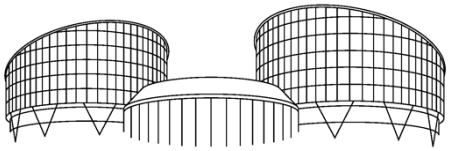

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ČIVINSKAITĖ v. LITHUANIA

(Application no. 21218/12)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Disciplinary proceedings against a prosecutor for allegedly improperly carrying out her duties in a high-profile criminal case • Applicant demoted to a lower position in the prosecution service • Art 6 applicable to the disciplinary proceedings under its civil head • Art 6 § 2 inapplicable • Independence and impartiality of the administrative courts examining the disciplinary penalty not compromised by the findings of the parliamentary inquiry, the public statements of high-ranking politicians, and the extensive media coverage • Domestic courts' omission to explicitly address applicant's argument about the unfairness of the proceedings due to alleged political and media interference not rendering the proceedings, taken as a whole, unfair

STRASBOURG

15 September 2020

FINAL

15/12/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Čivinskaitė v. Lithuania,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli,
Saadet Yüksel, *judges,*
Peeter Roosma, *ad hoc judge,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Ms Rita Čivinskaitė ("the applicant"), on 2 April 2012;

the decision to give notice to the Lithuanian Government ("the Government") of the complaints under Article 6 §§ 1 and 2 of the Convention concerning the fairness of disciplinary proceedings against the applicant and to declare inadmissible the remainder of the application;

the withdrawal of Egidijus Kūris, the judge elected in respect of Lithuania, from sitting in the case (Rule 28 § 3 of the Rules of Court) and the decision of the President of the Section to appoint Peeter Roosma to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a));

the parties' observations;

Having deliberated in private on 30 June 2020,

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

INTRODUCTION

1. The case concerns disciplinary proceedings against the applicant for allegedly improperly carrying out her duties as a senior prosecutor in a high-profile criminal case involving sexual abuse of a minor. The applicant complained that those proceedings had not been fair because of a parallel parliamentary inquiry, prejudicial statements made in the media by high-ranking politicians, and the heightened media attention to the case.

THE FACTS

2. The applicant was born in 1965 and lives in Skriaudžiai, in the Prienai Region. She was represented by Ms A. Ručienė, a lawyer practising in Kaunas.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

4. The domestic proceedings giving rise to the present application stemmed from the same facts as those described in *Stankūnaitė v. Lithuania* (no. 67068/11, §§ 7-9, 18-29 and 109, 29 October 2019).

I. PRE-TRIAL INVESTIGATION INTO ALLEGATIONS OF SEXUAL ABUSE OF A MINOR

5. In November 2008 D.K. submitted a complaint to the Kaunas police, alleging that his daughter, who was a minor, had been sexually abused by several individuals in the presence of her mother, L.S. On 30 November 2008 the police opened a pre-trial investigation.

6. In December 2008 and January 2009 the investigation was carried out by the police and supervised by G.R., a prosecutor of the Kaunas City District Prosecutor's Office (hereinafter "the KCDPO").

7. On 29 December 2008 A.Ū., the girl's godfather and a former adviser to the Speaker of the Seimas (the Lithuanian Parliament), was served with an official notice that he was suspected of sexual abuse of a minor.

8. In January 2009 the Kaunas Regional Prosecutor's Office carried out a review of the conduct of the investigation by the police. It identified certain shortcomings and held that, in view of the complexity of the case, the investigation should be taken over by the KCDPO and entrusted to a qualified prosecutor.

9. The Chief Prosecutor of the KCDPO instructed the applicant, who was the Deputy Chief Prosecutor, to entrust (*pavesti*) the investigation to the prosecutor G.R. The applicant did so. From 30 January until 11 June 2009 the investigation was carried out by G.R. and supervised by the applicant.

10. In January and February 2009 the suspect, A.Ū., submitted several requests to the prosecutor, including a request to grant him access to the investigation file. G.R. dismissed his requests. A.Ū. complained about that decision to the senior prosecutor – the applicant. On 9 February 2009 the applicant allowed A.Ū.'s complaint in part and granted him access to the material of the investigation file which had been collected until that date, with the exception of documents and video recordings containing interviews with the minor.

11. In June 2009, after carrying out a review of the conduct of the investigation by the KCDPO and identifying certain shortcomings, the Kaunas Regional Prosecutor's Office decided to take over the investigation.

12. In August 2009 the Prosecutor General's Office decided that the investigation should be taken over by the Vilnius Regional Prosecutor's Office, in view of the fact that D.K. had family ties to some law enforcement officers working in Kaunas.

13. Throughout the investigation D.K. lodged numerous requests with the authorities to question various individuals whom he suspected of having sexually abused his daughter, and on several occasions he provided new

details of the alleged abuse which he claimed that his daughter had remembered. On an unspecified date D.K. sent to the media and other individuals filmed recordings of his daughter recounting the sexual acts allegedly performed against her.

14. In October 2009 two individuals who had been accused by D.K. of having sexually abused his daughter were fatally shot in Kaunas. One of them was L.S.'s sister and the other was a judge of the Kaunas Regional Court. D.K. was suspected of murdering them; he fled from the authorities, and a search warrant was issued against him. In April 2010 D.K. was found dead (ibid., § 16).

15. In June 2010 A.Ū. was found dead and the criminal proceedings against him were discontinued. They were subsequently reopened at the request of A.Ū.'s relatives, who sought to clear his name, and he was acquitted posthumously (ibid., §§ 26-28).

II. INQUIRY BY THE PROSECUTOR GENERAL'S OFFICE

16. On 6 October 2009 the Prosecutor General's Office began an inquiry into how the pre-trial investigation concerning D.K.'s complaints had been conducted by all the authorities involved (see paragraphs 6, 8, 11 and 12 above). The inquiry was entrusted to a commission composed of prosecutors. It was instructed to assess, *inter alia*, the quality, intensity and thoroughness of the investigation; whether all relevant investigative methods had been used; whether the investigation had been supervised in a qualified and responsible manner; whether the complaints received during the investigation had been dealt with properly; and whether decisions related to children's rights and the protection of minors had been appropriate and justified.

17. On 12 October 2009 the commission concluded the inquiry and issued its findings, identifying multiple shortcomings at all stages of the pre-trial investigation.

18. The inquiry found that, after opening the investigation, the police had failed to act promptly and thoroughly, and the prosecutor G.R. had failed to properly supervise it. In particular, the interviews with D.K. and his daughter had been superficial and had not clarified the essential circumstances of the alleged criminal activity; the alleged location of the crime had been examined too late and the examination had not been thorough; the minor's clothes had not been seized; the suspect's home had not been searched; and the secret surveillance of electronic communications had been ordered too late. That had led to the loss of potentially essential evidence, and establishing the truth had become especially difficult.

19. In the view of the commission of inquiry, G.R.'s failure to properly supervise the work of the police and to address its multiple shortcomings gave reason to question her competence as a prosecutor. However, after the

investigation had been taken over by the KCDPO, the Deputy Chief Prosecutor (the applicant) had entrusted it to G.R. (see paragraph 9 above), despite the order of the Kaunas Regional Prosecutor's Office to entrust the investigation to a qualified prosecutor (see paragraph 8 above). There was no information to suggest that either the applicant or the Chief Prosecutor of the KCDPO had supervised the conduct of the investigation by G.R. or had given her any instructions.

20. It was also found that, after G.R. had dismissed A.Ū.'s request to be granted access to the investigation file (see paragraph 10 above), an appeal against that decision should have been lodged with the pre-trial investigation judge but not with the senior prosecutor (see paragraph 80 below). Therefore, by examining that complaint, the applicant had not acted in compliance with the law (see paragraph 10 above). In addition, by granting the suspect access to part of the investigation file, the applicant had not followed the relevant recommendations of the Prosecutor General which established the grounds for refusal of such access (see paragraph 81 below). The inquiry considered that the applicant had not properly assessed the situation.

21. Lastly, the inquiry found that various prosecutors of the Kaunas Regional Prosecutor's Office and the Vilnius Regional Prosecutor's Office had failed to prepare a strategy for conducting the investigation, to coordinate their actions with other institutions, and to promptly address the complaints and requests lodged by the parties to the proceedings.

22. Following the findings of the inquiry, the Prosecutor General's Office opened disciplinary proceedings against several prosecutors, including the applicant.

III. DISCIPLINARY PROCEEDINGS BY THE PROSECUTOR GENERAL'S OFFICE

23. On 13 October 2009 the Prosecutor General's Office informed the applicant that disciplinary proceedings had been opened against her because there were grounds to believe that she had committed disciplinary offences. In particular, she had put G.R., who had previously failed to properly supervise the pre-trial investigation, in charge of conducting that investigation; she had not supervised G.R.'s work and had not given her any instructions in writing; she had not taken adequate measures to ensure that the investigation was thorough and prompt; and she had unlawfully and unfoundedly granted the suspect access to the investigation file (see paragraphs 19 and 20 above).

24. On 22 October 2009 the Prosecutor General's Office concluded the disciplinary proceedings against the applicant and several other prosecutors. It found that the applicant had put G.R. in charge of carrying out the investigation despite the grounds for calling her competence into question

(see paragraph 19 above), and by doing so had disregarded the order of the Kaunas Regional Prosecutor's Office to entrust the investigation to a qualified prosecutor (see paragraph 8 above). Furthermore, the applicant had not fulfilled her duties as a senior prosecutor: she had failed to properly supervise G.R.'s actions when conducting the investigation, to take note of the mistakes made by G.R. and to give her instructions in order to rectify them (see paragraphs 78 and 79 below). As a result, many of the shortcomings which had occurred at the hands of the police had not been eliminated after the transfer of the investigation to the KCDPO. Moreover, by examining the suspect's complaint against G.R.'s decision to refuse him access to the investigation file, the applicant had overstepped her remit (see paragraph 20 above). It was concluded that the applicant had committed disciplinary offences and had thereby caused harm to the reputation of the prosecutor's office and breached public trust in prosecutors. It was recommended to issue her with the disciplinary penalty of demotion.

25. It was also recommended to dismiss G.R. and to give other prosecutors various disciplinary penalties ranging from a warning to demotion.

26. On 30 October 2009 the Prosecutor General ordered the applicant's demotion. On 3 November 2009 she was transferred to the post of prosecutor in the KCDPO.

IV. PARLIAMENTARY INQUIRY

27. In October 2009 the Parliamentary Committee on Legal Affairs ("the Committee") asked the Prosecutor General's Office to inform it what investigative measures had been taken during the pre-trial investigation into D.K.'s complaints, and what had been done to address the shortcomings of that investigation which had been identified.

28. On 22 October 2009 the Seimas ordered the Committee to carry out a parliamentary inquiry (see paragraphs 87 and 88 below) and to examine the following:

> "1. Whether the investigation into D.K.'s complaints was carried out in accordance with the requirements established by law;
>
> 2. Whether the aforementioned investigation was unjustifiably protracted;
>
> 3. What actions should be taken by State institutions to ensure that pre-trial investigations are conducted more expeditiously and efficiently, [and] what are the related legislative gaps."

29. The Committee held several interviews with the Prosecutor General and examined the following documents: the findings of the disciplinary proceedings held by the Prosecutor General's Office (see paragraphs 24 and 25 above); a report of another parliamentary committee on the functioning of child protection authorities; comparative reports on the

conduct of pre-trial investigations and the legal status of prosecutors in other European countries; and the 2008 annual report on prosecutors' activities in Lithuania.

30. As submitted by the Government, the Committee's meetings were not public because the inquiry was related to the ongoing pre-trial investigation.

31. On 21 January 2010 the Committee issued its report. It first examined the investigative measures which had been taken by the Kaunas police, and found them to be inadequate. The Committee stated:

> "The findings of the disciplinary proceedings carried out by the Prosecutor General's Office ... likewise established major shortcomings in the pre-trial investigation and its insufficient prosecutorial supervision. The commission which had conducted the disciplinary inquiry found that the persons responsible for the said inaction were the prosecutor of the KCDPO who had initially supervised the pre-trial investigation and had later taken over its conduct, and the Deputy Chief Prosecutor of the KCDPO."

32. The Committee also examined the conduct of the investigation by the KCDPO and held, *inter alia*, that the KCDPO "had obviously procrastinated in the investigation, because it had carried out almost no new investigative measures but had only repeated those which had been carried out previously and which had provided practically no new information of evidential value". The Committee concluded that the KCDPO had carried out the investigation incompetently and not in accordance with the relevant legal requirements. It also found that the relevant department of the Prosecutor General's Office had failed to properly supervise the KCDPO. The Committee noted that the Prosecutor General's Office had also identified multiple shortcomings in the KCDPO's actions and that the latter "had found that the persons responsible for the said inaction [had been] the prosecutor of the KCDPO who had initially supervised the pre-trial investigation and had later taken over its conduct, and the Deputy Chief Prosecutor of the KCDPO".

33. The Committee similarly held that the Kaunas Regional Prosecutor's Office had failed to fulfil its duties properly and that the Prosecutor General's Office had failed to properly supervise it.

34. The Committee furthermore examined the legal status of the prosecutors and the legal instruments regulating pre-trial investigations. It identified some structural problems, presented an overview of comparative law material, and concluded that certain legislative amendments might be necessary.

35. The concluding part of the Committee's report, in so far as relevant, read as follows:

Conclusions

"1. The pre-trial investigation concerning D.K.'s complaint and subsequent requests was conducted by the [Kaunas police] dismissively, not expeditiously, and incompetently.

2. The KCDPO, which supervised the investigation, did not take measures to speed it up, and did not carry out all available procedural and operative actions to find and establish evidence or to influence the [Kaunas police] in order to eliminate the obstacles to a proper investigation.

3. At the KCDPO the investigation was also carried out incompetently and not in compliance with the requirement of the Code of Criminal Procedure ... to complete a pre-trial investigation within the shortest possible time, and the Kaunas Regional Prosecutor's Office failed to properly supervise ... compliance with that requirement. After taking over the investigation, the KCDPO obviously procrastinated because it practically did not undertake any new procedural measures which were essential at that time ...

4. Neither the Kaunas Regional Prosecutor's Office ... nor the Prosecutor General's Office examined who had been responsible for the shortcomings of the investigation carried out by the KCDPO; they did not determine the appropriate disciplinary penalties for the officers responsible or the structural measures necessary to ensure that pre-trial investigations at the KCDPO were carried out and supervised expeditiously and professionally.

..."

Recommendations

"...

2. The Prosecutor General should assess, in a principled manner, the actions of all the officers who carried out the pre-trial investigation and who supervised the prosecutors.

..."

The Committee's report also contained a number of conclusions and recommendations relating to general measures to be taken in order to improve the functioning of prosecutors' offices and child protection authorities.

36. On the same day the Seimas adopted a resolution: (1) to endorse the conclusions of the Committee (see paragraphs 31-35 above); (2) to find that the Prosecutor General had failed to properly organise the work of the institutions under his command and to properly fulfil his duties established by law; and (3) to find that the prosecutors of the Prosecutor General's Office, the KCDPO and the Kaunas Regional Prosecutor's Office who had conducted and supervised the pre-trial investigation had failed to properly carry out their functions established by law.

37. In February 2010 the Prosecutor General resigned from office.

V. MEDIA COVERAGE AND STATEMENTS OF HIGH-LEVEL POLITICIANS

38. The case concerning the allegations of sexual abuse brought by D.K., as well as the subsequent murders and the deaths of D.K. and A.Ū. (see paragraphs 14 and 15 above) attracted considerable attention from the public, politicians and the media (ibid., § 109).

39. On 7 October 2009 the newspaper *Respublika* published an article quoting a Member of Parliament who stated that "the deliberate inaction of the authorities may have driven [D.K.] to such a tragedy". The publication also quoted the Chair of the Parliamentary Committee on Legal Affairs, who stated that the pre-trial investigation concerning D.K.'s complaints had been carried out "rather dismissively and slowly" (*skundo tyrimas buvo atliekamas gana atmestinai ir lėtai*).

40. In an article published on 8 October 2009 one of the largest national newspapers, *Lietuvos rytas*, stated that the Parliamentary Committee on Legal Affairs had asked the Prosecutor General to provide answers to a list of questions concerning the investigation of the "paedophilia scandal" (see paragraph 27 above). It quoted the Chair of that Committee, who had said that he had seen "displays of procrastination and negligence" in the actions of investigating officers (*teigė pareigūnų veiksmuose matąs vilkinimo ir aplaidumo apraiškų*).

41. On 12 October 2009 the following statement was published on the President's official website:

> **The President demands personal accountability of the officers who possibly protracted the investigation concerning the alleged sexual abuse of a minor**
>
> "The President of the Republic of Lithuania, Dalia Grybauskaitė, received the Prosecutor General ... [who] presented to the President a summary of the investigation concerning the tragic events in Kaunas.
>
> According to the President, it is evident that the investigation concerning the alleged sexual abuse of a minor was protracted. Therefore, the officials who acted negligently must be immediately identified and they must be personally held to account.
>
> As stated by the President, not a single officer or institution found responsible for the unjustified protraction of the investigation can avoid accountability. The Prosecutor General has been instructed to promptly identify the individuals who protracted the investigation, and the reasons for this, and to ensure an efficient further investigation of the events in Kaunas, in order to determine the truth as soon as possible."

42. On 19 October 2009 a statement on the President's official website gave an account of another meeting between the President and the Prosecutor General, in which the latter had informed the President about the progress of the ongoing disciplinary inquiry (see paragraph 22 above). The President stated that it was essential to promptly identify the officers who

had failed to perform their duties diligently, and to demand that they be personally held to account.

43. On 23 October 2009 one of the largest national news websites, *Delfi.lt*, reported on the conclusions of the disciplinary proceedings conducted by the Prosecutor General's Office (see paragraphs 24 and 25 above).

44. On 26 October 2009 *Delfi.lt* published an article that included the following statement from the President:

> **D. Grybauskaitė: I expect harsher decisions concerning prosecutors**
>
> "President Dalia Grybauskaitė admits that she was expecting harsher decisions concerning the prosecutors implicated in relation to the professional misconduct identified in the course of the investigation into the paedophilia case involving D.K.'s daughter. When asked how she viewed the proposal to dismiss one prosecutor and to demote others, the Head of State said that she had expected a different decision. 'Tomorrow, I think, perhaps the decisions will be different ... As for the Kaunas prosecutors, I expect slightly different – harsher – decisions', D. Grybauskaitė told journalists ...
>
> On Friday, in connection with the professional misconduct identified in the course of the investigation into the paedophilia case involving D.K.'s daughter, it was proposed that the Prosecutor General should dismiss prosecutor [G.R.] of the KCDPO and impose more lenient penalties on the other four Kaunas prosecutors ... It is proposed that [the applicant], the Deputy Chief Prosecutor of the KCDPO, be demoted ..."

45. On 12 November 2009 *Lietuvos rytas* published an article entitled "Sluggish investigators are partly responsible for the murders". It reported on a meeting of the Parliamentary Committee on Legal Affairs, which had concluded that the pre-trial investigation concerning D.K.'s complaints had not been carried out diligently. The publication quoted the Chair of the Committee, who reiterated that the Prosecutor General should "assess, in a principled manner, the actions of the officers at all levels – investigators and supervisors alike".

46. On 2 March 2010 *Delfi.lt*, the website of *Lietuvos rytas* and the news website *Balsas.lt* all published similar articles relating to the applicant. They quoted the Head of the Human Resources Division of the Prosecutor General's Office, who stated that the applicant's decision to grant A.Ū. access to the investigation file (see paragraph 10 above) had been one of the reasons for her demotion. It was also stated that the applicant had entrusted the pre-trial investigation to an unqualified prosecutor, G.R., and had failed to properly supervise her. According to the Head of the Human Resources Division, the applicant had claimed that she had put G.R. in charge of the investigation because the latter had the most work experience, but in fact G.R. had not had any experience in similar cases. The publications indicated that the applicant had appealed against her demotion before a court.

VI. COURT PROCEEDINGS CONCERNING THE APPLICANT'S DEMOTION

A. Proceedings before the Vilnius Regional Administrative Court

47. On 20 November 2009 the applicant lodged a complaint with the Vilnius Regional Administrative Court against the decision of the Prosecutor General's Office to give her a disciplinary penalty (see paragraph 26 above). She argued that she had acted in accordance with all the legal instruments regulating the duties of a prosecutor, but that even if she had committed any offences, the penalty (demotion) was disproportionately harsh.

48. The applicant's complaint was examined by a panel of three judges. The Government submitted that, according to the procedural rules valid at the material time, disputes related to disciplinary penalties could be examined at first instance by a single judge, but the applicant's case had been assigned to a three-judge panel as an additional guarantee of fairness.

49. One of the judges assigned to the applicant's case withdrew from it, on the grounds that the judge's husband worked at an institution which had examined some of the circumstances of the criminal case brought by D.K.

50. The court held hearings in March 2010. At the request of both the applicant and the Prosecutor General's Office, the hearings were closed to the public.

51. The applicant complained to the court that the record of one of the hearings had been inaccurate, and submitted her corrections. The court refused to include them in the case file, finding that the record had accurately described the parties' submissions at the hearing and that the applicant had not indicated any significant mistakes.

52. On 15 May 2010 the applicant submitted a revised complaint in which she additionally argued that the decision to demote her had not been based on her performance but that it had been influenced by public statements made by politicians, who had insisted on strict punishments for investigating officers, as well as by the media coverage of the case – she referred to the publications quoted in paragraphs 39, 40 and 45 above.

53. Subsequently the applicant asked the court to include in the case file video recordings of certain television broadcasts which had discussed the proceedings in her case. It appears that the request was refused.

54. On an unspecified date the applicant asked for one of the judges to be removed from the case, on the grounds that that judge had refused her requests and that his questions during the hearing had demonstrated his bias against her. The court refused her request, finding that there were no statutory grounds to remove the judge.

55. On 7 June 2010 the Vilnius Regional Administrative Court dismissed the applicant's complaint.

56. It annulled some of the findings of the inquiry conducted by the Prosecutor General's Office. First, the court held that the applicant had not been responsible for entrusting the pre-trial investigation to G.R. because that decision had been taken by the Chief Prosecutor of the KCDPO and that the applicant had merely complied with his order (see paragraph 9 above). Secondly, the fact that the applicant had not given G.R. instructions in writing did not constitute a disciplinary offence because instructions could also be given orally (see paragraph 79 below).

57. However, the court upheld the conclusion that the applicant had failed to properly supervise the investigation carried out by G.R. and to ensure that essential investigative measures were taken promptly. It found that when the investigation was transferred to the KCDPO (see paragraph 8 above), the Kaunas Regional Prosecutor's Office had indicated concrete investigative actions which had to be taken and had formulated specific questions which had to be addressed during the investigation. However, the majority of those instructions had not been carried out by the KCDPO, and the applicant had been unable to provide an explanation. The court therefore concluded that she had failed to fulfil the statutory duties of a supervising prosecutor (see paragraphs 78 and 79 below).

58. The court also held that the applicant had overstepped her remit by allowing the suspect to access the investigation file (see paragraph 24 above). Although the applicant argued that, being the senior prosecutor, she had had the right to examine appeals against decisions taken by G.R., the court found that this argument had no basis in law, and that the applicant's position demonstrated that she had acted intentionally.

59. Furthermore, the court considered that the disciplinary penalty given to the applicant had not been too harsh. It observed that the applicant had held the position of senior prosecutor and that she had been responsible for supervising other prosecutors and ensuring that they complied with the law. However, she had breached the law herself and had failed to properly carry out her supervisory duties. It was therefore justified to demote her to a post which did not require her to supervise other prosecutors.

60. The court did not comment on the applicant's complaint concerning the public statements made by politicians and the media coverage (see paragraph 52 above).

B. Proceedings before the Supreme Administrative Court

61. The applicant appealed against the above decision to the Supreme Administrative Court. Among other things, she submitted that the lower court had not addressed her complaint concerning the political and media interference in the case (see paragraphs 52 and 60 above). She also submitted that that court had been biased and that it had formed a

preconceived opinion of the case because of various statements made in the media.

62. The Prosecutor General's Office, in its reply to the applicant's appeal, argued that courts did not have the authority to examine whether politicians had interfered with the Prosecutor General's decisions.

63. The case was assigned to a panel of three judges. In March 2011 the applicant submitted a request for those three judges to be removed from the case, on the grounds that they had previously decided on her request for interim measures. The court allowed the applicant's request and changed the composition of the panel.

64. In June 2011 two judges of the new panel withdrew from the case, on the grounds that they both had close family relationships with persons working in prosecutors' offices and that this could cast doubt on their impartiality.

65. On 10 October 2011 the Supreme Administrative Court dismissed the applicant's appeal and upheld the lower court's decision in its entirety.

66. In particular, it observed that the Chief Prosecutor of the KCDPO had ordered the applicant to assist (*padėti*) G.R. in conducting the pre-trial investigation (see paragraph 9 above). In the light of that order and the specific instructions given to the KCDPO by the Kaunas Regional Prosecutor's Office (see paragraph 57 above), the court considered that it had been the applicant's duty to take all available measures in order to fulfil those instructions. However, as found by the lower court, she had failed to properly supervise G.R. and to ensure that the essential investigative measures were taken promptly.

67. The Supreme Administrative Court also stated that, in accordance with the law, the choice of an individual disciplinary penalty fell within the discretion of the prosecutor making that decision. This meant that the prosecutor's decision could be annulled by a court only when the chosen penalty was manifestly disproportionate and did not correspond to the offence committed. In the court's view, it was important to take into account the fact that the applicant had been one of the heads of the KCDPO and that this had increased her responsibility. The court considered that the penalty – demotion – was proportionate to the disciplinary offences committed by the applicant.

68. The court did not comment on the applicant's complaints concerning the public statements made by politicians, the media coverage and the alleged bias of the first-instance court (see paragraph 61 above).

VII. SUBSEQUENT PROCEEDINGS

69. In January 2012 the applicant lodged an application for the reopening of the proceedings, arguing that the Supreme Administrative Court had incorrectly interpreted her duties as senior prosecutor. In

particular, she submitted that the order given to her by the Chief Prosecutor of the KCDPO had been "to entrust" the investigation to G.R., but not "to assist" G.R. in carrying out the investigation (see paragraphs 9 and 65 above).

70. In July 2012 the Supreme Administrative Court refused to reopen the proceedings, finding that the applicant had not demonstrated that the courts had committed a material breach of the law.

71. In December 2012, after taking part in a selection procedure, the applicant took up office as a prosecutor at the Kaunas Regional Prosecutor's Office.

72. After being dismissed from office (see paragraph 25 above), G.R. complained to the courts, and in December 2014 the Supreme Administrative Court allowed her complaint. It acknowledged that G.R. had committed disciplinary offences, but considered dismissal to be a disproportionate penalty. In the court's view, that penalty had been determined essentially on the basis of the sole fact that the offences had been committed in a high-profile criminal case. However, G.R. had not acted intentionally, and the offences had been committed partly because of her insufficient qualification, high workload, and refusal of some of the parties to the proceedings to cooperate with the authorities. The court also considered it necessary to take into account G.R.'s positive character references, long work experience, and lack of previous disciplinary penalties. It changed the penalty from dismissal to a reprimand and ordered the reinstatement of G.R. to her previous post.

73. In March 2015 the applicant lodged a new application for the reopening of the proceedings concerning her demotion. She submitted that the courts in the proceedings instituted by G.R. had changed the case-law relating to the assessment of disciplinary offences committed by prosecutors and the determination of the appropriate penalties (see paragraph 72 above). The applicant argued that this constituted grounds to reopen her case, which had concerned the same legal provisions and closely related factual circumstances. She also submitted that the reopening of the proceedings would provide the courts with an opportunity to address the possible influence on the proceedings of public statements made by politicians and public officials, in accordance with the case-law of the European Court of Human Rights.

74. In May 2015 the Supreme Administrative Court refused to reopen the proceedings. It noted, *inter alia*, that the applicant and G.R. had held different posts and carried out different functions, concluding that this justified assessing their responsibility differently.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. Independence and impartiality of courts

75. The relevant provisions of the Constitution of the Republic of Lithuania read:

Article 109

"In the Republic of Lithuania, justice shall be administered only by courts.

When administering justice, judges and courts shall be independent.

When considering cases, judges shall obey only the law.

..."

Article 114

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

..."

76. Article 7 §§ 1, 2 and 4 of the Law on Administrative Procedure establishes that when administering justice, judges and courts are independent and obey only the law. They examine administrative cases on the basis of the law, and under conditions which do not enable any external influence on them. Interference with the activities of judges and courts by State institutions, the Seimas and its members, or any other individuals or entities is not allowed and incurs liability under the law. Should such interference occur, the judge or court must respond in accordance with the law.

B. Conduct of pre-trial investigations

77. Article 2 of the Code of Criminal Procedure states that prosecutors and pre-trial investigation authorities must, in each case where there are indications that a criminal activity may have been committed, take all the actions provided for by law which are within their remit in order to complete the investigation within the shortest possible time and to shed light on the criminal activity.

78. Article 170 §§ 1 and 2 of the Code of Criminal Procedure provides that the prosecutor has the right to conduct a pre-trial investigation or to carry out separate investigative actions. When the investigation or separate

investigative actions are carried out by a pre-trial investigation officer, the prosecutor must supervise the investigation.

79. The Recommendations on the actions of a prosecutor when organising and supervising a pre-trial investigation, approved by the Prosecutor General's order no. I-86 of 19 June 2008 and valid at the material time, provided that the chief prosecutor or the deputy chief prosecutor of a given prosecutor's office were responsible for the supervision of the pre-trial investigation carried out by a prosecutor of that office (point 15). A prosecutor could give instructions orally or in writing (point 25).

80. Article 63 § 1 of the Code of Criminal Procedure provides that procedural decisions taken by a prosecutor during a pre-trial investigation can be appealed against before a senior prosecutor. However, in line with Article 181 § 1 of that Code, a prosecutor's refusal to grant access to the investigation file has to be appealed against before a pre-trial investigation judge.

81. The Recommendations on granting access to the pre-trial investigation file to the parties to the proceedings, approved by the Prosecutor General's order no. I-58 of 18 April 2003 and valid at the material time, provided that when deciding whether to grant such access, the prosecutor had to assess whether it might interfere with the success of the investigation (point 13). Access to the investigation file could be denied, *inter alia*, where the essential data of the investigation had not been established; material objects had not been examined; there was a risk that material objects could be damaged or lost; or the investigation concerned allegations of sexual offences (point 14).

C. Duties and liability of prosecutors

82. Article 118 of the Constitution provides that when performing their duties, prosecutors must be independent and obey only the law. The Prosecutor General is appointed and dismissed by the President upon the assent of the Seimas.

83. At the material time, Article 4 §§ 1, 2 and 5 of the Law on the Prosecution Service provided that the Prosecutor General was the head of prosecution service and was accountable to the President and to the Seimas. The Seimas established the priorities for the activities of prosecutors' offices and ensured their parliamentary supervision. The Prosecutor General had the duty to inform the Government and the public about the activities of prosecutors' offices.

84. At the material time, Article 4 § 3 of the Law on the Prosecution Service provided that procedural activities of prosecutors were supervised by senior prosecutors and by courts, who had the authority to establish procedural violations and to annul unlawful decisions.

85. At the material time, Article 40 of the Law on the Prosecution Service established the following disciplinary penalties: (1) warning; (2) reprimand; (3) relegation to a lower qualification rank; (4) demotion; and (5) dismissal.

86. At the material time, the Regulations on the conduct of disciplinary inquiries and application of disciplinary penalties to prosecutors, approved by the Prosecutor General's order no. I-9 of 30 January 2007, provided that when choosing a disciplinary penalty, the following criteria had to be taken into account: the nature of the disciplinary offence committed, the reasons for its commission, the type of misconduct, the consequences of the offence, and other relevant circumstances (point 6.2).

D. Parliamentary inquiries

87. At the material time, Article 49 § 9 of the Statute of the Seimas provided that parliamentary committees had, among others, the following powers: (1) when performing parliamentary supervision, to hear information and reports by ministries and other State institutions on the compliance with laws and other legal instruments; and (2) on their own initiative or at the request of the Seimas, to carry out parliamentary inquiries into specific problems and to provide their conclusions to the Seimas.

88. At the material time, Article 56 § 4 of the Statute of the Seimas provided that when carrying out parliamentary inquiries at the request of the Seimas, parliamentary committees acted in accordance with Articles 75 and 76 of the Statute, which regulated *ad hoc* parliamentary commissions of inquiry and control, and they had the same powers as those commissions (see paragraph 89 below).

89. Article 75 § 3 of the Statute of the Seimas provides that the powers of *ad hoc* parliamentary commissions of inquiry and control are established by law. Article 3 § 2 of the Law on *Ad Hoc* Parliamentary Commissions of Inquiry and Control states that when investigating issues assigned to them and in the exercise of their powers, the said commissions may not interfere with the activities of courts, judges, prosecutors and pre-trial investigation officers, in relation to the conduct of a pre-trial investigation or judicial examination of a case.

90. In its ruling of 4 April 2006 the Constitutional Court held as follows:

> "In a democratic State governed by the rule of law, Parliament – the representation of the Nation – cannot be denied the power to take measures, *inter alia* ... to receive information about various processes taking place in the State and society, about the situation in various areas of life and the problems arising. Otherwise Parliament ... would be unable to properly discharge its functions and adopt the necessary decisions ...
>
> In accordance with the constitutional principle of the separation of powers, and other relevant provisions of the Constitution, it must be concluded that the Seimas does not have the power to create such *ad hoc* commissions of inquiry which, in the

course of their investigation, would interfere with the powers of other institutions. For example, an *ad hoc* parliamentary commission of inquiry may not take over the constitutional powers of courts or otherwise interfere with the implementation of their constitutional remit, or undermine the independence of judges and courts in the course of the administration of justice, let alone administer justice by itself ...

However, [the aforementioned limitations] do not mean that *ad hoc* parliamentary commissions of inquiry may not have any powers whatsoever with respect to State or municipal institutions, their officials and other persons. Such powers may be established by law, in compliance with the Constitution."

II. RELEVANT INTERNATIONAL AND COMPARATIVE MATERIAL

91. At its 98th plenary session, held on 21-22 March 2014, the European Commission for Democracy through Law (Venice Commission) adopted the Amicus Curiae brief in the case of *Rywin v. Poland* (nos. 6091/06, 4047/07 and 4070/07), which at that time was pending before the European Court of Human Rights. Its relevant parts read:

"7. Parliamentary committees of inquiry are an instrument for what is usually referred to as the 'control', 'supervisory' or 'oversight' function of parliament, the essence of which is to oversee and scrutinise the work of the executive branch. The main purpose of this supervision is to ensure democratic political accountability and to improve the transparency and efficiency of the government and the administration. But the supervisory function may also provide parliament with information of relevance to its own legislative and budgetary procedures.

...

19. Parliamentary committees of inquiry conduct processes that are essentially of a political nature and which should not be confused with criminal investigations and proceedings. Such committees should not assess or pronounce themselves on the question of criminal responsibility of the persons covered by the inquiry, which should be for the public prosecutor and the courts alone to assess.

20. At the same time, it is in the nature of (alleged) political 'scandals' that they may give rise to parallel processes, so that a case which is under parliamentary inquiry may at the same time be subject both to administrative inquiries and to legal investigations or proceedings. There is in itself nothing unusual or illegitimate in this. But it does put extra responsibility on all parties involved to ensure that proper distance is kept between the parliamentary (political) inquiry and the criminal investigations and legal proceedings before the courts ...

21. ... For such procedures to unduly interfere with the rights protected under Article 6 [of the European Convention on Human Rights] they would have to interfere with and in some way unduly influence the proceedings before the courts ... which can only be assessed on the basis of the individual case at hand.

...

28. A basic premise for the Venice Commission is that parliaments as autonomous institutions distinct from the judiciary cannot be impeded from carrying out their own inquiries. The composition of a parliamentary committee is always the result of a political choice. Its mandate is meant to be temporary. Even when they look into the possibly criminally relevant conduct of individual persons, parliamentary committees

of inquiry conduct processes that are essentially of a political nature, and which should not be confused with criminal investigations and proceedings. The result of these activities does not alter the legal order. The report which closes its work is in itself only an incentive to parliamentary discussion. The ultimate aim of the committees' investigations is transparency with a view of ensuring that the public is informed of matters which affect the *res publica* (the public good).

29. ... Searching for offences cannot be the only goal of the inquiry conducted by a parliamentary committee, or even the main purpose of its creation. This would be unconstitutional, even if domestic law provides no sanction. Indeed, the means conferred to the committee must always serve the jurisdiction of the parliament in a system of separation of powers – either to establish the responsibility of government and ministers or to collect information necessary for more effective legislation or to present political recommendations to government.

30. Even if identical items may be subject to both criminal proceedings and a parliamentary inquiry, the aim should always be different. The criminal investigation should lead to an individual legal measure, the conviction or acquittal of the accused. The committee of inquiry has no power over individuals, except to call them to testify."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 2 OF THE CONVENTION

92. The applicant complained that she had not received a fair hearing by an independent and impartial tribunal in the disciplinary proceedings against her because of the political and media involvement in the case. She relied on Article 6 §§ 1 and 2 of the Convention, the relevant parts of which read:

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

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

A. Admissibility

1. Applicability ratione materiae

(a) Article 6 § 1 of the Convention

93. The parties did not dispute the applicability of Article 6 § 1 of the Convention in the present case.

94. The Court has previously found that provision to be applicable under its civil head to "ordinary labour disputes" between civil servants and the State, including those relating to recruitment/appointment, career/promotion, transfer and termination of service (see *Baka v. Hungary* [GC], no. 20261/12, § 105, 23 June 2016, and the cases cited therein).

95. In the present case, the applicant was subject to disciplinary proceedings where one of the possible penalties was dismissal (see paragraph 85 above). She was found to have committed disciplinary violations and demoted to a lower position in the prosecution service (see paragraph 26 above), which penalty she contested before the administrative courts (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, 19 April 2007). In such circumstances, the Court is satisfied that, in accordance with its established case-law, Article 6 was applicable to the disciplinary proceedings against the applicant under its civil head.

(b) Article 6 § 2 of the Convention

96. The Government submitted that Article 6 § 2 of the Convention was inapplicable *ratione materiae* because the disciplinary proceedings had not concerned a determination of a criminal charge against the applicant.

97. The applicant contested the Government's submission.

98. The Court observes that the proceedings against the applicant were aimed at determining whether she had failed to properly carry out her duties as a supervising prosecutor and had thereby committed a disciplinary violation. The harshest penalty for such violations, provided by domestic law, was dismissal (see paragraph 85 above). Accordingly, those proceedings were of a purely disciplinary nature and did not involve the determination of a criminal charge against the applicant (see *Kamenos v. Cyprus*, no. 147/07, §§ 50-53, 31 October 2017, and the cases cited therein).

99. Therefore, as the applicant was not "charged with a criminal offence" within the meaning of Article 6 § 2 of the Convention, it follows that the complaint under that provision is incompatible *ratione materiae* with the provisions of the Convention or the Protocols thereto, and must be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Exhaustion of domestic remedies

(a) The parties' submissions

100. The Government submitted that the applicant had failed to exhaust available domestic remedies. In particular, she could have lodged a civil claim against the State for damage caused by allegedly unlawful acts of public officials, or brought a civil claim for defamation against specific individuals or media outlets, or lodged a complaint with the Office of the Inspector of Journalistic Ethics with regard to improper media reporting, but had not used any of those avenues.

101. The applicant submitted that she had chosen to defend her rights by complaining to the administrative courts, and that following their unfavourable decisions, lodging any civil claims had become futile.

(b) The Court's assessment

102. The Court reiterates that if there are a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 109 and 111, ECHR 2014 (extracts), and the cases cited therein).

103. In the present case, the applicant raised the complaint about the political and media interference before the administrative courts in the disciplinary proceedings (see paragraphs 52 and 61 above). The Government did not argue that this had not been an appropriate remedy in the applicant's situation. In such circumstances, the Court considers that, having raised her complaints before the administrative courts, the applicant was not required to institute any additional proceedings (see *Paulikas v. Lithuania*, no. 57435/09, § 41, 24 January 2017, and the case-law cited therein). It therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

3. Conclusion on admissibility

104. The Court notes that the applicant's complaint under Article 6 § 1 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

105. The applicant submitted that the disciplinary proceedings against her had not been fair. She contended that the Prosecutor General and the administrative courts had not based the decision to demote her on her professional performance but that they had been influenced by public opinion, statements of high-level politicians and public officials, and the heightened media attention. In particular, the applicant referred to several public statements made by the President in which the latter had emphasised the need to impose harsh penalties on the officers who had been involved in the pre-trial investigation of the alleged sexual abuse, irrespective of their role and actual impact on the investigation (see paragraphs 41 and 44 above). The applicant also referred to the findings of the Parliamentary Committee on Legal Affairs, which had specifically indicated that she and the KCDPO had failed to properly carry out the pre-trial investigation (see paragraphs 31 and 32 above).

106. The applicant submitted that, as the Prosecutor General and judges were appointed and dismissed by the President with the approval of the Seimas, they must have felt obligated to follow the opinion publicly expressed by the President and the Committee and to impose harsh punishments on the prosecutors, including herself.

107. Lastly, she argued that the courts which had examined her complaint against her demotion had reached arbitrary and unfounded conclusions, which had also demonstrated their bias, and they had failed to take into account her positive character references and lack of previous disciplinary penalties. She also pointed out that the courts which had examined the complaint brought by G.R. against her dismissal had found that penalty to be disproportionately harsh (see paragraphs 72 above).

(b) The Government

108. The Government submitted that the heightened attention of the public and the media with regard to the pre-trial investigation into D.K.'s complaints had been justified by its extremely sensitive subject matter: allegations of sexual abuse of a minor with the possible involvement of her mother, as well as the suspected involvement of public officials in the alleged criminal activity (see paragraphs 7 and 14 above). The nature and seriousness of the allegations, the inability of the authorities to promptly solve the case, and the ensuing murders (see paragraph 14 above) had triggered a large-scale scandal, raising serious questions about the ability of the domestic law enforcement authorities to properly react to similar crimes. Accordingly, the public had had a legitimate interest in being informed about the pre-trial investigation and the measures taken to address the shortcomings which had been revealed, and the media reporting had contributed to a public debate on matters of serious public concern.

109. The Government further submitted that none of the statements made by politicians and public officials had implied that the applicant was liable for any specific offence, and many of them had not referred to her at all. Furthermore, a number of statements invoked by the applicant had not been made until after the Prosecutor General's Office had issued the findings of the disciplinary inquiry and thus could not have influenced that inquiry, which had found that the applicant had improperly carried out her duties and recommended her demotion. Moreover, no politicians or public officials had made any interventions in the disciplinary proceedings against the applicant. The Government contended that those officials had merely displayed their interest in the proper investigation of serious criminal cases.

110. The Government also submitted that media interest in certain cases was inevitable in a democratic society and courts could not be expected to operate in a vacuum. However, the applicant's case had been decided by professional judges who, due to their professional training and experience, had been able to disregard any external influence. There had not been any

indications of bias on the part of any of the judges who had examined the applicant's case, and her concerns with regard to impartiality had been adequately addressed during the proceedings (see paragraphs 49, 63 and 64 above).

111. With regard to the parliamentary inquiry, the Government submitted that the Seimas, being the representative of the nation, needed to have the right to obtain information about various processes taking place in society in order to be able to exercise parliamentary control, including over prosecutors. However, there were adequate safeguards against any potential political interference with judicial processes (see paragraphs 89 and 90 above). Furthermore, unlike the disciplinary proceedings, the parliamentary inquiry had primarily sought to assess whether there was a need for legislative amendments in order to improve the conduct of pre-trial investigations, and not to make any findings as to liability of specific individuals (see paragraph 28 above). The Government submitted that the recommendations adopted by the Committee had been general and formulated in an abstract way, and it had not made recommendations with regard to any particular individuals (see paragraph 35 above). The Committee's findings had not been binding on judicial authorities nor had they had a higher probative value than other evidence, and thus the independence and impartiality of the judges who had subsequently examined the applicant's case had not been affected by them.

112. Lastly, the Government submitted that the administrative courts had thoroughly examined the applicant's complaints against the disciplinary penalty and adopted well-founded decisions. They had taken into account the applicant's role as the supervising prosecutor, her duties in performing that role, and the actions she had taken in the course of the investigation (see paragraphs 57-59 and 66 above). There were no indications that the courts had operated with a preconceived notion of the applicant's guilt or that they had been unduly influenced by external factors; in fact, some of the findings of the commission of inquiry had been annulled in the court proceedings (see paragraph 56 above).

2. The Court's assessment

(a) Scope of the case

113. In the present case, the disciplinary penalty was imposed on the applicant by the Prosecutor General, following an inquiry carried out by the Prosecutor General's Office (see paragraphs 23-26 above). The applicant then challenged that penalty before the administrative courts, which examined her complaint at two levels of jurisdiction.

114. In her submissions before the Court, the applicant raised complaints with regard, *inter alia*, to the fairness of the decision taken by the Prosecutor General (see paragraphs 105 and 106 above). In this connection,

the Court reiterates its settled case-law according to which, even where an administrative body determining disputes over "civil rights and obligations" does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1", that is, if any structural or procedural shortcomings identified in the proceedings before an administrative authority are remedied in the course of the subsequent review by a judicial body enjoying full jurisdiction (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 132, 6 November 2018 and the cases cited therein).

115. It was not disputed that the administrative courts which examined the applicant's complaint against the disciplinary penalty were judicial bodies within the meaning of Article 6 § 1 of the Convention and that they had full jurisdiction over the matter. In such circumstances, the Court considers that it is not necessary to examine whether the proceedings conducted by the Prosecutor General's Office complied with Article 6 § 1. It will limit its examination to the issue of fairness of the proceedings before the administrative courts.

(b) Approach to be taken in the present case

116. The applicant complained that the fairness of the proceedings before the administrative courts had been affected by the findings of the parliamentary inquiry, the prejudicial statements made by politicians and public officials in the media, and the heightened media attention to the case.

117. The Court has previously acknowledged, in cases concerning the fairness of civil proceedings, that public statements made by high-ranking politicians might, in view of their content and the manner in which they were made, be incompatible with the notion of an "independent and impartial tribunal" within the meaning of Article 6 § 1 of the Convention (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 80, 25 July 2002, and *Kinský v. the Czech Republic*, no. 42856/06, § 94, 9 February 2012). It also held that what was at stake was not actual proof of influence or pressure on judges but the importance of the appearance of impartiality (see, *mutatis mutandis*, *Kinský*, cited above, § 98).

118. Accordingly, the Court considers that the applicant's complaints should be examined from the perspective of the independence and impartiality of the courts which examined the case against her.

119. To date, when examining cases concerning the impact of statements made by public officials on the independence and impartiality of courts in civil proceedings, the Court found a violation of Article 6 § 1 of the Convention where the State authorities acting at the highest level had intervened in the civil proceedings on a number of occasions (see *Sovtransavto Holding*, cited above, § 80), as well as where several

politicians had made strong negative statements regarding decisions in the type of cases brought by the applicant, including the applicant's own cases, and about the judges deciding them, had unequivocally expressed the opinion that the courts' decisions upholding the applicant's claims had been wrong and undesirable, and those statements had been directly aimed at the judges (see *Kinský*, cited above, §§ 91-93). The Court considers that the reasoning of the aforementioned judgments is directly relevant to the present case and should be duly taken into account when assessing the statements made by public officials complained of by the applicant.

120. The Court has also held in previous cases, albeit in the context criminal proceedings, that in certain situations a virulent media campaign can adversely affect the fairness of court proceedings and engage the State's responsibility, with regard to, *inter alia*, the impartiality of courts under Article 6 § 1 (see *Paulikas*, cited above, § 57, and the cases cited therein).

121. In this connection, the Court reiterates that the requirements inherent in the concept of "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge. This is borne out by the absence of detailed provisions such as paragraphs 2 and 3 of Article 6 applying to cases of the former category. Thus, although these provisions have a certain relevance outside the strict confines of criminal law, the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases. However, the Court considers it necessary, when examining proceedings that fall within the civil-law aspect of Article 6, to draw inspiration from its approach to criminal-law matters (see *Jokela v. Finland*, no. 28856/95, § 68, ECHR 2002-IV; *Carmel Saliba v. Malta*, no. 24221/13, § 67, 29 November 2016; and *Hodžić v. Croatia*, no. 28932/14, § 67, 4 April 2019).

122. With the above considerations in mind, the Court emphasises, in particular, that a fair hearing can still be held after intensive adverse publicity. In a democracy, high-profile cases will inevitably attract comment by the media; however, that cannot mean that any media comment whatsoever will inevitably prejudice a defendant's right to a fair hearing. In such cases, the Court will examine whether there are sufficient safeguards to ensure that the proceedings as a whole are fair. It will require cogent evidence that concerns about the impartiality of judges are objectively justified before any breach of Article 6 § 1 can be found (see *Paulikas*, cited above, § 58, and the cases cited therein).

123. The Court will address separately the three aspects of the applicant's complaint (firstly, the findings of the Parliamentary Committee on Legal Affairs, secondly, various public statements made by high-ranking politicians, and thirdly, an alleged media campaign). It will also examine

whether the administrative courts in their decisions adequately addressed her concerns with regard to the fairness of the proceedings.

(i) As to the parliamentary inquiry

124. In accordance with Lithuanian law, the Seimas has the right to carry out parliamentary inquiries, either by entrusting them to one of the existing parliamentary committees or by creating an *ad hoc* commission of inquiry; when conducting such inquiries, both those bodies follow the same rules (see paragraphs 87-89 above). The Court takes note of the findings of the Constitutional Court of Lithuania and the Venice Commission, both of which recognised the right of Parliament to obtain information necessary for it to fulfil its lawful duties and the importance of parliamentary oversight in a democratic society (see paragraphs 90 and 91 above). The applicant did not argue that the very fact of the Seimas opening a parliamentary inquiry had, in and of itself, infringed the fairness of the proceedings in her case, and the Court has no grounds to find otherwise.

125. The applicant's complaint concerned some of the findings made by the Parliamentary Committee – namely, that the KCDPO had "obviously procrastinated" in the pre-trial investigation and that she had been one of the officers responsible for the inaction (see paragraphs 31 and 32 above).

126. In this connection, the Court firstly observes that the purpose of the parliamentary inquiry was not to establish the liability of the applicant or any other individual officers, but to make an overall assessment of how the pre-trial investigation into D.K.'s complaints had been carried out, and whether general measures were necessary in order to improve the conduct of pre-trial investigations (see paragraph 28 above). Accordingly, the purpose of the parliamentary inquiry was not the same as that of either the criminal proceedings concerning D.K.'s complaints or the disciplinary proceedings against the applicant (see, *mutatis mutandis*, *Rywin v. Poland*, nos. 6091/06 and 2 others, § 226, 18 February 2016; see also the position of the Venice Commission on the purposes of parliamentary inquiries in paragraph 91 above). The Court also notes that the Constitutional Court has held that parliamentary inquiries could not interfere with the constitutional powers of courts, or undermine the independence of judges and courts, or administer justice themselves (see paragraph 90 above).

127. Turning to the specific statements complained of by the applicant, the Court observes that the Committee held several times, both in the descriptive part of its report and in its conclusions, that the KCDPO had "obviously procrastinated" in the pre-trial investigation, that it had failed to ensure that the essential investigative measures were taken, and had thereby acted incompetently (see paragraphs 32 and 35 above). While these statements unequivocally expressed the Committee's view as to whether the KCDPO had acted properly, the Court emphasises that they did not engage the individual liability of any specific officers of the KCDPO. Similarly, the

Seimas in its resolution endorsing the Committee's findings did not make any mention of the applicant (see paragraph 36 above). The Court therefore considers that those statements were of a general nature and unable to affect the fairness of the disciplinary proceedings concerning the applicant's individual liability (see, *mutatis mutandis*, *Paulikas*, cited above, § 52, and the cases cited therein).

128. As for the other statement complained of by the applicant, the Court notes that it indeed referred specifically to her – namely, that "the commission [of the Prosecutor General's Office] which had conducted the disciplinary inquiry found that the persons responsible for the said inaction were the prosecutor of the KCDPO who had initially supervised the pre-trial investigation and had later taken over its conduct, and the Deputy Chief Prosecutor of the KCDPO" (see paragraph 31 above).

129. In this connection, the Court reiterates that any statement must be assessed in the context of the particular circumstances in which it was made (ibid., § 49). In the present case, the Committee did not carry out a separate investigation but based its findings on the documents provided to it by other authorities, including the Prosecutor General's Office (see paragraph 29 above). At the time when the Committee adopted its report, the Prosecutor General's Office had already concluded its disciplinary proceedings, in which it had identified various shortcomings in the work of the police and prosecutors – including the KCDPO and the applicant (see paragraphs 24 and 25 above).

130. In the Court's view, the Committee's report made it clear that the aforementioned finding had been reached by the Prosecutor General's Office and not by the Committee itself. The Committee did not express any assessment of its own as to the accuracy of the Prosecutor General's finding – it neither endorsed nor criticised it, and it did not make any additional observations with regard to the applicant's possible role in the pre-trial investigation (see, for a similar situation, *Rywin*, cited above, § 217). Furthermore, the conclusions and recommendations adopted by the Committee did not contain any statements implying that the applicant was individually liable (see paragraph 35 above).

131. In such circumstances, the Court considers that the impugned statements made by the Committee in its report, when read in their context and in the light of the report as a whole, cannot be seen as implying that the applicant was individually liable for any shortcomings in the work of the KCDPO, and thus they did not give cause to doubt the independence and impartiality of the administrative courts in her case (contrast the cases cited in paragraph 119 above).

(ii) As to the public statements of high-ranking politicians

132. The applicant also complained that the fairness of the disciplinary proceedings against her had been affected by the many public statements

made by high-level State officials, who had insisted on the accountability and harsh punishment of prosecutors involved in the criminal proceedings concerning D.K.'s complaints.

133. The Court notes that the impugned statements were made by the President, the Chair of the Parliamentary Committee on Legal Affairs and some Members of Parliament in a context that was independent of the disciplinary proceedings themselves, that is, by way of public statements or interviews in the national press (see paragraphs 39-45 above and contrast the cases cited in paragraph 119 above). The Court acknowledges that the circumstances of the case – allegations of sexual abuse against a minor, two murders, and the apparent inability of the law enforcement authorities to conduct criminal proceedings promptly and diligently – created a legitimate public interest in being informed about, *inter alia*, the authorities' actions when investigating those allegations, the problems identified in their response, and the measures taken to address those problems. The Court is also of the view that those same circumstances justified the wish of high-level State officials to express their reaction to the shortcomings in the work of the law enforcement authorities and to keep the public informed about the individual and general measures taken to address those shortcomings (see the Government's observations to that effect in paragraph 108 above). However, the Court reiterates that those circumstances in and of themselves could not justify each and every use of words by the officials in their statements to the press (see, *mutatis mutandis*, *Paulikas*, cited above, § 50, and the case-law cited therein).

134. The Court will first look at the statements which were made before the Prosecutor General's Office concluded its disciplinary proceedings and decided to give the applicant a disciplinary penalty (see paragraphs 24-26 above). The President issued several public statements criticising the pre-trial investigation as protracted and calling for the identification and personal accountability of all officers who had acted negligently and who had failed to perform their duties diligently (see paragraphs 41 and 42 above). Furthermore, the Chair of the Parliamentary Committee on Legal Affairs stated that the pre-trial investigation had been carried out "rather dismissively and slowly" and that he had seen "displays of procrastination and negligence" in the actions of investigating officers (see paragraphs 39 and 40 above). In addition, a Member of Parliament implied that the deliberate inaction of the authorities might have driven D.K. to commit two murders (see paragraph 39 above). The Court observes that none of those statements referred to the applicant or implied that she had been responsible for any of the alleged inadequacies in the criminal proceedings (see *Natsvlishvili and Togonidze v. Georgia*, no. 9043/05, § 104, ECHR 2014 (extracts)). It is unable to accept that such statements of a general nature could have affected the fairness of the proceedings in which the applicant's

individual liability was determined (see *Paulikas*, cited above, § 52, and the cases cited therein and contrast the cases cited in paragraph 119 above).

135. Soon after the Prosecutor General's Office concluded its disciplinary inquiry and recommended demoting the applicant and giving several other prosecutors disciplinary penalties ranging from a warning to dismissal (see paragraphs 24 and 25 above), the President gave a statement to a news website in which she admitted that she had expected the "Kaunas prosecutors" to receive harsher penalties (see paragraph 44 above). In the Court's view, this statement was sufficiently specific and referred to an identifiable group of prosecutors which included the applicant. The applicant contended that the President's insistence on harsh penalties had affected the fairness of the proceedings before the administrative courts.

136. The Court does not wish to speculate as to what effect the aforementioned statement may have had on the course of the proceedings in issue (see *Kinský*, cited above, § 94, and the case-law cited therein). However, it cannot be overlooked that the administrative courts which examined the applicant's complaint against the demotion did not give her a harsher penalty than the one chosen by the Prosecutor General (see paragraphs 55 and 65 above). Furthermore, the courts justified the appropriateness of the demotion by referring to the specific duties of a supervising prosecutor and listing the concrete actions which the applicant had failed to take (see paragraphs 59 and 67 above). In such circumstances, the Court does not consider that the President's statement with regard to the penalties to be given to the "Kaunas prosecutors" gave cause to doubt the independence and impartiality of the courts in the proceedings concerning the applicant's individual liability (see, *mutatis mutandis*, *Dimitrov and Others v. Bulgaria*, no. 77938/11, § 163, 1 July 2014).

(iii) As to the alleged media campaign

137. The Court acknowledges that, in certain situations, a virulent media campaign can adversely affect the fairness of court proceedings and engage the State's responsibility (see paragraph 120 above). At the same time, the Court notes that press coverage of current events is an exercise of freedom of expression, guaranteed by Article 10 of the Convention. If there is a virulent press campaign surrounding the proceedings, what is decisive is not the subjective apprehensions of the affected individual concerning the absence of prejudice required of the courts, however understandable, but whether, in the particular circumstances of the case, his or her fears can be held to be objectively justified (see, *mutatis mutandis*, *Paulikas*, cited above, § 57, and the cases cited therein).

138. In the present case, there was extensive media coverage of the criminal proceedings concerning the alleged case of sexual abuse and of the subsequent disciplinary proceedings against various prosecutors, including the applicant. The Court has already accepted that the interest in the case

was justified by the seriousness and nature of the criminal complaints brought by D.K. and the apparent inability of the authorities to adequately address those complaints (see paragraph 133 above). Therefore, although various State officials discussed the case in the media, it cannot be said that the coverage was prompted by the authorities, and nor did the applicant allege otherwise (ibid., § 60, and the cases cited therein).

139. The Court is unable to accept that the language used in the media reports with regard to the applicant while the court proceedings against her were ongoing was such as to create the perception of her responsibility for any specific offences (contrast *Paulikas*, cited above, § 61). Furthermore, the case against the applicant was decided by professional judges who were less likely than a jury to be influenced by the press campaign on account of their professional training and experience, which allows them to disregard improper external influence (ibid., § 62, and the cases cited therein). In addition, domestic courts at two levels of jurisdiction issued well-reasoned decisions and they upheld some of the applicant's complaints (see paragraphs 55-60 and 65-67 above). Accordingly, the Court finds no cogent evidence to suggest that the judges who assessed the arguments put forward by the applicant were influenced by any of the publications in the press (see the principles cited in paragraph 122 above).

(iv) As to the reasoning of the administrative courts

140. The Court reiterates that the right to a fair hearing as guaranteed by Article 6 § 1 of the Convention includes, in particular, the right of the parties to submit any observations that they consider relevant to their case. The purpose of the Convention being to guarantee not rights that are theoretical or illusory but rights that are practical and effective, this right can only be seen to be effective if the observations are actually "heard", that is, duly considered by the court. In other words, the effect of Article 6 is, among others, to place the "tribunal" under a duty to conduct a proper examination of the submissions, arguments and evidence presented by the parties, without prejudice to its assessment of whether they are relevant (see, among many other authorities, *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I, and *Paliutis v. Lithuania*, no. 34085/09, § 39, 24 November 2015).

141. However, while Article 6 § 1 obliges the courts to give reasons for their judgments, it cannot be understood as requiring a detailed answer to every argument put forward by the parties. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing between the Contracting States with regard to statutory provisions, customary rules, judicial opinion and the presentation and drafting of judgments. That is why the question as to whether a court has failed to fulfil

the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see, among many other authorities, *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A, and *Wagner and J.M.W.L. v. Luxembourg*, no. 76240/01, § 90, 28 June 2007).

142. In the present case, it does not escape the Court's attention that neither of the administrative courts which examined the applicant's complaint addressed her argument, raised before both the first-instance court and the appellate court, that the fairness of the proceedings had been prejudiced by public statements of politicians and by media reporting (see paragraphs 52, 60, 61 and 68 above; contrast *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005, and *Paulikas*, cited above, § 25).

143. At the same time, it observes that the courts answered the applicant's main arguments, namely that she had acted in accordance with the relevant legal instruments and that the penalty given to her had been disproportionate (see paragraphs 47, 56-59, 66 and 67 above and compare *Buzescu v. Romania*, no. 61302/00, § 67, 24 May 2005). In view of the rather general way in which the applicant formulated her complaint concerning the fairness of the proceedings (see paragraphs 52 and 61 above), as well as the detailed reasons given by the courts to justify the decision to give her a disciplinary penalty (see paragraph 136 above), the Court is prepared to accept that their silence on this issue can reasonably be construed as an implied rejection (see *Ruiz Torija*, cited above, § 30, and *Yanakiev v. Bulgaria*, no. 40476/98, § 71, 10 August 2006).

144. Furthermore, the Court has found no grounds to believe that the independence and impartiality of the administrative courts were compromised by public statements of State officials and politicians (see paragraphs 127, 131, 134, 136 and 139 above). Nor is there anything in the case file that would enable it to doubt the overall fairness of the proceedings before the administrative courts. Taking all these circumstances into account, the Court considers that the courts' omission to explicitly address the applicant's argument concerning the alleged political and media interference did not render the proceedings, taken as a whole, unfair.

(c) Conclusion

145. In the light of all the aforementioned circumstances, the Court concludes that there has been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 6 § 1 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 15 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Jon Fridrik Kjølbro
Deputy Registrar	President

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

J.F.K.
H.B.

DISSENTING OPINION OF JUDGE BOŠNJAK

1. To my regret, I cannot agree with the position of the majority in this case regarding the lack of reasoning of the administrative courts in respect of the alleged political and media pressure in the domestic proceedings conducted against the applicant (see paragraphs 140–44 of the judgment).

2. Both in her action before the first-instance court and in her appeal before the Supreme Administrative Court, the applicant raised the argument that the fairness of the proceedings had been prejudiced by public statements of politicians and by media reporting. The Court acknowledges that the domestic courts failed to address this argument in an explicit manner (paragraphs 142 and 144 of the judgment). In my opinion, this is an understatement, allowing an outside observer to assume that at least an implicit answer was provided. However, I believe it is fair to say that the courts of the respondent State failed to address the applicant's argument in any way at all.

3. While the majority find the lack of an (explicit) answer to the applicant's complaint to be disconcerting (paragraph 142 of the judgment), they nevertheless do not consider that this particular omission would suffice for a violation of Article 6 § 1 of the Convention to be found. In their view, the following grounds speak for such a position:

(a) the domestic courts addressed the applicant's main arguments;

(b) the applicant formulated her complaint before the domestic courts in a rather general way;

(c) the domestic courts provided detailed reasons to justify the decision to give her a disciplinary penalty;

(d) the Court has concluded that the independence and impartiality of the administrative courts were not compromised by public statements of State officials and politicians;

(e) the failure of the domestic courts to explicitly address the applicant's argument did not render the proceedings, taken as a whole, unfair.

I disagree with this view for the reasons stated below.

4. The applicant's argument, as formulated both before the Vilnius Regional Administrative Court and the Supreme Administrative Court, was clearly articulated and supported by evidence that she considered to substantiate her claim (see paragraphs 52 and 61 of the judgment in connection with paragraphs 38, 39 and 44). She expressly claimed that the decision to demote her had been influenced by public statements made by the politicians. She referred to the specific content of those statements and submitted examples. Her submissions were clear enough for both domestic courts to understand the essence of, and the grounds for, her complaint, which in turn put those courts under an obligation to consider it properly. In the light of the majority's argument outlined above in point (b), it is difficult to discern from their reasoning what more the applicant should have brought

before the domestic courts in order to trigger the obligation for those courts to reply. Equally, it should not be overlooked that the applicant repeated her complaint before the Court, which in turn has not found it to be insufficiently substantiated for an examination on the merits. Instead, it has rightly declared the complaint admissible and has explicitly examined it on nine pages. I believe that the same requirement should be found to apply domestically.

5. Furthermore, and regarding the majority's argument under (a), I believe that a failure to address one of the relevant legal and/or factual arguments by a party to the proceedings cannot be remedied by properly examining the other complaints. This is all the more true when the complaints and arguments are not directly interconnected. A complaint that public statements by high-ranking politicians were incompatible with the notion of an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention is a self-standing complaint (see, for example, *Sovtransavto Holding v. Ukraine*, no. 48553/99, 25 July 2002, and *Kinský v. the Czech Republic*, no. 42856/06, 9 February 2012). Even if it appears that procedural steps in a given case were duly taken and that the outcome of the proceedings cannot be reproached as such, public statements may, in view of their content and the manner in which they were made, entail a violation of the above-mentioned Convention provision. For this reason, any such complaint cannot be considered as "lateral" (as opposed to "main complaint", in the language of the majority) and should properly be addressed by a court before which it is brought.

6. Equally, and in respect of the majority's argument under (c) above, the fact that in a sufficiently reasoned view of the domestic courts, the outcome of the proceedings (namely the applicant's demotion) was justified, cannot remedy the fact that those courts failed to address the applicant's argument about the alleged political and media pressure in her case. What is at stake is not actual proof of pressure or of its influence upon the decision taken, but the appearance of impartiality (see, *mutatis mutandis*, *Kinský*, cited above, § 98). Thus an outcome may be perfectly correct, but a violation can still be indicated, if the relevant conditions are met. They are of course to be thoroughly examined, an exercise which the Court has performed in this judgment, whilst the domestic courts failed to do the same.

7. Similarly, while I agree with the majority that the independence and impartiality of the domestic courts were not prejudiced by the public statements made by the politicians and the media in the applicant's case, I believe that this fact did not absolve those courts from addressing the applicant's complaint to that effect. To hold otherwise would mean that the domestic courts are under an obligation to respond only to those arguments of a party which are well-founded, a position that would be wholly unacceptable from the point of view of protection against arbitrariness,

which is at the heart of the concept of fairness, as embodied by Article 6 of the Convention. According to the Court's case-law, the domestic courts are under an obligation to deal with those arguments which, if upheld, would be decisive for the outcome of the case (see *Ruiz Torija v. Spain,* 9 December 1994, Series A no. 303-A). As the applicant's argument, if successful, could have changed the course of the case domestically, I unfortunately cannot subscribe to the majority's argument outlined above under (d).

8. Finally, the argument of the majority that the omission of the Lithuanian administrative courts did not render the proceedings as a whole unfair (see under (e) above) is in my opinion inconsistent with the well-established approach of the Court. Notably, a single failure to comply with the obligation of domestic courts to provide reasons for dismissing a relevant submission of a party has sufficed for the Court to find a violation of Article 6 § 1 of the Convention (see, in the context of failure to provide reasons for not referring a case to the CJEU for a preliminary ruling, *Schipani and Others v. Italy*, no. 38369/09, 21 July 2015, and *Baltic Master Ltd. v. Lithuania* [Committee], no. 55092/16, 16 April 2019). Introducing a requirement that the fairness of the proceedings as a whole be tested in order to establish a violation goes beyond existing case-law and I therefore find it hard to support this position.

9. The omission of both the Vilnius Regional Administrative Court and of the Supreme Administrative Court is all the more serious as the applicant's complaint did not pertain (only) to relevant issues of fact or domestic law, but (also) to alleged political and media pressure in her case which, if confirmed, would entail a self-standing violation of Article 6 § 1 of the Convention.

10. In sum, I believe that the repeated failure of the respondent State's domestic courts to address a relevant and substantiated argument submitted by the applicant was incompatible with the prohibition of arbitrariness and therefore constituted a violation of Article 6 § 1 of the Convention.