proceedings were discontinued because of the statute of limitations, an appellate court's decision could not be based on statements which essentially meant that a person was guilty of a crime. That being so, the Supreme Court nevertheless considered that discontinuing a criminal case because of the statute of limitations did not in itself mean that a person had been rehabilitated, and could not be equated to an acquittal.

B. Disciplinary proceedings against the applicant, her removal from office, and civil proceedings for her reinstatement and unpaid salary

1. Disciplinary proceedings against the applicant

14. On 15 July 2010, whilst the criminal case against the applicant was still ongoing, the Prosecutor General wrote to the President of the Republic, President D.G., stating that it would be appropriate to consider whether the applicant had in fact discredited the title of judge through the negligent performance of her duties.

15. On 16 July 2010 the applicant asked the President of the Republic to reinstate her as a judge.

16. On 14 March 2011 the President of the Vilnius City Third District Court informed the Judicial Council (*Teismų taryba*), a body for self-government of judges, that he had received certain information from the Special Investigation Service regarding the applicant having mishandled civil cases in 2001. The Judicial Council then ordered the President of that court to investigate the matter.

17. On 29 March 2011 the President of the Vilnius City Third District Court appointed an internal investigation commission. The commission examined how the applicant had performed her duties when handling civil

cases at that court between 1 January 2000 and 10 November 2003 (when she had gone on maternity leave).

18. The commission presented its conclusions on 26 April 2011, finding that the applicant had negligently performed her duties within the relevant period. The conclusions were then presented to the Judicial Council, which forwarded them to the President of the Republic.

19. By decree no. 1K-699 of 24 May 2011, the President of the Republic asked the Judicial Council for advice as to whether the applicant should be removed from office for having discredited the title of judge, in the light of the commission's conclusions of 26 April 2011.

20. On 24 May 2011 the applicant challenged the internal investigation conclusions before the Judicial Council. In response to her plea that the conclusions had not been objective, the Vilnius City Third District Court explained to the Judicial Council why it was only at that time, that is in 2011, that it had examined how the applicant had been performing her job when handling civil cases at that court in 2003. The District Court noted that as of autumn 2003 the applicant had not been handling civil cases, and when she had returned from maternity leave on 21 January 2005 she had been handling only administrative cases, until she had been suspended by the decree of the President of the Republic of 21 February 2006 (see paragraph 8 above).

Afterwards the Vilnius Regional Court found that the commission's conclusions were valid and that the facts mentioned in those conclusions corresponded to reality.

21. The Judicial Council then held hearings on 6 June and 15 July 2011 at which the applicant was present. She denied any fault regarding performance of her duties.

22. On 15 July 2011 the Judicial Council unanimously recommended to the President of the Republic that the applicant be removed from office for having discredited the title of judge, on the basis of Article 90 § 1 (5) of the Law on Courts (see paragraph 59 below). The recommendation by the Judicial Council was based on the internal investigation conclusions (see paragraphs 17 and 18 above). The Judicial Council also noted that it took into consideration "the legal evaluation of how the Court of Appeal [had] evaluated the applicant's behaviour under Articles 228 and 300 of the Criminal Code in its ruling of 1 July 2011" (see paragraph 10 above).

23. On 18 July 2011 the President of the Republic passed decree no. 1K-764, removing the applicant from office for having discredited the title of judge, on the basis of Article 112 § 1 (4) and (5) and Article 115 § 1 (5) of the Constitution, and Article 90 §§ 1 (5) and (6) of the Law on Courts, having obtained the proposal of the Judicial Council (see paragraphs 57 and 59 below).

24. On the same day the office of the President of the Republic issued the following press release:

"President D.G. has signed a decree whereby, on the basis of the Constitution and the Law on Courts, and having taken into account the unanimous advice of the Judicial Council, [the applicant] has been removed from judicial office as a judge of the Vilnius City Third District Court for having discredited that office.

[The applicant] delayed cases concerning the recovery of debts. She was also negligent and acted hastily when hearing cases about the privatisation of apartments on terms beneficial to a private party, land restitution and other real-estate-related cases, [and] relied on non-existent documents and the false testimony of witnesses.

The fact that [the applicant] forged documents and adopted an unlawful and ungrounded decision which permitted the privatisation of an apartment on terms beneficial to a private party was acknowledged by the Court of Appeal on 1 July; however, because of the statute of limitations, [that court] could not adopt a judgment of conviction.

Aiming to prevent such situations in the future, on the initiative of the President of the Republic, amendments to the Criminal Code were passed, prolonging the time-limits for the statute of limitations so that persons who had committed crimes could not escape criminal liability.

The President has removed eight judges for having discredited the title of judge."

2. Civil proceedings for the applicant's reinstatement and unpaid salary

25. The applicant asked her former employer, the District Court, to pay her her unpaid salary for the period from 21 February 2006 to 18 July 2011 (see, respectively, paragraphs 8 and 23 above), but that court refused her request.

26. The applicant then started civil proceedings, challenging her removal from office by the decree of the President of the Republic of 18 July 2011 and claiming her unpaid salary for the aforementioned period. She also challenged all the procedural decisions relating to the courts' administration which had led to the President's decree (see paragraph 22 above). The applicant pointed to the amended Article 47 § 3 of the Law on Courts (see paragraph 58 below) and also relied on Article 6 § 2 of the Convention and Article 1 of Protocol No. 1 to the Convention, observing that no accusatory judgment had been adopted in respect of her, and that therefore she should have been paid her salary for the entire period when she had been suspended from her duties.

In that connection, it appears that on 18 October 2011 the Vilnius City Third District Court issued a document, signed by its President and chief accountant, indicating that the applicant's "salary" between 21 February 2006 and 18 July 2011 was 322,874 Lithuanian litai (LTL – approximately 94,370 euros (EUR)), and the "social insurance [tax]" was an additional LTL 100,674 (EUR 29,155).

27. The Court of Appeal decided that the Panevėžys Regional Court should hear the applicant's case as the court of first instance, because her

civil claim concerned matters which had already been examined by the Vilnius Regional Court and therefore an impartial tribunal was required.

28. By a decision of 7 June 2012, the Panevėžys Regional Court dismissed the applicant's civil claim. The court found no flaws in the courts' internal administration proceedings which had led to the adoption of the decree of the President of the Republic for the applicant's dismissal. As to the applicant's claim for her unpaid salary, the court noted that she had been suspended from office on 21 February 2006, but the judgment of conviction had not been adopted because the criminal proceedings had been terminated owing to the statute of limitations. Article 47 § 3 of the Law on Courts, as in force at the time of the applicant's dismissal on 18 July 2011 (see paragraph 58 below), provided that a judge's salary had to be repaid if criminal proceedings became impossible. In the Panevėžys Regional Court's view, that rule meant that a judge should be compensated if his or her suspension was unreasonable. In this context, the court also referred to the Supreme Court's ruling of 8 May 2012 wherein it had held that terminating criminal proceedings because of the statute of limitations did not mean that a person had been rehabilitated; such a judgment did not equate to an acquittal (see paragraph 13 *in fine* above). The Regional Court therefore considered that, in such a situation, the absence of a judgment of conviction did not mean that the applicant had been suspended from office without reason. Given that the applicant had not performed her judicial duties between 21 February 2006 and 18 July 2011, and that her suspension had not been declared unfounded, it would not be just and fair to award her unpaid salary for that period of time. The Regional Court also considered that "whilst she [had been] suspended from her judicial duties, the applicant [had] not [been] prevented from working in another job; she could also have received other income". Lastly, the Panevėžys Regional Court also referred to the Article 47 § 3 of the Law on Courts, as in force at the time of the applicant's suspension on 21 February 2006 (see paragraph 58 below), and considered that the applicant could have legitimately expected to be repaid her salary only in case of judgment of acquittal.

29. The applicant lodged an appeal, challenging various aspects of her dismissal by the President's decree of 18 July 2011, and claiming her unpaid salary. The applicant also requested that questions regarding the procedure for her dismissal be referred to the Constitutional Court. She further asked the Court of Appeal to refer certain questions to the Court of Justice of the European Union for a preliminary ruling. Firstly, she submitted that this concerned the question of whether Article 48 of the European Charter of Fundamental rights, which enshrines the principle of the presumption of innocence, could be interpreted in such a way that discontinuing criminal proceedings because of the statute of limitations meant that a person was still considered guilty of a crime. Secondly, the applicant wished to know whether Article 17 of the European Charter on

Fundamental Rights, which enshrines the right to property, could be interpreted in such a way that Article 47 § 3 of the Law on Courts could be the basis for refusing to pay a judge's salary if a criminal case was discontinued because of the statute of limitations, but not if proceedings were terminated by an acquittal.

30. On 13 August 2012 the president of the civil cases division of the Court of Appeal appointed three judges of that court – Judges R.G., D.V. and A.B. – to hear the applicant's appeal. After two of those judges had recused themselves from the composition – because one of them had previously worked at the Vilnius Regional Court, which was one of the defendants in those proceedings, and another knew the applicant personally – a new chamber was appointed by the President of the Court of Appeal, consisting of Judge D.V. (the reporting judge), Judge R.N. and Judge A.J. The case file was then given to Judge D.V.

31. On 12 November 2012 the applicant attempted to challenge the composition of the Court of Appeal on the basis that it was not impartial. She submitted that she had lodged certain procedural requests with that court, for example as regards holding an oral hearing and suspending the civil court proceedings and referring certain questions to the Constitutional Court, but those requests had not been put in the case file.

32. On 13 November 2012 the President of the Court of Appeal dismissed the applicant's complaint. On the basis of the case-file material, he noted that her requests regarding the oral hearing and the referral to the Constitutional Court had been put in the file, but had not been sewn into it, because when those requests had been submitted, the case file had already been given to Judge D.V., the reporting judge, and it was a court clerk's job to sew the documents into a case file when he or she received them and the case file. In this case, the court assistant had not received the file until the day of the court hearing. The President of the Court of Appeal also noted that in the event that parties' requests for an oral hearing and for a referral to the Constitutional Court were denied, those requests could be dealt with when the decision on the merits of a case was adopted.

33. By a ruling of 28 November 2012, the Court of Appeal, in a chamber composed of three judges (Judges D.V., R.N. and A.J. – see paragraph 30 above), examined the Panevėžys Regional Court's decision (see paragraph 28 above) and held that that court had properly examined the legal and factual circumstances of the case. It therefore left the first-instance court's decision unchanged. The Court of Appeal rejected the applicant's request for a hearing. In the court's view, the case concerned questions of law as opposed to questions of fact, and could therefore be decided in written proceedings. It also rejected her request that certain questions be referred to the Constitutional Court, considering that those questions had been answered by the Court of Appeal when it had examined the merits of her appeal (see the paragraph below).

34. With regard to the merits of the case, the Court of Appeal found that there had been no procedural errors by the courts' administration when adopting procedural acts that had led to the decree of the President of the Republic of 18 July 2011 dismissing the applicant. Nor was there any reason to refer a question regarding those decisions to the Constitutional Court, because its position as to the procedures and the President's powers to dismiss judges was settled and clear. The Court of Appeal also rejected the applicant's request for the questions regarding the presumption of innocence and the right to property to be referred to the ECJ for a preliminary ruling (see paragraph 29 above), holding that such a referral was not necessary. In the view of the Court of Appeal, the applicant had been dismissed not because of criminal liability, but for other reasons – a retrospective internal investigation into how she had performed her duties from 1 January 2000 until 10 November 2003. On the one hand, the Court of Appeal also considered that the fact that a criminal case against the applicant had been discontinued because of the statute of limitations did not in itself mean that a judgment of acquittal had been adopted, where it had been held that there had been no reason to bring criminal proceedings against the applicant. On the other hand, discontinuing the criminal proceedings on the above-mentioned basis could not be seen as an accusatory judgment either.

35. The Court of Appeal did not explicitly elaborate on the Panevėžys Regional Court's conclusion that the applicant could have worked in another job whilst she had been suspended from office (see paragraph 28 *in fine* above), even though it noted that Article 113 § 1 of the Constitution prohibited judges from taking up other jobs (see paragraph 57 below). The Court of Appeal nevertheless noted that before the criminal proceedings had been terminated by the Court of Appeal on 1 July 2011, disciplinary proceedings had been opened in respect of the applicant. During those disciplinary proceedings, it had been established that the applicant had performed her judicial duties negligently long before her suspension in 2006. Therefore, there was no reason to compensate the applicant for the salary which she had not received during her suspension and until her removal from office by the President's decree no. 1K-764 of 18 July 2011 (see paragraph 23 above). Without specifying which version of the provision it relied on, the Court of Appeal also considered that Article 47 § 3 of the Law on Courts established the presumption of innocence in respect of judges, and such a presumption in respect of the applicant had been upheld when the criminal case had been discontinued because of the statute of limitations. However, discontinuing the criminal proceedings because of the statute of limitations had not, as such, restored the applicant's irreproachable reputation, which was a compulsory requirement for a judge. The President of the Republic had therefore been correct in passing decree no. 1K-764 for the applicant's removal. Moreover, since the applicant's

powers as a judge could not be restored due to her loss of reputation, there were also no grounds to award her compensation for loss of salary.

36. The applicant lodged an appeal on points of law, arguing, among other things, that when handling her case the Court of Appeal had not been impartial and independent, which was also proven by the fact that only a month after passing a decision in her case judge D.V. had been proposed to the Supreme Court. The other judge from that composition, R.N., at that time also was being proposed for such a promotion. The applicant also challenged how the Court of Appeal resolved the questions of her dismissal by the President's decree of 18 July 2011 and her unpaid salary. The applicant considered that those were questions of law that merited the Supreme Court's examination.

By a final ruling of 4 March 2013 the Supreme Court refused to examine the applicant's appeal on points of law.

C. Promotion of two Court of Appeal judges to the Supreme Court

1. Promotion of Judge D.V.

37. On 4 December 2012 the Seimas passed a resolution approving the voluntary resignation of Judge E.B., a judge at the Supreme Court. Subsequently, there was a vacancy at the Supreme Court.

38. On 13 December 2011, on the basis of Article 73 § 2 of the Law on Courts (see paragraph 58 below), the President of the Supreme Court G.K. put forward the Court of Appeal judge, Judge D.V., as a candidate for appointment to the Supreme Court, by making a proposal in this regard to the President of the Republic. The President of the Supreme Court acknowledged the candidate's experience in the academic field, her numerous publications in the field of law, her former experience as a lawyer (advocate), her excellent results while working at the Court of Appeal, and her irreproachable reputation. He also underlined the need to ensure a balance between practitioners and academics, and emphasised that the big priority at that particular point in time was having more scholars on the Supreme Court bench.

39. On 13 December 2012 the President of the Republic passed another decree asking the Judicial Council for advice on whether Judge D.V. could be appointed to the Supreme Court.

40. According to the Government, having evaluated the personal and professional characteristics of Judge D.V. and her academic and pedagogical activities, as well as the absence of any complaints about her work as a judge, on 14 December 2012 the Judicial Council unanimously approved her nomination as a candidate, advising the President of the Republic to nominate her to the Supreme Court.

41. On 18 December 2012 the President of the Republic passed another decree, asking the Seimas to appoint Judge D.V. to the Supreme Court. The Seimas appointed Judge D.V. to the Supreme Court on 17 January 2013.

2. Promotion of Judge R.N.

42. On 15 January 2013 the Seimas passed a resolution to remove Judge P.Ž. from the Supreme Court on the grounds that he had reached pensionable age. Subsequently, there was a vacancy at the Supreme Court.

43. On 6 February 2013, on the basis of Article 73 § 2 of the Law on Courts (see paragraph 58 below), the President of the Supreme Court G.K. put forward the Court of Appeal judge, Judge R.N., as a candidate for appointment to the Supreme Court, and made a proposal to the President of the Republic in this regard. The President of the Supreme Court acknowledged the candidate's successful experience in the academic field – he was a doctor of law and a professor and had numerous publications in the field of law. The President of the Supreme Court also underlined Judge R.N.'s exceptional professional and personal characteristics and long professional career within the court system as of 1999, when he had started as a consultant and adviser in various administrative and civil courts. Besides that, the President of the Supreme Court noted Judge R.N.'s active participation in teaching judges and taking part in the legislative process, in addition to his international experience, irreproachable reputation and great results while working as a judge at the Court of Appeal. The President of the Supreme Court highlighted that employing more judges at the Supreme Court who had academic achievements in the science of law was a priority.

44. By a decree of 26 February 2012, the President of the Republic asked the Judicial Council for advice on whether Judge R.N. could be appointed to the Supreme Court.

45. According to the Government, having evaluated the personal and professional characteristics of Judge R.N. and his academic and pedagogical activities, as well as the absence of complaints about his work as a judge, on 1 March 2013 the Judicial Council unanimously approved his nomination as a candidate, advising the President of the Republic to nominate him to the Supreme Court.

46. By a decree of 6 March 2013, the President of the Republic then asked the Seimas to appoint Judge R.N. to the Supreme Court. The Seimas appointed Judge R.N. to the Supreme Court on 28 March 2013.

47. In October 2014 the Seimas removed Judge G.K. from his office as President of the Supreme Court after his term of appointment had expired. The place thus became vacant.

48. According to the Government – who in turn quoted information received from the Chancellery of the President of the Republic – having considered several nominations for the vacant post and having received Judge R.N.'s consent, by a decree of 12 December 2014, the President of

the Republic asked the Judicial Council for advice on his appointment. According to the Government, such a decision by the President was determined by Judge R.N.'s extensive experience of working in the court system, perfect administration and management skills, knowledge of the work of general and specialist courts, and work at courts of different levels of jurisdiction. His international experience and knowledge of languages were also positively noted, given the representative role of the President of the Supreme Court.

49. Having received the Judicial Council's approval of Judge R.N.'s nomination, on 15 December 2014 the President of the Republic proposed his nomination to the Seimas, which approved it on 18 December 2014.

D. Civil proceedings for damages

50. In 2014 the applicant started civil proceedings in respect of the damage which she claimed to have suffered because of the loss of her salary during the period of her suspension from judicial office**.** She stated, among other things, that whilst she had been suspended her salary had not been paid, nor had her social security contributions or contributions to the old-age pension scheme. As a result, she could not use public healthcare services.

51. By a decision of 9 June 2015, the Vilnius Regional Court rejected the applicant's civil claim. The court noted that under Article 47 of the Law on Courts (see paragraph 58 below), the President of the Republic had the right to suspend a judge from office. In the circumstances of the applicant's case, her powers had been suspended when the question of her criminal liability had arisen. The court also noted that the plenary session of the Supreme Court had reached the final decision in the criminal proceedings on 8 May 2012, when the criminal proceedings against the applicant had been terminated because of the statute of limitations (see paragraphs 12 and 13 above). The Vilnius Regional Court held that, under Article 47 § 3 of the law on Courts "as valid at relevant time", the decision in a criminal case determined the consequences of a suspension of judicial powers: "if a judge was declared innocent, his or her powers were restored and he or she was paid the salary for the suspension period". Accordingly, in the Vilnius Regional Court's view, the law clearly and unambiguously established when a judge might be compensated for the period when his or her powers had been suspended. The court also underlined that the matter of how long a judge's powers might be suspended was not regulated by law, therefore that depended directly on how a criminal case had been handled and when the decision in a criminal case could be reached. For the Vilnius Regional Court, "even if suspending [the] judge's powers for more than five years had not been justified", those were not grounds to declare unlawful the decision of the President of the Republic to suspend the applicant's powers

and allow criminal proceedings to be brought against her. It followed that there was no causal link between the adoption of the President's decree of 21 February 2006 (see paragraph 8 above) and the consequences which the applicant had had to bear. The applicant had been dismissed from her office before the criminal proceedings had been terminated, and as a result of disciplinary liability.

52. The Vilnius Regional Court also considered that the applicant had had a choice – to wait for the outcome of the criminal case and "legitimately expect" that her salary for the period of suspension would be paid if a judgment of acquittal was adopted in her case, or to get another job and thus receive an income.

53. The applicant appealed, arguing that the first-instance court had erred in reaching the conclusion that the fact that the President of the Republic had been competent to pass the decree of 21 February 2006 meant that she had not proved that there had been unlawful actions by the State which would be grounds for civil liability. She pointed out that the State's unlawful actions had manifested themselves not in the above-mentioned decree as such, but in the fact that once the decree had been adopted and her judicial powers had been suspended, she had had no opportunity to appeal against that decree. As a result, she could not actively defend her civil and work-related rights and had been destined to sustain serious financial damage, also as a result of the lack of time-limits concerning how long a judge's powers could be suspended during criminal proceedings, which in her case had been for a protracted period.

54. The applicant also pleaded that by failing to pay her salary for the period from 21 February 2006 to 18 July 2011, the State had breached the principles of the presumption of innocence and the protection of property. She found the first-instance court's finding that she could have worked during the time of her suspension (see paragraph 52 above) devoid of substance and not supported by evidence. In fact, between 21 February 2006 and 18 July 2011 she had not been dismissed from her post, which meant that during all that time her status had been that of a judge who could not take up another job, except a teaching post. Lastly, the applicant pointed out that in those civil proceedings for damages she had not been challenging the President's decree of 18 July 2011 regarding her dismissal, because that issue had already been examined during the first set of civil proceedings (see paragraphs 25-36 above). She underlined that her dismissal had not been linked to the outcome of the criminal case. This was plain from the fact that her criminal prosecution had lasted from 21 February 2006 to 8 May 2012, whereas she had been dismissed from office on 18 July 2011. In other words, the dismissal, which had taken place in 2011, could not be based on the criminal court's judgment, which had been adopted a year later, in 2012.

55. By a judgment of 20 April 2016, the Court of Appeal left the lower court's decision unchanged. The Court of Appeal relied on the first-instance and appellate courts' reasoning in the applicant's first civil case (see paragraphs 25-35 above), which, in its view, was based on Article 47 § 3 of the Law on Courts, as in force on the day of the applicant's dismissal (18 July 2011). That provision provided that a judge should be compensated for his or her loss of salary when criminal proceedings became impossible (see paragraph 58 below). Those courts held that the aim of that provision was to compensate a judge for a period when his or her duties had been unreasonably restricted. As noted by the courts in the first set of civil proceedings, and as stated by the Supreme Court during the criminal proceedings against the applicant (see paragraph 13 *in fine*), discontinuing criminal proceedings because of the statute of limitations was not tantamount to a person's rehabilitation, and also could not be equated to a person's acquittal. The Court of Appeal thus reasoned that the absence of a judgment of conviction due to the statute of limitations did not permit a conclusion that a judge's duties had been suspended unlawfully. The court considered that the loss (the unpaid salary) had been caused by the applicant herself, namely by the fact that she had been negligent in performing her judicial duties. Lastly, and as regards the applicant's argument that she could not have worked in another job while her judicial powers had been suspended, the Court of Appeal reiterated the findings of the first instance court (see paragraph 52 above) that the applicant had had a choice: to wait for the outcome of the criminal case and, under the version of the Law on Courts in force at that time, legitimately expect to be paid her unpaid salary if a judgment of acquittal was adopted, or to work in another job and receive an income. Accordingly, the applicant had been incorrect in stating that such reasoning by the court of first instance had been devoid of substance and not based on any evidence.

56. According to the Government, by a ruling of 26 July 2016, the Supreme Court refused to examine the applicant's appeal on points of law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

57. The Constitution, in so far as relevant, reads as follows:

Article 30

"A person whose constitutional rights or freedoms are violated shall have the right to apply to a court.

Compensation for material and moral damage inflicted upon a person shall be established by law."

Article 31

"A person shall be presumed innocent until proved guilty in accordance with the procedure established by law and declared guilty by an effective court judgment.

A person charged with committing a crime shall have the right to a public and fair hearing of his case by an independent and impartial court..."

Article 112

"...

The justices of the Supreme Court, and its President chosen from among them, shall be appointed and released by the Seimas upon submission by the President of the Republic.

Judges of the Court of Appeal, and its President chosen from among them, shall be appointed by the President of the Republic with the assent of the Seimas.

The judges and presidents of district, regional, and specialised courts shall be appointed, and their places of work shall be changed, by the President of the Republic.

A special institution of judges, as provided for by law, shall advise the President of the Republic on the appointment, promotion, and transfer of judges, or their release from their duties ..."

Article 113

"Judges may not hold any other office to which he or she has been elected or appointed, or work in any business, commercial, or other private establishments or enterprises. Nor may they receive any remuneration other than the remuneration established for judges and payment for educational or creative activities ..."

Article 114

"Interference with the activities of a judge or court by any institutions of State power and governance, members of the Seimas or other officials, political parties, political or public organisations or citizens shall be prohibited and lead to liability provided for by law.

Judges may not be held criminally liable or be detained, or have their liberty otherwise restricted without the consent of the Seimas, or, in the period between sessions of the Seimas, without the consent of the President of the Republic of Lithuania."

Article 115

"Judges of the courts of the Republic of Lithuania shall be removed from office according to the procedure established by law in the following cases:

1) of their own will;

2) on the expiry of their term of office, or upon reaching the pensionable age established by law;

3) owing to their state of health;

4) on election to another office, or upon transfer, with their consent, to another place of work;

5) when their conduct discredits the title of a judge;

6) on the entry into effect of court judgments convicting them."

58. The Law on Courts (*Teismų įstatymas*), in so far as relevant, reads:

Article 36. Composition of a court (wording on 28 November 2012)

"9. In all instances, cases shall be allocated to judges and judicial panels so as to ensure the right of the parties to the proceedings and participants in the hearing to an independent and impartial court.

10. The cases shall be allocated to judges and the judicial panel shall be constituted via the computer programme created pursuant to the rules on the allocation of cases to judges and the formation of judicial panels of judges approved by the Judicial Council."

Article 47. Immunity of a judge (wording at the time when the applicant's duties were suspended on 21 February 2006)

"3. If a judge is suspected of or charged with a crime, he or she may be suspended from judicial duties by the Seimas or – in the period between the Seimas' sessions – by the President of the Republic. A judge is suspended from his or her duties until the court decision in a criminal case comes into force. If a judge is declared innocent, his or her duties are restored and he or she is repaid the salary for the period when he or she was suspended from office [*jei teisėjas pripažįstamas nekaltu, jo įgaliojimai atnaujinami ir jam sumokamas atlyginimas už įgaliojimų sustabdymo laiką*]."

Article 47. Immunity of a judge (wording after 1 September 2008, currently valid and currently Article 47 § 4 of the Law on Courts)

"3. ... If a judge is suspected of or charged with a crime, he or she may be suspended from his or her judicial duties by the Seimas or – in the period between the Seimas' sessions – by the President of the Republic. A judge is suspended from his or her duties until the final decision in a pre-trial investigation is adopted or until the judgment in a criminal case comes into force. If, during the pre-trial investigation, circumstances are established which prove that criminal proceedings are impossible or that not enough evidence has been collected to prove the judge's guilt in respect of the crime, or if the judge is not found guilty by a court judgment in a criminal case, the powers of the judge shall be restored and he or she shall be repaid the salary for the period when he or she was suspended from office."

Article 48. A judge's work and activity outside the court

"1. A judge may not take up other duties to which he or she may have been elected or appointed, or work in business or other private enterprises or companies, except for pedagogical or creative activities [*išskyrus pedagoginę ar kūrybinę veiklą*] ..."

Article 73. Appointment of a judge to the Supreme Court

"1. A judge of the Supreme Court shall be appointed by the Seimas upon being nominated by the President of the Republic.

2. Candidates for judicial office at the Supreme Court shall be elected and nominated by the President of the Supreme Court. This nomination shall not be binding on the President of the Republic."

Article 79. Appointment of the President of the Supreme Court and the President of a Division of the Supreme Court

"1. The President of the Supreme Court shall be appointed by the Seimas upon being nominated by the President of the Republic out of the judges of the Supreme Court.

...

4. Candidates for the office of President of the Supreme Court ... shall be considered by the Judicial Council ..."

59. The Law on Courts (Teismų įstatymas) also reads that a judge may be removed from office if the title of judge has been discredited through his or her conduct (Article 90 § 1 (5)). A judge may also be removed from office if a court judgment convicting him or her comes into force (Article 90 § 1 (6)). In such cases, the Judicial Council, a body assuring the independence and self-governance of judges, advises the President of the Republic. The hearings of the Judicial Council are public, and a judge whose removal from office is to be considered at such a hearing has a right to take part in that hearing and to be heard. Should the Judicial Council recommend that the President of the Republic remove a judge from office, and should the President of the Republic pass such a decree, the removal may be appealed against to civil courts at three levels of jurisdiction.

Historically, the Judicial Council has recommended that the President of the Republic remove judges from office for discrediting the title of judge through behaviour such as being drunk at work, drink-driving, swearing in a public place, negligently performing work duties, exerting undue influence on other judges in order to affect the outcome of court proceedings, and accepting objects of material value.

60. The Law on Courts further reads that criminal proceedings against a judge may be started and his or her liberty restricted only with the agreement of the Seimas, or with the agreement of the President of the Republic when the Seimas is not in session (Article 89 § 1). Criminal proceedings against a judge can only be initiated by the Prosecutor General (Article 89 § 2).

61. As regards the appointment of judges to the Supreme Court in the event of there being a vacancy, the Statute of the Seimas at the relevant time read that the candidate had to be approved by the Seimas within one month of the vacancy coming up or within one month of the Seimas' session beginning (Article 204). The Seimas had competence to appoint the Supreme Court's judges and its President (Article 199).

62. At the relevant time, the Code of Criminal Procedure read:

Article 3. Circumstances when criminal proceedings are not possible

"1. Criminal proceedings may not be started, and ongoing criminal proceedings must be terminated:

1) if no criminal act has been committed;

2) if criminal responsibility is barred due to the statute of limitations;

...

2. If the circumstance mentioned in point 1 (1) of this Article becomes known during the examination of the case in court, the court shall terminate criminal proceedings and adopt a judgment of acquittal."

63. In the ruling of 16 January 2006, the Constitutional Court held:

"13. When regulating the relations of criminal procedure, one must also pay heed to the imperative of the presumption of innocence entrenched in the Constitution. One must follow this constitutional imperative not only in the course of consideration of a criminal case in court, but also during the pre-trial investigation. ... [T]he Constitutional Court [has already] emphasised that it was especially important that State institutions and officials follow the principle of the presumption of innocence, [and] that public figures should in general restrain themselves from referring to a person as a criminal until the person's guilt in respect of the crime had been proved in accordance with the procedure established by law and [the person had been] recognised as guilty by a court judgment which had entered into force, otherwise human honour and dignity could be violated and human rights and freedoms could be undermined."

64. In a ruling of 9 May 2006, on the constitutional system of the judiciary and its self-governance, on the appointment, promotion and transfer of judges and their dismissal from office, and on the prolongation of the powers of judges, the Constitutional Court held:

"It has been mentioned that the special institution of judges provided for by law specified in paragraph 5 of Article 112 of the Constitution also participates (thus also has certain constitutional powers) when forming the judiciary. In the area of the formation of the judiciary, this special institution of judges (which ... is an important element of the judiciary's self-governance [and] an independent State power), is a balance to the President of the Republic, who is part of the executive ... The ... status, autonomy, [and] independence of the judiciary, and the constitutional principle of the separation of powers, does not allow the constitutional purpose and functions of that special institution of judges to be construed in such a way that [the institution's] role as a balance to the President of the Republic in the area of the formation of the judiciary would be denied or ignored. On the other hand, as already said, the checks and balances which the judiciary (and institutions thereof) and other State powers (and institutions thereof) have with respect to each other may not be treated as opposing mechanisms of corresponding powers. Accordingly, it would be unfair to construe the constitutional purpose of that special institution of judges as only a balance to the President of the Republic in the area of the formation of the judiciary, because partnership and cooperation between the President of the Republic and this special institution of judges is also necessary while forming it (in particular, paying heed to the interests of society – based on and defended by the Constitution – that the judiciary be formed fairly and transparently [and] that [candidates] for judicial office be chosen only on the basis of their professional qualifications and personal features, and [on the basis of] other circumstances which determine their suitability or unsuitability for this activity (judicial office in a particular court)).

...

14. In this context, it should be noted that, as the Constitutional Court held ..., the advice of the special institution of judges established in paragraph 5 of Article 112 of the Constitution gives rise to legal effects: if there is no advice from this institution, the President of the Republic may not adopt decisions on the appointment, promotion, or transfer of judges, or [decisions] on their being released from office.

...

21. It should also be emphasised that even though the dominant principle of forming the judiciary of courts of higher level is the principle of the professional careers of judges (when judges are promoted after they are released from their previous office and are appointed as judges of higher courts), under the Constitution, it is not permitted to establish any such legal regulation whereby only judges are able to become judges of higher courts. Establishing such a legal regulation and treating the principle of the professional careers of judges clearly would make the court system become too closed, subject to a routine, and so on."

65. In a ruling of 27 November 2006, on the right of judges to apply to court, the Constitutional Court held:

"8.4. Under Article 115 of the Constitution, judges of courts shall be released from office in accordance with the procedure established by law, *inter alia*, when their conduct discredits the title of judge (Item 5)...

The Constitution does not establish *expressis verbis* any type of conduct by judges which discredits the title of judges; the formula 'conduct discrediting the title of judges' is wide, and includes not only conduct which discredited the title of a judge while implementing his powers as a judge, but also conduct which discredited the title of a judge which has no relation to the implementation of the powers of the judge; under the Constitution, the legislature, as well as the self-governing institutions of the judiciary, have the discretion to establish what conduct should be regarded as that which discredits the title of a judge, however, neither laws nor the decisions of self-governing institutions of the judiciary may establish any final list of actions by which a judge discredits the title of a judge. ... [I]t was also held that when deciding whether the conduct of a judge is such that the title of a judge has been discredited, all the circumstances related to the said conduct and its significance to the case must be assessed each time.

...

14. ...

It has been mentioned that, under the Constitution, a judge, as any other person who thinks that he has been released from office unlawfully and without grounds, has the right to apply to court regarding the defence of his violated right. This right of his is absolute, and it is not permitted to restrict or deny it. It has also been mentioned that, under the Constitution, the legislature has a discretion, in accordance with the constitutional principle of a State under the rule of law, to establish to which court – *inter alia*, a court of general jurisdiction – and under what procedure a person who thinks that he has been released from office unlawfully and without grounds may apply regarding the defence of his violated rights.

It has also been held in this ruling of the Constitutional Court that the Constitution provides for significant powers for the President of the Republic, as the Head of State, as regards the formation of courts. The President of the Republic participates, in one way or another, when appointing or releasing judges of courts of all levels. The special institution of judges provided for by law [and] specified in paragraph 5 of

> Article 112 of the Constitution, which advises the President of the Republic, *inter alia*, on the release of judges from office, is a counterbalance to these constitutional powers of the President of the Republic."

As to the powers of the President of the Republic when forming the judiciary, and the alleged inability of the courts to impartially and independently decide any case against the President of the Republic, the Constitutional Court highlighted the following:

> "It needs to be emphasised that the mere fact that the President of the Republic decides questions related to the careers of judges or participates in those decisions ... is not grounds to doubt the independence [of judges] ... when they consider cases for the release of judges from office ... If one agreed with the reasoning ... – that the fact that the President of the Republic appoints and releases judges ... and decides questions concerning their professional careers is grounds to doubt the independence and impartiality of the court [which hears such a case] – if a party in a case considered by that court was the President of the Republic, it would have to be held that no court existed in Lithuania which was independent and could investigate in an utterly impartial manner a case in which the President of the Republic was a party. It is obvious that such a statement ... would be absolutely groundless, constitutionally speaking."

66. The Constitutional Court has also underlined the fact that the Law on Courts provides for two separate grounds for removing a judge from office: where a court judgment which had entered into force had established that a judge had committed a crime (Article 90 § 1 (6)), and where a judge had discredited the title of judge (Article 90 § 1 (5)), and also underlined that such regulation was not in breach of the principle of the presumption of innocence (see *Linkevičienė and Others* ((dec.), nos. 33556/07, 34734/07, 34740/07, §§ 52 and 53).

67. As to the principle of presumption of innocence, in a recent ruling of 27 June 2016, on discontinuing criminal proceedings after the expiry of a statutory limitation period for criminal liability, the Constitutional Court held:

> "8.2. [T]he [existing] legal regulation ... creates conditions for a court to dismiss a case without assessing the charges brought against the accused, and without ascertaining whether the accused has been reasonably charged with having committed a crime or whether the acquitted person has been reasonably acquitted of a crime with which he or she was charged. Consequently, this legal regulation precludes a court from acting in such a way that the truth in a criminal case could be established and the question of the guilt of the person accused of a crime could be fairly resolved. This legal regulation disregards a person's right to due court process, which stems from paragraph 2 of Article 31 of the Constitution and the constitutional principle of a State under the rule of law.
>
> It should also be noted that, under the [existing] legal regulation ..., if a court fails to assess whether the charges brought against the accused person are reasonable and the case is dismissed for the reason that the statutory limitation period for criminal liability has expired, the impression created is that the expiry of the prescribed limitation period prevented the conviction of the accused. Such a legal regulation creates conditions for continued doubts as to whether the accused has been reasonably

charged with a criminal act, as well as continued doubts as to the accused's good repute.

...

10. [I]t is worth noting that justice is not administered during a pre-trial investigation; ... a pre-trial investigation involves collecting and assessing information that is necessary for deciding whether charges on behalf of the State must be brought against a person and whether a criminal case must be referred to a court. Consequently, the termination of a pre-trial investigation upon the expiry of the statutory limitation period for criminal liability means that, within the prescribed period, no necessary data has been collected to bring charges against a certain person, and there are no grounds to believe that the accused has committed a crime.

It should also be noted that ... paragraphs 1 and 2 of Article 31 of the Constitution, *inter alia*, and the constitutional principle of a State under the rule of law, imply the duty of the legislature, when regulating criminal procedure regarding cases where the time-limits during which criminal liability may be applied to persons who have committed criminal acts have expired, to lay down such legal regulation as would create conditions for ensuring that a charge is dropped in a case where such a charge is not confirmed. Consequently, in cases where, after the expiry of statutory limitation periods, it is ascertained that the charges brought against the accused for having committed a crime are unfounded, a court must deliver an acquittal judgment."

III. INTERNATIONAL AND COUNCIL OF EUROPE MATERIALS ON THE INDEPENDENCE OF THE JUDICIARY AND THE IRREMOVABILITY OF JUDGES

68. See *Baka v. Hungary* [GC], no. 20261/12, §§ 72-86, 23 June 2016, and, more recently, *Denisov v. Ukraine* [GC], no. 76639/11, §§ 33-36, 25 September 2018.

69. Specifically, the European Charter on the Statute for Judges of 8-10 July 1998 read as follows:

4. CAREER DEVELOPMENT

"4.2. Judges freely carry out activities outside their judicial mandate including those which are the embodiment of their rights as citizens. This freedom may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her. The exercise of an outside activity, other than literary or artistic, giving rise to remuneration, must be the object of a prior authorization on conditions laid down by the statute."

THE LAW

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

70. The applicant claimed that at the stage of the Court of Appeal her civil case challenging the decree of the President of the Republic for her dismissal had not been examined fairly by an independent and impartial

tribunal. She relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... , everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. The parties' arguments

(a) The applicant

71. The applicant submitted that she had not had a fair hearing by an independent and impartial tribunal when her civil claim for unlawful dismissal and unpaid salary had been examined by the Court of Appeal (see paragraphs 33-35 above). The applicant argued in particular that two of the three judges had been partial, and in return for giving a court decision favouring the President of the Republic, had soon afterwards been promoted to the Supreme Court.

72. In support of her argument, the applicant wanted the Court to take note of the fact that, after Judge R.N.'s and Judge D.V.'s appointment, it had taken other judges with much more judicial experience much longer to be appointed to the Supreme Court. For instance, Judge A.B., who had withdrawn from the applicant's civil case, had become a judge at the Supreme Court only in January 2015, even though she had been working at the Court of Appeal for eighteen years. Another judge, Judge A.M., had become a judge at the Supreme Court after working in the district and regional courts for twelve years. Similarly, Judge D.Š. had worked in the district and regional courts for six years and at the Court of Appeal for more than five years before being appointed to the Supreme Court. In contrast, Judge D.V. – the reporting judge who had sat on the Court of Appeal bench only as of February 2012 and had heard the applicant's civil claim on 28 November 2012 – had been put forward for a promotion to the Supreme Court on 13 December 2012, within less than a month of that hearing. For the applicant, suggesting that a person who had not worked at the Court of Appeal for even one full year – and who had never worked in a lower court – should be put forward as a candidate had to be regarded as gratitude for the decision in her case that had been favourable to the President of the Republic. The fact that another judge of the Court of Appeal chamber which had heard the applicant's case, Judge R.N., had also been proposed as a candidate for the Supreme Court by the President of the Republic, despite not having worked one full year as a judge, only reinforced the applicant's suspicions.

(b) The Government

73. The Government stated at the outset that the sole fact that the President of the Republic was involved in the appointment of judges and decided issues concerning their careers could not be construed as meaning that no court could independently and impartially hear a case against the President of the Republic (the Government relied on the Constitutional Court's ruling of 27 November 2006, see paragraph 65 above). Moreover, the procedure for judges' appointment and removal from office was well counterbalanced, especially in the light of the Judicial Council's special role as a self-governing body for judges. In the circumstances of this case, one also had to bear in mind that three Presidents of the Republic had been involved during the applicant's career and her removal from office.

74. Regarding the specific circumstances of the applicant's civil case for reinstatement, the Government firstly submitted that, under the domestic law, cases were allocated to judicial chambers randomly, in order to ensure impartiality and transparency (they relied on Article 36 of the Law on Courts, see paragraph 58 above). Initially, the applicant's civil case had been assigned to a chamber of a different composition. It was only after two judges had withdrawn from the case that Judges R.N. and D.V. had been appointed (see paragraph 30 above). Even so, despite the applicant's contentions, the President of the Court of Appeal had dismissed any arguments as to their partiality (see paragraphs 31 and 32 above).

75. Turning to the question of Judge R.N.'s and Judge D.V.'s promotion to the Supreme Court, the Government pointed out that any such promotion was firstly contingent on there being a judicial vacancy, and in this case the vacancies had opened up after the Court of Appeal ruling of 28 November 2012. Accordingly, when giving that ruling, Judges R.N. and D.V. could not have predicted that there would be the possibility of a promotion. Similarly, the need to ensure the normal functioning of the Supreme Court had demanded that replacements for the two judges who had left that court be found without undue delay (see paragraph 61 above). It was also pertinent that the nominations had come from the President of the Supreme Court. In this connection, the Government also submitted that although the President of the Republic was not bound by those nominations, the current President of the Republic, President D.G., had always relied on the Supreme Court President's recommendation, and there had been no cases when the President of the Republic had submitted a nomination for a different candidate to the Seimas. The objectivity and transparency of the appointment procedure was also guaranteed by the involvement of the Judicial Council, from which Judges R.N. and D.V. had both received unanimous approval.

76. The Government also pointed out that Judge G.K., who had been the President of the Supreme Court at the relevant time, when forming the composition of that court, had paid particular attention to the enhancement

of that court's professionalism by including academics in the judiciary. The positive impact of professional scholars was undeniably beneficial, in order to ensure and develop the jurisprudence of the Supreme Court in accordance with the domestic, European Union and international legal regulation, as well as the relevant case-law of the Court, and at the same time in order to seek to ensure and maintain the highest professional qualifications. The Government thus submitted that before Judge G.K.'s presidency, only 20% of the Supreme Court's judges had had a doctor of sciences degree. For that reason, special account had been taken of the opportunity to strengthen the Supreme Court's capacity by including legal scholars. According to the Government, currently, one third of the judges on the Supreme Court bench have a doctoral degree in law. They submitted that it therefore followed that there were objective reasons – their experience and high qualifications in both academic and professional fields, including at the Court of Appeal and in examining the most complex cases – for choosing Judges R.N. and D.V. to be promoted to the Supreme Court.

77. In the light of the foregoing, the Government concluded that the applicant had had an opportunity to exercise her right to a hearing by an independent and impartial tribunal.

2. The Court's assessment

(a) General principles

78. By way of general observation, the Court reiterates that in determining in previous cases whether a body could be considered as "independent" – notably of the executive and of the parties to the case – it has had regard to such factors as the manner of appointment of its members, the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence. The irremovability of judges by the executive during their term of office is in general considered as a corollary of their independence and thus included in the guarantees of Article 6 § 1. Although the notion of the separation of powers between the political organs of government and the judiciary has assumed growing importance in the Court's case-law, appointment of judges by the executive or the legislature is permissible, provided that appointees are free from influence or pressure when carrying out their adjudicatory role (see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, § 49, ECHR 2013 (extracts), and the case-law cited therein; see also, more recently, *Thiam v. France*, no. 80018/12, § 59, 18 October 2018).

79. The Court has also held that as regards the requirement of impartiality, the tribunal must be subjectively free of personal prejudice or bias and must also be impartial from an objective viewpoint, in that it must offer sufficient guarantees to exclude any legitimate doubt in this respect

(see, more recently, *Haarde v. Iceland*, no. 66847/12, § 103, 23 November 2017, with further references).

80. Lastly, the concepts of independence and objective impartiality are closely linked and, depending on the circumstances, may require joint examination. Having regard to the facts of the present case, the Court finds it appropriate to examine the issues of independence and impartiality together (see *Denisov v. Ukraine* [GC], no. 76639/11, § 64, 25 September 2018, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 150, 6 November 2018).

(b) Application to the instant case

81. The Court firstly notes that the applicant's complaint that two Court of Appeal judges had lacked impartiality when handling her civil case against the President of the Republic initially was dismissed by the President of the Court of Appeal, who gave reasons and explanations as to why certain procedural requests by the applicant had not been addressed as soon as she had wished (see paragraphs 31 and 32 above). In any event, the Court does not find any testament of alleged partiality on account of the Court of Appeal choice to proceed with the examination of the applicant's case in that manner. In this context, the Court is also mindful of the fact that cases are allocated to judges by a computer system, in order to ensure proceedings' participants' right to an independent and impartial tribunal (see Article 36 of the Law on Courts, cited in paragraph 58 above). It also notes that the applicant did not plead that the computer system had been circumvented, be it by the President of the Republic or by any other person, or that her case had initially been allocated to Judges R.N. and D.V. in particular. In fact, the case landed in their hands as a result of two other judges recusing themselves from the Court of Appeal's chamber composition (see paragraph 30 above). The applicant did not adduce any evidence to show that Judges R.N. or D.V. had been subject to any form of influence or pressure from the President of the Republic when handling her civil case (for an identical conclusion, see *Flux v. Moldova (no. 2)*, no. 31001/03, §§ 23-27, 3 July 2007). Accordingly, the Court has no reason to find that those judges lacked either independence or impartiality in the applicant's case. Lastly, as noted by the Constitutional Court, one may not hold that the mere fact that the President of the Republic decides questions of judges' professional careers is grounds to consider that there is no court in Lithuania which is independent and able to impartially examine a case in which the President of the Republic is a party (see paragraph 65 *in fine* above).

82. The Court next turns to another aspect pleaded by the applicant in support of her complaint, that is, that Judges R.N. and D.V. were promoted to the Supreme Court for giving a court decision in the President's favour. Firstly, the Court takes into account the Government's view that, when

passing that verdict, those two judges could not have known about an opening at the Supreme Court, for at that time there was none. It was only after the Court of Appeal decision of 28 November 2012 that vacancies opened up at the Supreme Court, which moreover had to be filled without delay (see paragraphs 37, 42 and 61 above). Secondly, the Court has regard to the fact that the nominations of Judges R.N. and D.V. for the Supreme Court bench were proposed by one of the highest judicial figures in Lithuania, the President of the Supreme Court, and were motivated by his desire to, *inter alia*, reinforce the presence of academics at the Supreme Court, which, at that time, he saw as being small (see paragraphs 38 and 43 above). The fact that the court system should not be closed has also been underlined by the Constitutional Court (see paragraph 64 *in fine* above). Having regard to the above, the Court sees no plausible reason to doubt the assessment by the Supreme Court President in his proposal to the President of the Republic that, owing to their academic and other experience, both Judge R.N. and Judge D.V. met the relevant criteria. Thirdly, it is worth noting that the nominations of Judge R.N. and Judge D.V. received unanimous support from the Judicial Council (see paragraphs 40 and 45 above), a body whose task is to counterbalance the powers of the President of the Republic when deciding questions concerning judges' promotion or dismissal, and whose participation in any such proceedings is an additional guarantee against any outside pressure on the judiciary. As underlined by the Constitutional Court, without the Judicial Council's approval, no candidate could be promoted or dismissed, which was a supplementary guarantee of judges' independence (see paragraph 64 above). Lastly, even though Judge R.N. was later nominated by the President of the Republic to be President of the Supreme Court, there is nothing tangible in the facts of the case to suspect any kind of arrangement. In fact, this was after the incumbent Supreme Court President's term in office came to an end; a replacement was required and the nomination of Judge R.N. again received support from the Judicial Council (see paragraphs 47-49 above).

83. Against this background, the Court is unable to conclude that Judges R.N. and D.V. lacked independence and impartiality within the meaning of Article 6 § 1 of the Convention when dealing with the applicant's civil action for her reinstatement and unpaid salary, an action brought against the decree of the President of the Republic.

84. Accordingly, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

85. The applicant further complained of the fact that the State had refused to compensate her for her unpaid salary for the period of her

suspension from judicial office. She relied on Article 1 of Protocol No. 1 to the Convention.

86. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. The parties' arguments

(a) The Government

87. The Government firstly submitted that, as regards her complaint about unpaid salary, the applicant had not had "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. The Government agreed that "possessions" could also include claims in respect of which the applicant could argue that she had at least a "legitimate expectation" of obtaining effective enjoyment of a property right. However, a "legitimate expectation" had to be of a more concrete nature than just a mere hope, and should be derived from a legal act or from settled case-law of the domestic courts confirming it.

88. The Government pointed out that, in the instant case, the applicant had been suspended from office in relation to the criminal case, as explicitly provided for by Article 47 of the Law on Courts. They took the view that, under the domestic law, the applicant had not been entitled to her salary for the period of the suspension unless it had been established that the suspension had been imposed unreasonably. Given that the domestic courts had ruled out that the suspension measure was in any way unreasonable, and ruled that no unlawful acts on the part of the State authorities had been established, the applicant had had no enforceable claim to her salary for the period when she had been suspended and thus had not worked (the Government relied, *mutatis mutandis*, on *Buterlevičiūtė v. Lithuania*, no. 42139/08, § 70, 12 January 2016).

89. The Government also considered that, notwithstanding the fact that the judicial powers of the applicant had been suspended within the context of the examination of her criminal liability, the circumstance that criminal liability had not been incurred had not been critical. In fact, prior to the termination of the criminal proceedings due to the statutory limitation, a disciplinary case against the applicant had been opened, which had resulted in her being dismissed from office by the President of the Republic. Before

the criminal proceedings had become time-barred, the President had already been in possession of information about the applicant's conduct of 2000-03 possibly amounting to discrediting judicial office, and had asked the Judicial Council for advice in that connection. There was no doubt that, in such circumstances, the President of the Republic could not renew the judicial powers of the person whose actions had presumably discredited judicial office.

90. In the Government's view, in such circumstances, the applicant also could not have had a legal expectation to be compensated for the period when she had not worked, irrespective of the outcome of the criminal proceedings. The Government also considered that the applicant had been improperly interpreting the domestic law by alleging that there was an obligation to reinstate a person once (criminal) proceedings were terminated without there being a decision on the person's guilt. On the contrary, the President of the Republic retained the right to ask the Judicial Council about a person's suitability to continue working as a judge, or about a judge's reinstatement, should doubts as to his or her fitness for judicial office arise.

91. In the light of the above, the Government considered that the applicant had not had possessions and her complaint was therefore inadmissible, as Article 1 of Protocol No. 1 to the Convention was inapplicable *ratione materiae* to her claim.

92. In the alternative, the Government submitted that the applicant should have started court proceedings for damages, had she considered that the length of her suspension from judicial office had been unjustified, in particular if she had been of the opinion that she had been precluded from having another job owing to prolonged criminal proceedings, and had thereby sustained loss through being unable to earn any income. Lastly, the Government considered that the applicant had failed to properly exhaust the domestic remedies on account of the fact that on 4 March 2013 the Supreme Court refused to accept for examination her appeal on points of law (see paragraph 36 above).

(b) The applicant

93. The applicant noted that her complaint regarding the violation of her right of property had been raised on the basis of a domestic legal act, specifically Article 47 § 3 of the Law on Courts. She also highlighted that, under that provision, the right to remuneration did not depend on whether the suspension of judicial powers had been reasonably applied or not. The right to compensation for the period of suspension was contingent on only one criterion – the outcome of the criminal case: if a judge was not found guilty of a crime, he or she had to be given compensation. The applicant was thus convinced that she had had an enforceable claim for her unpaid salary for the period when she had been absent from work due to her suspension within the criminal proceedings.

94. The applicant also considered that the mere fact that the Supreme Court had refused to examine her appeal on points of law against the Court of Appeal decision of 28 November 2012 did not mean that she had failed to use the domestic remedy appropriately. The applicant noted that she had consistently argued that there had been a breach of her Convention rights with regard to the refusal to pay her her salary for the period of her suspension within the criminal proceedings.

95. As to the Government's suggestion that she could have claimed damages if she had considered that she had been unlawfully deprived of her salary, the applicant pointed out that she had pursued such proceedings, although without success.

2. The Court's assessment

96. The Court points out that the applicant's claim for the salary withheld during her suspension was based on a specific domestic legal provision, namely Article 47 of the Law on Courts (see paragraph 58 above; contrast *Buterlevičiūtė*, cited above, §§ 23, 29 and 70, where the suspension was based on different legal acts – the Code of Criminal Procedure and the Labour Code – which did not made the compensation of unpaid salary contingent on the outcome of the criminal proceedings). In both domestic civil proceedings the relevant courts, as can be deduced from their reasoning, summed up by the Court of Appeal when reaching the final decision regarding the applicant's claim for her unpaid salary (see, in particular, paragraph 55 above), referred to the 2008 version of Article 47 § 3 of the Law on Courts, according to which for a suspended judge to have his or her salary repaid it was sufficient that the criminal proceedings proved impossible or that he or she was not found guilty by a court judgment in a criminal case (see paragraph 58 above). Against this background, the Court shares the applicant's view that the 2008 version of Article 47 § 3 of the Law on Courts created a legitimate expectation that, if she was not found guilty, she could obtain her salary (see also *Béláné Nagy v. Hungary* [GC], no. 53080/13, §§ 72-79, 13 December 2016). The Court therefore finds that Article 1 of Protocol No. 1 to the Convention is applicable and that the Government's objection as to the inadmissibility of the complaint as incompatible *ratione materiae* must be dismissed.

97. The Court further notes that the applicant raised her complaints about the loss of her salary, also relying on Article 1 or Protocol No. 1, both throughout the civil proceedings for the annulment of the President's decree for her dismissal, up to the level of the Supreme Court (see paragraphs 26, 29 and 36 above), as well as during the subsequent civil court proceedings for damages (see paragraphs 50, 53 and 54 above). It therefore finds that the applicant exhausted the available domestic remedies.

98. The Court lastly finds that this complaint is not manifestly ill-founded. Nor it is inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

(a) The applicant

99. The applicant firstly noted that her judicial powers had been suspended not because of the application of any measures of criminal procedure, but by a decree of the President of the Republic in order to allow the pre-trial investigation which had been initiated. During the period of her suspension, her salary had not been paid. Compensation depended on the outcome of a criminal case, as set out in Article 47 § 3 of the Law on Courts. Although the Government insisted that the grounds for not paying the applicant her salary for the period of suspension from judicial office were not the outcome of the criminal case, as established by law, but the disciplinary case, the applicant underlined that disciplinary proceedings and a judge's dismissal for disciplinary violations did not restrict a judge's right to remuneration during the suspension of his or her powers. The Government themselves acknowledged in their observations that "disciplinary proceedings could not have served as a ground for [such a] suspension" (see paragraph 106 below). Therefore, it was plain that her suspension from judicial powers could not have been based on the disciplinary case, firstly because that case had been opened after the suspension of her judicial powers, secondly because the suspension had related exclusively to the pre-trial investigation, and thirdly because any subsequent legal regulation regarding the possibility to suspend judicial powers, within disciplinary proceedings, could not be applied to her retroactively.

100. In the applicant's view, the Government were misleading the Court by stating that the suspension of a judge's powers did not preclude him or her from pursuing any other activity or work. The applicant drew the Court's attention to Article 48 § 1 of the Law on Courts, wherein it was clearly stated that a judge might not take up any other elected or appointed duties, or work in business or other private institutions or enterprises, except for pedagogical or creative activities (see paragraph 58 above). That indicated that, after the suspension, the only possibilities for the applicant had been either teaching or resigning from her post. However, that would have had an impact on her right to judicial independence, as well as her right to defence. Otherwise, a situation could arise whereby a judge suspended from office due to an ongoing criminal investigation would choose to leave his or her job voluntarily and find another one, rather than

protect his or her rights, for this would be more beneficial financially. The applicant therefore considered that the Government's arguments that she had not been prudent by choosing to wait for the end of the criminal case were devoid of substance. On the contrary, from the time her powers had been suspended, she had reasonably expected her salary for the term of her suspension, in accordance with the law. Payment of salary depended solely on the outcome of a criminal case, and her criminal case had not ended with a conviction. Under Article 47 § 3 of the Law on Courts, the fact that she had not had another job was irrelevant. In the same vein, it was immaterial whether her suspension from duties within the criminal proceedings was lawful or founded. Article 47 § 3 of the Law on Courts made no such links.

101. The applicant also pointed out that the State's damaging actions against her had consisted not only of the decree of the President of the Republic for her suspension, but also the fact that that decree had not been open to appeal, as she had unsuccessfully pleaded during the civil proceedings for damages. The applicant thus distinguished her situation from that where the usual coercive measures, such as removal from work under the rules of criminal procedure, would be applied to a person and the lawfulness of those measures could then be challenged in court, thus a person potentially could avoid pecuniary loss within the criminal proceedings. The applicant also submitted that although strictly speaking the President's decree suspending her duties had not been a procedural document in a criminal case, it had had consequences for her.

102. Turning to the burden which she had had to bear as a result of her suspension and the court's refusal to pay her salary, the applicant also noted the Vilnius Regional Court's conclusions that the time-limits for suspending judges' powers were not regulated by law. Instead, they depended on the length of actual criminal proceedings. As recognised by the Vilnius Regional Court in her case, the suspension of a judge's powers for a period of more than five years was not reasonable (see paragraph 51 above).

103. Lastly, the applicant submitted that her dismissal had had no connection with the outcome of the criminal proceedings. It sufficed to note that she was dismissed from her job on 18 July 2011, whereas the criminal case against her had been terminated only on 8 May 2012. Her dismissal during the disciplinary proceedings thus could not have been based on the future final decision of the criminal court. Moreover, she had been dismissed from work not because of criminal actions, but for various disciplinary breaches.

(b) The Government

104. The Government considered that the applicant's suspension from judicial office had been prescribed by law, namely Article 47 of the Law on Courts, and had been effected by the decree of the President of the Republic of 21 February 2006. Implementing that decree had meant that she would

not receive her salary whilst suspended, and that had been a foreseeable restriction on her property rights. However, the measure of suspension could not be considered as holding her "guilty" of the offence with which she had been charged, for it was merely a coercive measure to ensure proper conduct of criminal proceedings, similar to other measures within the criminal procedure. When rejecting the applicant's civil claims for compensation, the courts had not stated, either expressly or in substance, that she was criminally liable for the relevant criminal acts. Furthermore, the applicant's suspension had been a proportionate measure, especially in the light of the crimes she had been suspected of – forgery of documents and abuse of office whilst performing her duties. Moreover, such a restriction had aimed to preclude a person who might no longer satisfy the irreproachable reputation requirement from engaging in judicial activities. As the case-law of the Court showed, such a legitimate aim of ensuring the proper conduct of criminal proceedings undoubtedly fell within the general interest as envisaged in Article 1 of Protocol No. 1 (the Government relied on *Lavrechov v. the Czech Republic*, no. 57404/08, § 46, ECHR 2013). Besides, such a measure was also related to guaranteeing the proper administration of justice in a broader way, in order to strengthen society's confidence in the courts.

105. The Government wished to underline that the disciplinary proceedings against the applicant which had ended in her dismissal had not been limited to the investigation – via another type of procedure – of the same actions which were already being examined within the criminal proceedings against her. In fact, the disciplinary proceedings had been related to an internal investigation of the applicant's much wider activities over the course of a couple of years (2000-03). The overlap between disciplinary liability and criminal liability had been caused only by the fact that the renewal of the applicant's judicial powers had not been possible because, owing to the disciplinary violations revealed, she had no longer satisfied the requirements for judicial office. That could be proved by her removal from office prior to the termination of the criminal proceedings. As concluded by the domestic courts, this circumstance could only confirm that the suspension of the applicant's judicial powers had been reasonable throughout the entire period.

106. That being so, the Government also noted that at that time "disciplinary proceedings could not have served as a ground for [such a] suspension". In fact, domestic regulation had subsequently been amended to also provide for the possibility of suspension with regard to disciplinary proceedings once the President of the Republic addressed the Judicial Council for advice on whether a judge had discredited judicial office. In the Government's view, such an amendment only confirmed the serious and particularly high requirements for persons taking judicial office. As a general observation, there was no doubt that the President of the Republic

could not renew the judicial powers of a person who had presumably discredited judicial office.

107. The Government also wished to point out that the length of the applicant's suspension from judicial office, which had lasted over five years, had been directly linked to the length of the criminal proceedings. Even if the courts had acknowledged the lengthy suspension during the civil case for damages (see paragraph 51 above), they had also considered that the length in itself did not make the State's actions unlawful.

108. As to the burden imposed on the applicant, the Government asseverated that her suspension from judicial office had not prevented her from engaging in another activity or having another job. In order to ensure the independence and impartiality of judges, the law restricted them from engaging in other activities, except for educational and creative ones. However, during a suspension, a judge could not use his judicial status or be involved in the administration of justice in any way. Accordingly, the Government's understanding was that the prohibition on having another job in cases where persons had been suspended from judicial office should be considered in this context. As concluded by the domestic courts (see paragraphs 52 and 55 above), the applicant had had a choice: to wait for the outcome of the criminal proceedings, expecting that she would be compensated for her unpaid salary once acquitted, or to get another job.

109. The Government lastly considered that the grounds for compensation for unpaid salary during a period of suspension were not related to situations where the criminal case against a judge was not finalised by a judgment of conviction, but instead related to the reasonableness of a suspension. In the applicant's case, however, none of the courts had found that her suspension had been unreasonable or unlawful. In that context, the Government also referred to the Vilnius Regional Court's decision whereby it had held that the law clearly provided that unpaid salary might be compensated for upon a judge being acquitted (see also paragraph 51 above). According to the Government, attention had to be drawn to the fact that "the applicant had not been found not guilty". Instead, the criminal case had been discontinued because the prosecution had become time-barred, which could not be equated to an acquittal. In other words, only an acquittal should be regarded as an outcome of criminal proceedings which automatically preconditioned the payment of salary for a period of suspension.

2. The Court's assessment

(a) Whether there was an interference with the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1

110. The Court considers that the authorities' refusal to compensate the applicant for her unpaid salary constituted "control of use" of property

within the meaning of the second paragraph of Article 1 of Protocol No. 1, and thus amounted to an interference with her right to the peaceful enjoyment of her possessions (see also paragraph 96 above, and *R.Sz. v. Hungary*, no. 41838/11, §§ 31-33, 2 July 2013).

(b) Lawfulness of the interference

111. The Court's principles as to the lawfulness of an interference have been summarised in *R.Sz. v. Hungary* (cited above):

> "35. The Court reiterates that Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: indeed, the second sentence of the first paragraph of that Article authorises the deprivation of possessions "subject to the conditions provided for by law". Moreover, the rule of law, one of the fundamental principles of a democratic society, is a notion inherent in all the Articles of the Convention (see *Former King of Greece and Others v. Greece* [GC] (merits), no. 25701/94, § 79, ECHR 2000–XII, and *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V).
>
> 36. However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness.
>
> 37. It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application (see *Guiso-Gallisay v. Italy*, no. 58858/00, §§ 82-83, 8 December 2005). The Court would add that similar considerations apply to interferences with the peaceful enjoyment of possessions.
>
> As to the notion of "foreseeability", its scope depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (see, *mutatis mutandis*, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 109, 20 January 2009). In particular, a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 143, ECHR–2012). Similarly, the applicable law must provide minimum procedural safeguards commensurate with the importance of the principle at stake (see, *mutatis mutandis*, *Sanoma Uitgevers B.V. v. the Netherlands* [GC], no. 38224/03, § 88, 14 September 2010; *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 96-98, 25 October 2012)."

112. In the instant case, the Court notes that in the judgment of 20 April 2016 the Court of Appeal, also referring to the previous domestic courts' decisions in the applicant's civil case, relied on Article 47 § 3 of the Law on Courts, as amended in 2008, and as it was in force at the time of the applicant's dismissal from her duties (see paragraph 55 above). However, instead of focussing on the fact that the applicant had never been found guilty in the criminal proceedings, the latter proceeding having been the basis for her suspension, the Court of Appeal took the view that Article 47

§ 3 of the Law on Courts meant that a judge should be compensated if his or her suspension was unreasonable (ibid.).

113. Hence, when referring to the amended version of Article 47 § 3 of the Law on Courts, the courts added an additional statutory element that had never been a part of the assessment under the domestic law, notably, that payment of compensation was conditional upon a suspension from judicial duties being unreasonable. In this context, the Court notes the applicant's view that the question of whether a judge's powers had initially been suspended reasonably had no bearing on his or her right to receive a salary, unless he or she was found guilty by a final court judgment (see also paragraph 100 above *in fine*). It observes that in 2016 the Constitutional Court had apparently declared the practice of the criminal courts by which criminal proceedings were terminated by doubts as to the accused's guilt being left to be in breach of the presumption of innocence (see paragraph 67 above), an issue also complained of by the applicant during the domestic court proceedings as well as to the Court (see, respectively, paragraphs 29 and 54 above and paragraph 117 below). Accordingly, and although the Court's power to review compliance with domestic law is limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 144, 27 June 2017, with further references), the Court cannot but find that the Lithuanian courts' arguments in the applicant's case lacked precision and consistency. Moreover, those arguments were not in conformity with the letter of the law as found applicable by the Court of Appeal in its judgment of 20 April 2016 (see paragraph 55 above). Thus, the relevant decisions should be considered as arbitrary (compare and contrast *Kopecký v. Slovakia* [GC], no. 44912/98, § 56, ECHR 2004-IX).

114. Further, the Court cannot find that the applicant could not be paid her salary because of her dismissal due to disciplinary proceedings. As noted by the applicant and acknowledged by the Government, at the time of her suspension in 2006, and even at the time of her dismissal in 2011, there was no legal basis to suspend a judge's powers during disciplinary proceedings. Such a measure was made possible only afterwards (see paragraph 106 above).

115. That being so, the Court cannot but conclude that, for the applicant, it was not foreseeable that, in the absence of a conviction, she was to be denied the payment of her salary for the period of her suspension during the criminal proceedings. In the absence of foreseeability, the Court finds that the interference with the applicant's rights under Article 1 of Protocol No. 1 to the Convention had no legal basis. Accordingly, it is not necessary to examine whether the interference had a legitimate aim and whether it was proportionate.

(c) Conclusion

116. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 1 of Protocol No. 1.

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

117. The applicant was also dissatisfied with the domestic court's finding that discontinuing criminal proceedings did not amount to an acquittal, which she saw as a breach of the right to the presumption of innocence.

118. Article 6 § 2 of the Convention reads as follows:

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

119. The applicant essentially restated the arguments which she presented in support of her complaint under Article 1 of Protocol No. 1 regarding her unpaid salary.

120. The Government noted, among other things, that whereas voicing suspicions about an accused's innocence following a final acquittal was not admissible, in cases where proceedings were terminated or discontinued without an acquittal, some comment on the existence of suspicion might be allowed (the Government referred to *Baars v. the Netherlands*, no. 44320/98, §§ 26-32, 28 October 2003).

121. The Court notes that the gist of the applicant's complaint has already been examined and dealt with under Article 1 of Protocol No. 1 to the Convention (see, in particular, paragraphs 112-116 above). Therefore, the Court declares it admissible but finds that there is no need to examine it separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

123. The applicant claimed 94,370 euros (EUR) in respect of pecuniary damage resulting from a violation of Article 1 of Protocol No. 1 to the Convention, on account of the fact that she had been deprived of her salary for the period from 21 February 2006 to 18 July 2011 (see paragraph 26 above).

The applicant also claimed EUR 30,000 in respect of non-pecuniary damage for the mental suffering and emotional distress occasioned by the violation.

124. The Government disputed the applicant's claims. They submitted that the applicant's calculation of the pecuniary loss which she had sustained was not accurate, since it did not take into account all the taxes payable by her as an employee.

125. The Court notes that it has found a violation of Article 1 of Protocol No. 1 in this case, and considers that the applicant suffered pecuniary damage in connection with the violation found. Taking into account the documents in its possession, the Court considers it appropriate to award the applicant EUR 94,370 in respect of pecuniary damage.

The Court further considers that the applicant undoubtedly suffered distress and frustration as a result of the violation of her property rights by the authorities. However, it finds the amount claimed by her excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 6,500 in respect of non-pecuniary damage.

B. Costs and expenses

126. The applicant also claimed 119,064 Lithuanian litai (LTL – EUR 34,500) for the costs and expenses incurred before the domestic courts, and LTL 38,720 (EUR 11,200) for those incurred before the Court.

127. The Government stated that the sums claimed by the applicant were not only unreasonably high, but they had also not been necessarily incurred. They pointed out that the documents submitted by the applicant only confirmed certain agreements between her and her lawyer; however, there were no documents, such as receipts or copies of bank transfers, confirming that those amounts had actually been paid.

128. 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, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

C. Default interest

129. 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,

1. *Declares*, by a majority, the complaints concerning the applicant's right to the presumption of innocence and the protection of her property rights admissible, and the remainder of the application inadmissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*, by five votes to two, that no separate issue arises under Article 6 § 2 of the Convention;

4. *Holds*, by five votes to two,
   (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:
      (i) EUR 94,370 (ninety-four thousand three hundred and seventy euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) 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;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 April 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Jon Fridrik Kjølbro
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Kjølbro and Ranzoni is annexed to this judgment.

J.F.K.
A.N.T.

JOINT DISSENTING OPINION OF JUDGES KJØLBRO AND RANZONI

1. Regretfully, we are not able to share the view of the majority that there has been a violation of Article 1 of Protocol No. 1. For the reasons explained below, we are of the view that this part of the applicant's complaint should have been declared inadmissible *ratione materiae* as the applicant does not have a "possession" within the meaning of that provision (see paragraph 96 of the judgment).

2. Furthermore, even assuming Article 1 of Protocol No. 1 to be applicable in the present case, we cannot share the view of the majority that the alleged interference was arbitrary and therefore in violation of that provision (see paragraphs 112-115 of the judgment).

3. Consequently, we cannot subscribe to the majority's reasoning that there is no need to examine separately the applicant's complaint under Article 6 § 2 of the Convention (see paragraph 121 of the judgment). However, as the majority do not assess this part of the applicant's complaint, we shall also refrain from doing so in our dissenting opinion.

As to the question of the applicability of Article 1 of Protocol No. 1 ratione materiae

4. On 21 February 2006, following the institution of criminal proceedings on charges of abuse of office and forgery of documents while performing judicial duties, the applicant, a judge in the Vilnius City Third District Court, was suspended from her judicial duties without salary (see paragraph 8 of the judgment) and on 18 July 2011, following disciplinary proceedings, was removed from office for having discredited the title of judge (see paragraph 23 of the judgment).

5. When the criminal proceedings against the applicant were discontinued as prosecution had become time-barred (see paragraph 12 of the judgment), the applicant instituted proceedings claiming unpaid salary for the period from 21 February 2006 to 18 July 2011. However, her claim was dismissed, first in civil proceedings for reinstatement and unpaid salary (see paragraphs 32-35 of the judgment) and subsequently in civil proceedings for damages (see paragraph 55 of the judgment).

6. The first question to be assessed is whether the applicant's claim for unpaid salary concerned a "possession" within the meaning of Article 1 of Protocol No. 1, a condition *sine qua non* for the applicability of that provision.

7. Before the domestic courts as well as the Court, the applicant based her claim and thus her alleged "possession" on Article 47 § 3 of the Law on Courts. According to the version of that provision that was applicable on 21 February 2006, when the applicant was suspended from her judicial

duties without salary, a judge's duties were restored and salary repaid if the judge "[was] declared innocent" in the criminal proceedings (see paragraph 58 of the judgment); according to the version applicable on 18 July 2011, when the applicant was dismissed, a judge's duties were restored and salary repaid if the judge "[was] not found guilty by a court judgment in a criminal case" (see paragraph 58 of the judgment).

8. The applicant argued that because the criminal proceedings against her had been discontinued as prosecution had become time-barred, she was entitled to the repayment of her salary, a position contested by the defendants in the civil proceedings.

9. In deciding whether a claim, in this case the applicant's claim based on Article 47 § 3 of the Law on Courts, is protected by Article 1 of Protocol No. 1, it is worth recalling the Court's established case-law according to which a claim may constitute an "asset" if it is "*... sufficiently established to attract the guarantees of Article 1 of Protocol No. 1. In this context, it may also be of relevance whether a 'legitimate expectation' of obtaining effective enjoyment of the coins arose for the applicant in the context of the proceedings complained of ...*" (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 42, ECHR 2004-IX).

10. In this context, it is worth reiterating that "*... no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts ...*" (see *Kopecký*, cited above, § 50).

11. In other words, the Court's case-law "*... does not contemplate the existence of a 'genuine dispute' or an 'arguable claim' as a criterion for determining whether there is a 'legitimate expectation' protected by Article 1 of Protocol No. 1. ... On the contrary, the Court takes the view that where the proprietary interest is in the nature of a claim it may be regarded as an 'asset' only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it*" (see *Kopecký*, cited above, § 52).

12. The above citations from the Court's case-law reflect, in our view, established case-law that is – or should be – decisive for the adjudication of the present case (see, for example, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 173, ECHR 2012; *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 75, 13 December 2016; *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018; *Bikić v. Croatia*, no. 50101/12, §§ 49-56, 29 May 2018; and *Basa v. Turkey*, nos. 18740/05 and 19507/05, §§ 83-103, 15 January 2019).

13. In our view, a correct application of the Court's case-law leads to the conclusion that the applicant did not have a "legitimate expectation" and thus not a "possession" within the meaning of Article 1 of Protocol No. 1. Consequently, the provision in question is inapplicable.

14. The present case is a clear example of a situation where there is a dispute between an applicant and a defendant State about the correct interpretation and application of a domestic provision. The applicant's claim and arguments were put before and duly considered by the domestic courts in two sets of civil proceedings and were ultimately rejected. In addition, the applicant relied only on the wording of the relevant provision and did not refer to any domestic case-law supporting her reading of the domestic provision. Bearing that in mind, it is important to stress that it is not for the Court to create a "possession" that does not exist and is not recognised under domestic law.

15. The majority fail to engage in a discussion of the above-mentioned case-law and simply agree with the applicant's reading of Article 47 § 3 of the Law on Courts (see paragraph 96 of the judgment). We find this omission and the scant nature of the majority's reasoning on this point problematic, and for the reasons explained above, and basing our position on the Court's established case-law, we reach the conclusion that the applicant may very well have had an "expectation" based on her reading of the relevant domestic provision, but that her claim was not sufficiently established to amount to a "legitimate expectation" within the meaning of the Court's case-law. Consequently, Article 1 of Protocol No. 1 is inapplicable *ratione materiae*.

As to the question of the lawfulness of the interference with Article 1 of Protocol No. 1

16. Even assuming that the applicant, on the basis of the wording of Article 47 § 3 of the Law on Courts, had a "legitimate expectation" within the meaning of the Court's case-law, we respectfully disagree that the interference, that is, the domestic courts' dismissal of the applicant's claim in the two sets of civil proceedings, was arbitrary and therefore unlawful.

17. It follows from the case-law that the Court, when assessing whether an interference was in accordance with the law and thus lawful, will normally respect the domestic courts' interpretation and application of domestic law unless it is "arbitrary or manifestly unreasonable".

18. To illustrate this, the Court has stated as follows:

> "... power to review compliance with domestic law is limited. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention 'incorporates' the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection ... This is particularly true when, as in this instance, the case turns upon difficult questions of interpretation of domestic law ... Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention ..." (see Radomilja, cited above, § 149).

19. The "arbitrary or manifestly unreasonable" principle referred to is well established in the Court's case-law, including in cases concerning Article 1 of Protocol No. 1 (see, for example, *Fredin v. Sweden (no. 1)*, 18 February 1991, § 49, Series A no. 192; *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 47, Series A no. 171-A; *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I; *Baklanov v. Russia*, no. 68443/01, §§ 42-47, 9 June 2005; and *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 86, ECHR 2005-VI).

20. In the view of the majority, it was not foreseeable to the applicant that she would be denied payment of her salary for the period of her suspension during criminal proceedings "in the absence of a conviction" (see paragraph 115 of the judgment). In other words, the majority, on the basis of the wording of Article 47 § 3 of the Law, merely confirm the applicant's reading of that provision. In doing so, they argue that the domestic courts, in dismissing the applicant's claim, "added an additional statutory element" that was not found in Article 47 § 3 of the Law on Courts, and that the domestic courts' reasoning "lacked precision and consistency" (see paragraphs 112-113 of the judgment). Regretfully, we cannot subscribe to the majority's reasoning.

21. The applicant's situation, whereby criminal proceedings had been discontinued as prosecution had become time-barred, was not directly regulated in the wording of Article 47 § 3 of the Law on Courts, either as the provision was worded when the applicant was suspended in 2006 or as it was worded when the applicant was dismissed in 2011. As already mentioned, according to the version applicable in 2006, a judge was to be restored and his or her salary repaid if the judge "[was] declared innocent". According to the version applicable in 2011, a judge was to be restored and his or her salary repaid if the judge "[was] not found guilty".

22. In other words, the domestic courts were called upon to decide on a claim arising in a situation that was not directly regulated in the wording of the provision. They were called upon to assess whether a situation in which criminal proceedings were discontinued as prosecution had become time-barred, that is where there was neither a conviction nor an acquittal, could be compared to or equated with a judge being "acquitted" or "not found guilty". In both sets of proceedings, the domestic courts relied on Article 47 § 3 of the Law on Courts as worded in 2011, when the applicant was dismissed, and provided extensive reasoning for their decisions (see paragraphs 28, 33 and 55 of the judgment).

23. Without going into a detailed analysis of the domestic courts' rulings, we fail to see how their interpretation and application of Article 47 § 3 of the Law on Courts can be characterised as "arbitrary or manifestly unreasonable" (it being noted that the majority relied only on its being "arbitrary").

24. The majority criticise the domestic courts for having introduced or added an element that was not reflected in Article 47 § 3 of the Law on Courts, that is, whether the suspension had been "unreasonable" (see paragraphs 112-113 of the judgment). Such wording can be found in the Regional Court's judgment of 7 June 2012 (see paragraph 28 of the judgment), but was used in a context where the Regional Court was explaining the meaning of the legal conditions in Article 47 § 3 of the Law on Courts. This is reflected in the wording of the Regional Court ("... that rule means that ..."). Similar wording can also be found in the Court of Appeal's judgment of 20 April 2016 (see paragraph 55 of the judgment) when it referred to "duties unreasonably restricted", but this reference too was made in the context of explaining the meaning of the legal conditions in Article 47 § 3 of the Law on Courts. This is reflected in the wording used by the Court of Appeal ("... the aim of that provision was ...").

25. As already mentioned, the domestic courts were called upon to decide on a claim not directly regulated in the wording of the provision in question. Therefore, not surprisingly, the domestic courts could not simply rely on the wording of the provision but had to interpret it in the light of the purpose and meaning of the legal conditions stipulated in Article 47 § 3 of the Law on Courts. It is not decisive whether the Court agrees or disagrees with the domestic courts' interpretation and application, and, in our view, such an interpretation and application of domestic law is far from reaching the threshold of being "arbitrary or manifestly unreasonable".