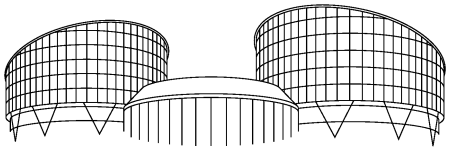

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 72252/11
Tomas LEŠČIUKAITIS
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 28 March 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar*,

Having regard to the above application lodged on 25 October 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Tomas Leščiukaitis, is a Lithuanian national who was born in 1976 and lives in Garliava. He was represented before the Court by Mr V. Sirvydis, a lawyer practising in Kaunas.

2. The Lithuanian Government ("the Government") were represented by their Agent, Ms K. Bubnytė.

A. The circumstances of the case

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

4. In 1997 the applicant was appointed a junior inspector in the police. He was responsible for the investigation of economic crimes.

1. Criminal proceedings against the applicant and his dismissal

5. On 26 March 2003 a criminal investigation was started against the applicant. He was suspected of forging documents and appropriating value added tax. The applicant was arrested on the same day and placed under arrest for a month by the decision of the Vilnius City 1st District Court of 27 March 2003.

6. On 2 April 2003 the applicant was suspended from performing his official duties.

7. On 22 March 2006 the Kaunas Regional Court found the applicant guilty of fraud and abuse of office. The court stated that the applicant and several other people had established a fictitious company, forged documents and acquired property of high value. The court also noted that the applicant had been employed at the police division which investigated economic crimes, however, he had abused his position and had wilfully appropriated value added tax. The applicant was sentenced to four years and six months' imprisonment.

8. The applicant appealed, complaining that the court of first instance had made mistakes in applying the provisions of the domestic law, and that there had been no information that he had in fact received half of the value added tax appropriated by the perpetrators as alleged.

9. On 28 March 2008 the Court of Appeal dismissed the applicant's appeal, finding contradictions in his statements. The applicant had denied his guilt but at the same time he had acknowledged that he had known that other people had been engaged in illegal activities and had still acted as an intermediary.

10. On 1 April 2008 the applicant was dismissed from the police after the judgment of the Court of Appeal became enforceable (see paragraphs 29 and 30 below).

11. The applicant lodged an appeal on points of law against the Court of Appeal's judgment of 28 March 2008 (see paragraph 9 above), and on 21 October 2008 the Supreme Court returned the case to the Court of Appeal for fresh examination. The Supreme Court held that the reasoning of the Court of Appeal had been insufficient in relation to the application of the provisions of the Criminal Code and the assessment of evidence.

12. On 23 September 2010 the Court of Appeal found that only one witness could confirm that the applicant had received half of the value added tax appropriated by the perpetrators, but that that witness had only presented his evidence as his own view and not as a fact (*ne kaip faktą*). The witness had also testified that there had been no discussion with the applicant about seizing the value added tax. The Court of Appeal therefore held that it had not been proved that the applicant had gained any personal benefit. On the other hand, the court stated that the applicant, as a police officer, had undoubtedly understood the illegality of his actions, despite

arguing otherwise. He had also acted as an intermediary for two other people in an illegal exchange of money and documents. However, the Court of Appeal held that the applicant's alleged crime fell under a different provision of the Criminal Code than the one he had originally been accused under, and that the court could not assess the applicant's crime under that specific provision without overstepping the limits of the appeal. As for abuse of office, the court held that the applicant's participation in the crime had not been proved and that he had communicated with the other people in a personal capacity rather than an official one. The applicant was therefore acquitted of that crime.

2. Administrative proceedings for reinstatement

13. In October 2010 the applicant asked the police to annul their dismissal decision of 1 April 2008 (see paragraph 10 above) and to reinstate him to his former position. The police refused and stated that the Court of Appeal had not expressed itself in any way regarding his reinstatement to his former position or about his dismissal being illegal.

14. The applicant started court proceedings before the Kaunas Regional Administrative Court to be reinstated to his former position and have his salary paid from 2 April 2003, when he had been suspended (see paragraph 6 above), until the execution of the court's judgment, i. e. until his reinstatement to his former position. The applicant also asked for a renewal of the time-limit for submitting his complaint because the time-limit to complain about being dismissed from work was one month under domestic law (see paragraph 24 below). The applicant had been dismissed on 1 April 2008 (see paragraph 10 above), however, the grounds to annul that decision had only arisen after the court proceedings had ended on 23 September 2010 and he had been acquitted (see paragraph 12 above).

15. On 3 February 2011 the Kaunas Regional Administrative Court decided that the applicant had become aware of the grounds to contest the dismissal order on 23 September 2010 at the latest. He had submitted the complaint to the Kaunas Regional Administrative Court on 22 October 2010 and had therefore not missed the prescribed time-limit. The court also annulled his dismissal from the police (see paragraph 10 above), and ordered that he be reinstated to his former position and paid his average salary for the period from 2 April 2003 to the date of the judgment on 3 February 2011. The total of the average salary for the period was 122,164 Lithuanian litai (LTL, approximately 35,381 euros (EUR)).

16. The police and the applicant both appealed, the latter asking to be awarded approximately LTL 407,600 (about EUR 118,050) for the period of his suspension and dismissal, up to the Kaunas Regional Administrative Court's decision of 3 February 2011. He also asked to be awarded the payment of an average salary from 3 February 2011 until his reinstatement to his former position, as well as late-payment fees and payment for unused holidays.

17. On 7 June 2011 the Supreme Administrative Court dismissed the applicant's appeal. The court noted that the applicant had complained about the dismissal order of 1 April 2008 but found that although he had submitted his first complaint on 22 October 2010, he had also submitted two clarifying complaints on 13 December 2010 and 18 January 2011. The Supreme Administrative Court thus held that the date of submission was 18 January 2011, as that was when the applicant had finally formulated his complaints. The Supreme Administrative Court held that the dismissal order had been an extremely important social issue for the applicant (*pareiškėjui ypatingą socialinę reikšmę turintis klausimas*), that he should have started court proceedings within a month of that order, and that therefore he had missed the time-limit to lodge a complaint. The court also observed that the Kaunas Regional Administrative Court had put too much weight (*neteisingai sureikšmino*) on the applicant's acquittal. The court also considered that despite the fact that the applicant had missed the time-limit for submitting his complaint, it had to express itself on the merits of the applicant's complaint about his dismissal and found that it had never been contested by the parties that at the time of the order to dismiss him there had been factual and legal grounds for such a decision because of the Kaunas Regional Court's judgment of 22 March 2006 (see paragraph 7 above). Lastly, the court held that monetary claims under Article 6.272 § 1 of the Civil Code (see paragraph 27 below) had to be submitted to civil courts rather than administrative courts and it therefore rejected that claim too.

3. Civil proceedings for damages

18. Shortly before the applicant applied to the Court on 25 October 2011 he started civil proceedings for damages for his unlawful conviction before the Kaunas Regional Court. The applicant asked to be awarded LTL 244,436 (approximately EUR 70,794) in respect of pecuniary damage and LTL 100,000 (approximately EUR 28,962) in respect of non-pecuniary damage. The applicant stated that he had never been reinstated to his former position after his acquittal, had lost his main source of income, and had experienced emotional problems, not only because of his unlawful conviction but also because of the lengthy criminal proceedings against him.

19. On 11 April 2012 the Kaunas Regional Court satisfied the applicant's claim in part. The court held that in order for the State's civil liability to arise, three conditions had to be met: an unlawful act, damage and a causal link between the two. The court held that the acquittal decision had not automatically meant that all acts related to the criminal prosecution had been unlawful. The court referred to the material of the criminal case and stated that the criminal proceedings had been started against the applicant because there had been enough evidence to suspect that he had committed a criminal offence. That circumstance was confirmed by the acquittal decision, which had stated that the applicant had undoubtedly understood the illegality of his acts (see paragraph 12 above). However, the court held that while the dismissal order had been lawful at the time it had

been issued, the grounds for it had disappeared after the applicant's acquittal. The court dismissed his claim in respect of pecuniary damage, observing that although his unlawful conviction had directly influenced his dismissal, the conviction itself had been influenced by the applicant's illegal acts. The court further held that the applicant's unlawful conviction had caused him mental suffering and emotional distress and decided to award him LTL 10,000 (approximately EUR 2,896) for non-pecuniary damage. The court also noted that the applicant had been arrested on 26 March 2003 (see paragraph 5 above) and acquitted on 23 September 2010 (see paragraph 12 above) and that therefore the criminal proceedings against him had lasted for seven years and six months. They had been unjustifiably long and so the court awarded him a further LTL 10,000 (approximately EUR 2,896) for non-pecuniary damage.

20. The applicant appealed, complaining that he had not been awarded anything in respect of pecuniary damage and asking the court to increase the amount in respect of non-pecuniary damage.

21. On 4 November 2013 the Court of Appeal upheld the applicant's appeal in part. It held that the acquittal had not necessarily meant that the acts of the law enforcement institutions (*teisėsaugos institucijų veiksmai*) had been unlawful. The court further observed that the applicant had carried out certain acts that were unlawful under "civil law", which meant that he could not have expected the same protection when deciding on damages as a person who had not carried out such illegal acts. The court considered that the amount of compensation could be reduced in such cases and awarded him LTL 15,000 (approximately EUR 4,344) in respect of pecuniary damage, counting it as unpaid salary from the date of the decision by which he had been convicted until the date of the decision he had been acquitted. The court also held that the criminal proceedings had been lengthy, but that around twenty hearings had been postponed for reasons related to the applicant and some of the other accused. It therefore decided to award the applicant LTL 4,000 (approximately EUR 1,158) in respect of non-pecuniary damage in that part. Lastly, the court found that the applicant's conviction had lasted for six months but that he had not started serving a sentence and so it decided to reduce the amount awarded for non-pecuniary damage to LTL 3,000 (approximately EUR 869).

22. The applicant was paid his compensation award – totalling LTL 22,000 (approximately EUR 6,371) – on 24 March 2014.

B. Relevant domestic law and practice

23. At the material time, Article 53 § 1 (8) of the Statute on Interior Ministry Service (*Vidaus tarnybos statutas*) provided that an officer could be dismissed if he had been convicted of an intentional crime or criminal act by a final court judgment.

24. Article 33 § 1 of the Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*) provided at the time that a

complaint had to be brought before an administrative court within a month of the disputed act being carried out or served on an interested party.

25. Article 34 § 1 of the Law on Administrative Proceedings provided that if there was a good reason for not complying with the time-limit to lodge a complaint then an applicant could seek an order from an administrative court to renew the time-limit.

26. Article 6.253 § 5 of the Civil Code provided at the time of the events that the acts of a victim could be grounds to reduce or remove civil liability. Such acts were those that were the fault of the victim and which led to that person suffering greater damage. They could be a victim's consent to damage or risk. Such consent could only be grounds for exemption from civil liability if it was not contrary to mandatory legal rules, public order, good morals, and the criteria of good faith, reasonableness and justice.

27. At the material time, Article 6.272 § 1 of the Civil Code allowed a civil claim to be brought in respect of pecuniary and non-pecuniary damage caused by the unlawful acts of the investigating authorities or the courts. The Article in question made provision for compensation for unlawful conviction, unlawful arrest or detention or for the application of unlawful procedural measures in enforcement proceedings. The relevant part of the provision read as follows:

Article 6.272. Liability for damage caused by the unlawful acts of preliminary investigation officials, prosecutors, judges and the courts

> "1. Damage resulting either from unlawful conviction, unlawful arrest on remand, unlawful detention, the application of unlawful procedural measures in enforcement proceedings, or the unlawful imposition of an administrative penalty (arrest) shall give rise to full compensation by the State, irrespective of any fault by preliminary investigation officials, prosecution officials or courts..."

28. Article 6.282 § 1 of the Civil Code provided at the time that if a victim's gross negligence had contributed to causing or increasing any damage, depending on the degree of the person's fault, the amount of compensation could be reduced or the compensation dismissed unless the law provided otherwise.

29. Article 336 § 3 of the Code of Criminal Procedure provided that an appellate court judgment became enforceable from the date of issue.

30. Article 366 § 1 of the Code of Criminal Procedure provided that the Supreme Court had the power to examine appeals on points of law against judgments delivered by courts of first instance and appellate courts that had become final.

31. The Supreme Administrative Court has held that interpreting Article 53 § 1 (8) of the Statute on Interior Ministry Service (see paragraph 23 above) as precluding the reinstatement of an officer to his or her former position or an equivalent position after his or her acquittal would contradict the principles of justice, reasonableness and *ex iniuria ius non oritur* (decision of 5 November 2012, no. A^{662}-2459/2012).

COMPLAINTS

32. The applicant complained under Article 6 § 1 of the Convention about the refusal to reinstate him or pay him compensation solely on the basis of the limitation period being counted from the date of his dismissal, rather than from the date the court proceedings had ended, implying that his right of access to a court had been breached. He also complained under Article 13 that he had not had an effective remedy because the criminal proceedings had still been ongoing when he had been dismissed and his complaint against his dismissal, to be filed within one month, as required under domestic law, would not therefore have been successful.

THE LAW

A. Complaint under Article 6 § 1 of the Convention

33. The applicant complained that the refusal to reinstate him to his former position or pay him compensation solely because the time-limit to lodge a complaint had been calculated from the date of his dismissal, rather than from the end of the criminal court proceedings, had infringed his right of access to a court. The relevant part of that provision reads as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

34. The applicant maintained that the only reason his reinstatement request had not been heard properly was because he had failed to lodge it in time and the domestic courts had refused to renew the time-limit (see paragraph 17 above).

35. The Government submitted that although the Supreme Administrative Court had held that the applicant had missed the time-limit for lodging his complaint, it had nevertheless examined the complaint on the merits. As a consequence, the applicant had enjoyed access to a court.

36. The Government also argued that Article 6 of the Convention did not provide the right to a favourable outcome of proceedings and that the assessment of facts and the application of domestic law was the competence of the domestic courts.

2. The Court's assessment

37. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal. In that way it embodies the "right to a court", which, according to the Court's case-law, includes not only the right to institute proceedings but also to obtain a "determination" of the dispute by a

court (see, for instance, *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II; *Menshakova v. Ukraine*, no. 377/02, § 52, 8 April 2010; and *Kardoš v. Croatia*, no. 25782/11, § 48, 26 April 2016). The Court further notes that the right of access to a court secured by Article 6 § 1 is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which may vary in time and in place according to the needs and resources of the community and of individuals (see, for example, *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 89, ECHR 2016 (extracts)). The requirement to lodge a judicial claim within a statutory time-limit is not in itself incompatible with Article 6 § 1 of the Convention. The Court has held on numerous occasions that such a requirement pursued a legitimate aim of proper administration of justice and of compliance, in particular, with the principle of legal certainty (see *Dumitru Gheorghe v. Romania*, no. 33883/06, § 27, 12 April 2016). Litigants should expect those rules to be applied (see *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, § 33, ECHR 2000-I).

38. As regards the present case, the Court reiterates that the mere fact that a legal action was held to be inadmissible does not mean that an applicant was denied access to a court, provided that the dispute which he or she submitted for adjudication was the subject of a genuine examination (see *Yanakiev v. Bulgaria*, no. 40476/98, § 69, 10 August 2006, and *Velikovi and Others v. Bulgaria*, nos. 43278/98 et al., § 259, 15 March 2007).

39. The Court must therefore establish whether the administrative courts in fact determined the dispute. In this respect it notes that the applicant had access to a court in that his claims reached the Kaunas Regional Administrative Court and the Supreme Administrative Court. In the proceedings before the Supreme Administrative Court, which also commented on the merits of the case (see paragraph 17 above), the applicant's claim was eventually dismissed as having been lodged out of time. The Court observes that the Supreme Administrative had carefully examined the reasons referred to by the applicant and found that they had not been such as to justify his failure to lodge his action in due time. The findings of the latter that the time-limit to submit the complaint established in the domestic law was one month (see paragraph 24 above) and that this time-limit had been missed in the applicant's case do not appear unreasonable or arbitrary.

40. Under these circumstances, the Court is of the opinion that the applicant's right of access to a court was not impaired or restricted to an extent disclosing any appearance of a violation of Article 6 § 1 of the Convention.

41. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 13, taken in conjunction with Article 6 § 1 of the Convention

42. The applicant complained under Article 13 of the Convention of the lack of an effective remedy for his complaint under Article 6 § 1. He argued that a civil claim for unpaid salary and for reinstatement, to be lodged to the domestic courts within one month of his dismissal, as required under domestic law, would not have been an effective remedy. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. The parties' submissions

43. The applicant argued that the refusal of the domestic courts to reinstate him after the acquittal decision by the criminal court had deprived him of an effective remedy and that that deprivation could not be remedied by any compensatory measures.

44. The Government submitted that the applicant had had effective access to compensatory remedies with regard to his unlawful dismissal. Although the administrative courts had rejected his reinstatement request, he had been advised to start civil proceedings. He had done so and had been awarded LTL 22,000 (approximately EUR 6,372) in respect of pecuniary and non-pecuniary damage.

45. The Government also stated that the applicant had had three other possibilities to obtain an effective remedy. Firstly, he had had several opportunities to use his right to ask the administrative courts to renew the time-limit for lodging a complaint on the grounds he had had a good reason for missing it. Secondly, domestic law provided for the possibility to reopen administrative proceedings, which the applicant could have asked for as a result of his unlawful conviction. Thirdly, the applicant could have instituted administrative proceedings following the Supreme Court's decision to allow his appeal on points of law in the criminal proceedings, requesting the suspension of the administrative case until a final judgment had been issued in the criminal case.

2. The Court's assessment

46. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of Convention rights and freedoms in whatever form they happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision (see *Jabari v. Turkey*, no. 40035/98, § 48, ECHR 2000-VIII, and *Bazjaks v. Latvia*, no. 71572/01,

§ 127, 19 October 2010, with further references). The remedy required by Article 13 must be "effective" in practice as well as in law (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 97, ECHR 2000-VII). The term "effective" is also considered to mean that the remedy must be adequate and accessible (see *Asproftas v. Turkey*, no. 16079/90, § 120, 27 May 2010). However, the effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Sürmeli v. Germany* [GC], no. 75529/01, § 98, ECHR 2006-VII) and the mere fact that an applicant's claim fails is not in itself sufficient to render the remedy ineffective (*Amann v. Switzerland* [GC], no. 27798/95, § 89, ECHR 2000-II, and *Y v. Latvia*, no. 61183/08, § 68, 21 October 2014). It is therefore necessary to determine in each case whether the means available to litigants in domestic law are "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see, for example, *Sürmeli*, cited above, § 98).

47. The Court has frequently held that its task is not to review the relevant legislation or practice in the abstract; it must as far as possible confine itself, without overlooking the general context, to examining the issues raised by the case before it (see, for example, *Y v. Latvia*, cited above, § 70).

48. In the present case the applicant has made use of two remedies in respect of his unlawful conviction: in the first place, he began administrative proceedings to be reinstated and have his salary paid for the period of his suspension and dismissal from the police (see paragraphs 13-17 above); and, secondly, he launched civil proceedings for damages for his unlawful conviction (see paragraphs 18-21 above).

49. As regards the first remedy, the Court observes that the Supreme Administrative Court dismissed the applicant's claim because he had missed the one month time-limit to lodge a complaint, but nevertheless decided to express itself on the merits of the claim and decided that it would have been rejected anyway (see paragraphs 17 and 39 above). As regards the second remedy, the applicant made full use of it and was awarded and paid compensation for his unlawful conviction as well as unpaid salary (see paragraphs 21 and 22 above) and it can therefore be considered as an appropriate remedy. It is true that the outcome of the administrative proceedings regarding the applicant's reinstatement was unfavourable to the applicant as his claims were rejected. However, in the Court's view that fact alone cannot be said to demonstrate that the administrative remedy did not meet the requirements of Article 13, let alone that it was non-existent. Furthermore, no other evidence has been provided to show that the remedy at issue could be considered ineffective.

50. In the light of that conclusion, the Court is not required to examine whether the three other remedies proposed by the Government (see paragraph 45 above) would also have been capable of offering appropriate relief for the applicant's Article 6 § 1 complaint.

51. It follows that this part of the application is likewise manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 20 April 2017.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President