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

FOURTH SECTION

DECISION

Application no 33556/07
Palmira LINKEVIČIENĖ against Lithuania
and 2 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 20 June 2017 as a Chamber composed of:

Ganna Yudkivska, *President,*
Faris Vehabović,
Iulia Motoc,
Carlo Ranzoni,
Gabriele Kucsko-Stadlmayer,
Péter Paczolay, *judges,*
Danutė Jočienė, ad hoc *judge,*

and Andrea Tamietti, *Deputy Section Registrar,*

Egidijus Kūris, the judge elected in respect of Lithuania, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 6 March 2017, the President of the Section accordingly appointed Ms Danutė Jočienė to sit as an *ad hoc* judge in his place (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court).

Having regard to the above applications lodged by three Lithuanian nationals, Ms Palmira Linkevičienė (case no. 33553/07, "the first applicant") on 31 July 2007, Mr Darius Japertas (case no. 34734/07, "the second applicant") on 30 July 2007 and Mr Arvydas Gudas (case no. 34740/07, "the third applicant") on 30 July 2007,

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

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

2. The Lithuanian Government ("the Government") were represented by their former Agent, Ms E. Baltutytė.

A. The circumstances of the case

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

The applicants were judges and presidents of their respective courts:
- the first applicant at the Biržai District Court;
- the second applicant at the Panevėžys City District Court; and
- the third applicant at the Lazdijai Dictrict Court.

1. Criminal proceedings against the applicants

(a) The applicants' involvement in the release of smugglers from detention

4. On 6 July 2002 the Lithuanian authorities arrested V.R. and M.R., who were suspected of smuggling a large quantity of cigarettes. V.K., who was also implicated in the ensuing criminal investigation, feared that V.R. and M.R. would disclose information about the other people involved in the smuggling if they were detained.

5. In July 2002, with the aim of preventing V.R. and M.R. from testifying against him, V.K. contacted the third applicant, at the time president of the Lazdijai District Court and father of the woman V.K. was living with. V.K. asked the third applicant to use his position, personal contacts, authority as a judge and possible influence on other judges to make sure that V.R. and M.R. were released from detention pending trial.

6. The third applicant, acting in V.K.'s interests, contacted the second applicant by telephone and conveyed V.K.'s request. The second applicant also used his authority and personal contacts and, by telephone, conveyed the message to the first applicant, who on 8 July 2002 refused to grant a prosecution request to remand V.R. and M.R. in custody.

7. Between July and December 2002 there were four other episodes of V.K. and the second and third applicants, communicating by telephone calls and by themselves or through other judges, successfully preventing or attempting to prevent the suspected smugglers from being detained pending trial. In particular, on 16-18 July 2002, V.K. asked the third applicant to exert his influence on a judge at a higher level court, the regional court, so the judge would reject the prosecutor's request to remand V.R. and M.R. in custody. Afterwards, on 27-28 November 2002, V.K. and the second and third applicants again attempted to influence the first applicant so that another suspected smuggler, V.P., who was in pre-trial detention, would be released. However, the first applicant refused to continue such criminal activity and neither decided the question of V.P.'s detention herself, nor transmitted the request to other judges. On 29 November 2002 V.K. was placed in pre-trial

detention, pending a criminal case for smuggling. Between 29 November and 1 December 2002 the second and third applicants again attempted to exert influence on the first applicant to act in a way that would lead to V.K. being released, but the first applicant did not respond to their request. Lastly, on 1-6 December the third applicant attempted to influence the second applicant to get the latter to exert influence on a higher instance – regional court and have V.K. released from pre-trial detention. However, the second applicant did not respond to that request.

The prosecutors considered that V.K. and the three applicants had by such actions caused serious damage to the State because they had made it more difficult to bring people to justice who had committed crimes. They had also obstructed the course of justice, damaged the authority of the judiciary and discredited the title of judge of the Republic of Lithuania (*pažemintas teisminės valdžios autoritetas ir diskredituotas Lietuvos Respublikos teisėjo vardas*).

(b) The applicants' removal from office

8. After gathering information about the activities of the three applicants, on 9 July 2003 Deputy Prosecutor General G.J. wrote to the President of the Supreme Court to inform him that the three applicants had possibly seriously violated the ethical rules of the judicial profession and asked that the Judges' Ethics and Disciplinary Commission initiate proceedings against them. The operational information was based on evidence gathered, *inter alia*, by the State Security Department.

9. On 17 and 18 July 2003 the three applicants were charged with abuse of office and perverting the course of justice. The President of the Supreme Court was immediately informed about the charges and that a pre-trial investigation had been going on.

10. On 17 July 2003 another Deputy Prosecutor General, V.B., who was acting in place of the Prosecutor General A.K. while he was on summer vacation, on the basis of Article 89 of the Law on Courts (see paragraph 62 below), asked the State President at the time, Mr Rolandas Paksas, in writing to consent to lifting the three applicants' immunity so that criminal proceedings could be started against them in connection with the aforementioned allegations. Materials from the criminal case file were provided to the State President to support the request.

11. On the same day the President signed two decrees: no. 161, suspending the applicants' powers as judges, and, on the basis of Article 114 § 2 of the Constitution, decree no. 162, by which he consented to having the three applicants charged with criminal offences and detained if necessary (see paragraph 59 below). Both decrees came into force that day and were published in the Official Gazette (*Valstybės žinios*) on 23 July 2003.

12. On 21 July 2003 the Prosecutor General Office informed the President of the Supreme Court in writing that the second and the third applicants had

acknowledged carrying out the acts specified in the notice of suspicion (see paragraphs 5-7 and 9 above), however, according to the prosecutor, "they did not regard those actions as criminal deeds, but as violations of the Code of Conduct of Judges and conduct discrediting the title of judge".

On the same day, 21 July 2003, the State President's Office asked the Judicial Council (*Teismų taryba*) for advice on whether the three applicants should be removed from office (on the function of the Judicial Council, see Article 112 § 5 of the Constitution, cited in paragraph 59 below; also see paragraph 60 below). On the same day the Judicial Council, presided over by the President of the Supreme Court, gathered to review the material provided to it by the prosecutor (see paragraph 10 above) and to hear the applicants. The first applicant was notified of the hearing of the Judicial Council; she did not attend it. The second applicant was present and gave an explanation. According to the minutes, the second applicant "agreed that he should not have behaved in such a manner, acknowledged having made telephone calls, but thought that it would be a little too harsh to consider that he had discredited the title of judge (*D. Japertas sutinka, kad nederėjo taip elgtis bei pripažįsta, jog skambino, tačiau mano, kad tokia formuluotė, jog pažemino teisėjo vardą, kiek per griežta*)". The third applicant was not present at the hearing; instead he had already submitted a request to be dismissed as a judge and as president of the Lazdijai District Court of his own will, under Article 115 § 1 of the Constitution (see paragraphs 47 and 59 below).

The Judicial Council then decided to advise the President that the three judges should be removed from office for discrediting the title of judge (Article 90 § 1 (5) of the Law on Courts; also see paragraph 60 below).

13. On 22 July 2003, the State President signed decree no. 164, removing the applicants from their positions as judges and presidents of their respective courts. The decree was based on Articles 84 § 1 (11), 112, and 115 § 1 (5) of the Constitution, and also on the advice of the Judicial Council (see paragraphs 59 and 60 below). The decree came into force on the same day. It was published in the Official Gazette (*Valstybės žinios*) on 22 July 2003.

(c) Public statements by State officials about the applicants' involvement in the smugglers' case

14. On 18 July 2003, in the daily newspaper *Lietuvos Rytas*, the President of the Supreme Court, in answer to a journalist's question as to whether the information about the judges helping the smugglers had come as a surprise, stated:

> "I very much regret that the judges could have done this. Personally, I am very taken aback, astonished even, by this information. I did not believe that such gross violations occurred. Unfortunately, they do."

15. In response to a journalist's question as to how he would react to the three judges' actions, he replied:

> "A pre-trial investigation is ongoing at this time and I do not wish to talk on that topic ... I have already responded. I think that the State President will ask the Seimas to suspend the powers of those judges. I understand that the State President will also make sure that those judges are removed from office. For that, the approval of the Judicial Council is necessary. Yesterday I again explained the situation to the State President. How did he react? He was decisive. The matter has been discussed with the State President more than once. He [the State President] is for decisive action".

16. On 18 July 2003 the daily newspaper *Respublika* wrote that the President of the Supreme Court had initially thought that disciplinary sanctions would suffice in the applicants' case, but quoted him as adding:

> "However, after looking into the matter more carefully, it was agreed [with the Prosecutor General's Office] that a criminal investigation must be conducted."

The same article stated:

> "Officials have established that all the judges consciously acted for the benefit of the smugglers and might have received remuneration [from them]."

17. On 22 July 2003 the Internet site of New Union, one of the ruling political parties at the time, published the following statement by the Speaker of the Seimas:

> "The disclosed facts of corruption among the [three] judges have shown that neither big salaries nor good social guarantees ... protect the court system from corruption."

18. On 23 July 2003 the newspaper *Lietuvos Žinios* published an article in which the State President's press officer outlined the President's position on the three applicants:

> "The court system will not be a safe haven for such judges; the [response of the] President will be categorical in respect of these judges ("*Teismų sistema tokiems teisėjams netaps užuovėja, jų atžvilgiu Prezidentas elgsis kategoriškai*")."

19. The same publication quoted the President of the Supreme Court as stating that "it is very unlikely that those judges [the applicants] will ever work in the justice system again".

20. On 24 July 2003, in weekly publication *Veidas*, the chairman of Seimas's Anti-corruption Commission, in response to the journalist's statement that a couple of days earlier three corrupt judges had been exposed, said:

> "People say that smuggling without a 'cover' is not possible. Consequently, if smuggling took place, there must have been 'covers'. It was the Commission and myself who first received information about this smuggling, in which ... judges were involved. ... I think that it would be most appropriate to conduct a joint pre-trial investigation in the smuggling case which came to light and to try the [three] judges, like the other suspects, as members of a criminal organisation."

21. On 24 July 2003 the news agency BNS cited the head of the State Security Department as saying after a meeting with the State President that the possible connections between the three judges and the smugglers were only "a fragment of a big case", in which even politicians could be involved.

22. In summer 2004, Mr Valdas Adamkus was elected as the President of the Republic of Lithuania. In summer 2005, on his proposal, the Seimas appointed the Prosecutor General A.K. to the Supreme Court's judges.

(d) The trial court's verdict

23. On 26 April 2004 and 20 October 2004, the first applicant's lawyer unsuccessfully applied to the Vilnius Regional Court to suspend the criminal proceedings and ask the Constitutional Court whether the State President's decree no. 162, by which the President had lifted the applicants' immunity from prosecution, and Article 228 of the Criminal Code were in conformity with the Constitution.

The first applicant's lawyer did not challenge before the trial court the statements made by State officials in the press.

24. On 29 November 2004 the Vilnius Regional Court acquitted the applicants of abuse of office and perverting the course of justice.

The court, however, convicted V.K. of attempting to influence a judge.

After the trial court's judgment, on 30 November 2004 the newspaper *Lietuvos Žinios* interviewed the former President, Rolandas Paksas, who stated:

> "I remember those events very well. It happened last summer, when the Seimas was not in session. I think that my decision was in line with the information that I had received from the President of the Supreme Court and the State Security Department (see paragraphs 8-10 above). I learned the information from the file on the criminal investigation into the crime that had been committed (*operatyvinius duomenis apie padarytą nusikaltimą*) and I could not have acted otherwise."

Mr Paksas also stated that when signing the decree to remove the three applicants from office he had not only taken into consideration the fact that they had possibly taken part in a crime, but also emphasised that "Disciplinary liability was also very important (*Labai svarbi yra drausminė atsakomybė*)".

(e) The decision by the Court of Appeal

25. The prosecutor, V.K. and the third applicant appealed against the trial court's judgment. The third applicant argued that his acquittal should have been on a different legal basis. He also challenged decree no. 162 of the State President as the basis for his prosecution.

The two other applicants asked the appellate court to dismiss the prosecutor's appeal.

It transpires from the Court of Appeal judgment that none of the applicants argued a breach of the principle of the presumption of innocence on account of the statements in the press by State officials.

26. On 12 April 2005 the Court of Appeal upheld the trial court's verdict. The appellate court dismissed the third applicant's argument that decree no.

162 had not given a sufficient basis on which to prosecute the three applicants.

(f) The Supreme Court returns the case for fresh examination

27. The prosecutor, V.K. and the third applicant lodged appeals on points of law.

The third applicant argued that the criminal proceedings against the three judges had been initiated in breach of the procedural rules applicable when a judge was charged with a criminal offence. He asked the Supreme Court to specify additional grounds for his acquittal, without arguing a breach of his right to the presumption of innocence on account of the public statements by high-ranking State officials.

28. On 29 November 2005 the Supreme Court, sitting in an enlarged chamber of seven judges, quashed the Court of Appeal's decision, noting that the latter had not thoroughly examined the prosecutor's appeal and, as a result, it had committed a substantive breach of criminal procedure. The former Prosecutor General A.K. did not sit on the Supreme Court's bench.

The third applicant's appeal on points of law was dismissed.

The case was remitted to the Court of Appeal for fresh examination.

(g) The Court of Appeal finds the applicants guilty

29. The third applicant made written submissions, arguing that domestic criminal law had been applied erroneously. The other two applicants made oral requests to the appellate court to dismiss the prosecutor's appeal. They did not raise the matter of the presumption of innocence.

30. On 9 June 2006 the Court of Appeal found that between July 2002 and December 2002 V.K. and the three applicants had acted jointly, and that the three applicants had used their personal connections and authority as judges to make sure that some of the suspects in the smuggling cases would not be detained on remand. The appellate court therefore found the applicants guilty of abuse of office, under Article 228 § 2 of the Criminal Code. The punishment for abuse of office was either imprisonment for up to six years, or, as an alternative, a prohibition on taking up a particular activity or working in a certain area. When considering the most effective and just punishment to be imposed on the three applicants, the Court of Appeal underlined that they had committed the crime "within the area of their work and professional activity", and "performed actions discrediting the title of judge", and that therefore they should be prohibited from working in law-enforcement, law and order and judicial institutions (see paragraph 73 below). The first applicant was barred for one year and three months; the second applicant was barred for two years and three months; and the third applicant was barred for four years.

31. The criminal charges of perverting the course of justice (Article 298 of the Criminal Code, see paragraph 74 below) against V.K. and the three applicants were dropped as time-barred.

32. In addition, V.K. was found guilty of organising an act of abuse of office (five episodes). The court sentenced him to two years and six months' imprisonment, suspended for two years.

33. The Court of Appeal decision came into force on the day it was pronounced, and the three applicants and V.K. started serving their sentences from that day.

(h) The Supreme Court's final verdict in the applicants' criminal case

34. The prosecutor, V.K. and the three applicants lodged appeals on points of law. The three applicants alleged, *inter alia*, that there had been breaches of procedural requirements when the criminal proceedings had been instituted against them as judges and that the appellate court had wrongly applied and interpreted the provisions of the Criminal Code.

35. In his appeal on points of law, invoking Article 31 of the Constitution (see paragraph 58 below) and Article 6 § 2 of the Convention, the third applicant further argued that there had been a breach of the right to the presumption of innocence. Firstly, he contended that pending the pre-trial investigation some information about the case had been leaked to the media, including transcripts of telephone conversations between the three applicants and comments on those conversations. As a result, an opinion had been formed in advance as to the applicants' guilt. He had thus not had a fair trial, in breach of Article 6 § 1 of the Convention. Secondly, before the guilty verdict had been reached, high-ranking State officials – the State President and the Speaker of the Seimas – had on many occasions made public statements to the effect that the applicants were guilty. They had also commented on the crimes which the applicants were said to have committed. In the third applicant's view, the State President had publicly acknowledged in his interviews that he had removed the three applicants from office after he had found that they had committed the crimes in question.

36. On 6 February 2007 the Supreme Court dismissed the three applicants' appeals on points of law. As regards the third applicant's complaint of an alleged violation of the right to the presumption of innocence, the Supreme Court noted that there was no indication that the public disclosure of the facts about the criminal case had had an effect on its outcome. The dismissal of three judges was a noteworthy event, about which society had a right to be informed. The publicity had also been unavoidable because the State President's decrees dismissing the applicants had been public documents. Nonetheless, there was no proof that any of the public comments on the case had been made by the prosecutors or judges who had been dealing with it.

37. The Supreme Court observed that the public statements by the State President and other State officials or politicians could not be examined on points of law since those questions had not been raised before the lower courts. The issue of the presumption of innocence had been mentioned only when the case had been examined on points of law a second time, and it was not for the Supreme Court to gather evidence or examine it, because under domestic law its competence was to examine questions of law and to ensure its uniform application. Even assuming that the third applicant had correctly understood the statements by the politicians, there was no reason to find that those statements had prevented the appellate court from impartially and objectively deciding the case and adopting a lawful and reasonable judgment.

38. Lastly, the Supreme Court dismissed the three applicants' suggestion that the criminal proceedings against them had been started in breach of domestic law.

The former Prosecutor General A.K. did not sit on the Supreme Court's bench.

2. Civil proceedings for the applicants' removal from office

(a) The first applicant

39. On 14 August 2003 the first applicant started civil proceedings with the Vilnius Regional Court, alleging that she had been unlawfully removed from office by the State President's decree no. 164 of 22 July 2003 (see paragraph 13 above). She argued that by initially suspending her from her duties by the earlier decree, no. 161 of 17 July 2003 (see paragraph 11 above), the President had already passed judgment on her actions, which had still been the subject of an ongoing criminal investigation. As a result, her removal from office for those actions, before a criminal court had found her guilty, had been a form of political pressure on the criminal courts, and had also been in breach of the right to the presumption of innocence under Article 6 § 2 of the Convention. She asked Vilnius Regional Court to refer questions to the Constitutional Court about whether decree no. 164 had been in breach of the Constitution and the principle of the presumption of innocence.

40. By a ruling of 9 March 2004 the Vilnius Regional Court suspended the civil proceedings and asked the Constitutional Court to rule on the constitutionality of decree no. 164. It also asked, *inter alia*, whether the decree in the first applicant's case, as far as its content and adoption procedure were concerned, had been in conflict with, *inter alia*, Article 31 § 1 of the Constitution, which establishes the principle of the presumption of innocence, Article 115 of the Constitution on the grounds for a judge's removal, or with Articles 83, 84 and 86 of the Law on Courts, which regulate judges' disciplinary liability (see paragraphs 59 and 62 below).

41. After receiving similar requests in the other two applicants' cases (see paragraphs 44-51 below), in November 2005 the Constitutional Court joined them in one case.

42. On 16 January 2007 the Constitutional Court delivered a ruling. It found that decree no. 164 of 22 July 2003, by which the three applicants had been removed from office for discrediting the title of judge, had not been in breach of the Constitution or the Law on Courts. It also held that the first applicant's removal from office by the same decree of the State President had not been in breach of Article 6 § 2 of the Convention (the Constitutional Court's reasoning is given in paragraphs 52-55 below).

43. In March 2007 the first applicant asked the Vilnius Regional Court to discontinue the civil proceedings for unlawful dismissal and reinstatement. The court granted that request on 16 March 2007.

(b) The second applicant

44. On 17 August 2003 the second applicant brought a civil claim with the Vilnius Regional Court, asking it to quash the State President's decree no. 164 as regarding this applicant's dismissal. He argued, *inter alia*, that there had been a breach of the right to the presumption of innocence because he had been dismissed as a judge while criminal proceedings against him had still been pending.

45. On 2 April 2007 the Vilnius Regional Court dismissed the second applicant's claim. The court considered that the criminal charges against the applicant, as indicated by the prosecutor's report of 17 July 2003 and given to the State President (see paragraph 10 above), had been sufficient to hold that by his behaviour the applicant had discredited the title of judge. The judgment of 9 June 2006 by the Court of Appeal, finding the three applicants guilty (see paragraph 30 above), had only confirmed that there had been grounds to dismiss the second applicant for discrediting the title of judge. The Vilnius Regional Court also relied on the Constitutional Court's aforementioned ruling regarding the three applicants' case. The civil court also rejected the argument that the State President's decree on the applicants' dismissal had been in breach of the principle of the presumption of innocence. In fact, the decree had specified another ground for his dismissal, which was discrediting the title of judge, and not that a crime had been committed. The State President's decree had thus had no influence on the subsequent criminal proceedings against the second applicant. Lastly, the civil court found no breaches of law as regards the domestic proceedings for the second applicant's dismissal.

46. The Government submitted that the second applicant lodged no appeal against that decision.

(c) The third applicant

47. The third applicant challenged the lawfulness of the decision of the Judicial Council of 21 July 2003, which had recommended that the State President remove the three applicants from office for having discredited the title of judge (see paragraph 12 above). The third applicant requested that he be allowed to step down voluntarily, under Article 115 § 1 of the Constitution (see paragraph 59 below). He also alleged that the Judicial Council had committed numerous violations of procedural and substantive legal rules when suspending him from his duties and removing him from office. As it transpires from the summary of the third applicant's lawsuit, he did not argue that statements by State officials in the press had breached his right to the presumption of innocence. However, he argued that the right to the presumption of innocence had been breached because conclusions as to his guilt had been made and he had been dismissed as a judge before the criminal proceedings had finished.

48. On 2 April 2007 the Vilnius Regional Court dismissed the third applicant's claims as unfounded. Relying on the Constitutional Court's ruling of 16 January 2007, the civil court found that the Judicial Council had acted lawfully when recommending that the three applicants be removed from office. The prosecutor's request to the State President of 17 July 2003, where the three applicants' actions had been described (see paragraph 10 above), as well as the fact that criminal charges had been brought against them, had been sufficient grounds to hold that the third applicant's actions had discredited the title of a judge. The court also dismissed the argument that the State President's decree on the removal of the three applicants had been in breach of the principle of the presumption of innocence. In fact, the decree had not stated that the judges had been removed for committing a crime. In other words, the applicant had been removed from office not for committing a crime, but for discrediting the title of judge. Lastly, the court found that no laws had been broken during the proceedings for the three judges' removal from office.

49. The third applicant appealed. He argued, *inter alia*, that the presidential decree on his dismissal had been in breach of the principle of the presumption of innocence because after the applicants' acquittal the State President had allegedly acknowledged in the press that he had dismissed the applicants because they had committed a crime. Such statements by the State President had also been in breach of the principle of the independence of courts. The criminal courts had subsequently been obliged to find the applicants guilty. Undue influence on the criminal courts had also been exerted by the statements of other politicians in the press.

50. On 31 August 2007 the Court of Appeal endorsed the lower court's reasoning. For the Court of Appeal, the State President's prerogative to dismiss someone for discrediting the title of judge could not be seen as undue influence on the criminal courts.

51. By a ruling of 4 December 2007, the Supreme Court refused to examine an appeal on points of law by the third applicant. Even so, the Supreme Court underlined the fact that the third applicant had erred in his appeal on points of law by ignoring the fact that a judge's removal from office for committing a crime and discrediting the title of judge, as foreseen in Article 115 § 1 (5) and (6) of the Constitution, were two distinct grounds for a judge's dismissal.

3. The Constitutional Court's ruling of 16 January 2007

52. On 16 January 2007 the Constitutional Court issued a ruling regarding the constitutionality of presidential decree no. 164 (also see paragraphs 40-42 above). Firstly, it emphasised that under Articles 112 § 5 and 115 § 1 (5) the State President retained the right to remove a judge from office who had discredited the title of judge, whether or not there had been disciplinary proceedings before the Judges' Court of Honour, however, on condition that removal had been recommended by the Judicial Council. As that had been the situation in the three applicants' case, decree no. 164 had not been in conflict with Articles 83, 84 and 90 of the Law on Courts.

53. The Constitutional Court also underlined the fact that the Law on Courts provided for two separate grounds for removing a judge from office – if a court judgment which has entered into force has established that a judge has committed a crime (Article 90 § 1 (6)), or if a judge has discredited the title of judge (Article 90 § 1 (5)), the latter provision being the relevant legal ground in the applicants' case. For the Constitutional Court, it was paramount that the disputed decree no. 164 of the State President did not stipulate that the three applicants had committed a crime. Nor did that decree declare that actions for which the three applicants had been removed from office had been a crime.

The Constitutional Court also held that the principle of the presumption of innocence, as enshrined in Article 31 of the Constitution, could not be interpreted as prohibiting the State President from removing a judge, who by his or her actions had discredited the title of judge, until a criminal court had found that person guilty in criminal proceedings. In fact, Article 115 of the Constitution contained distinct grounds for a judge's dismissal, those being "when their conduct discredits the title of judge" in point 5, and "upon the entry into force of court judgments convicting them", in point 6 (see paragraph 59 below). Those two grounds could not be considered to be the same (*negali būti tapatinami*). On the one hand, actions which discredited the title of judge might not necessarily be a crime. On the other hand, conduct discrediting the title of judge might be recognised as a criminal act later by a court conviction. Under point 5 of Article 115 of the Constitution therefore, a judge could be dismissed for discrediting the title of judge, whether or not the conduct in question was later judged by a court to have been a criminal

deed, and regardless of whether a corresponding court conviction came into effect. The Constitutional Court further noted:

> " ...the content of the principle of the presumption of innocence which is entrenched in Paragraph 1 of Article 31 of the Constitution cannot be construed that it, purportedly, implies, *inter alia*, that the President of the Republic cannot dismiss a judge who by his conduct has discredited the title of a judge, until a conviction in regard of that judge has been adopted and come into force. In this context, it should be noted that Article 115 of the Constitution establishes various grounds for the removal of judges from office, that judges may be removed from office also 'when their conduct has discredited the title of judges' (point 5), and 'upon the entry into force of court judgments convicting them' (point 6). In its ruling of 27 November 2006, the Constitutional Court held that the Constitution does not *expressis verbis* establish any type of conduct by judges which discredits the title of judges; that 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; that, 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 thorough (final) list of actions by which a judge discredits the title of a judge. In the said Constitutional Court's ruling it 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."

54. The Constitutional Court also gave weight to the fact that by its judgment of 9 June 2006 in the applicants' criminal case the Court of Appeal had acknowledged that within their area of work and professional activity the applicants had performed actions which had discredited the title of a judge and undermined the authority of the judiciary (see paragraph 30 above).

55. Consequently, there were no grounds to find a violation of the right to the presumption of innocence, as enshrined in Article 31 of the Constitution and in Article 6 § 2 of the Convention, on account of the State President's decree no. 164 removing the first applicant from office.

4. Further developments

56. By a letter of 5 March 2014, the Government informed the Court that Article 8 of the Law on the Bar had been amended, thus having an impact on the applicants' eligibility to work as advocates (see paragraph 65 below). The Government submitted that the applicants were therefore no longer prevented from working as advocates, given that their convictions had expired and the period in the law of three years after serving their sentence had passed. The Government also stated that the second and the third applicants had been admitted to the Bar by decisions of the Bar Association on, respectively, 16 January 2014 and 17 October 2013. To the Government's knowledge, the first applicant had not addressed the Bar Association with a request to be recognised as an advocate.

All three applicants were informed about the Government's letter but none of them commented on it.

57. In June 2017 the Lithuanian Bar Association's website listed the third applicant among the advocates practising in Lazdijai. The other two applicants were not listed among advocates practicing in Lithuania.

B. Relevant domestic law and practice

58. Article 31 of the Constitution provides that a person is presumed innocent until proved guilty by a final court judgment and in accordance with a procedure established by the law.

1. As to the judges' appointment and removal from office

59. As to the appointment of judges and their removal from office, the Constitution reads as follows:

Article 84

"The President of the Republic:

...

11) ...shall appoint the judges and presidents of regional and district courts and change their places of work ..."

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 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."

60. 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 (*įsiteisėja*) (Article 90 § 1 (6)). In such cases, the Judicial Council, a body assuring the independence and self-governance of judges, advises the State President.

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 the State President to remove a judge from office and the State President would pass such a decree, the removal may be appealed against to the civil courts of three instances.

Historically, the Judicial Council has recommended the State President to remove from office judges for having discredited the title of a judge by behaviour such as being drunk at work, drunk driving, swearing in a public place, negligent performance of work duties, undue influence on other judges in order to affect outcome of court proceedings, accepting objects of material value, and sometimes also whilst criminal proceedings had still been pending.

61. The Law on Courts also reads that disciplinary proceedings may be brought against a judge in the Judges' Court of Honour if a judge has discredited the title of judge or breached the requirements of the Judges' Code of Ethics (Articles 83 §§ 1 and 2 and 84 § 6).

62. 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 State President 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).

2. As to the criterion of high moral character

(a) The Law on the Bar

63. At the time of the applicants' conviction on 9 June 2006 (see paragraph 30 above), the Law on the Bar (*Advokatūros įstatymas*) read that a person who wished to become an advocate must be of high moral character. The law stipulated:

Article 8. High moral character

"A candidate is not considered of high moral character and thus cannot be recognised as an advocate, if he or she:

1) has been convicted of a serious or very serious crime (*teistas už sunkų ar labai sunkų nusikaltimą*), irrespective of whether the conviction has expired, or has been convicted of another crime, until the conviction expires;

2) has been dismissed from the post of judge, prosecutor, advocate, trainee advocate, notary, trainee notary, bailiff ... or dismissed from the civil service ... for professional misconduct ... and less than three years has passed ...".

64. On 15 April 2008, which was after the applicants had started serving their sentences (see paragraph 30 above), Article 8 of the Law on the Bar was amended and, as regards the concept of high moral character, stated the following:

Article 8. High moral character

"A candidate is not considered to be of high moral character and thus cannot be recognised as an advocate, if he or she:

1) has been convicted of an intentional crime, irrespective of whether the conviction has expired or not; or, alternatively, if a candidate has been convicted of another crime, until the conviction has expired;

2) has been dismissed from the post of judge, prosecutor, advocate, trainee advocate, notary, trainee notary, bailiff ... or dismissed from the civil service ... for professional misconduct ... and less than three years have passed ...".

65. After the latest amendments of 2 July 2013, Article 8 of the Law on the Bar reads as follows:

Article 8. High moral character

"A candidate is not considered to be of high moral character and cannot be recognised as an advocate, if he or she:

1) has been convicted of a serious or very serious crime and until the conviction has expired ..., and less than four years have passed since serving the sentence or being released from serving the sentence;

2) has been convicted of any other intentional crime and the conviction has not expired ..., and less than three years have passed since serving the sentence, a suspension of the sentence, or release from serving the sentence;

3) has been dismissed from the post of judge, prosecutor, advocate, trainee advocate, notary, trainee notary, bailiff ... or dismissed from the civil service ... for professional misconduct ... and less than three years have passed ...".

66. The Law on the Prosecutor's Office (*Prokuratūros įstatymas*) currently reads that a person who wishes to become a prosecutor must be of high moral character. Those convicted of a crime by a court judgment that has come into force, or, alternatively, those dismissed from the civil service for a gross professional misconduct and less than five years have passed, may not be considered as being of high moral character (Article 25).

67. The Law on the Courts currently reads that a person cannot be considered as being of high moral character, and therefore may not be appointed as a judge, if he or she has been convicted by a court judgment which has come into force, or if he or she has been dismissed as a judge, prosecutor, notary, or from the police or civil service for professional misconduct and less than five years have passed (Article 52).

(b) Domestic court practice as to the high moral character criterion

68. The Government referred to the following domestic court decisions regarding the recognition of a person as an advocate and the concept of high moral character.

(i) Civil case no. 3K-3-133/2000

69. By a ruling of 7 February 2000 the Supreme Court held that gross violations of the law (*šiurkštūs įstatymų pažeidimai*) committed by a judge were incompatible with the high moral character requirement applied to a person who wished to become an advocate. Respect for the law was a particularly important quality for a person who wished to become an advocate. The case concerned a complaint by a former judge who had been disciplined twice for negligence at work and for showing a serious disregard to the rules of court proceedings. He resigned as a judge of his own free will, but afterwards wished to become an advocate.

(ii) Civil case no. 2A-220

70. On 5 September 2000 the Court of Appeal examined a claim by a plaintiff who once had been an advocate but had been convicted for attempting to bribe a judge. The plaintiff complained that the Lithuanian Bar Association had argued that he was not of high moral character and had therefore refused to admit him to the Bar, even though his conviction had expired. The Court of Appeal, however, held that the commission of a crime had a significant impact when assessing a person's reputation. The fact that a person had served his or her sentence showed that person was no longer a criminal. However, those facts could not be ignored when assessing a person's character. Even after a criminal conviction had expired, they were still relevant when assessing character. The Court of Appeal therefore

dismissed the plaintiff's claim, noting that he could not be considered as being of high moral character, as required by the Law on the Bar.

(iii) Civil case no. 3K-3-177/2001

71. The case concerned the personal situation of a plaintiff who in 1992 had been convicted for an intentional but not serious crime (*nesunkus tyčinis nusikaltimas*) related to his activities as an advocate and had been disbarred. In 1994 the conviction had expired. In 1999 the plaintiff asked to be recognised as an advocate. The Bar Association refused the request, relying on the legal rule that a person who had been dismissed from the Bar for breaches of professional activity could not be considered as being of high moral character. The plaintiff argued that because of that decision he had been punished twice for the same crime.

72. On 7 February 2001 the Supreme Court held that an advocate who had been convicted of an intentional crime of such severity as in that case could start proving that he was again of high moral character once the conviction had expired.

3. Other relevant domestic law

73. Article 228 § 2 of the Criminal Code at the relevant time provided for criminal liability for the crime of abuse of office where a State official or a person of similar legal status had abused his or her office for pecuniary or other gain, and that abuse had caused significant damage to the State. The sanction for this crime was a prohibition on taking up a particular activity or working in a certain area or, alternatively, a deprivation of liberty for up to six years. Abuse of office is an intentional crime.

Under Article 11 of the Criminal Code, crimes were put into categories, in accordance with the possible sanction they could attract. Abuse of office did not fall into the categories of serious or very serious crimes (*sunkūs arba labai sunkūs nusikaltimai*), but was considered to be a crime of medium severity (*apysunkis nusikaltimas*).

74. Article 298 § 1 of the Criminal Code at the relevant time provided for criminal liability for an attempt of any kind to influence an investigator, prosecutor or judge with the aim of preventing a pre-trial investigation from being concluded properly and objectively, or preventing the proper examination of the case in court.

75. Article 320 §§ 3 and 4 of the Code of Criminal Procedure at the material time read that an appellate court could examine a case to the extent it had been asked to do so in the appeal, and only in respect of the persons who or on whose behalf the appeal had been lodged. An appellate court could aggravate the situation of a convicted or acquitted person only if there had been such an application by a prosecutor.

The Code of Criminal Procedure also provides that the court must suspend the criminal proceedings if a question must be referred to the Constitutional

Court for interpretation (Article 234 § 5 (3)). Analogous rule and right of a court is set out in Article 3 § 3 of the Code of Civil Procedure.

COMPLAINTS

76. The applicants complained that the criminal court proceedings in their case had been in breach of Article 6 §§ 1 and 2 of the Convention.

77. The applicants also complained that because of their criminal convictions they had been banned from practising the law as advocates.

THE LAW

A. Joinder of the applications

78. The Court notes at the outset that all three applicants complained about the fairness of criminal court proceedings in Lithuania. They were also dissatisfied with the prohibition on them to practice law. Having regard to the similarity of the applicants' grievances, the Court is of the view that, in the interest of the proper administration of justice, the applications should be joined, in accordance with Rule 42 § 1 of the Rules of Court.

B. Complaints under Article 6 of the Convention

79. The applicants complained of the fairness of the criminal proceedings in their cases. They also argued that the State President's decree on their dismissal, as well as public statements by State officials, had been in breach of the principle of the presumption of innocence. The applicants relied on Article 6 of the Convention, which, as far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law... "

1. As to the fairness of the criminal proceedings against the applicants overall and on account of the State President's decree no. 164 to dismiss the applicants while criminal proceedings were still pending in particular

(a) The Government

80. The Government submitted that the applicants' dismissal, as opposed to their suspension, pending the criminal proceedings had had no effect on their right to a fair trial or to their right to the presumption of innocence. In fact, Article 115 of the Constitution established six separate grounds for the dismissal of a judge. As emphasised by the Constitutional Court, a judge could be dismissed regardless of whether the conduct discrediting the title of judge was later found by a criminal court to have been a crime (see paragraphs 53 and 59 above). The Government submitted that the content of the principle of the presumption of innocence, as established in Article 31 of the Constitution and Article 6 § 2 of the Convention, could not be interpreted as preventing the State President from dismissing a judge for discrediting the title of judge unless the judge had been convicted by a court. Furthermore, the State President's right in that regard had no impact on the independence or impartiality of the criminal courts. By issuing the decree on the applicants' dismissal, the State President had neither made recommendations nor in any way interfered with the examination of the applicants' criminal case. That argument had been upheld by the Court of Appeal (see paragraph 50 above). None of the judges on the Judicial Council who had recommended the applicants' dismissal to the State President had participated in the examination of the applicants' criminal case.

(b) The applicants

81. The first applicant argued that the State President's decree on her dismissal had been issued in the context of the criminal case pending against her. She submitted that the State President appeared to people as someone who was fighting firmly against corruption. Lastly, the first applicant insisted that the State President's decree should not have been issued before the criminal court had found the three applicants guilty as that had been in breach of the right to the presumption of innocence. She was also dissatisfied with the trial court's decision not to refer certain questions to the Constitutional Court for interpretation (see paragraph 23 above).

82. The second applicant also insisted that by signing the decree on the three applicants' dismissal the State President had had an impact on their criminal case and that the State President's influence had been crucial for their conviction. This applicant further claimed that the judges who had sat on the Supreme Court's bench in the applicants' case had already expressed a view on the case, and that the Prosecutor General (A.K.), who had reported

on the criminal case to the State President Rolandas Paksas, had later been appointed by the Seimas as a Supreme Court judge (see paragraph 22 above).

The three applicants also alleged that the proceedings for their dismissal as judges had been unlawful and in breach of Article 6 § 1 of the Convention, *inter alia*, because under Article 89 § 2 of the Law on Courts the dismissal of a judge could be initiated only by the Prosecutor General, whereas in the applicants' case the proceedings had been initiated by a Deputy Prosecutor General (see paragraphs 10 and 62 above).

83. The third applicant maintained that his right to the presumption of innocence had been breached by him being dismissed rather than suspended while criminal proceedings had still been pending. He had raised that issue within the civil proceedings, and had also applied to have the matter referred to the Constitutional Court, which had then addressed it (see paragraphs 41 and 49 above). The applicant saw the Constitutional Court's ruling as being binding on both the civil and criminal courts.

(c) The Court

84. Firstly, the Court turns to the applicants' arguments concerning the State President's decree on their dismissal. It notes that Article 115 of the Constitution provides six different grounds and purposes for removing a judge from office. In particular, it observes that the ground which the State President relied on in this case, removal from office for discrediting the title of a judge (Article 115 § 1 (5)), and the legal ground on which the applicants rely, removal on the basis of a conviction (Article 115 § 1 (6)), are distinct legal grounds. That was explained in detail by the Constitutional Court (see paragraph 53 above), and the Court sees no valid reason to reject that analysis. Furthermore, the argument that a judge could be removed from office only after the criminal proceedings were over was dismissed by the civil court which heard the third applicant's case and which relied on the Constitutional Court's guidelines (see paragraph 48 above). What is more, in this case the Court also observes that the first applicant had been invited to the Judicial Council hearing to explain her behaviour and later withdrew her civil claim for unlawful dismissal (see paragraphs 12 and 43 above). The second applicant acknowledged to the Judicial Council having made the telephone calls he was reproached for (see paragraphs 6, 7 and 12 above) and that he should not have behaved in such a manner. He also did not appeal against the decision of the first-instance court concerning his dismissal (see paragraphs 12 and 46 above). The third applicant likewise recognized his unethical behaviour and expressed a wish to be dismissed of his own will, under Article 115 § 1 of the Constitution (see paragraphs 12 and 47 above).

85. To the extent that the applicants alleged that the criminal court proceedings overall were unfair, the Court observes that two of the Prosecutor General's deputies, in two different requests, and not the Prosecutor General himself, informed the President of the Supreme Court and the State President

about the crimes the three applicants were suspected of having committed (see paragraphs 8 and 10 above). Although the second applicant insinuated that the Prosecutor General A.K. had been appointed to the Supreme Court in return for his communications to then State President Rolandas Paksas in the applicants' case, the Court considers that that conjecture is devoid of any basis in fact. The applicants have not presented any arguments as to why the State President and the Seimas should not have fulfilled their constitutional functions and appointed A.K. to the Supreme Court (see paragraph 22 above). As to the alleged influence by then State President Rolandas Paksas on the law-enforcement institutions, the Court considers that, in the absence of proof, it is not a place for speculation about the effects of such interference (contrast *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 80, ECHR 2002-VII). Furthermore, Prosecutor General A.K. was appointed to the Supreme Court on the proposal by State President Valdas Adamkus, who in 2004 succeeded Mr Rolandas Paksas. The Court also observes that A.K. did not sit in the applicants' case when it was twice decided by the Supreme Court (see paragraphs 22, 28 and 38 above). In this context, the Court does not fail to note the applicants' argument that their dismissal was also made unfair by an alleged breach of domestic law, because it had been the Deputy Prosecutor General, and not the Prosecutor General who had initiated criminal proceedings against them (see paragraph 82 above). This only shows the inconsistency of the applicants' complaints because, on the one hand, they complain about a lack of participation by the Prosecutor General and, on the other, that he was too involved.

86. Insofar as the applicants claim that the criminal courts were partial in their case, the Court finds that the applicants simply contest the competence of the judges in carrying out their statutory functions, rather than present any evidence, whether applying a subjective or objective test, of a lack of impartiality by the courts within the meaning of Article 6 § 1 (see, by contrast, *Daktaras v. Lithuania*, no. 42095/98, §§ 30-38, ECHR 2000-X). No documents have been produced in this case to prove the second applicant's submission about Supreme Court judges having expressed prior views on the applicants' criminal case. In fact, the Supreme Court explicitly held that none of the prosecutors or judges who dealt with the applicants' case had made any public comments (see paragraph 36 *in fine* above). On the basis of the materials submitted by the parties, the Court further notes that none of the judges who took part in the Judicial Council hearing, and thus its decision of 21 July 2003 proposing that the State President dismiss the applicants (see paragraph 12 above), were later involved in the criminal proceedings against the three applicants. In any event, the Court finds that there is no evidence that the domestic courts lacked impartiality within the meaning of Article 6 § 1.

87. As regards the applicants' remaining complaints about fairness (see, in particular, paragraph 81 *in fine* above), the Court finds them

unsubstantiated. They do not, therefore, give rise to any problem under Article 6 of the Convention.

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

2. As to the statements of State officials in the press while criminal proceedings were pending

(a) The Government

88. The Government noted at the outset that neither the first nor the second applicant had at any point throughout the criminal proceedings lodged a complaint arguing a breach of the right to the presumption of innocence on account of the public statements by State officials in the press.

89. The Government pointed out that the third applicant had argued a violation of the presumption of innocence only in his second appeal on points of law, when it was too late (see paragraphs 35 and 37 above).

90. The Government also noted that Lithuanian court practice regarding the principle of the presumption of innocence had been established for a long time, especially after the Court's judgment in *Butkevičius v. Lithuania* (no. 48297/99, §§ 46-54, ECHR 2002-II (extracts)). After the Court had found a violation in that case, the Supreme Court had reopened the court proceedings and very clearly specified the aspects which should be evaluated when analysing the presumption of innocence, that is, whether statements made by State officials could affect the independence and impartiality of the courts examining a case. It had therefore been up to the applicants in this case to raise the matter properly with the criminal courts, but the applicants had failed to use that opportunity.

91. In the alternative, the Government argued that the complaint about this aspect of an alleged breach of the right to the presumption of innocence was manifestly ill-founded. In fact, on 6 February 2007 the Supreme Court had held that the statements made by the high-ranking State officials had had no impact on the criminal courts' ability to reach impartial and objective decisions (see paragraph 37 above).

(b) The applicants

92. The first applicant argued that the statements by the State President and the Supreme Court President in the press had had a direct impact on her conviction, in breach of Article 6 §§ 1 and 2 of the Convention. However, she had not mentioned those statements during the criminal proceedings because the first-instance court and the court of appeal had acquitted her.

93. The second applicant was also critical of the public statements made by State officials about the three applicants being criminals.

94. The third applicant argued that the numerous public statements by high-ranking State officials about the applicants' guilt had clearly been in

breach of the principle of the presumption of innocence. Even if he had not raised the question of the presumption of innocence within the criminal proceedings before lodging his second appeal on points of law, he argued that that had not deprived him of the right to raise that issue before the Court. In the third applicant's view, it had only been possible to determine the scale of the violation of the principle of the presumption of innocence after the completion of the domestic proceedings.

(c) The Court

95. The Court firstly turns to the Government's objection that the applicants have not exhausted domestic remedies. It reiterates that a complaint intended to be made subsequently to the Court must first have been made – at least in substance – to the appropriate domestic body, and in compliance with the formal requirements and time-limits laid down in domestic law (see *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, with further references).

96. In the circumstances of this case, the Court finds it established that the first two applicants indeed did not raise a complaint before the criminal courts that the public statements made by high-ranking State officials had been in breach of their right to be presumed innocent (see paragraphs 23, 25 and 27 above). As to the third applicant, the Court points out that he only brought this issue up in his second appeal on points of law to the Supreme Court, which found itself precluded from examining it as a question of fact (see paragraph 37 above). The Court sees no cause to depart from the Supreme Court's findings, which were based on its direct knowledge of the applicants' case and domestic law.

97. The Court also observes that the statements in the press by the State President, the President of the Supreme Court and other State officials, of which these applicants complain to the Court, were made much earlier than when both the trial court and the appellate court gave their judgments in the applicants' criminal case (see paragraphs 14-21 above). Given that those statements were made public prior to the trial court's verdict, the Court considers that the applicants could not have simply expected an acquittal and on that ground be absolved from the duty to raise the matter before the trial court in the hearing. Considering that the prosecutor appealed against the acquittal (see paragraph 25 above), the applicants could at least have relied on the presumption of innocence at the stage of appeal. Furthermore, given the sheer number of public statements by different State officials regarding the applicants' involvement in the alleged crime of helping smugglers (see paragraphs 14-21 above), it is unreasonable to hold that those statements could have gone unnoticed by the applicants.

98. The Court further notes that under Lithuanian criminal procedure a person who has been acquitted by a trial court may appeal against that judgment without risking a worsening in his or her position (see paragraph 75

above). The third applicant actually used such a possibility by lodging an appeal on points of law with the Supreme Court, asking it to vary certain formulations in the lower courts' judgments which had already acquitted him. Even so, neither he, nor the other two applicants who responded to the appeal by the prosecutor, raised the issue of an alleged breach of the principle of the presumption of innocence at that stage of the criminal proceedings in at least some form (see paragraph 25 above).

99. Lastly, the Court notes that, after the criminal proceedings were over, the third applicant did mention the presumption of innocence related complaint during the civil court proceedings concerning his dismissal (see paragraph 49 above). That notwithstanding, the Court considers that such a complaint should have been properly raised during the criminal court proceedings where the criminal charges of abuse of office and perverting the course of justice against the applicants were examined and which resulted in their conviction (see, *mutatis mutandis*, *Fatullayev v. Azerbaijan*, no. 40984/07, §§ 153 *in limine* and 155, 22 April 2010).

100. In the light of the above, the Court finds that all three applicants failed to properly exhaust domestic remedies in regard to this complaint, as required by Article 35 § 1 of the Convention. The complaint therefore must be declared inadmissible, pursuant to Article 35 § 4.

C. Complaints under Article 8 of the Convention, taken alone and in conjunction with Article 14

101. In a supplement to his original application, dated 15 December 2008, the second applicant also complained that, after the Law on the Bar was amended on 15 April 2008, he, as a person convicted of intentional crime, had been permanently banned from becoming an advocate. The second applicant further asserted that such strict requirements on the concept of high moral character did not apply to other legal professions.

The third applicant supported those complaints in his reply to the Government's observations. These two applicants relied on Article 8 of the Convention, taken alone and in conjunction with Article 14.

The first applicant did not raise a complaint about a prohibition on practising law or about discrimination, either in her application or in her observations.

Article 8 states:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 states:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The Government

102. The Government argued that the right to practise the profession of an advocate did not fall within the sphere of private life (they relied on *Bigaeva v. Greece*, no. 26713/05, § 39, 28 May 2009). However, if the Court considered that Article 8 of the Convention applied to the applicants' complaint, the Government submitted that the interference with their private life had been based in law. Moreover, since an advocate actively participated in the process of the administration of justice, it was important to safeguard the interests of others who were in need of proper legal representation. Taking into account the nature of the applicants' crime, the ban on them practising law had not been disproportionate.

103. As to the discrimination alleged, the Government noted that the laws regulating other legal professions, such as judges and prosecutors, established analogous or even stricter requirements as far as the criteria of being of high moral character was concerned. In particular, the Law on the Prosecutor's Office and the Law on Courts set out that a person convicted of any criminal act, irrespective of its seriousness or whether it had had been committed intentionally or by negligence, could not be considered as being of high moral character. The Law on the Bar, however, did not provide for such an absolute ban (see paragraphs 65, 66 and 67 above).

104. In their observations of 15 September 2010 in the third applicant's case, the Government also doubted as to whether the third applicant, or the other two, could claim to be victims of an Article 8 violation. They noted that the third applicant had only raised the issue of the Law on the Bar amendments of 15 April 2008, which had resulted in the restriction on him becoming an advocate (see paragraph 64 above), in his observations in reply to the Government's observations in two other applicants' cases, and had failed to raise it in his application to the Court. Furthermore, at the time none of the three applicants had asked the Bar Association to recognise them as advocates. A refusal by the Bar Association could have been appealed against to a court by asking it to interpret the retrospective application of Article 8 § 1 of the Law on the Bar. That court would also have been able to apply to the Constitutional Court if it had seen any issues of non-compliance of that legal rule with the Constitution.

105. Lastly, the Government referred to their letter of 5 March 2014 (see paragraph 56 above). They submitted that after the amendments to the Law on the Bar passed in 2013 the applicants were no longer precluded from

working as advocates, given that their convictions had expired and the statutory three-year period after serving their sentence had ended.

2. The applicants

106. In the supplement of 15 December 2008 to his original application the second applicant argued that a prohibition on practising law as an advocate had been disproportionate because, after his conviction in 2006, he had irreversibly lost his status as being of high moral character, as it was then defined by Article 8 of the Law on the Bar, and it had been impossible to restore it. He also argued that such strict requirements as to character as those applied to prosecutors and judges should not be applied to advocates, who exercised a liberal profession.

107. The third applicant did not raise Article 8 and 14 complaints in his application. He mentioned them in his observations of 26 July 2010 when replying to the Government's arguments.

3. The Court

108. The Court notes at the outset that only the second and third applicants raised complaints under Articles 8 and 14 of the Convention.

109. Furthermore, the Court has held that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence (see *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 49, ECHR 2004-VIII). Be that as it may, in the instant case the Court observes that, at least right after the applicants' conviction, loss of reputation affected their ability to pursue various legal professions, and the profession of advocate in particular. Therefore the Court will proceed on the assumption that the ban on them practising law had an effect on the enjoyment of the applicants' right to respect for their private life within the meaning of Article 8 (see, most recently, *Erményi v. Hungary*, no. 22254/14, § 30, 22 November 2016), and that Article 14 of the Convention is applicable in the circumstances of this case taken in conjunction with Article 8 (ibid., §§ 42-50).

110. The Court further observes that after the applicants' conviction was upheld by the Court of Appeal on 9 June 2006, the second and third applicants were barred from taking up legal jobs for, respectively two years and three months and for four years (see paragraph 30 above). Although the Government have argued that once their conviction expired those applicants could have asked the Bar Association to recognise them as having regained their high moral character and thus be eligible to become advocates, the Court cannot subscribe to that argument. It notes that from April 2008 until it was amended in July 2013, Article 8 § 1 of the Law on the Bar unequivocally held that conviction for an intentional crime led to an absolute prohibition on being

considered as being of high moral character (see paragraphs 64 and 65 above). Accordingly, until July 2013 there appears to have been no real chance of success, even if the second or third applicants had asked the Bar Association to recognise them as advocates once their conviction had expired. Similarly, although the applicants could have asked the court of civil jurisdiction to raise the issue with the Constitutional Court, it was entirely within the civil court's competence whether to grant such a request (see paragraph 73 above). The discretionary right of the courts of general jurisdiction is perfectly well illustrated by the trial court's refusal to grant the first applicant's referral request during the criminal proceedings (see paragraph 23 above).

111. Be that as it may, the Court observes that in 2013 the Law on the Bar was amended so that a person with a prior conviction for an intentional crime of medium severity, such as the crime of abuse of office, of which all three applicants were found guilty, could claim to have regained a high moral character three years after serving his or her sentence (see paragraphs 30, 65 and 73 above). According to the Government and publicly available information, in January 2014 and in October 2013 the second and third applicants respectively were recognised as advocates in Lithuania, and the third applicant practises law to this day. None of the applicants have contested those facts or commented on them (see paragraphs 56 and 57 above). The Court also takes note of Lithuanian case-law to the effect that the lack of a high moral character is distinct as a criterion from a prior conviction (see paragraphs 69-72 above), with the result that a person in the second or third applicant's situation is free to prove that he or she has regained a high moral character after a conviction has expired.

112. Lastly, the Court notes that as far as character is concerned, the Law on the Prosecutor's Office and the Law on Courts set out even stricter criteria than those in Article 8 § 1 of the Law on the Bar as it now stands, because persons convicted of any crime, irrespective of its severity or whether that crime was intentional or committed by negligence, may not become prosecutors or judges (see paragraphs 65, 66 and 67 above). It also shares the Government's point of view that being of high moral character is paramount for an advocate to protect those in need of proper legal representation (see paragraph 102 above). Above all, and given the Court of Appeal finding that the applicants had committed a crime "within the area of their work and professional activity", and thus "performed actions discrediting the title of judge" (see paragraph 30 above), the Court does not find that a prohibition on practising the law had a disproportionate or discriminatory effect on the private lives of the second and third applicants, all the more so because that restriction in their situation was only temporary.

113. Accordingly, this part of the application must be rejected as manifestly ill-founded and declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

D. Other complaints

114. The three applicants also raised a number of other grievances. In particular, invoking Article 5 § 1 (c) of the Convention, the second and third applicants argued that since they had been punished for telephone conversations they had had with the first applicant whilst attempting to protect detained smuggling suspects from a violation of Article 5 § 1, they themselves had become incidental victims of such violation.

115. Under Article 7 of the Convention, the first applicant complained that she had been convicted for abuse of office, whereas, in her opinion, a judge could not be convicted for such a crime. Invoking Article 10 of the Convention, the first applicant also complained that she had been convicted for an exchange of information, notably for telephone conversations between her and the second applicant.

116. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that these complaints do not disclose any appearance of a violation of the Articles of the Convention relied on. It follows that these complaints are inadmissible under Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 13 July 2017.

Andrea Tamietti
Deputy Registrar

Ganna Yudkivska
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	33556/07	31/07/2007	**Palmira LINKEVIČIENĖ** 12/04/1950 Vilnius	Kęstutis ČILINSKAS
2.	34734/07	30/07/2007	**Darius JAPERTAS** 3/01/1963 Utena	Eugenijus KAROSAS
3.	34740/07	30/07/2007	**Arvydas GUDAS** 9/12/1956 Lazdijai	Vytautas Stanislovas SVIDERSKIS and Zigmas PEČIULIS