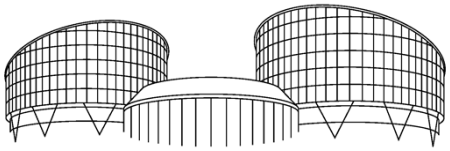

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF ČERNIUS AND RINKEVIČIUS v. LITHUANIA

(Applications nos. 73579/17 and 14620/18)

JUDGMENT

Art 6 (civil) • Access to court • Individual and excessive burden on applicants as a result of domestic courts' refusal to reimburse legal costs incurred in successful litigation for lifting fines • Pecuniary loss from litigation costs substantially exceeding the amount of fines imposed • Domestic courts' failure to carry out proportionality assessment • Litigation costs not excessive

STRASBOURG

FINAL

18/06/2020

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

In the case of Černius and Rinkevičius v. Lithuania,

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

Robert Spano, *President,*
Marko Bošnjak,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli,
Peeter Roosma, *judges,*

and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 21 January 2020,

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

1. PROCEDURE

1. The case originated in two applications (nos. 73579/17 and 14620/18) 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 two Lithuanian nationals, Mr Irmantas Černius (hereinafter, "the first applicant") and Mr Andrejus Rinkevičius (hereinafter, "the second applicant"), on 9 October 2017 and 20 March 2018, respectively.

2. The applicants were represented by Mr M. Mikalopas, a lawyer practising in Vilnius. The Lithuanian Government ("the Government") were represented by their Acting Agent, Ms Lina Urbaitė.

3. The applicants complained about their inability to obtain compensation for the legal costs incurred during administrative court proceedings. They alleged a violation of the right to access to court, under Article 6 § 1 of the Convention.

4. On 14 June 2018 notice of the applications was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1977 and 1960 respectively and live in Vilnius.

6. The applicants worked as regional supervisors at different branches of the same private company, "Eurocash1", which provides security services in Lithuania and Latvia.

A. The first applicant

7. Having inspected the company's premises in February 2015, on 7 April 2015 the State Labour Inspectorate drew up an administrative-law violation protocol, under Article 41 of the Code of Administrative Law Violations (see paragraph 36 below), in respect of the first applicant, holding that he had failed to display publicly the employees' work schedules. The State Labour Inspectorate imposed a fine of 500 euros (EUR) on the first applicant for a breach of Article 147 § 3 of the Labour Code (see paragraph 35 below).

8. Later that month the first applicant concluded a legal assistance agreement with a law firm in order for it to represent him in court proceedings in which he intended to challenge the fine imposed on him.

9. By a decision of 29 May 2015 the Vilnius City District Court quashed the Inspectorate's decision as unfounded. The court noted that the employees of the company did in fact have access to their work schedules – they could consult them in the binders at the office and were informed by telephone and SMS. They habitually arrived at work on time. The court held a hearing in those proceedings at which both the first applicant and his advocate (lawyer who has been admitted to the Bar (*advokatas*)) were present.

On 27 July 2015, in written proceedings, the Vilnius Regional Court found the lower court's findings reasonable and dismissed the State Labour Inspectorate's appeal.

10. In August 2015 the law firm that had represented the first applicant in the labour dispute with the State presented him with an invoice, with a breakdown of the costs, for EUR 1,169 in respect of legal representation. The first applicant then made a bank transfer for that sum to the law firm.

11. In September 2015 the first applicant, represented by an advocate from the same law firm, commenced a new set of court proceedings, arguing that he had sustained pecuniary damage which was equal to the sum he had had to pay for his legal representation in the first set of court proceedings. He noted that he had had to take judicial action in order to have the fine lifted.

12. By a decision of 9 February 2016 the Vilnius Regional Administrative Court dismissed the first applicant's claim as unfounded. It noted that the State Labour Inspectorate had not abused its powers or acted negligently or precipitately when imposing the fine. The mere fact that the administrative-law violation protocol had subsequently been annulled by the courts on account of a purely different evaluation of the factual circumstances did not make the inspector's actions unlawful, which, in turn, would be a ground to hold the State liable under Article 6.271 of the Civil Code (see paragraph 24 below).

13. The first applicant, represented by the same law firm, appealed. He relied on Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. He argued that if, upon winning a case against the Labour Inspectorate, he was not returned to the initial position, there would be a situation which was against the rule of law, because the plaintiff, facing the unlawful act of a State institution, would be better off paying the fine of EUR 500, than choosing to defend his rights in court, since the latter option would only lead to greater financial loss for him. He also referred to the maxim *ex injuria jus non oritur*, and maintained that the fact that the State institution had not properly used its powers and had imposed a sanction on him could not result in the State having the privilege of not compensating damage caused to a person by an "unlawful act" (*neteisėtu aktu padaryta žala*).

14. By a final ruling of 12 April 2017, the Supreme Administrative Court left the lower court's decision unchanged. The Supreme Administrative Court pointed out that one of the conditions for the compensation of damage under Article 6.271 of the Civil Code was the presence of unlawful actions or inaction by State officials. That was also the Supreme Administrative Court's practice. In the first applicant's case, however, this "unlawful action" condition had not been met, since the State Labour Inspectorate officers had acted within the bounds of their authority.

B. The second applicant

15. On 7 April 2015, exactly as in the first applicant's case, the State Labour Inspectorate imposed a fine of EUR 500 on the second applicant for having breached administrative law by failing to ensure that the employees' work schedules were publicly displayed at the company. The fine was imposed on legal grounds identical to those in the first applicant's case (see paragraph 7 above).

16. Afterwards the second applicant concluded a legal assistance agreement with the same law firm as the first applicant in order for it to represent him in court proceedings in which he intended to challenge the fine imposed on him.

17. By a decision of 11 September 2015, the Vilnius City District Court quashed the Inspectorate's decision as unfounded. As in the first applicant's case, the court established that the employees of that company did in fact have access to their work schedules, although those schedules were not published on the billboard. It transpires that that decision was final.

18. Later that month the law firm which had represented the second applicant in that labour dispute presented him with an invoice, with a breakdown of the costs, for EUR 837 in respect of legal representation. He paid that sum.

19. In September 2015 the second applicant, represented by an advocate from the same law firm, brought a new set of court proceedings, arguing that he had sustained pecuniary damage which was equal to the amount he had paid for his legal representation in the first set of court proceedings. He submitted that he had had to undergo court proceedings in order to have the fine lifted. He also asked the court, for the purposes of procedural economy and so that he would not suffer even more pecuniary losses from litigation costs, to join his case to the first applicant's case, which concerned the same subject matter.

20. By a decision of 11 October 2016 the Vilnius Regional Administrative Court dismissed the second applicant's claim for reasons analogous to those in the first applicant's case (see paragraph 12 above).

21. The second applicant, represented by the same law firm, appealed, putting forward the same pleas as the first applicant (see paragraph 13 above).

22. By a final ruling of 3 January 2018, the Supreme Administrative Court left the lower court's decision unchanged for the same reasons as in the first applicant's case (see paragraph 14 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. As to compensation for damage and the State's responsibility

1. The Constitution and legislation

23. Article 30 of the Constitution reads as follows:

> "A person whose constitutional rights or freedoms are violated shall have the right to apply to court.
>
> Compensation for material and moral [i.e. non-pecuniary] damage inflicted upon a person shall be established by law."

24. The Civil Code reads as follows:

> **Article 6.249. Damage and damages**
>
> "1. Damage shall include the amount of the loss or damage of property sustained by a person and the expenses incurred (direct damages) as well as the income of which he has been deprived, i.e. the income he would have received if unlawful actions had not been committed. Damage expressed in monetary terms shall constitute damages. Where the amount of damages cannot be proved by the party with precision, it shall be assessed by a court.
>
> ...
>
> 4. In addition to the direct damages and the income of which a creditor has been deprived, damages shall comprise:
>
> 1) reasonable costs to prevent or mitigate damage;
>
> 2) reasonable costs incurred in assessing civil liability and damage;

3) reasonable costs incurred in the process of recovering damages within extrajudicial procedure ...”

Article 6.271. Liability to compensation for damage caused by unlawful actions of institutions of public authority

“1. Damage caused by unlawful acts of institutions of public authority must be compensated by the State from the means of the State budget, irrespective of the fault of a concrete public servant or other employee of public authority institutions...

2. For the purposes of this Article, the notion ‘institution of public authority’ means any subject of public law (State or municipal institution, official, public servant or any other employee of these institutions, etc.), as well as a private person executing functions of public authority.

3. For the purposes of this Article, the notion ‘action’ means any action (active or passive actions) of an institution of public authority or its employees, that directly affects the rights, liberties and interests of persons (legal acts or individual acts adopted by the institutions of State and municipal authority, administrative acts, physical acts, etc., with the exception of court judgments – verdicts in criminal cases, decisions in civil and administrative cases and orders).

4. Civil liability of the State or municipality, subject to this Article, shall arise where employees of public authority institutions fail to act in the manner prescribed by law for these institutions and their employees.”

25. Administrative courts decide cases concerning damage caused by unlawful acts of public authorities, as provided for in Article 6.271 of the Civil Code (this is set out in Article 15 § 1 (3) of the Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*)).

2. The Constitutional Court’s case-law

26. In a ruling of 19 August 2006 the Constitutional Court held:

“In the course of protection and defence of human rights and freedoms ... particular importance is attributed to the institute of compensation for damage. It is established in Paragraph 2 of Article 30 of the Constitution that compensation for material and moral damage inflicted upon a person shall be established by law. Thus, the necessity to compensate material and moral damage inflicted upon a person is a constitutional principle ... This constitutional principle is inseparable from the principle of justice entrenched in the Constitution: all the necessary legal preconditions must be created by law in order to justly compensate for the inflicted damage. Thus, the Constitution imperatively requires to establish by law such legal regulation that a person, who has sustained damage as a result of unlawful actions, would be able in all cases to claim just compensation for that damage and to receive that compensation. ... [It] should be emphasised that it does not follow from the Constitution that it is possible by law to establish some exceptions, under which the moral and/or material damage inflicted upon the person is not compensated, for example, because of the reason that it was inflicted by unlawful actions of officials or institutions of the State itself. If the law, let alone another legal act, established such legal regulation whereby the State would fully or partially avoid the duty to justly compensate for material and/or moral damage inflicted by unlawful actions of the State institution or [its] officials, it would mean not only that the constitutional concept of compensation for damage is disregarded and that this is not line with the Constitution (*inter alia*, Paragraph 2 of

Article 30 thereof), but it would also undermine the *raison d'être* of the State itself as a common good of the whole society.

...

[It] should be noted that, under the Constitution, a person has the right to claim compensation for damage inflicted by unlawful actions of State institutions and officials, also when the case of the corresponding compensation for damage is not specified in any law, while the courts, deciding such cases according to their competence, have the constitutional powers, by applying the Constitution directly (the principles of justice, legal certainty and legal security, proportionality, due process of law, the equality of persons and the protection of legitimate expectations, as well as other provisions of the Constitution), and general principles of law, pursuing, *inter alia*, the principle of reasonableness etc., to award the corresponding compensation for damage."

B. The right of access to a court, the right to legal assistance and the right to reimbursement of legal costs

1. The right of access to a court

27. The right to access to court is established in Article 30 of the Constitution (see paragraph 23 above).

28. In a ruling of 2 July 2002 the Constitutional Court held that:

"The constitutional principle of judicial protection is established in Paragraph 1 of Article 30 of the Constitution. In its ruling of 18 April 1996, the Constitutional Court held that in a democratic State the court is the main institutional guarantor of human rights and freedoms and that the constitutional principle of judicial protection is universal.

It needs to be noted that, under the Constitution, the legislator has a duty to establish such legal regulation whereby all disputes regarding any violation of rights or freedoms of individuals may be decided in court. An out-of-court dispute settlement procedure may also be provided for. However, it is not permitted to establish any such legal regulation that would deny the right of an individual who believes that his rights or freedoms have been violated to defend his rights and freedoms in court."

29. In a ruling of 15 May 2007 the Constitutional Court held that:

"9. ... it is imperative, from the constitutional principle of a State under the rule of law, that a person who considers his or her rights or freedoms to be violated has an absolute right to an independent and impartial court; this right may not be artificially constrained or artificially complicated ... The rights of the person must be protected not formally, but in reality and effectively, from unlawful actions of private persons, as well as those of State institutions or officials. The legal regulation establishing the procedure of implementation of the right of a person to judicial defence must conform to the constitutional requirement of legal clarity, and the legislature must clearly establish in laws in what manner and to which court a person can apply, so that he would in reality implement his right to apply to court regarding violation of his rights and freedoms."

30. In a ruling of 30 June 2008 the Constitutional Court held that:

"3.3 ... the right of access to court is absolute, this right cannot be restricted or denied; under the Constitution, the legislator has a duty to establish such legal regulation so that all disputes regarding violation of the rights or freedoms of a person can be resolved in court; the rights of a person must not be formally but realistically and effectively protected from the unlawful actions of both private persons and State authorities or officials."

2. The right to legal assistance

31. The Law on the Bar (*Advokatūros įstatymas*) at the material time read:

Article 4

"2. Every person has the right, under the law, to choose an advocate who will advise, represent or defend his/her interests."

Article 6

"An advocate has the right to choose the area of law in which he/she provides legal services (specialization of an advocate)."

32. The Code of Administrative Law Violations (*Administracinių teisės pažeidimų kodeksas*) at the material time provided:

Article 272

"1. A person subject to administrative liability shall have the right <...> to use the legal assistance of an advocate or another authorised person with a university degree in law ... in the proceedings ...."

Article 275

"1. An authorised representative in the proceedings regarding an administrative offence may be an advocate or a person with a university degree or equivalent education."

33. In a ruling of 10 July 1996 the Constitutional Court held:

"3. The right to defence, as well as the right to have an advocate, is one of the fundamental human rights helping to ensure the person's freedom and inviolability and the protection of other constitutional rights and freedoms. The implementation of the constitutional right to defence is particularly dependent on the level of the advocate's professional experience, that is, on the qualifications acquired by the lawyer and his or her practical legal skills...

The legislator ... also has come to the conclusion that legal education including a wide outlook that could be secured only by university higher legal education is necessary to lawyers who work as advocates. The Constitutional Court recognises that this may be treated as an augmented requirement of educational qualification for the lawyers of this profession. However, while establishing such requirements it is intended to secure that people may be rendered a more qualified legal assistance, that is, to strengthen the guarantees for protection and defence of human rights and freedoms."

3. The right to reimbursement of legal costs

34. The Code of Civil Procedure reads:

Article 98. Reimbursement of the expenses to pay for the assistance of an advocate or trainee advocate

"1. The party in whose favour the judgment was made shall be awarded by the court from the other party the expenses for the assistance of the advocate or trainee advocate who participated in the hearing of the case as well as for help in preparing the court documents and providing consultation. These expenses cannot be awarded if the claim to award them and the proof confirming the amount of the expenses are not submitted by the end of the hearing of the case on the merits.

2. A party's expenses connected with the assistance of an advocate or trainee advocate, taking into consideration the specific complexity of the case and the expenditures of labour and time of the advocate or trainee advocate, shall be awarded in an amount no greater than that established in the payment amount recommendations approved by the Minister of Justice together with the Chairman of the Council of the Lithuanian Bar Association.

3. The provisions of this article shall be applicable when awarding expenses to pay for the assistance of the advocate or trainee advocate who represented the party in the court of first, appellate or cassation instance."

C. Other relevant law

35. The Labour Code (*Darbo kodeksas*) at the relevant time read:

Article 147. Working time regime

"3. ... Working time schedules shall be announced publicly on information boards of enterprises and their subdivisions not later than two weeks in advance..."

36. The Code of Administrative Law Violations at the material time read:

Article 41. Violation of labour laws, labour safety and hygiene regulations

"Violation of labour laws, labour safety and hygiene regulations attracts a fine on the employer from one hundred and forty four to up to one thousand four hundred and fourty four euros."

37. The Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*) at the time relevant to the applicants' litigation for lifting the fines, read as follows:

Article 1. Purpose of the Law

"1. This Law establishes the procedure for the hearing of administrative cases concerning disputes arising from administrative legal relations.

2. When holding hearings, the administrative court shall be governed by the provisions of this Law, and in the cases not regulated under this Law, by the Code of Civil Procedure.

3. The procedure of hearing administrative cases of different categories may also be regulated by other laws."

Article 5. Right to Apply to the Court for Remedy

"1. Every interested entity shall be entitled to apply to the court, in the manner prescribed by law, for the protection of his infringed or contested right or interest protected under law.

2. Waiver of the right to apply to the court shall be inadmissible.

3. The court shall accept an administrative case for consideration:

1) on the complaint or petition of the person or his representative, applying for the protection of his right or interest protected under the law ..."

Article 44. Reimbursement of Costs by the Parties to the Proceedings

"1. The party to the proceedings in whose favour the [court] decision has been adopted shall be entitled to recover costs from the other party.

2. When the claimant has obtained a decision in his favour, he shall be entitled to recover: the paid stamp duty; other costs relating to the drawing up and filing of the complaint/petition; costs connected with the hearing of the case ...

...

6. The party to the proceedings in whose favour the decision has been adopted shall also be entitled to reimbursement of representation expenses. The question of reimbursement of representation expenses shall be determined in accordance with the procedure laid down by the Code of Civil Procedure and other legal acts."

Article 47. Representation in court

"1. The parties to the proceedings defend their interests in court in person or through representatives. Presence of the party at the hearing does not deprive it of the right to have a representative in that case.

...

3. Representatives, on the basis of power of attorney, are usually advocates..."

D. The administrative courts' case-law on the issue of compensation for damage caused by State institutions and legal assistance

1. *Some of the cases cited by the applicants and the Government*

38. In administrative case no. A-63-2176/2011, decided on 14 July 2011, the Supreme Administrative Court considered the matter of compensation for the legal representation costs that the plaintiff had incurred when contesting a fine imposed by the police, who a court eventually had found had acted negligently (regarding the same case see also paragraph 41 below). The Supreme Administrative Court held:

"... Owing to the fact that Article 6.271 of the Civil Code regulates compensation for damages caused by unlawful actions of State institutions, without restricting the

application of this article to actions committed in the field of public administration, this article may also be applied when deciding on the question of compensation for damage sustained in proceedings concerning the administrative-law violation. A possibility of compensation for damage caused by a person in proceedings concerning an administrative-law violation in accordance with Article 6.271 of the Civil Code is also acknowledged in the case-law of the Supreme Administrative Court of Lithuania (see, e.g., the ruling of the Supreme Administrative Court of 4 October 2007 in administrative case no. A-17-822/2007, the ruling of 28 December 2007 in administrative case no. A-17-822/2007, the ruling of 17 September 2007 in administrative case no. A-14-751/2007, the ruling of 17 April 2007 in administrative case no. A-442-330-2008). ... Article 6.249 § 4 of the Civil Code establishes that loss covers not only direct loss and loss of earnings, but also other reasonable costs. As has been mentioned above, the examination of cases of administrative-law violations does not fall within the scope of public administration. However, this conclusion does not give a reason to hold that the pecuniary and non-pecuniary damage caused by the State institutions' actions in the course of the administrative law proceedings should not be compensated. ...

[T]here is no special law that regulates the issue of reimbursement of costs incurred in hiring a lawyer. Such possibility is not explicitly provided for in either the Code of Administrative Law Violations or the Law on Administrative Proceedings. However, absence of such a law cannot deprive of the right to request compensation for damages caused by unlawful actions of the officers in accordance with the Constitution, and thus, the panel of judges finds that the reimbursement of such costs in accordance with the procedure established under Article 6.271 of the Civil Code is reasonable and in line with the provisions of the Constitution ..."

39. In administrative case no. 153-579/2012, determined on appeal on 13 April 2012 by the Kaunas Regional Court, that court held that EUR 320, the legal representation costs which the plaintiff had incurred in connection with administrative litigation regarding a parking fine of EUR 23 which had been lifted as having been imposed by the municipality without grounds, had to be compensated. The lower court had previously refused the claim for reimbursement of the legal costs on the ground that the law did not provide such a right in proceedings concerning administrative law violations.

The Kaunas Regional Court reiterated that under Article 272 of the Code of Administrative Law Violations a person had a right to choose an advocate to defend his interests in administrative proceedings. Admittedly, neither that Code nor any other piece of legislation explicitly provided for a possibility to compensate legal representation costs for the person in respect of whom the administrative decision had been quashed as unlawful. That notwithstanding, the right to be compensated for the legal representation costs stemmed from the Constitutional Court's ruling of 19 August 2006 (see paragraph 26 above), and the constitutional principle that pecuniary and non-pecuniary damage had to be reimbursed.

40. In administrative case no. A-442-756/2018, decided on 26 June 2018, concerning the award of EUR 690 as compensation for legal costs to the plaintiff in respect of whom an administrative fine of EUR 43 had been

lifted, the Supreme Administrative Court noted that when imposing that fine the police had failed to act diligently. It also held:

> "40. Under the settled case-law of the Supreme Administrative Court, the reimbursement of representation costs in a case of administrative law violation in respect of a person who has been the subject of proceedings on administrative liability is not established, notwithstanding the fact that Article 272 of the Code of Administrative Law Violations provides for the right of a person who is the subject of proceedings on administrative liability to be provided with legal assistance by an advocate or other authorised representative who has a higher legal university or equivalent degree of education. When exercising the established right to defence, a person may avail himself or herself of paid services provided by a representative, and the costs incurred for the defence must be reimbursed in accordance with the principle "loser pays" *(pralaimėjęs moka)*. In these circumstances, the person's expenses incurred in relation to defence, according to their legal nature, are considered to be the person's direct loss, and, in accordance with Article 6.249 § 1 of the Civil Code, depending on the outcome of the administrative-law violation proceedings, can be regarded as damage to be compensated in accordance with Article 6.271 of the Civil Code (see, e.g., the ruling of 29 November 2016 in an administrative case no. eA-1615-261/2016 [see paragraphs 42-45 below], the ruling of 3 March 2016 in an administrative case no. A-631-756/2016, the ruling of 9 January 2018 in an administrative case no. A-5215-261/2017 and other)."

2. *Other case-law of the Supreme Administrative Court and the Supreme Court*

41. In administrative case no. A-63-2176-11, the ruling of 28 October 2011, the Supreme Administrative Court considered the matter of reimbursing the litigation costs incurred by the plaintiff, who had earlier obtained a favourable decision in an administrative case against the police whom the court had found to have acted negligently (see also paragraph 38 above). The Supreme Administrative Court relied on Article 44 §§ 1 and 6 of the Law on Administrative Proceedings, as well as on Article 98 §§ 1 and 2 of the Code of Civil Procedure (see, respectively, paragraphs 37 and 34 above). The Supreme Administrative Court considered that the legal representation expenses which that plaintiff had incurred in that case – EUR 450 – had to be reimbursed. It also pointed out that the sum requested did not exceed the upper limit on sums for legal assistance recommended by the Ministry of Justice.

42. On 29 November 2016, in case no. eA-1615-261/2016, the Supreme Administrative Court examined a claim for pecuniary and non-pecuniary damage lodged by a person who had been fined by the police for a traffic violation. Later that fine had been lifted by civil courts of two instances. The plaintiff in that second set of proceedings before the administrative courts claimed EUR 318 in respect of pecuniary damage caused to him by his legal representation costs – the services of an advocate he had had during the proceedings when contesting the fine. He also claimed EUR 150

in respect of non-pecuniary damage – his alleged suffering caused by the police actions.

43. The Supreme Administrative Court pointed out that even if Article 272 of the Code of Administrative Law Violations provided a right to have an advocate for the person who had been subjected to administrative proceedings, that Code did not stipulate that the representation costs should be compensated. However, when exercising the right to defence, the person could use the paid services of an advocate, and the expenses incurred then should be reimbursed in accordance with the principle "loser pays". The legal representation expenses, according to their nature, were thus direct losses of a person and, depending on the outcome of the administrative violation case, could be recognised as damage, as set out in Article 6.249 § 1 of the Civil Code.

44. The Supreme Administrative Court also referred to the Constitutional Court's ruling of 19 August 2006 (see paragraph 26 above), pursuant to which there could be no exception under the laws when damage caused to a person could not be compensated. Accordingly, and notwithstanding that the law did not directly establish the right to reimbursement of legal representation costs by the State to the person who had been subject to proceedings concerning administrative liability, that person retained such a right on the basis of the constitutional principle that the State had to compensate the damage. Lastly, the extent of the pecuniary damage could be assessed and confirmed by the payments made to the advocate. Those sums also were just and reasonable, and did not exceed the amounts included in the Minister of Justice's recommended maxima for legal costs.

45. Finally, the Supreme Administrative Court dismissed the plaintiff's claim in respect of non-pecuniary damage, holding that the fact that the administrative-law violation proceedings had been discontinued did not mean that the police had acted unlawfully. Neither had it been established that those officers had been abusing their powers or had limited the plaintiff's rights in any way. The administrative violation case must therefore only have caused the plaintiff only minor inconvenience, which did not merit the award of non-pecuniary damage.

46. In a ruling of 27 April 2018 in civil case no. 3K-3-194-684/2018 the Supreme Court held that, as a general rule, as set out in Article 98 § 1 of the Code of Civil Procedure, a request for compensation for representation costs (*atstovavimo išlaidos*) incurred before courts of each instance, together with supporting documents, should be submitted at any stage of the court proceedings, but before the case is examined on the merits at that instance.

That being so, the Supreme Court also underlined that Article 98 § 1 could not be interpreted and applied in such a way that the right to compensation for legal costs was denied to a person in whose favour the court decision on the merits of the case had been given. Accordingly, if

significant circumstances were established proving that the person was unable to present the claims regarding "representation costs" and the supporting evidence before the merits of the case were examined, the rule set out in Article 98 § 1 *in fine* did not apply (for example, this would be so where a case has been terminated in written proceedings about which the parties were not informed, without being decided on the merits – in such a situation it was considered that the parties had had no possibility to present their claims regarding compensation of "representation costs" before the case was examined on the merits). Such conclusions also stemmed from the Supreme Court's earlier rulings of 15 April 2015 and 3 February 2016.

THE LAW

I. JOINDER OF THE APPLICATIONS

47. In view of the similarity of the subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

48. Relying on Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complained that because of the courts' refusal to award them legal costs after successful litigation against the State Labour Inspectorate they had been left in a worse situation than before the commencement of the court proceedings.

49. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), considers that this complaint falls to be examined solely under Article 6 § 1 of the Convention, which insofar as relevant reads as follows:

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

A. Admissibility

50. The applicants wished to obtain compensation for the costs of administrative litigation when challenging the State Labour Inspectorate's decisions by which, as managers of a company, they had been found in breach of labour law rules and had been fined. The Court considers that the applicants' complaints do not fall under the notion of "criminal charge" within the autonomous meaning of Article 6 § 1, because they do not meet – neither alternatively, nor cumulatively – the criteria set out in the Court's established case-law, commonly known as the "*Engel* criteria": the legal classification of the offence under national law; the very nature of the

offence; and the degree of severity of the penalty that the person concerned risks incurring. In particular, Articles 1 and 44 § 6 of the Law on Administrative Proceedings specifically refer to the Code of Civil Proceedings as regards litigation for lifting fines (see paragraph 37 above). Moreover, the offences that had been imputed to the applicants had not been classified as criminal under national law – they were of labour law nature and were not punishable by imprisonment. Besides, it has not been argued that the applicants risked imprisonment even if they had failed to pay the fines (see and compare, most recently, *Mihalache v. Romania* [GC], no. 54012/10, §§ 54-62, 8 July 2019, and the case-law cited therein). That being so, the Court also recalls that the fine imposed on the applicants was based on a provision of the Labour Code (see paragraph 35 above), which regulates relations within, *inter alia*, private companies, and therefore is not of a purely public law character. Bearing this in mind, and given the pecuniary nature of the dispute, the Court considers that the outcome of those proceedings affected their "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention.

51. The Court also notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

52. The applicants complained that as a result of the courts' refusal to restore the situation prior to the unlawful decisions of the State Labour Inspectorate, they had been placed in a worse situation than they would have been in if they had chosen not to defend their rights in court.

53. The applicants pointed out that, as was apparent from the domestic courts' case-law, neither the Code of Administrative Law Violations nor any other piece of legislation explicitly provided for the possibility of reimbursing legal representation costs incurred by a person in respect of whom an administrative decision had been quashed as unlawful. Nevertheless, case-law acknowledged that the lack of such express regulation could not be used to deprive a person of the right to request compensation for damage caused by unlawful actions of State officials, and that therefore the reimbursement of such legal costs in response to a claim for damages under Article 6.271 of the Civil Code was a reasonable and fair solution. Accordingly, since they had been formally unable to file a claim for the reimbursement of legal costs during the administrative proceedings, they had resorted to the only possible alternative – separate proceedings for

damages. In that context, the applicants also referred to the administrative courts' case-law establishing the "loser pays" principle. In the applicants' case, the fact that the court found the State Labour Inspectorate's decisions unlawful and quashed them meant that the applicants had won the case, and had accordingly acquired, under the doctrine both of the Constitutional Court and of the administrative courts, the right to reimbursement of the legal expenses by the losing party – the State. Any requirement for the winning party to prove any additional clauses to gain the right to reimbursement of litigation costs would contradict not only the "loser pays" principle but also the practice of the Constitutional Court (they referred to the ruling of 19 August 2006, cited in paragraph 26 above). The applicants thus emphasised that any risk of error on the part of public authorities had to be borne by the State itself and that errors could not be dealt with at the expense of the individuals concerned.

54. In reply to the arguments submitted by the Government (see paragraph 59 below), they further noted that at the material time they had not qualified for State-guaranteed legal aid. Even so, legal aid as afforded by the State was an individual right and not an obligation that had to be exercised. It did not prevent them from choosing to be represented by an advocate, *inter alia* because Article 272 § 1 of the Code of Administrative Law Violations (see paragraph 36 above) entitled them to the legal assistance of an advocate during court proceedings. That right also flowed from the Law on the Bar (see paragraph 31 above), which provided that a person had the right freely to choose the advocate whom he considered the most suitable and reasonable for a particular case. Given that the applicants had been found administratively liable under Article 41 § 1 of the Code of Administrative Law Violations, which concerned specific labour legal relations, they had also chosen a lawyer specialising in labour law, as allowed under Article 6 of the Law on the Bar. Conversely, the State-guaranteed legal aid system did not guarantee the assignment of a lawyer specialising in a specific field of law to the person concerned.

55. The applicants also disagreed with the Government's suggestion that they should have had recourse to alternative remedies to protect their rights, rather than calling on the services of an advocate (see paragraphs 60 and 61 below). Firstly, the Government's position that they could have chosen not an advocate but a trainee advocate or a person with a university degree in law, did not refute the fact that even in such a situation they would have had to incur legal costs. Moreover, the claim that they could have applied to a lower-skilled specialist, in comparison with an advocate – with higher professional requirements – clearly ran counter to the constitutional right to defend his or her rights in court effectively, rather than declaratively. Secondly, the Government's proposal that the applicants could have applied to the State Labour Inspectorate – with which institution a dispute was pending – for a consultation could only be seen as a "cynical approach" to a

person's rights. Thirdly, the mere fact that the applicants did not have to pay court fees for filing a lawsuit did not mean that this in itself was a sufficient effective remedy, or removed their right to conduct the proceedings through a qualified advocate as their representative. Fourthly, the Government had not argued that the litigation costs incurred by the applicants had exceeded the maximum amounts to be awarded according the Ministry of Justice's Recommendations. Even if the costs incurred by the applicants had exceeded those set out in the Recommendations, that would have led to the reduction of the costs awarded to the applicants but not the outright rejection of their claims. It was likewise irrelevant to argue that the applicants could have paid their legal costs in instalments, since this would not have changed their final financial situation.

56. In the light of the foregoing considerations, the applicants concluded that the Government's position was essentially that an individual, in challenging an unlawful act against him or her in court, rather than ensuring an effective defence, should concentrate on maximising efforts to avoid any legal expenses and related costs disbursable by the State. The fact that the Government's position was based not on legal but exclusively on economic grounds was also clear from their statement that the requirement to reimburse legal expenses in all administrative proceedings would impose a disproportionate financial burden on the State. Obviously, such a situation – restricting an individual's right to recover the costs incurred in court when challenging the unlawful acts of public authorities, with the sole aim of reducing the possible financial burden on the State – was incompatible with the doctrine of the Constitutional Court as well as with the Convention. Moreover, as the Government had acknowledged, the Ministry of Justice's Recommendation set the upper limits on the legal costs awarded by the courts for legal services. This meant that the State's interests in protecting the disproportionately high financial burden associated with the obligation to defray legal expenses to the winner of the case was protected by law, while the latter's right to reimbursement of such costs, as the applicants' example showed, was not adequately ensured.

57. The applicants concluded that, as a result of the courts' refusal to award them litigation costs which they had incurred in connection with administrative court proceedings when successfully challenging the fines imposed by a State institution, they had had to bear the adverse consequences even after successful litigation. Given that their aim had not been to litigate *in abstracto* but to have the fines imposed on them lifted, and that the pecuniary loss in that litigation ultimately exceeded the amount of all the fines imposed, it would have been better for them not to have initiated court proceedings at all.

(b) The Government

58. The Government first of all stated that the applicants had actually implemented their right to participate in two sets of proceedings – one for the annulment of administrative fines and the other for the compensation for pecuniary damage – and thus had had access to court. It followed that the applicants' right of access to court had not been impaired.

59. The Government also submitted that, if the applicants had been unable to afford to pay for legal assistance, they could have applied for free legal aid, in order to secure their right of access to court. If they had met all necessary conditions, such aid would have been provided to them. The Government argued that there were no domestic statutory requirements that would bar the applicants from receiving legal aid in such litigation.

60. Nor did the Government dispute that the applicants had been free to choose their own lawyers to represent them in court during the administrative-law violation proceedings. That being so, the Government also wished to emphasise certain aspects related to the particularities of the applicants' legal representation during those proceedings. According to the settled case-law of the domestic courts, the possibility of reimbursing the litigation costs incurred during the proceedings contesting the administrative violation was not explicitly established in legislation – either the Code of Administrative Law Violations, the Law on Administrative Proceedings, or any other piece of legislation, and either at the time material to the applicants' litigation or at the present time. The Government took the view that the applicants, being aware of such legal regulation, had nevertheless deliberately chosen to have an advocate when challenging the State officials' actions and to claim the reimbursement of their litigation costs. Yet they must have been aware of a number of other avenues capable of protecting their interests, such as choosing to pay less by electing to be represented not by an advocate but by a trainee advocate or any person who has a university degree in law, since those persons also could represent a client before the administrative courts. The applicants could also have asked the State Labour Inspectorate for a consultation in order to prepare their defence in court.

61. The Government also noted that the applicants had not had to pay any stamp duty. They added that advance payment of advocate's fees was not compulsory under domestic law and that payment for legal services was subject to an agreement between the advocate and the client. Furthermore, there was always a possibility of payment for legal services in instalments as well as of *pro bono* agreements with the lawyers.

62. The Government wished to draw the Court's attention to the fact that the well-established case-law of the domestic courts, based on Article 30 § 2 of the Constitution, the Constitutional Court's doctrine and Article 6.271 of the Civil Code, provided for a possibility to be compensated for damage caused by unlawful actions of the authorities. This also covered a possibility

to be awarded the litigation costs incurred during the court proceedings seeking to contest such actions. Such a legal regime had also been confirmed by the domestic courts (they referred to the Supreme Administrative Court's decision of 14 July 2011, see paragraph 38 above). However, the Government disagreed with the applicants' interpretation of the Constitutional Court's ruling of 19 August 2006 (see paragraph 26 above). In fact, the Government considered that the right to compensation for damage inflicted by the actions of State institutions or officials arose only when those actions had been found to be unlawful. This was not the situation in the present case, where the State Labour Inspectorate's decisions had been quashed only on the basis of a different assessment of the factual circumstances concerning the methods of posting work schedules. The courts had not established that the officers of the State Labour Inspectorate had failed to act properly when drawing up the administrative-law violation reports against the applicants. The dismissal of a case of administrative violation of the law could not *per se* be unequivocally regarded as an acknowledgment of unlawful action on the part of State officials (in support of this argument they referred to the Supreme Administrative Courts' ruling cited in paragraph 40 above). It followed that the State could not be held liable in such a situation.

63. Lastly, the Government submitted that although the litigation costs incurred by the applicants had exceeded the total amount of the fines imposed on them, they were not such as to impose on them an individual excessive burden or to impair the essence of the applicants' right of access to a court (the Government contrasted the applicants' case with the facts in *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, §§ 65 and 67, Series A no. 316-B). It also had to be borne in mind that by instituting the administrative proceedings the applicants had benefited not only from the annulment of the fines, but also from the lifting of administrative liability, with all the related consequences. The applicants had also failed to substantiate that the litigation costs incurred in those cases had caused them such a level of hardship as to completely preclude their future access to a court.

64. In the light of the foregoing, the Government considered that the applicants' complaint should be dismissed as ill-founded and unsubstantiated.

2. The Court's assessment

(a) General principles

65. The right of access to a court as guaranteed by Article 6 was established in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to

the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, §§ 84–89, 29 November 2016, and the references therein).

66. The Court has also held that the right of access to a court is not absolute, but may be subject to limitations (see *Golder*, cited above, § 38). These are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, for example, *Mihajlović v. Croatia*, no. 21752/02, § 41, 7 July 2005).

67. Lastly, it is not the Court's task to express a view on whether the policy choices made by the Contracting Parties defining the limitations on access to a court are appropriate or not; its task is confined to determining whether their choices in this area produce consequences that are in conformity with the Convention. Similarly, the Court's role is not to resolve disputes over the interpretation of domestic law regulating such access but rather to ascertain whether the effects of such an interpretation are compatible with the Convention (see *Zubac v. Croatia* [GC], no. 40160/12, § 81, 5 April 2018, and the case-law cited therein).

(b) Application of the general principles to the instant case

68. The Court notes that the applicants in the present case had the possibility of bringing legal proceedings. They availed themselves of that option by suing the State Labour Inspectorate, challenging the fines imposed by that entity (see paragraphs 9 and 17 above). That being so, and contrary to what has been suggested by the Government, the Court is not ready to hold that this, of itself, satisfies all the requirements of Article 6 § 1. The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Zubac v. Croatia* [GC], cited above, § 77). The Court finds it reasonable to accept that the applicants' intention in going to court was not to participate in court proceedings as an academic exercise, but rather to obtain a result. It refers to the applicants' statement that going to court to defend their rights is pointless if in the end they are in a worse situation than they were before litigating (see paragraph 57 above). This was exactly what

occurred in this case, since the financial burden on each of the applicants was nearly double or treble that which they had initially faced. Accordingly, and although they enjoyed access to court, the Court finds that the *ex post facto* refusal to reimburse their costs nevertheless constituted a hindrance of the applicants' right of access to court (see, *mutatis mutandis*, *Klauz v. Croatia*, no. 28963/10, § 77, 18 July 2013, with further references).

69. As to the legitimate aim, the Court acknowledges that public interest-related financial considerations could sometimes play a part in the State's policy to decrease State expenses (see, for example, *mutatis mutandis*, *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 91, ECHR 2005-VI, *Stella and Others v. Italy* (dec.), nos. 49169/09, 54908/09, 55156/09, 61443/09, 61446/09, 61457/09, 7206/10, 15313/10, 37047/10, 56614/10, 58616/10, § 61, 16 September 2014, and *Mockienė v. Lithuania* (dec.), § 42, 4 July 2017). The Court thus does not disregard the possibility, as such, to limit reimbursement of litigation fees in administrative proceedings as being legitimate in the public interest.

70. As to the question of the proportionality of the interference, the Court does not find relevant the Government's argument that the applicants did not have to pay stamp duty (see paragraph 61 above). The Court however shares the applicants' view that legal aid as afforded by the State was an individual right and not an obligation that had to be exercised. All the more so, it did not prevent them from choosing to be represented by an advocate (see paragraph 54 above). In this connection, the Court also cannot agree with the Government's suggestion that the applicants should have chosen to be represented by a person of a lesser calibre than an advocate, in order to mitigate the costs. As correctly pointed out by the applicants, this argument as put forward by the Government appears to be primarily based on economic considerations, and disregards both the case-law of the Constitutional Court, which emphasises the importance of the right to have an advocate to defend a person's interests (see paragraph 33 above), as well as the Court's case-law which also highlights the special role of lawyers, as independent professionals, in the administration of justice (see, *mutatis mutandis*, *Correia de Matos v. Portugal* [GC], no. 56402/12, § 139, 4 April 2018). In this context the Court also refers to the Law on the Bar, which provides that advocates have a right to specialise in a certain field of law. As pointed out by the applicants and not rebutted by the Government, they had advocates of their own choosing specialising in labour law to challenge the lawfulness of the fines imposed on them by the State Labour Inspectorate, and the success of the applicants' appeals may be regarded as an indication that their decision to engage advocates was vindicated (see paragraphs 9, 17 and 54 above).

71. Next, the Court turns to the Government's suggestion that the applicants were prevented from pursuing their claims under domestic legislation which required, in order to incur State liability and give rise to an

obligation to reimburse the claimant's legal costs, the State officials' actions to have been unlawful. While recalling that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law and that the Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Markovic and Others v. Italy* [GC], no. 1398/03, §§ 107 and 108, ECHR 2006-XIV), the Court takes note of a number of rulings given by the domestic courts, including the Supreme Administrative Court, which demonstrate that legal costs, although the matter of their compensation is not explicitly regulated in the Code of the Administrative Law Violations, are reimbursed on other legal bases, including the Constitution (see paragraphs 38 *in fine*, 39 and 44 above). This has also been acknowledged by the Government (see paragraph 62 above). At the same time, the Law on Administrative Proceedings clearly provides that legal costs are determined in accordance with the principles set out in the Code of Civil Procedure (see paragraph 37 above). The latter Code in turn refers to the principle that the "loser pays", which has also been relied upon by the administrative courts in a number of cases concerning reimbursement of legal costs of administrative litigation (see paragraphs 34, 40 and 43 above). The Court also notes the Constitutional Court's case-law to the effect that the State should not leave a person in a disadvantageous situation (see paragraph 26 above; as to the principle that the risk of any mistake made by the State authority must be borne by the State itself and errors must not be remedied at the expense of the individuals concerned, although in the context of Article 1 of Protocol No. 1 to the Convention, see *Beinarovič and Others v. Lithuania*, nos. 70520/10 and 2 others, § 140, 12 June 2018). It also transpires from the Supreme Administrative Court's practice that legal costs have been reimbursed without any apparent failure to act diligently by the authorities whose actions have been impugned (see paragraph 45 above).

72. Furthermore, it has not been argued, either by the administrative courts in the second set of court proceedings that concerned claim for compensation for litigation costs as pecuniary damage (see paragraphs 12, 14, 20 and 22 above), or by the Government, that the applicants could have lodged the claims for compensation for legal costs within the first set of proceedings that took place in the civil courts (see paragraphs 9 and 17 above), thus failing to follow the law. On this point, the Court also refers to the applicants' argument that they had been formally unable to file a claim for the reimbursement of legal costs during the first set of court proceedings (see paragraph 53 above; for a similar situation and analogous sequence of court proceedings see paragraph 42 above), this argument not having been contested by the Government (see also paragraph 46 above). Indeed, and being careful not to substitute its own view for that of the domestic courts, the Court cannot but observe that the applicants' claims were rejected not on the basis of Article 98 § 1 of the Code of Civil Procedure (for its

interpretation by the Supreme Court, see paragraph 46 above), but on the basis of the administrative courts' understanding that the State Labour Inspectorate employees' actions had not been unlawful.

73. The Court also cannot ignore the fact that in the present case the administrative courts' decisions to deny the applicants any compensation for their legal costs were based solely on their interpretation of the domestic statutory law to the effect that unlawfulness had to be proved on the State's part for such a right to materialise, rather than on the proportionality of those legal costs *vis-à-vis* the material gain obtained by having the fines lifted (see paragraphs 12, 14, 20 and 22 above). At this juncture, the Court has regard to the Lithuanian courts' decisions in other cases, in which they noted that disproportionately high or unjustified legal costs could always have been refused (see paragraphs 41 and 44 above). Such an examination of proportionality is absent in the applicants' case. The Court also cannot find, and it has not been suggested, that the litigation costs which the applicants incurred in the instant case were excessive or beyond what the Recommendations by the Ministry of Justice's indicated (see paragraph 55 above). Lastly, it observes that the second applicant showed good faith by referring to the principle of procedural economy, and asking that his case be joined to the first applicant's case so that he would not suffer even more pecuniary losses from litigation costs (see paragraph 19 above), a request which apparently was denied. Against this background the Court therefore finds that, irrespective of whether the domestic courts' interpretation of the domestic law in the applicants' case was arbitrary (see paragraphs 65 and 67 above), the resulting disproportion created an individual and excessive burden on the applicants.

74. In the light of the foregoing considerations, and in the particular circumstances of this case, the Court considers that the domestic courts' refusal to reimburse the applicants' legal costs incurred during administrative litigation, in which they challenged the imposition of fines by the State Labour Inspectorate and obtained the quashing of the respective decisions as unfounded (see paragraphs 9 and 17 above), regardless of the amount of those legal costs, constitutes a breach of their right of access to court and thus a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

76. Each applicant claimed 1,000 euros (EUR) in respect of non-pecuniary damage.

In addition, the first applicant and the second applicant claimed, respectively, EUR 1,169 and EUR 836, for pecuniary damage, which were the amounts that they had incurred in connection with their legal representation during the domestic court proceedings for the annulment of the fines.

77. The Government considered that, should the Court find a violation of the Convention, the finding of such a violation should be considered as proper compensation. Alternatively, they left the amount of proper compensation to the Court's discretion.

78. The Court awards each of the applicants EUR 1,000 in respect of non-pecuniary damage. It also awards the first applicant and the second applicant, respectively, EUR 1,169 and EUR 836, for pecuniary damage.

B. Costs and expenses

79. The first and the second applicants also claimed, respectively, EUR 907 and EUR 282 for the costs and expenses incurred before the domestic administrative courts within the second set of administrative proceedings.

80. The Government considered that the above sums had been reasonable and properly substantiated.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the claims for costs and expenses in the domestic proceedings in full.

C. Default interest

82. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of each applicant;

4. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, at the rate applicable at the date of settlement:

(i) EUR 1,169 (one thousand one hundred sixty nine euros) to the first applicant and EUR 836 (eight hundred and thirty six euros) to the second applicant, for pecuniary damage, plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to each of the applicants;

(iii) EUR 907 (nine hundred and seven euros) to the first applicant and EUR 282 (two hundred and eighty two euros) to the second applicant, plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 18 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President