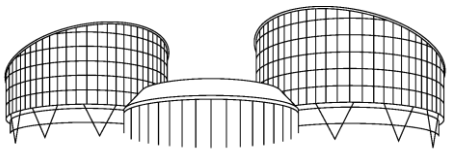

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 66365/09
Rimantas SAVICKAS against Lithuania
and 5 other applications
(see list appended)

The European Court of Human Rights (Second Section), sitting on 15 October 2013 as a Chamber composed of:

Guido Raimondi, *President,*
Danutė Jočienė,
Peer Lorenzen,
András Sajó,
Işıl Karakaş,
Nebojša Vučinić,
Helen Keller, *judges,*

and Lawrence Early, *Acting Section Registrar*,

Having regard to the above applications lodged by six Lithuanian nationals, Mr Rimantas Savickas (case no. 66365/09, "the first applicant") on 12 December 2009, Mr Vylius Kryževičius (case no. 12845/10, "the second applicant") on 23 February 2010, Mrs Daiva Vaškelienė (case no. 29809/10, "the third applicant") on 21 May 2010, Mr Vilmantas Almantas Gaidelis (case no. 29813/10, "the fourth applicant") on 18 May 2010, Mr Algimantas Pivoriūnas (case no. 30623/10, "the fifth applicant") on 26 May 2010 and Mr Petras Rimantas Brazys (case no. 28367/11, "the sixth applicant") on 17 April 2011,

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

A. The circumstances of the case

1. The first applicant was born in 1960 and lives in Panevėžys.

The second applicant was born in 1941 and lives in Panevėžys.

The third applicant was born in 1963 and lives in Vilnius. She is an advocate.

The fourth applicant was born in 1945 and lives in Vilnius.

The fifth applicant was born in 1939 and lives in Vilnius.

The sixth applicant was born in 1944 and lives in Šiauliai.

2. On 3 February 1993 the Seimas (the Lithuanian Parliament) decided that pending the adoption of the relevant laws the Government would be responsible for establishing judges' remuneration. In that connection, by rulings of 6 December 1995 and 21 December 1999 the Constitutional Court held that the protection of judges' salaries and benefits was one of the guarantees of their independence. Accordingly, to ensure the independence of judges it was prohibited to reduce a judge's salary during his or her term of office.

3. On 30 June 1997, in order better to fight crime and corruption, the Government adopted Resolution no. 689, raising judges' salaries by a factor of 2.5.

4. By Resolution no. 1494 of 28 December 1999 the Government decided that, taking into account the difficult financial and economic situation of the State, a factor of 1.75 instead of 2.5 would be used to calculate judges' salaries as of 1 January 2000 [a reduction of about 30 per cent].

5. On 29 August 2000 the Seimas adopted the Law on the Remuneration of State Politicians, Judges and State Officials, thus regulating judges' salaries by law as of that moment. In their observations to the Court the Government noted that the judges' salaries remained reduced.

6. The reduction in remuneration affected the entire community of judges. According to the Government, at the relevant time there were 772 judges who worked in the Lithuanian courts. Of that number, 226 judges instituted 103 sets of proceedings before the domestic courts claiming payment of the lost part of their salary on the ground that the reduction of judges' salaries was in breach of the principle of their independence.

7. Five of the applicants and the third applicant's husband, who at that time were Lithuanian judges, sued the State between February and July 2000 in the courts of general and administrative jurisdiction.

8. On 20 June 2001 the Special Panel on Courts' Jurisdiction, whose function is to resolve disputes concerning jurisdiction arising between the general and the administrative courts, ruled that in order to ensure the

independence and impartiality of the courts, the cases concerning the remuneration of judges of the general courts should be examined by the administrative courts and *vice versa*. Following that decision and the reform of the administrative courts, the cases concerning the third applicant's husband and the other applicants and were transferred to the Vilnius Regional Administrative Court acting as the court of first instance.

9. The Vilnius Regional Administrative Court later requested the Constitutional Court to rule on the question whether the reduction of judges' salaries was in line with the principle of their independence.

10. After the third applicant's husband died in August 2005, she and their two children joined the administrative court proceedings as his heirs, asking the court to award the third applicant his unpaid salary.

11. By a ruling of 28 March 2006 the Constitutional Court held that when the economic and financial situation in the State deteriorated significantly, a temporary reduction in judges' salaries was lawful and, provided certain safeguards were met, as such did not breach their independence (for the relevant extracts from the ruling see paragraph 44 below).

12. Having regard to that ruling by the Constitutional Court, the Court of Appeal, which at that time was also examining a case concerning the reduction in judges' remuneration, ordered an expert report to be prepared by the Lithuanian Free Market Institute in order to determine the economic and financial situation in the country at the relevant time. The experts concluded that the financial crisis in the Russian Federation had caused a difficult situation in Lithuania, because at that time the Russian Federation was the biggest export market for Lithuanian producers and after the crisis export to Russia had shrunk three times. Limited economic growth, strong competition and high quality standards in the Western Europe as well as appreciation of the United States dollar did not allow Lithuanian companies to quickly compensate the loss of the Russian market in the West. According to the experts, the extremely difficult economic and financial situation in Lithuania began in 1999 and continued until 2003. On the basis of that finding, on 18 June 2008 the Court of Appeal held that the reduction of the judges' salaries, which had been carried out in accordance with the principle of proportionality, was legitimate for that period. The Court of Appeal nevertheless noted that the State's financial and economic situation had improved in 2003. Therefore, the fact that as of that date the State had not revoked the austerity measure (in this case the reduction of salaries) was in breach of the principle that austerity measures could be applied only on a temporary basis. Accordingly, the court awarded the claimants the unpaid part of their remuneration as of 1 January 2003.

13. In connection with the above-mentioned expert report ordered by the Court of Appeal, the Vilnius Regional Administrative Court adjourned the examination of some of the applicants' cases. In addition, despite the

transfer of jurisdiction (see paragraph 8 above), in February and November 2007 and July 2008 some judges withdrew from examination of the applicants' cases because they themselves were claimants in other cases concerning the same subject.

14. On 18 August 2008 the Vilnius Regional Administrative Court granted the first and second applicants' claims in part and awarded them compensation for different periods spanning the years 2003-2007.

15. On 24 October 2008 the Vilnius Regional Administrative Court partly granted the third, fourth and fifth applicant's claims and awarded them part of their unpaid salary for different periods spanning the years 2000-2008.

16. On 5 October 2009 the Vilnius Regional Administrative Court partly granted the sixth applicant's claim and awarded him compensation for the reduction in salary in respect of the years 2003-2005.

17. The six applicants lodged appeals with the Supreme Administrative Court challenging the Lithuanian Free Market Institute's conclusions about the severity of the 1999-2003 financial crisis. They also argued that lowering judges' salaries had been out of proportion.

18. The Ministry of Finance asked that the appeals be dismissed. It noted, in the sixth applicant's case, that the fact of the particularly difficult economic situation in Lithuania had been established not only by the experts but also by the Constitutional Court. In deciding whether the judges' salaries had been lowered proportionately, the scale of the savings measures had to be taken into account. By taking those measures the Government had attempted to reduce the disparities between various groups of the population. The Ministry of Finance emphasised that in December 1999 the average salary in the public sector had been 1,171 Lithuanian litas (LTL[1]), whereas the average salary of a judge at that time had been LTL 7,784. That being so, the reduction in judges' salaries had been proportionate.

19. Having noted the Constitutional Court's conclusions on the possibility of a temporary reduction of judges' salaries and the Court of Appeal decision of 18 June 2008, the Supreme Administrative Court confirmed that because of the financial and economic crisis the situation in Lithuania had improved only as of 1 January 2003. Accordingly, the applicants should have received compensation for the period after that date, in accordance with the arrangements laid down by the Law on Compensation for the Unpaid Part of Judges' Remuneration of 11 November 2008 (see paragraph 46 below).

20. Eventually, the six applicants' claims for the unpaid part of their salaries were granted in part by the Supreme Administrative Court, as follows:

on 18 June 2009 the first applicant was awarded a sum of LTL 96,657;

[1] 1 euro (EUR) = 3,45 LTL

on 24 August 2009 the second applicant was awarded LTL 101,043;

on 1 December 2009 LTL 54,015 was awarded to the third applicant and LTL 16,204 to each of her two children, in respect of the third applicant's late husband; the fourth applicant was awarded LTL 96,703 and the fifth applicant LTL 96,814;

on 25 October 2010 the sixth applicant was awarded a sum of LTL 104,048.

B. Relevant domestic law and practice

1. As regards the length of proceedings

(a) Statutory provisions

21. Article 30 of the Lithuanian Constitution provides that persons whose constitutional rights or freedoms are violated shall have the right to apply to a court. Compensation for pecuniary and non-pecuniary damage shall be established by law.

Article 138 § 3 of the Constitution stipulates that the international treaties ratified by the Seimas shall be a constituent part of the legal system of the Republic of Lithuania.

The Law on International Treaties stipulates that if a treaty ratified by the Republic of Lithuania which has entered into force establishes norms other than those established by the laws or other legal acts of the Republic of Lithuania which are in force at the moment of conclusion of the treaty, or which entered into force after the entry into force of the treaty, the provisions of the treaty shall prevail (Article 11 § 2).

22. Article 6.272 of the Civil Code allows a civil claim to be lodged for pecuniary and non-pecuniary damage in respect of unlawful actions of the investigating authorities or the courts. The Article in question makes provision for compensation for unlawful conviction, unlawful arrest or detention and for the application of unlawful procedural measures in enforcement proceedings. It reads as follows:

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

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

2. The State shall be liable for full compensation in respect of the damage caused by the unlawful actions of a judge or a court trying a civil case, where the damage is caused through the fault of the judge himself or of any other court official.

3. In addition to pecuniary damage, the aggrieved person shall be entitled to non-pecuniary damage.

> 4. Where the damage arises from an intentional fault on the part of preliminary investigation, prosecution or court officials or judges, the State, after compensation has been provided, shall have the right to take action against the officials concerned for recovery, under the procedure established by law, of the sums in question in the amount provided for by the law."

23. On 14 April 2011 the Ministry of Justice presented to the Seimas a draft amendment to Article 6.272, adding a new fifth paragraph. As the explanatory note to the amendment states, its aim is to directly establish individuals' right to compensation for excessively lengthy pre-trial investigation or court proceedings. The Ministry noted that, to that date, there were eighteen judgments in respect of Lithuania in which the European Court of Human Rights had found a violation of a person's right to a hearing or trial within a reasonable time. It also observed that the Court had not yet acknowledged Article 6.272 of the Civil Code to be an effective remedy in respect of the excessive length of court proceedings, one of the reasons being that the provision in question did not mention excessively lengthy court proceedings as giving grounds for compensation. Should the State fail to act, there was a likelihood that the Court would find excessively lengthy court proceedings to be a systemic problem in Lithuania. Another important factor was that the amendment would allow compensation to be awarded for excessively long court proceedings irrespective of the investigating officers' or courts' fault. Moreover, taking into account the Court's practice in length-of-proceedings cases, the whole range of criteria – the impact of the proceedings on the person concerned, and the actions or failure to act by the State authorities and by the person himself – should be taken into consideration. A crucial element was that the draft amendment did not set out an exhaustive list of criteria as to when compensation could be awarded for damage.

The proposed provision reads as follows:

> "5. In accordance with the rules set out in paragraphs 1, 3 and 4 of this Article, compensation shall also be afforded in respect of damage caused by an excessively lengthy pre-trial investigation or examination of the case by the court. The court, when it determines the issue of compensation for damage, in addition to the general criteria for assessment of the pecuniary and non-pecuniary damage as set out in this Code, shall also take into account the impact of the pre-trial investigation and court proceedings on the person claiming compensation for damage, their complexity and the procedural actions or failure to act by the pre-trial investigations officials, prosecutors or judges as well as those of the person claiming damages, and other relevant circumstances."

24. On 21 June 2001 the Seimas partly amended the Code of Civil Procedure, adding a new paragraph 3 to Article 72, designed to make proceedings more efficient and speedy. The amendment provides for an additional protective mechanism for the parties: where the court of first instance fails to perform procedural actions which it is obliged to perform, a

party may request the appellate court to impose a time-limit within which the action must be performed.

(b) Lithuanian courts' practice

(i) The Constitutional Court

25. As regards a person's right to claim damages for unlawful actions by the State authorities, on 19 August 2006 the Constitutional Court held as follows:

> "5. In this context it is to be noted that, under the Constitution, persons have a right to claim compensation for damage caused by the unlawful actions of State institutions and officials, including when a particular case of compensation for damage is not specified in any law. The courts, when ruling on such cases in accordance with their competence, have constitutional powers to adjudge the corresponding compensation for damage by directly applying the Constitution (the principles of justice, legal certainty and legal security, proportionality, due process of law, equality of persons and protection of legitimate expectations, and other provisions of the Constitution) and general principles of law, pursuing, *inter alia*, the principle of reasonableness, etc."

(ii) The courts of criminal jurisdiction

26. In criminal case no. 2K-7-45/2007, in which judgment was given on 17 April 2007, the Supreme Court found that the duration of the pre-trial investigation in the case of two convicted persons had been unjustifiably long. The court noted the Convention organs' case-law to the effect that in cases of a breach of Article 6 § 1 of the Convention in respect of the right to a trial within a reasonable time, mitigation of the sentence could be one of the appropriate remedies (it referred to *Einarsson v. Iceland*, no. 22596/93, decision of 5 April 1995, and *Beck v. Norway*, no. 26390/95, judgment of 26 June 2001). No custodial sentence was therefore imposed.

27. In the judgment of 10 February 2009 in criminal case no. 2K-7/48/2009, the Supreme Court refused the prosecutor's request to impose a heavier penalty on the convicted persons. The court noted that the criminal proceedings had lasted relatively long and that, according to the settled case-law of the European Court of Human Rights, reducing the sentence was an effective remedy when the proceedings had exceeded a reasonable time (the court referred to *Tamás Kovács v. Hungary*, no. 67660/01, § 26, 28 September 2004).

(iii) The courts of civil jurisdiction

28. In case no. 3K-7-7/2007 of 6 February 2007, the Supreme Court examined a civil claim for pecuniary and non-pecuniary damage lodged by a claimant whose criminal proceedings had lasted some six years at one level of jurisdiction. The applicant's case was closely linked to that of another group of persons whose case had lasted a similar period of time and

had been pending at two levels of jurisdiction. Both sets of proceedings were terminated because the prosecution became time-barred. As regards the question of non-pecuniary damage caused by unjustified delays in criminal proceedings and the link between the domestic law and Article 6 § 1 of the Convention, the Supreme Court held as follows:

> "The State has an obligation not only to guarantee that a person's rights are not breached by the unlawful actions of other persons, but also to make sure that they are not breached by the State authorities and State officials. In the sphere of protection of human rights and freedoms the subject of redress for damage is of particular importance. This means that persons have a right to redress for damage caused by unlawful actions of State authority officials only when it has been established that the State institution or official concerned has performed unlawful actions which have caused damage. Article 6.272 of the Civil Code sets forth the conditions governing liability for damage caused by certain specific subjects: pre-trial investigation officers, prosecutors, judges and the courts. This type of liability ... has a special feature, namely that the damage must be compensated for irrespective of whether the fault of a particular officer has been established or not. The obligation to compensate for damage caused by the unlawful actions of pre-trial investigation officers, prosecutors, judges or the courts arises where unlawful actions have been established (tort liability); therefore, it is very important to determine what actions are considered as unlawful and what are the criteria for establishing unlawfulness. The actions which might be held to be unlawful are listed in Article 6.272 § 1 of the Civil Code. The existence of such a list implies that the legislator regulating the obligation to redress such damage did not comply with the general rule according to which every action that is contrary to law and causes damage creates an obligation to redress such damage. The discretion of the legislator to regulate the present issues has been analysed by the Constitutional Court, which noted in its ruling of 19 August 2006 that when regulating the question of redress for damage, where the damage was caused by State officials, the legislator does not have discretion to establish an exhaustive (finite) list of cases in which such damage must be compensated for, as this would be contrary to the constitutional principle that damage must be compensated for.
>
> The claimant seeks to defend her rights on the basis of national law. The defendant states that national law, and in particular the Civil Code, does not provide for civil liability for damage caused by [State] officials' unlawful actions, in this instance, failure to examine a case within a reasonable time. Such an argument is not valid, because the legal system of the Republic of Lithuania is comprised not only of domestic legal acts but also of international treaties, by which the Republic of Lithuania has assumed an obligation to guarantee certain rights and interests and to treat actions which breach them as a violation. The chamber finds that when a person points out possibly unlawful actions by [State] officials which are not listed in specific legal norms establishing liability, the courts treat such facts as possible violations of common legal principles, within the context of the Lithuanian Constitution and Lithuanian international agreements. ... In cases where State liability for certain infringements is not regulated by the national law, the court may establish the State's liability in accordance with the international treaties which constitute an integral part of the national legal system (Article 138 § 3 of the Constitution). Article 6 § 1 of the European Convention on Human Rights establishes an obligation to determine issues related to criminal charges against a person within a reasonable time. The provisions of the Convention are interpreted by the Court. The Supreme Court has already had occasion to rule as regards the application of the Convention in matters related to redress for damage caused by the actions of officials. It held that the lawfulness of a

> certain action under national law did not automatically mean that it was lawful within the meaning of the Convention. In the light of this approach to civil liability, the defendant's argument to the effect that cases where State liability arises for damage caused by the unlawful actions of its officials are limited by the provisions of Article 6.272 § 1 of the Civil Code, is unsubstantiated, as it is contrary to the provisions of the Constitution concerning the structure of the legal system of the Republic of Lithuania. According to the said provisions legal relations are regulated not only by domestic law, but also by international treaties (Article 11 §§ 1 and 2 of the Law on International Treaties). Given that Article 6.272 of the Civil Code provides for civil liability for damage caused by pre-trial investigation officers, that is to say, for infringements similar to those provided for by Article 6 § 1 of the Convention, the principle of analogy of the law should be applied, i.e. the provisions of Article 6.272 of the Civil Code should be applicable when assessing the damage caused by a breach of Article 6 § 1 of the Convention."

29. The Supreme Court then went on to examine the claimant's case in the light of the Court's criteria under Article 6 § 1 of the Convention. It noted that the claimant had been charged with a criminal act as far back as 1998. The case concerned a financial crime and thus was clearly complex, involving the smuggling of goods in large amounts (the court referred to *Meilus v. Lithuania*, no. 53161/99, § 25, 6 November 2003). Twenty persons had been charged, the case file contained eighty volumes and more than two hundred witnesses had been questioned. Despite that, all the investigative actions in respect of the claimant had been performed in 1998. However, up until 2004, when the prosecution became time-barred, the investigators had not performed any other actions in respect of the claimant and had also failed to transfer her case to the court for trial. Likewise, they had not made use of the possibility to sever the charges against the plaintiff, even though the prosecutors had done so in respect of some of the other accused (the Supreme Court referred to *G.K. v. Poland*, no. 38816/97, § 102, 20 January 2004). The Supreme Court thus considered that the pre-trial investigation authorities had not acted with sufficient diligence, thereby breaching the claimant's right to timely criminal proceedings. Having the status of a person charged with a crime, the claimant had experienced uncertainty about the end of the criminal proceedings. Moreover, this procedural status had for an unjustifiably long time limited her other rights: the right to move (she was under an obligation not to leave her place of residence) and her property rights (her property had been seized). Those restrictions had lasted from March 1998 until January 2004. Furthermore, she had been dismissed from her job from December 1998 to July 2002. Taking into account the fact that the delayed criminal investigation and the restrictions applied to the claimant had caused her emotional distress, tarnished her reputation and restricted her opportunities for contact with others, and the fact that the claimant, who had two minor children, had been without income for a long time, the Supreme Court considered that a sum of LTL 15,000 (approximately 4,300 euros (EUR)) would be appropriate to compensate for non-pecuniary damage. It also

awarded the claimant LTL 15,000 for pecuniary damage in compensation for loss of salary.

30. In civil case no. 3K-3-5/2009, in which judgment was given on 4 February 2009, the Supreme Court again considered the issue of non-pecuniary damage for, firstly, the length of criminal proceedings and, secondly, the length of time taken to examine a civil claim in separate civil proceedings which were linked to the criminal proceedings.

31. As regards the length of the criminal proceedings, the Supreme Court established that the pre-trial investigation in the claimant's case had lasted for four years and had been terminated as being time-barred. The authorities had not acted with sufficient diligence: there had been substantial delays when no investigative actions had been conducted at all, and the investigators had not coordinated their actions, with the result that the criminal case had been returned for further investigation many times. Such delays could not be justified by the complexity of the case (the court referred to *Vachev v. Bulgaria*, no. 42987/98, § 96, ECHR 2004-VIII (extracts)). Whilst noting that the claimant's conduct during the criminal proceedings, in lodging complaints that were not granted, raised certain suspicions as to whether he had an interest in seeing the proceedings swiftly terminated, the Supreme Court, on the basis of *Barfuss v. the Czech Republic* (no. 35848/97, § 81, 31 July 2000), nevertheless dismissed the State's argument that the criminal proceedings had been protracted because the claimant had actively exercised his procedural rights. Having judiciously balanced the actions of the claimant and those of the State authorities, the Supreme Court held that it was the State that had to bear the blame for the principal delay in the proceedings.

32. As to the claimant's application for non-pecuniary damage, the Supreme Court found it important that the criminal investigation had been started because of the claimant's 'unlawful actions' – when the tax authorities had established that the claimant's company had been selling counterfeit intellectual property. Even though the pre-trial investigation had lasted for a long time, no procedural enforcement measures had been applied to the claimant, nor had his property been seized. Given that a violation of the claimant's rights under Article 6 § 1 of the Convention had already been established, the Supreme Court considered it appropriate to refer to the Court's guidelines in cases which bore as close a resemblance as possible to the case at issue. Accordingly, the Supreme Court relied on *Gečas v. Lithuania* (no. 418/04, 17 July 2007), where the criminal proceedings had lasted for five years and eleven months and had been discontinued as being time-barred and where the main delays had been attributed to the State authorities, one of the arguments for that conclusion being the return of the case for fresh investigation owing to earlier flaws. Accordingly, following the Court's award of EUR 900 in respect of non-

pecuniary damage in *Gečas*, the Supreme Court awarded the claimant LTL 3,000 (approximately EUR 870).

33. The Supreme Court then went on to examine the claimant's complaint that the four-year period for the hearing of his civil case at first instance had been excessive. It noted that under Article 6 § 1 of the Convention parties had a right to have a civil dispute examined within the least time possible. The court also considered that, for civil proceedings to be in compliance with Article 6 § 1, the most pertinent factor was not their duration as such, but the question whether the civil proceedings had been delayed or pending without a valid reason and thus in breach of the principle of concluding proceedings within the shortest time possible. As to the circumstances of that civil case, the court found that its examination had been protracted because of the delays during the criminal proceedings, when the investigators' actions had been too slow. However, the civil court which heard the case had also contributed to the length of the civil proceedings by delaying the fixing of hearings, postponing hearings without a reason and not always refusing the parties' ungrounded requests to postpone hearings. Even though both the parties and the court of first instance had been responsible for some of the delays, it was the role of the domestic courts, in line with the Court's guidelines in *Makarenko v. Ukraine* (no. 43482/02, § 37, 1 February 2007), to manage their proceedings so that they were expeditious and effective. Moreover, pursuant to *Tsirikakis v. Greece* (no. 46355/99, § 43, 17 January 2002), even in proceedings based on the principle of the parties' initiative, the national courts were under an obligation to be very careful in supervising the proceedings and granting various requests by the parties, including requests to postpone the hearings. Accordingly, the Supreme Court held that the civil court bore the larger share of the responsibility for the unjustifiably long civil proceedings.

34. By a decision of 15 October 2009 in civil case no. 3K-3-428/2009, the Supreme Court found that, because of the authorities' inaction, the criminal proceedings in the claimant's case had been in breach of his right to a trial within a reasonable time (from 1997 to 2004 the claimant had been accused in three criminal cases and had been placed under an obligation not to leave his place of residence). It noted that the Lithuanian courts' practice regarding the right to compensation for delayed proceedings had been established (*formuojama*) by the Supreme Court's decision of 6 February 2007 (see paragraphs 28 and 29 above). The court then reviewed the sums which the Strasbourg Court had awarded the applicants in seven length-of-proceedings cases concerning Lithuania, which ranged from EUR 900 to EUR 5,000. Having taken into account the above, it considered that a sum of EUR 5,800 would be just compensation for the non-pecuniary damage sustained by the claimant.

35. In its decision of 30 November 2009 in civil case no. 3K-3-534/2009, the Supreme Court confirmed that the State's obligation

to compensate for damage caused by excessively lengthy court proceedings, on the basis of Article 6.272 of the Civil Code, had already been confirmed by the Supreme Court. The obligation had likewise been confirmed by the Constitutional Court in its ruling of 19 August 2006. In the case at hand, however, the criminal proceedings concerned a financial – and thus complicated – crime and had lasted one year and ten months. In view of the Court's case-law, proceedings of that duration were not in breach of the reasonable-time requirement. The plaintiff's claim for compensation was therefore dismissed.

36. On 22 June 2010, in civil case no. 3K-3-284/2010, the Supreme Court held that the obligation to provide redress in respect of non-pecuniary damage for excessively lengthy criminal proceedings, as well as the method of assessing the damage, had already been established in Lithuanian law and case-law:

> "Questions related to compensation for the non-pecuniary damage caused by unreasonable delays in criminal proceedings have been addressed extensively in the case-law of the Supreme Court of Lithuania (the decisions of the Supreme Court of Lithuania of 6 February 2007 in civil case no. 3K-7-7/2007, of 15 October 2009 in civil case no. 3K-3-428/2009 and of 30 November 2009 in civil case no. 3K-3-534/2009). Therefore there is no legal uncertainty or any necessity to form any new rule or case-law in this category of cases.
>
> The obligation to redress the non-pecuniary damage, and the relevant conditions, criteria etc., in cases where such damage has been caused by excessively lengthy criminal proceedings, have been determined in detail in the above-mentioned decisions and other decisions of the Supreme Court, following the case-law developed by this court as well as the judgments of the European Court of Human Rights. Therefore, in the present case the Supreme Court shall not explain in detail or more extensively the right to redress for the damage caused by unreasonable delays in criminal proceedings."

(iv) The courts of administrative jurisdiction

37. As an illustration of the administrative courts' case-law concerning non-pecuniary damage caused by the allegedly excessive length of administrative court proceedings, the Government adduced case no. A858-940/2010 concerning a complainant whose driver's licence had been taken away by the police on suspicion of drunk driving. The administrative court of first instance upheld the police decision. However, the complainant was cleared on appeal by the Supreme Administrative Court. He was nevertheless dissatisfied with the length of the proceedings before the Supreme Administrative Court. Claiming that he had suffered non-pecuniary damage because during that period he could not drive a car, the complainant started new administrative proceedings. He relied on Article 6 § 1 of the Convention.

38. On 23 June 2010, in the above case, the Supreme Administrative Court first turned to the general legal framework governing the State's liability:

"Article 6.272 of the Civil Code sets forth the conditions governing liability for damage caused by the acts of pre-trial investigators, prosecutors, judges and the courts. It follows from the provisions of the Article that the damage sustained by the person concerned should be made good irrespective of whether the fault of a particular official is established. Article 6.271 § 1 defines the actions which give rise to such liability. Although the unreasonable length of proceedings in the administrative courts is not mentioned as giving rise to such liability, the Constitutional Court of Lithuania in its jurisprudence has emphasised the importance of providing redress. That court has noted that the necessity to provide redress for pecuniary and non-pecuniary damage caused to a person is a constitutional principle and that it does not follow from the Constitution that it is possible to establish statutory exemptions to the effect that pecuniary and/or non-pecuniary damage is not redressed, for instance, because of the fact that the damage was caused by the unlawful actions of officials or institutions of the State itself. If the law, let alone any other legal act, established a legal regulation of that kind whereby the State could fully or partially avoid the duty to justly compensate for pecuniary and/or non-pecuniary damage caused by the unlawful actions of State institution or officials, it would not only mean that the constitutional concept of compensation for damage was being disregarded, which would be incompatible with the Constitution (*inter alia* paragraph 2 of Article 30 thereof), but would also undermine the *raison d'être* of the State itself .... The Constitutional Court has also emphasised that it is not possible to establish legal regulations such that a person's right to apply to a court and to claim just compensation for damage caused by unlawful actions is denied (see the ruling of the Constitutional Court of 19 August 2006).

In his complaint and appeal the complainant asserts that he has sustained non-pecuniary damage because his right to a hearing within a reasonable time has been breached.

The chamber notes that the European Convention on Human Rights is a constituent part of the Lithuanian legal system (see Article 138 § 3 of the Lithuanian Constitution and the Constitutional Court's conclusions to that effect). Therefore, the administrative courts, in resolving cases, must apply its provisions directly and in the event of a conflict the Convention provisions shall prevail over the national laws and other legal acts.

...

Article 13 of the Convention sets out the requirement to guarantee an effective remedy at the national level also in cases where the right under Article 6 § 1 to have one's case heard within a reasonable time was breached. The European Court of Human Rights has emphasised the subsidiary nature of the Convention and the aim of allowing States themselves to put an end to human rights and freedoms violations at the national level ... When interpreting Article 13 of the Convention the Court has acknowledged that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (*Kudła v. Poland* [GC], no. 30210/96, §§ 152 and 156, ECHR 2000-XI).

The chamber also draws attention to Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies, adopted on 12 May 2004, to the effect that the member States should ascertain that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective in that they can result in a decision on the merits of the complaint and adequate redress for any violation found (point 1).

> The chamber also takes note of Recommendation Rec(2010)3 on effective remedies for excessive length of proceedings, adopted on 24 February 2010, in which, among other things, the member States are invited to take all possible measures to guarantee that State institutions effectively examine complaints about the right to a hearing within a reasonable time, including acknowledging the fact of the violation and compensating for the damage caused by it ..."

39. The Supreme Administrative Court then went on to examine the particular circumstances of the complainant's case. It considered that taking into account the serious consequences of the sanction applied to the complainant – a prohibition on driving a car that lasted for a little longer than one year – Article 6 § 1 of the Convention under its criminal head applied. The court then continued to examine the Court's criteria in length-of-proceedings cases. Firstly, it was necessary to look at the overall length of the proceedings (the court referred to *Hentrich v. France*, 22 September 1994, § 59, Series A no. 296-A). In the Lithuanian case the complainant had been issued with an administrative sanction by the police on 28 August 2007, his case had been examined by the administrative court of first instance on 12 November 2007, and by the time the Supreme Administrative Court took the final decision on 19 December 2008, one year, three months and twenty-one days had passed. Given that the complainant did not argue that the proceedings had been unduly delayed until his case reached the Supreme Administrative Court, it was appropriate to verify whether that court had acted swiftly enough. On this point the chamber noted that it was not aware of a single European Court judgment finding a similar duration [one year and one month at one level of jurisdiction] to be in breach of Article 6 § 1 of the Convention. On the contrary, in the above-mentioned *Hentrich* judgment (§ 61), a nine-month period before the first-instance court had been considered to be in compliance with the guarantee of a trial within a reasonable time. Accordingly, there were no grounds for finding a violation of the complainant's rights under Article 6 § 1 of the Convention.

2. As regards judicial independence and judges' salaries

40. As regards judicial independence, the Lithuanian Constitution provides that in administering justice, judges and courts shall be independent. When considering cases, judges must obey only the law (Article 109 §§ 2 and 3). Interference by institutions of State power and governance, Members of the Seimas and other officials, political parties, political and public organisations or citizens with the activities of a judge or the courts is prohibited and may give rise to liability as provided for by law (Article 114 § 1).

41. In its rulings of 6 December 1995 and 21 December 1999 the Constitutional Court held that any attempts to reduce the salary and other

social benefits of a judge, and any reduction in funding for the courts, were to be seen as an attack on the judges' and courts' independence.

42. The Law on the Courts (wording of 24 January 2002) provided that during a judge's term of office his or her remuneration and other social guarantees could not be lowered unless provided for by law (Article 96 § 2). The Law nevertheless stipulated that the Seimas could review the material conditions for the functioning of the courts "when the economic and financial situation of the State deteriorates significantly" (Article 11 § 3).

43. In a ruling of 23 August 2005 the Constitutional Court acknowledged the effect of the economic situation and held as follows:

> "IV. ...
>
> 2. ... in Lithuania, at the end of 1999, there was an especially grave economic situation which was determined to a large extent by the Russian economic and financial crisis and other outside factors, and which had a negative impact on the economic and financial system of Lithuania as well as other States, *inter alia* because very large sums which were necessary in order to finance education, healthcare, social welfare and other needs of society and the State, and in order to discharge other functions of the State, had not been collected in the 1999 State Budget."

44. On 28 March 2006, in its ruling concerning guarantees of judicial independence and the compliance of Article 11 § 3 and Article 96 § 2 of the Law on the Courts with the Constitution, the Constitutional Court held as follows:

> "IV. ...
>
> 4. ... The expression 'when the economic and financial situation of the State deteriorates significantly' contained in paragraph 3 (wording of 24 January 2002) of Article 11 of the Law on the Courts is to be construed as meaning a fundamental change in the economic and financial situation of the State when, owing to particular circumstances (economic crisis, natural disasters, etc.), an extremely difficult economic and financial situation occurs in the State. In such cases and for objective reasons there may be a lack of resources for exercising the State's functions and meeting public needs, including guaranteeing the material and financial needs of the courts. In such circumstances the legislator may amend the legal regulation establishing the salaries of various persons, and introduce a legal regulation on salaries which is less favourable to those persons, if it is necessary in order to ensure the vital interests of society and the State and to protect other constitutional values. However, even in such cases the legislator must maintain a balance between the rights and legitimate interests of those persons to whom the less favourable statutory regulations apply, and the interests of society and the State, that is to say, it must pay heed to the requirements of the principle of proportionality.
>
> It is also to be emphasised that in the event of a very serious economic and financial situation the budgetary financing of all State institutions should be reviewed and lowered ... If, in the event of a very serious economic situation, legal acts were to prescribe that the funding of the courts and judges' salaries alone could not be reduced, that would mean that the courts were being unreasonably distinguished from other State institutions and judges were being unreasonably distinguished from other persons exercising functions within State institutions. Making an exception of this kind for the courts (judges) does not correspond to the requirements of an open, just

and harmonious civil society, nor does it meet the requirements of justice. It is also to be emphasised that it is permissible to worsen the financial and material conditions for the functioning of the courts and to reduce the remuneration of judges only by law and only temporarily, for the period of time during which the economic and financial situation of the State is extremely difficult. Any such lowering of remuneration must not allow other branches of the State government or its officials to breach the principle of the courts' independence. Even in the event of a very serious economic and financial situation of the State, the funding of the courts and judges' salaries may not be reduced to such an extent that they cannot perform their constitutional function and duty – to administer justice – or to the extent that the courts' ability to perform that function is restricted."

45. In its decision of 13 November 2007 concerning the budgetary laws of 1998-2001, the Constitutional Court further held as follows:

"... III. ...

4. It is universally known that in 1998 and subsequently there was a particularly difficult economic and financial situation in Lithuania, which was predominantly determined by the economic and financial crisis in Russia and other external factors, and which had a very negative impact on the economic and financial systems of different States, including Lithuania, owing, *inter alia*, to the fact that an exceedingly large amount of funds which was required for the financing of education, healthcare, social welfare and other needs of society and the State, and for the execution of other State functions, was not collected in the 1999 State budget. ....

The Constitutional Court has held that the fact that at the end of 1999 the negative impact of the particularly serious economic and financial crisis continued to affect the breakdown and execution of the State budget (*atsiliepė valstybės biudžeto sudarymui ir vykdymui*) is to be seen as a situation which the legislator could not have ignored (see the Constitutional Court's ruling of 23 August 2005). This practice of the Constitutional Court applies not only to the year 1999, but also to the years 1998 and 2000/2001. The effect of the aforementioned economic and financial crisis on the breakdown and execution of the State budget was felt for a long time. In such circumstances the State and municipal budgets were liable to be reviewed and spending curtailed."

46. On 28 October 2008 the Seimas enacted the Law on Compensation for the Unpaid Part of Judges' Remuneration, laying down the arrangements for returning to the judges or their heirs the unpaid part of judges' remuneration. According to the law, the reference date for calculating the unpaid salary was 31 December 1999. The rules for calculating the salary and paying it were as follows:

Article 2. The period of time to be taken into consideration in calculating the unpaid parts of judges' remuneration

"1. For judges whose term of office has not expired by 31 October 2008, the unpaid part of the remuneration shall be returned for the last three years (from 31 October 2005 to 31 October 2008).

2. For judges whose term of office expired between 1 January 2006 and 31 October 2008 the unpaid part of remuneration shall be returned for the three years prior to the day of expiry of their term of office.

3. For judges whose term of office expired between 1 January 2003 and 31 December 2005 the unpaid part of remuneration shall be returned for the working period from 1 January 2003 until the day their term of office expired."

Article 3. Persons entitled to the unpaid part of remuneration

"According to this Law the persons entitled to the unpaid part of remuneration are those who during the period referred to in Article 2 were judges at the district or regional courts or the Court of Appeal, the Supreme Administrative Court, the Supreme Court of Lithuania or the Constitutional Court of the Republic of Lithuania, or their legal successors."

Article 4. Period for payment of the unpaid part of remuneration

"The unpaid part of remuneration shall be paid out in annual instalments by 31 December 2012, as prescribed by the Government."

3. Other relevant legal acts

47. As regards the role of legal precedent in the Lithuanian legal system, the Constitutional Court held as follows on 28 March 2006:

"3.3 ... The principle of the rule of law means continuity of case-law. In this context it must be emphasised that the system of courts of general jurisdiction at different levels established in the Constitution must function so that the conditions are created for uniform (coherent and consistent) practice of the courts of general jurisdiction, ... so that similar (analogous) cases are decided in the same way, i.e. they are decided not by creating new precedents, competing with the existing ones, but by taking account of those already established.

... It is to be emphasised that the existing precedents ..., which were created by the higher courts of general jurisdiction, are binding not only on the lower courts of general jurisdiction that adopt decisions in analogous cases, but also on the higher courts of general jurisdiction that created those precedents (*inter alia*, the Court of Appeal of Lithuania and the Supreme Court of Lithuania). A court may deviate from existing precedents and create new precedents only in specific and exceptional cases where it is unavoidably and objectively necessary, is based on constitutional grounds and is properly (clearly and rationally) argued ..."

48. The Civil Code provides that abridged three-year prescription shall be applied with respect to claims for the compensation of damage (Article 1.125 § 8). The expiration of a time-limit of prescription prior to the date of bringing an action serves as valid ground for dismissal of the claim. Nonetheless, if the court acknowledges the time-limit of prescription as expired due to important reasons, the violated right must be protected and the expired time-limit restored (Article 1.131).

C. Relevant recommendations by the Council of Europe

49. Recommendation Rec(2004)6 to member states on the improvement of domestic remedies, adopted by the Committee of Ministers on 12 May 2004, reads in its relevant parts as follows:

Appendix to Recommendation Rec(2004)6

Introduction

"1. The Ministerial Conference held in Rome on 3 and 4 November 2000 ... emphasised that it is states parties who are primarily responsible for ensuring that the rights and freedoms laid down in the Convention are observed and that they must provide the legal instruments needed to prevent violations and, where necessary, to redress them. This necessitates, in particular, the setting-up of effective domestic remedies for all violations of the Convention, in accordance with its Article 13 ...

...

2. In the recent past, the importance of having such remedies with regard to unreasonably long proceedings has been particularly emphasised, as this problem is at the origin of a great number of applications before the Court, though it is not the only problem.

3. The Court is confronted with an ever-increasing number of applications. This situation jeopardises the long-term effectiveness of the system and therefore calls for a strong reaction from contracting parties. It is precisely within this context that the availability of effective domestic remedies becomes particularly important. The improvement of available domestic remedies will most probably have quantitative and qualitative effects on the workload of the Court:

- on the one hand, the volume of applications to be examined ought to be reduced: fewer applicants would feel compelled to bring the case before the Court if the examination of their complaints before the domestic authorities was sufficiently thorough;

- on the other hand, the examination of applications by the Court will be facilitated if an examination of the merits of cases has been carried out beforehand by a domestic authority, thanks to the improvement of domestic remedies.

4. This recommendation therefore encourages member states to examine their respective legal systems in the light of the case-law of the Court and to take, if need be, the necessary and appropriate measures to ensure, through legislation or case-law, effective remedies as secured by Article 13. The examination may take place regularly or following a judgment by the Court.

...

6. Within the framework of the above, the following considerations might be taken into account.

The Convention as an integral part of the domestic legal order

7. A primary requirement for an effective remedy to exist is that the Convention rights be secured within the national legal system. In this context, it is a welcome development that the Convention has now become an integral part of the domestic legal orders of all states parties. This development has improved the availability of effective remedies. It is further assisted by the fact that courts and executive authorities increasingly respect the case-law of the Court in the application of domestic law, and are conscious of their obligation to abide by judgments of the Court in cases directly concerning their state (see Article 46 of the Convention) ...

8. The improvement of domestic remedies also requires that additional action be taken so that, when applying national law, national authorities may take into account

the requirements of the Convention and particularly those resulting from judgments of the Court concerning their state ...

...

Remedies in the case of an arguable claim of unreasonable length of proceedings

20. The question of effective remedies is particularly topical in cases involving allegations of unreasonable length of proceedings, which account for a large number of applications to the Court. Thus the Court has emphasised in the *Kudla v. Poland* judgment of 26 October 2000 that it is important to make sure there is an effective remedy in such cases, as required by Article 13 of the Convention. Following the impetus given by the Court in this judgment, several solutions have been put forward by member states in order to provide effective remedies allowing violations to be found and adequate redress to be provided in this field.

Reasonable length of proceedings

21. In their national law, many member states provide, by various means (maximum lengths, possibility of asking for proceedings to be speeded up) that proceedings remain of reasonable length. In certain member states, a maximum length is specified for each stage in criminal, civil and administrative proceedings. The integration of the Convention into the domestic legal systems of member states, particularly the requirement of trial within a reasonable time, as provided for in Article 6, has reinforced and completed these national law requirements.

Preventing delays, accelerating proceedings

22. If time limits in judicial proceedings – particularly in criminal proceedings – are not respected or if the length of proceedings is considered unreasonable, the national law of many member states provides that the person concerned may file a request to accelerate the procedure. If this request is accepted, it may result in a decision fixing a time limit within which the court – or the prosecutor, depending on the case – has to take specific procedural measures, such as closing the investigation or setting a date for the trial. In some member states, courts may decide that the procedure has to be finished before a certain date. Where a general remedy exists before a Constitutional Court, the complaint may be submitted**,** under certain circumstances, even before the exhaustion of other domestic remedies.

Different forms of redress

23. In most member states, there are procedures providing for redress for unreasonable delays in proceedings, whether ongoing or concluded. A form of redress which is commonly used, especially in cases already concluded, is that of financial compensation. In certain cases, the failure by the responsible authority to issue a decision within the specified time limit means that the application shall be deemed to have been granted. Where the criminal proceedings have exceeded a reasonable time, this may result in a more lenient sentence being imposed."

50. Recommendation CM/Rec(2010)3 to the member states on effective remedies for excessive length of proceedings, adopted by the Committee of Ministers on 24 February 2010, reads in its relevant parts as follows:

"The Committee of Ministers, ...

Recalling Recommendation Rec(2004)6 of the Committee of Ministers to member states on the improvement of domestic remedies and intending to build upon this by

giving practical guidance to member states in the specific context of excessive length of proceedings;

...

Emphasising the High Contracting Parties' obligations under the Convention to secure to everyone within their jurisdiction the rights and freedoms protected thereby, including the right to trial within a reasonable time contained in Article 6.1 and that to an effective remedy contained in Article 13;

...

Reiterating that excessive delays in the administration of justice constitute a grave danger, in particular for respect for the rule of law and access to justice;

Concerned that excessive length of proceedings, often caused by systemic problems, is by far the most common issue raised in applications to the Court and that it thereby represents an immediate threat to the effectiveness of the Court and hence the human rights protection system based upon the Convention;

...

Recommends that the governments of the member states:

1. take all necessary steps to ensure that all stages of domestic proceedings, irrespective of their domestic characterisation, in which there may be determination of civil rights and obligations or of any criminal charge, are determined within a reasonable time;

...

4. ensure that there are means to expedite proceedings that risk becoming excessively lengthy in order to prevent them from becoming so;

5. take all necessary steps to ensure that effective remedies before national authorities exist for all arguable claims of violation of the right to trial within a reasonable time;

6. ascertain that such remedies exist in respect of all stages of proceedings in which there may be determination of civil rights and obligations or of any criminal charge;

7. to this end, where proceedings have become excessively lengthy, ensure that the violation is acknowledged either expressly or in substance and that:

a. the proceedings are expedited, where possible; or *b.* redress is afforded to the victims for any disadvantage they have suffered; or, preferably, *c.* allowance is made for a combination of the two measures;

8. ensure that requests for expediting proceedings or affording redress will be dealt with rapidly by the competent authority and that they represent an effective, adequate and accessible remedy;

9. ensure that amounts of compensation that may be awarded are reasonable and compatible with the case law of the Court and recognise, in this context, a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage;

10. consider providing for specific forms of non-monetary redress, such as reduction of sanctions or discontinuance of proceedings, as appropriate, in criminal or administrative proceedings that have been excessively lengthy;

11. where appropriate, provide for the retroactivity of new measures taken to address the problem of excessive length of proceedings, so that applications pending before the Court may be resolved at national level;

..."

51. Recommendation No. R (84) 12 of the Committee of Ministers to member states on the independence, efficiency and role of judges, adopted on 13 October 1994, provides that proper working conditions should be provided to judges. The states are to ensure that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities. The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.

The report by the Consultative Council of European Judges, adopted during its 12th plenary meeting on 7-9 November 2011, reads in its relevant part as follows:

C. Cuts in the remuneration of judges and budgetary cuts

"15. The independence of judges also implies economic independence laid down by law. Recommendation Rec(2010)12 states that judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. The payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working, should also be guaranteed. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

16. The same proposal appears in CCJE's Opinion No. 1 and in the European Charter on the Statute for judges.

17. Several countries facing economic crisis have opted for a cut in the salaries of public officers, including judges. Regardless of the rationale behind such measures, judicial remuneration cannot be reduced in a greater proportion than that of public officers, on pain of violating the principle of equality established as a general principle of law.

18. In any case, even at times of economic crisis, the legislative and executive powers of various member states should keep in mind that a serious reduction of judges' salaries is a threat to judges' independence and to the proper administration of justice, and may jeopardise objectively and subjectively the judges' work. Such measures should always be limited in time."

COMPLAINTS

52. The applicants complained under Articles 6 § 1 and 13 of the Convention that the court proceedings for the unpaid part of the judges' salaries had been excessively long and that they had no effective domestic remedy for that complaint.

53. All the applicants except for the sixth one also complained that when examining their cases concerning the unpaid part of judges' salaries the Lithuanian courts had been partial and had erred in interpreting the domestic law and facts, in breach of Article 6 § 1 of the Convention.

54. Invoking Article 1 of Protocol No. 1 to the Convention, the second, third and fifth applicants also complained about the fact that under the Law on Compensation for the Unpaid Part of Judges' Remuneration the State had no obligation to repay the unpaid part of the salaries in full, and had limited to three years the period in respect of which compensation could be paid. They maintained that they had thus been deprived of their property.

THE LAW

A. Preliminary point

55. As the six applications are based on similar facts and as they contain, for the most part, identical complaints, the Court considers it appropriate to join them under Rule 42 § 1 of its Rules.

B. The alleged excessive length of court proceedings and absence of effective domestic remedies for that complaint

56. The applicants complained that the length of the court proceedings concerning the reduction in judges' salaries had been in breach of Article 6 § 1 of the Convention, which reads as follows:

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

57. In substance, the applicants also complained that the remedies available for excessively lengthy legal proceedings in Lithuania were ineffective. They relied on Article 13 of the Convention, which 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

(a) The Government

(i) As to the existence of effective domestic remedies and the applicants' failure to exhaust them

58. The Government first submitted that the applicants had had an effective domestic remedy, which they had not used, in respect of their claim about the breach of their right to a hearing within a reasonable time. The Government's joint arguments as to Articles 6 § 1 and 13 of the Convention were as follows.

59. The Government first noted that the constitutional principles as regards redress for the damage caused by the unlawful actions of State authorities and individuals' right to apply to a court seeking compensation had been emphasised on a number of occasions by the Constitutional Court. Moreover, according to the case-law of the domestic courts, excessively lengthy proceedings obviously constituted an unlawful action by State officials. The damage caused by such lengthy proceedings had to be compensated for under Article 6.272 of the Civil Code, taken together with Article 30 of the Constitution and Article 6 § 1 of the Convention, as an integral part of the domestic law as formulated *expressis verbis* in the case-law of the Lithuanian courts.

60. The Government further observed that the possibility to claim damages for the unreasonable length of proceedings had been and continued to be developed in the case-law of both the general and the administrative courts. Whilst acknowledging that in cases lodged with the Court prior to 2007 the latter had repeatedly expressed doubts as to the existence of effective domestic case-law and thus of a remedy regarding complaints related to the "reasonable time" requirement of Article 6 § 1 of the Convention, the Government asserted that, at least as of the date of the Supreme Court's decision of 6 February 2007, in which that court had emphasised that Article 6.272 of the Civil Code made provision for civil liability in respect of the unjustified length of court proceedings in the same way as Article 6 § 1 of the Convention, the domestic courts' practice could be considered as well established (see paragraph 28 *in fine* above). It was equally important to note that, as illustrated by the Supreme Court's decision of 4 February 2009, in assessing the reasonableness of the length of proceedings and the amount of compensation to be awarded, the domestic courts applied the criteria formulated by the Court, such as the complexity of the case and the conduct of the claimant and that of the authorities (see paragraphs 30-33 above). The Government observed that the domestic courts also assessed the entire course of the proceedings as a whole, and considered that the courts must work in a rational and effective manner when dealing with cases. It was also noteworthy that in its decision of

22 June 2010 the Supreme Court had stated *expressis verbis* that the issue of non-pecuniary damage caused by unreasonably lengthy proceedings had been extensively addressed in its case-law and that therefore in such cases there was no legal uncertainty and no need to form any new rules or case-law (see paragraph 36 above). Lastly, even though there were no issues concerning excessively lengthy administrative court proceedings, Article 6.272 of the Civil Code, as an effective remedy, applied not only to proceedings in the courts of general jurisdiction but also to administrative court proceedings, as exemplified by the Supreme Administrative Court's decision of 23 June 2010 (see paragraphs 37-39 above).

61. In the Government's view, it was also paramount to note the special role of the Supreme Court, one of whose functions was to ensure uniform practice by the general courts. Accordingly, the interpretation of domestic law carried out by the Supreme Court established a precedent binding the lower courts. This principle had also been noted by the Constitutional Court (see paragraph 47 above, decision of 28 March 2006). Therefore the applicants – judges of the Lithuanian courts and an advocate – could not claim to be unaware of the above-mentioned interpretation by the Supreme Court of the domestic law regarding the right to a hearing within a reasonable time and compensation for a breach of that right. Moreover, the present applications had been submitted to the Court between 2009 and 2011, when the domestic case-law constituting an effective remedy was not only well established, but also widely applied by the domestic courts.

62. The Government further observed that the systematic development of the effective domestic remedy in Lithuania had been reflected in the case-law of the Court itself. In *Giedrikas v. Lithuania* ((*dec*.), no. 51392/07, 14 December 2010)) the Court had noted that the applicant had been awarded compensation for damage sustained because of lengthy court proceedings. It therefore considered that the regularisation arrangements proposed to the applicant by the Lithuanian authorities constituted an adequate and sufficient remedy for his complaint under Article 6 § 1 of the Convention. In *Beržinis* v. *Lithuania* ((dec.), no. 20513/08, 13 December 2011) and in *Jonika v. Lithuania* ((dec.), no. 25991/05, 20 November 2012), the Court had found that the applicants had lost their "victim" status within the meaning of Article 34 of the Convention in respect of the alleged violation of Article 6 § 1 of the Convention because they had been awarded compensation by the domestic courts. Accordingly, in those two cases the principle of subsidiarity did not allow the Court to rule on the issues already resolved within the domestic legal system.

63. In addition to the well-established domestic case-law and clearly formed legal precedents on the matter at issue, some relevant legislative changes had been tabled before the Seimas. In this regard the Government pointed out that a draft amendment had been presented to the Seimas and was currently under consideration. That draft proposed adding a paragraph 5

to Article 6.272 of the Civil Code and establishing *expressis verbis* the right to claim redress for the damage caused by unreasonably lengthy proceedings, while also setting forth the principles governing assessment of the compensation (see paragraph 23 above). Besides the compensatory mechanism with regard to excessive procedural delays, the Government were constantly making proposals for legislative amendments to prevent such delays and to make proceedings shorter (see paragraph 24 above). Furthermore, the domestic courts did not limit themselves to merely awarding pecuniary compensation for damage caused by unreasonably lengthy proceedings – a milder sanction could be imposed where excessive delays occurred in criminal proceedings (see paragraphs 26 and 27 above).

64. Lastly, the Government mentioned that the subsidiary nature of the Convention mechanism had been emphasised not only in the case-law of the Court itself, but also at the ministerial conferences of Council of Europe member States held in Izmir, Turkey, and in Brighton, the United Kingdom. Consequently, the Court could and should intervene only where the domestic courts had failed in that task. As to the instant case, the applicants had had and continued to have the possibility to lodge their complaints regarding redress for the allegedly excessive length of administrative proceedings before the Lithuanian courts, a remedy of which they should have availed themselves before lodging applications with the Court.

(ii) As to the merits of the applicants' complaint about a breach of their right to a hearing within a reasonable time

65. Should the Court find the applications admissible, the Government maintained that the overall duration of the court proceedings had been entirely justified. Admittedly, they had lasted a relatively long time, but that duration had resulted from the exceptional nature, complexity and scale of the matters addressed. The applicants in the present case had been complainants in three separate cases involving a number of other judges. The extraordinary situation whereby a great number of cases had been brought in which judges of various courts were claimants required an appropriate solution, especially in order to ensure the impartial and independent examination of those cases.

66. To further complicate matters, the cases concerning the temporary reduction of judges' salaries had raised the issue of compliance of the relevant legal provisions with the Constitution. Therefore the domestic courts, on their own initiative or at the request of the claimants, including the applicants, had referred the issue to the Constitutional Court, adjourning the court proceedings in the meantime. In the course of the proceedings initiated by the applicants the Constitutional Court had had occasion to set forth the entire constitutional doctrine on the matter. Following the Constitutional Court's ruling of 28 March 2006, in which it had held that in extremely difficult economic and financial circumstances the legislator

could lower judges' salaries, the domestic courts had continued to develop the case-law on the matter, thus further delaying the resolution of the applicants' case (see paragraphs 12 and 13 above). The Government also submitted that throughout the whole process negotiations had been taking place between the community of judges and the State. As a result, on 28 October 2008 the Law on Compensation for the Unpaid Part of Judges' Remuneration had been enacted and the majority of the judges affected by the savings measures had received the unpaid part of their remuneration.

(b) The applicants

67. The applicants argued that the court proceedings concerning the unpaid part of judges' salaries had been protracted without a valid reason and that they had had no effective remedy for that complaint. Their submissions may be summarised as follows.

68. In his observations of 4 January 2013 the first applicant maintained that to date there had been no judgments by the domestic courts in which a person had been awarded compensation for damage caused by the State's inability to examine the case within the shortest possible and reasonable time. In his view, such claims would be not admitted by the courts for examination or, even if they were admitted, would be dismissed as unfounded.

69. The second applicant asserted that when he had lodged his application with the Court, on 23 February 2010, no specific legal norm guaranteeing an effective remedy for excessively long court proceedings had existed in Lithuanian law. He deemed that Article 6.272 of the Civil Code could hardly be interpreted as a domestic remedy. On this point he relied on the legal doctrine (he referred to a monograph by L. Štarienė "The right to a fair trial according to the European Convention on Human Rights" (Vilnius, 2010, Mykolas Romeris University)), where it had been argued that no specific legal norm affording an effective remedy of legal defence during excessively lengthy proceedings was enshrined in Lithuanian law. The second applicant observed that all the Government's arguments about the applicants' failure to rely on Article 6.272 of the Civil Code and the practice of the Constitutional Court and the courts of general jurisdiction as a remedy in prior Lithuanian cases had so far been rejected by the Court. The second applicant thus considered that the Government had unreasonably blamed him, as a judge, for not having known about his options for defending his Article 6 § 1 rights. He also submitted that because of poor health he had not been working since 2006 and therefore could not objectively follow legislative and case-law trends and changes.

70. For the second applicant, even if Article 6.272 was to be considered as an appropriate legislative provision, it was relevant only in respect of excessively lengthy proceedings in criminal or administrative cases. He maintained that there were no examples of domestic case-law concerning

delayed civil proceedings. At the same time, he noted that his case concerned violations of the Convention occurring in the course of administrative and not civil proceedings. Lastly, the second applicant noted that the examples of the Court's practice relied on by the Government could not be applied in his case. The decision in *Giedrikas* (cited above) concerned the length of criminal proceedings and the decision in *Beržinis* (cited above) had been adopted on 13 December 2011, that is to say, after the second applicant had lodged his application with the Court.

71. The third applicant first noted that Article 6.272 of the Civil Code did not explicitly provide for a right to compensation for excessively lengthy court proceedings. Accordingly, it was only on 6 February 2007 that the Supreme Court, in civil case no. 3K-7-7/2007 concerning damage caused by protracted criminal proceedings, had interpreted that norm as being analogous to Article 6 § 1 of the Convention. That being so, she maintained that she could not have relied on Article 6.272 because her late husband had litigated for the unpaid part of his salary, an ostensibly civil claim which had nevertheless been examined within the framework of administrative proceedings, and thus no analogy as to available remedies could be applied. Accordingly, before she had lodged her application with the Court, the domestic courts had not had any case-law with regard to claims for compensation for damage caused by excessively lengthy administrative or civil proceedings, based either on the provisions of the Civil Code or on Article 6 § 1 of the Convention.

72. Lastly, the third applicant submitted that, contrary to the Government's assertion (see paragraph 63 above), the very fact that an amendment to the Civil Code had been proposed in 2011, proposing to add a fifth paragraph to Article 6.272, showed that the law did not regulate clearly enough the right of individuals to apply to the courts for reimbursement of the damage caused by excessively lengthy court proceedings.

73. The fourth and sixth applicants did not submit arguments about the availability of domestic remedies with regard to their complaint about delays in the court proceedings concerning the unpaid part of their salaries.

74. The fifth applicant conceded that there was one administrative-law case in which the court had acknowledged a person's right to claim damages for excessively lengthy administrative court proceedings, namely case no. A858-940/2010 (see paragraphs 37-39 above). However, the decision in that case had been adopted on 23 June 2010, whereas the fifth applicant had lodged his application with the Court on 9 May 2010, that is, before that date. He also argued that the gap in the law stemming from the inexistence of a specific domestic legal norm allowing individuals to claim compensation for unduly long court proceedings had been confirmed by the legal doctrine (the above-mentioned publication by L. Štarienė).

2. The Court's assessment

(a) General principles established under the Court's case-law

75. The Court reiterates that the purpose of Article 35 § 1, which sets out the rule on exhaustion of domestic remedies, is to afford Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The rule in Article 35 § 1 is based on the assumption, reflected in Article 13 of the Convention - with which it has a close affinity - that there is an effective remedy available in respect of the alleged breach in the domestic system. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights. Thus the 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, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V, and the case-law cited therein).

76. However, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV; and *Dalia v. France*, 19 February 1998, § 38, *Reports of Judgments and Decisions* 1998-I). In addition, according to the "generally recognised principles of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (see *Selmouni*, cited above, § 75). However, the Court points out that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 37, Series A no. 40; and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

(b) Application of these principles to the circumstances of the instant case

77. The Government argued that the applicants had failed to exhaust the available domestic remedies because they had not lodged claims for damages with the Lithuanian courts on the basis of Article 6.272 of the Civil Code. On this point the Court observes that, although to date it has examined this argument by the Government in a number of Lithuanian cases, it has never made a general conclusion to the effect that an action for damages under that legal provision can be seen as an effective remedy in respect of length-of-proceedings complaints. The reason it did not reach such a conclusion was in each case the lack of evidence confirming the existence of sufficiently extensive, clear and unequivocal practice on the part of the Lithuanian courts to that effect at the time those judgments of the Court were adopted (see *Šulcas v. Lithuania*, no. 35624/04, §§ 60–62, 5 January 2010, and *Novikas v. Lithuania*, no. 45756/05, § 16, 20 April 2010).

78. More recently the Court has changed its position to some extent. In *Giedrikas* (cited above) it found, "having regard to the particular circumstances of the case" that the applicant, who had received LTL 8,000 in compensation for non-pecuniary damage, could no longer be considered a "victim" within the meaning of Article 34 of the Convention. In *Beržinis* (cited above), in the light of the material in the file and having regard to the particular circumstances of the case (the applicant had contributed substantially to the delay in the proceedings), the Court held that the sum of EUR 290 awarded to the applicant could be considered sufficient and therefore appropriate redress for the violation found. Lastly, in *Jonika* (cited above), the Court held that the sum awarded to the applicant (EUR 2,900) "almost correspond[ed] to the sum that the Court would be likely to have granted in accordance with its practice". It appears that these three cases were rather specific and were determined on their particular facts. The Court therefore has to examine whether in the light of the domestic courts' case-law as submitted by the Government in the present case it may find, once and for all, that the practice of the Lithuanian courts offers a sufficiently clear remedy for length-of-proceedings complaints, such that that remedy should always be used before an applicant lodges analogous Article 6 § 1 complaint with the Court.

79. The Court first observes that since the Supreme Court decision of 6 February 2007 (see paragraph 28 above), which the Government considered to be the breakthrough point in Lithuanian case-law, Article 6 § 1 of the Convention, as interpreted by the European Court of Human Rights, has been applied by the Lithuanian courts of all jurisdictions in the context of length-of-proceedings complaints. Thus, the courts of criminal jurisdiction have found that provision to be relevant when imposing sentences and, in line with point 23 of Council of Ministers'

Recommendation Rec(2004), have shown more leniency to the persons convicted (see paragraphs 26 and 27 above).

80. The Court next turns to the Lithuanian courts of civil jurisdiction and to the Supreme Court's decision of 6 February 2007 in particular. In that case the Supreme Court acknowledged that when State liability for certain infringements was not regulated by national law, the court could establish State liability on the basis of the international treaties which constituted an integral part of the national legal system, in this case Article 6 § 1 of the Convention. The Supreme Court also rejected as unsubstantiated the argument that under Article 6.272 of the Civil Code the State was liable only where the State officials had acted unlawfully. It held that the lawfulness of a certain action under national law did not automatically mean that it was lawful within the meaning of the Convention (see paragraph 28 above). The Lithuanian court then went on to examine the claimant's case and, on the basis of the Court's case-law, found that there had been a violation of her right to a trial within a reasonable time and awarded her compensation for non-pecuniary damage in the sum of LTL 15,000 for six years at one level of jurisdiction, as well as compensation for pecuniary damage (see paragraph 29 above). The Court considers that this decision closely follows the Court's principles and guidelines and that the sum awarded in compensation cannot be considered derisory. The same holds true as regards the Supreme Court's decision of 15 October 2009, where an award of EUR 5,800 was made (see paragraph 34 above).

81. Assessing further, the Court has regard to the Supreme Court's decision of 4 February 2009, in which the latter found it established that there had been unjustified inaction on the part of the pre-trial investigation officers and, on the basis of the Court's judgment it found to be most similar to the case of the claimant, awarded compensation for non-pecuniary damage (see paragraph 32 above). In the same case the Supreme Court also found unjustified delays in the civil proceedings before the first-instance court. Even though both the claimants and the courts had been responsible for those delays, the Supreme Court considered that it was the court, and not the parties, which had an obligation to lead the process, and hence the larger share of the responsibility for the delay in the civil proceedings lay with the State (see paragraph 33 above). Accordingly, in so far as the second and third applicants appear to have alleged an absence of domestic case-law concerning delayed civil court proceedings (see paragraphs 69 and 70 above), their arguments must be dismissed.

82. Lastly, in the decisions of 30 November 2009 and 22 June 2010 the Supreme Court held that the obligation to redress non-pecuniary damage for excessively lengthy criminal proceedings as well as the method of assessing the damage were already established in Lithuanian legislation and case-law (see paragraphs 35 and 36 above).

83. The Court further notes the existence of domestic case-law as regards the State's liability for unduly long administrative court proceedings. The Supreme Administrative Court has emphasised that the administrative courts, in hearing cases, must apply the Convention provisions, including Article 6 § 1, directly and that in the event of a conflict the Convention provisions shall prevail over the national laws and other legal acts. On the basis of Committee of Ministers' Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings, it also stressed the member States' duty to take all possible measures and to guarantee that State institutions effectively examined complaints about the right to a hearing within a reasonable time, including acknowledging the fact of the violation and affording compensation for damage caused by it (see paragraphs 37 and 38 above).

84. On the basis of the above-mentioned case-law the Court considers that the Lithuanian courts have applied the Convention and its case-law criteria willingly and in good faith when determining compensation in respect of length-of-proceedings cases. Moreover, as is evident from the analysis of the decisions in question, in assessing the reasonableness of the length of criminal, civil or administrative proceedings the Lithuanian courts examined the facts in accordance with the criteria established by the Court's case-law, namely the complexity of the case, the applicants' conduct and that of the investigating authorities or the courts, which were examined in detail, and the importance of what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII; also see points 7 and 8 of the Committee of Ministers Recommendation Rec(2004)6, paragraph 49 above). Nothing in the domestic courts' decisions could lead the Court to adopt a different conclusion in the above-mentioned cases. On this point the Court also notes the weight of legal precedent in Lithuania (see paragraph 47 above). Accordingly, it is ready to accept that the encouraging case-law of the Supreme Court and the Supreme Administrative Court, examined above, will be closely followed by the Lithuanian courts of other jurisdictions.

85. The Court further observes that, in addition to the positive practice of the Lithuanian courts in interpreting Article 6.272 of the Civil Code in the light of the requirements of Article 6 § 1 of the Convention, in 2011 the Government proposed supplementing the former provision with a norm which explicitly establishes a right to compensation for excessively lengthy court proceedings (see paragraph 23 above). On a similarly positive note it observes that the Lithuanian authorities have not limited themselves to compensatory remedies alone – legislative amendments aimed at expediting civil proceedings have also been introduced (see paragraph 24 above). On this point the Court reiterates that a combination of two types of remedies, one designed to expedite the proceedings and the other to afford

compensation, seems to be the best solution for the redress of breaches of the "reasonable time" requirement (see *Grzinčič v. Slovenia*, no. 26867/02, § 96, 3 May 2007).

86. In view of the foregoing, and in particular basing its conclusion on the assessment of the Lithuanian courts' case-law, the Court is satisfied that the uncertainty as regards the effectiveness of Article 6.272 of the Civil Code as a domestic remedy in cases of excessively long proceedings was remedied by judicial interpretation on 6 February 2007, when the Supreme Court affirmed that the aforementioned provision should be applicable when assessing the damage caused by a breach of Article 6 § 1 of the Convention (see paragraph 28 *in fine* above). The Court has held that in cases like the present one, where the remedy in question was the result of interpretation by the courts, it normally takes six months for such a development of the case-law to acquire a sufficient degree of legal certainty before the public may be considered to be effectively aware of the domestic decision which had established the remedy and the persons concerned be enabled and obliged to use it (see *Depauw v. Belgium* (dec.), no. 2115/04, ECHR 2007-V; *Provide S.r.l. v. Italy*, no. 62155/00, § 18, 5 July 2007; *Majski v. Croatia (no. 2)*, no. 16924/08, § 70, 19 July 2011). As concerns the present six applications, it must be noted that they were lodged with the Court between 2009 and 2011, that is to say more than six months after 6 August 2007, the day as of which effective domestic remedies capable of providing adequate redress for violations of the right to a hearing without undue delay exist.

87. It follows that the applicants' complaint under Article 6 concerning the excessive length of the court proceedings seeking payment of the unpaid part of judges' salaries must be declared inadmissible for failure to exhaust domestic remedies in accordance with Article 35 § 1 of the Convention. As to the applicants' complaint under Article 13 that the remedies at their disposal for excessively lengthy proceedings were ineffective, it should be declared manifestly ill-founded under Article 35 § 3 of the Convention. This part of the application should therefore be rejected under Article 35 § 4 of the Convention.

(c) Exhaustion requirement in respect of applications lodged with the Court after the Lithuanian Supreme Court's decision of 6 February 2007

88. At this point the Court also finds it appropriate to address, for the purposes of the exhaustion requirement, the issue of other applications against Lithuania lodged with the Court after 6 August 2007, the date as of which it has established the existence of a foreseeable effective remedy in respect of length-of-proceedings complaints in Lithuania. In the context of legislative measures, the Court has already decided on several occasions, when Contracting Parties have adopted such measures in order to comply with the "reasonable time" requirement under Article 6 § 1 of the

Convention, that applicants should exhaust such remedies notwithstanding the fact that their applications were lodged with the Court prior to the enactment of the legislation in question. Thus, the Court has held that applicants in cases against Italy concerning the length of proceedings should have recourse to the remedy introduced by the "Pinto Act" (see, for example, *Giacometti and Others v. Italy* (dec.), no. 34939/97, ECHR 2001-XII). Similar decisions were taken in respect of cases brought against Croatia, Slovakia and Poland, following legislative changes (see *Nogolica v. Croatia* (dec.), no. 77784/01, ECHR 2002-VIII; *Andrášik and Others v. Slovakia* (dec.), nos. 57984/00, 60226/00, 60237/00, 60242/00, 60679/00, 60680/00 and 68563/01, ECHR 2002-IX; and *Michalak v. Poland* (dec.), no. 24549/03, 1 March 2005). The Court considers that the position as regards the present applications is similar in substance to the above-mentioned cases, with the result that the applicants in other cases concerning length of civil, criminal or administrative court proceedings in Lithuania and lodged with the Court after 6 August 2007 should make use of the remedy under Article 6.272 of the Civil Code before the Lithuanian courts (see, *mutatis mutandis*, *Grzinčič*, cited above, §§ 99-106). To this end the Court also notes that Lithuanian law allows the courts to restore the time-limit of prescription if it has expired due to important reasons, so that the violated right could be protected (see paragraph 48 above).

C. The alleged lack of fairness of court proceedings regarding the unpaid part of the judges' salaries

89. All the applicants except for the sixth one also complained that when examining their cases concerning the unpaid part of judges' salaries the Lithuanian courts had been partial and had erred in interpreting the domestic law and facts, in breach of Article 6 § 1 of the Convention. Having examined the documents submitted by the parties, however, the Court does not find that the proceedings were unfair or that the applicants' rights under the above provision were infringed. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible under Article 35 § 4 of the Convention.

D. The alleged deprivation of the applicants' property

90. The second, third, fifth and sixth applicants were also dissatisfied with the fact that under the Law on Compensation for the Unpaid Part of Judges' Remuneration the State had no obligation to repay the unpaid part of the salaries in full, and had limited to three years the period in respect of which compensation could be paid. They maintained that they had thus been deprived of their property, in breach of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

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

91. On the basis of its settled case-law the Court reiterates that the principles which apply generally in cases under Article 1 of Protocol No. 1 are equally relevant when it comes to salaries and welfare benefits (see, *mutatis mutandis*, *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011). The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful and that it should pursue a legitimate aim "in the public interest". Any interference must also be reasonably proportionate to the aim sought to be realised. In other words, a "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see *Khoniakina v. Georgia*, no. 17767/08, § 70, 19 June 2012). The Court has also held that Article 1 of Protocol No. 1 to the Convention cannot be interpreted as giving an individual a right to a salary of a particular amount (see *Panfile v. Romania* (dec.), 13902/11, § 18, 20 March 2012).

92. The Court observes that the salaries of the second, fifth and sixth applicants', as well as the salary of the third applicant's husband, were reduced on the basis of Government Resolution no. 1494 of 1999. The adoption of the measure was justified by reference to the existence of the "particularly difficult economic and financial situation in Lithuania" in 1999, as noted by the Government and later confirmed by the Constitutional Court in its decisions of 23 August 2005 and 13 November 2007 (see paragraphs 43 and 44 above). In the view of the Constitutional Court, the reduction of public officials' salaries was required in order to finance education, healthcare, social welfare and other needs of society. On this last point the Court has already held that the notion of "public interest" is necessarily extensive and that the Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 91, ECHR 2005-VI; *Arras and Others v. Italy*, no. 17972/07, § 78, 14 February 2012). On the basis of the materials in its possession, the Court sees nothing that would

allow it to conclude that in deciding to lower civil servants' salaries the legislator did not have the public interest in mind.

93. In examining whether the appropriate balance was struck between the interests of the applicants and those of others, the Court takes cognisance of the fact that the austerity measures were taken against the background of an actual, unexpected budgetary crisis in Lithuania. In this context the Court finds it decisive that the reduction of public sector salaries did not single out the judiciary. On the contrary, the reduction of judges' salaries formed part of a much wider programme of austerity measures affecting salaries in the entire public sector (see *Bakradze v. Georgia* (dec.), no. 1700/08, § 20, 8 January 2013). The Court also recalls the Lithuanian Constitutional Court's conclusion to the effect that, notwithstanding the principle of judges' independence, it would be unfair for judges to be treated as an exception and to be exempted from austerity measures (see paragraph 44 above). That being so, the Court would observe that the fact that other officials were also concerned by the austerity measures is not decisive, given that the officials in public administration are part of the executive branch, and their remuneration does not affect the independence of the judicial branch, the latter being quintessential for the protection of Article 6 rights under the Convention (see paragraph 51 above). However, in the present case the reduction of judges' salaries concerned an increase granted two years earlier (see paragraphs 3 and 4 above) and thus did not affect the level of salary that had been granted to five of the applicants and the third applicant's husband at the time when they had been appointed to the bench.

94. Developing this assessment, the Court lends particular weight to the statement by the Ministry of Finance according to which in 1999 the average salary in the public sector was LTL 1,171, whereas the average salary of a judge at that time was LTL 7,784 (see paragraph 18 above). The Court therefore does not consider that the reduction of judges' salaries by applying a factor 1.75 instead of 2.5 was a threat to their livelihood and hence disproportionate (see, most recently, *Koufaki and Adedy v. Greece* (dec.), nos. 57665/12 and 57657/12, §§ 44 and 46, 7 May 2013). Finally, whilst observing that the salary reduction rules did not, regrettably, contain a specific provision concerning a limitation in time of the austerity measures, the Court notes that at the time the instant applications were submitted to it, the Lithuanian courts and legislation had recognised the measures as having been temporary and applied only for the duration of the economic and financial crisis, until the Lithuanian State's economic situation improved in 2003 (see paragraphs 12 and 46 above). Eventually the judges were compensated for their loss of salary, either under the Law on Compensation for the Unpaid Part of Judges' Remuneration or, as in the case of the applicants in the instant case, by a court decision according to that law (see paragraphs 19 and 46 above). Accordingly, and also noting the

compensation the six applicants received in the wake of the administrative litigation, the Court does not consider, contrary to the applicants' assertion, that the temporary reduction of judges' salaries made the applicants bear an excessive burden (see, *mutatis mutandis*, *Khoniakina*, cited above, § 78), or as such had an impact on their independence or ability to perform their functions as judges with the dignity required by their profession (on this point see the Constitutional Court's statement in paragraph 44 *in fine* above). Having regard to the reasons advanced by the Lithuanian Government in adopting the austerity measures and to the arguments presented by the Court of Appeal (see paragraph 12 above) and the Constitutional Court (see paragraphs 43-45 above), the Court considers that the Lithuanian State did not overstep its margin of appreciation in adopting and upholding the temporary reduction of judges' salaries (see *Koufaki and Adedy*, cited above, §§ 20-49). It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 and therefore inadmissible under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Declares the applications inadmissible.

Lawrence Early
Acting Registrar

Guido Raimondi
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence
1.	66365/09	12/12/2009	**Rimantas SAVICKAS** 19/02/1960 Panevėžys
2.	12845/10	23/02/2010	**Vylius KRYŽEVIČIUS** 11/06/1941 Panevėžys
3.	29809/10	21/05/2010	**Daiva VAŠKELIENĖ** 28/02/1963 Vilnius
4.	29813/10	18/05/2010	**Vilmantas Antanas GAIDELIS** 24/05/1945 Vilnius
5.	30623/10	26/05/2010	**Algimantas PIVORIŪNAS** 06/05/1939 Vilnius
6.	28367/11	17/04/2011	**Petras Rimantas BRAZYS** 11/05/1944 Šiauliai