



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

SECOND SECTION

CASE OF G.K. v. BELGIUM

(Application no. 58302/10)

JUDGMENT

STRASBOURG

21 May 2019

FINAL

21/08/2019

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of G.K. v. Belgium,

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

Robert Spano, *President*,
Paul Lemmens,
Julia Laffranque,
Valeriu Grițco,
Stéphanie Mourou-Vikström,
Ivana Jelić,
Arnfinn Bårdsen, *judges*

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 2 April 2019,

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

PROCEDURE

1. The case originated in the application (no. 58302/10) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Belgian national, Ms G.K. (“the applicant”), on 8 December 2010. The Section President acceded to the applicant’s request for her identity not to be disclosed (Article 47 § 4 of the Rules of Court).

2. The applicant was represented by Mr F. van Bergen, a lawyer practising in Antwerp. The Belgian Government (“the Government”) were represented by their Agent, Ms I. Niedlispacher, of the Federal Justice Department.

3. The applicant alleged that the Senate had unlawfully deprived her of her seat as a senator and that she had not had the benefit of an effective remedy to challenge the Senate’s decision.

4. On 27 November 2017 notice of the complaints under Article 3 of Protocol No. 1 and Article 13 of the Convention was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was elected to the Senate in the federal parliamentary elections of 13 June 2010.

A. The circumstances of the applicant's resignation

6. In August 2010, while on a private trip to Asia, the applicant was suspected of drug-related offences, which she denied. She informed the President of the Belgian Senate, P., who was also a member of her political party.

7. On her return to Brussels on 31 August 2010, after travelling for more than 24 hours, P. immediately summoned her to a meeting attended by two other senators, W. and H., who were her party's chairman and parliamentary group leader respectively.

8. According to the applicant, at the end of the meeting, she was forced to sign a pre-drafted letter of resignation from her office as senator. The letter read as follows:

"Following our conversation on 31 August 2010, in which I conveyed my desire to resign from my office as senator for personal reasons, I hereby inform you of my resignation in writing.

I shall deal with all pending files to the best of my ability so as to ensure a fluid transition for everyone."

9. On 2 September 2010 the Director General of the Senate sent the applicant a letter confirming receipt of her resignation letter and provided her with information concerning her severance payment.

B. The proceedings before the Senate to contest the validity of the resignation

10. The applicant sent the President of the Senate a letter, served by a bailiff on 6 September 2010, informing him that she wished to continue her term as senator. She argued that she had been put under significant pressure during the conversation of 31 August 2010 and that those in attendance had threatened to lodge complaints against her that would be damaging for her non-political career. This led her to conclude that, pursuant to Article 1109 of the Civil Code, her resignation was null and void since it had been signed under duress. It followed that it would be unconstitutional for a new senator to be sworn in to replace her. The applicant further accused the President of the Senate of having used his powers as President to further the aims of his own political party and, in this particular case, to carry out the instructions of the party's chairman, W., who wished for her to resign.

11. The applicant sent another letter to the President of the Senate, served by a bailiff on 14 September 2010, concluding from his failure to reply to her previous letter that he agreed with its content. She explained that the agenda for the plenary session of the Senate scheduled for 12 October 2010 contained an erroneous reference to her resignation since she had not resigned. She reiterated that she had been coerced into signing the letter of 31 August 2010 under psychological duress and reiterated her accusations to the effect that

the President of the Senate had been acting in the interests of his own party and not in those of the Senate, the dictates of his office notwithstanding.

12. On 16 September 2010 receipt of both the applicant's letters was acknowledged. The Secretary General of the Senate specified that the absence of a reply to the letter of 6 September had in no way indicated that the President agreed with its content and that it was for the plenary Senate to decide on the merits of the case when examining the credentials of the applicant's successor.

13. In the meantime, on 15 September 2010, the legal department of the Senate had issued an opinion to the effect that the applicant's resignation had irrevocably taken effect immediately upon its delivery to the President of the Senate, without requiring approval by the plenary Senate.

14. That opinion was supplemented by a second opinion dated 21 September 2010 concerning challenges to the validity of a resignation on grounds of lack of consent. In the legal department's opinion, when a senator contested the validity of his or her resignation, the matter would sooner or later be decided by the Senate, if only tacitly when called upon to ratify the credentials of a successor. It was for the Senate alone to assess the validity of its composition since, under Article 48 of the Constitution, it alone had the power to ratify the credentials of its own members. The legal department specified that it was nevertheless necessary to take into account the fact that a challenge to the validity of a senator's resignation could ultimately be brought before a court of law, most likely in the form of a claim for compensation. Nevertheless, it was in any event not for a court to order or prohibit the Senate's granting of a seat to one person or another.

C. The injunction proceedings

15. On 1 October 2010 the applicant lodged an urgent application with the President of the Brussels Court of First Instance requesting a ruling to the effect that, since her consent to her resignation had been vitiated, the Senate could not avail itself of Article 48 of the Constitution and of Article 235 of the Electoral Code for want of a vacant seat, and consequently that the Senate could not allow anyone else to be sworn in as her successor. In addition, she requested that the President of the court confirm that she was entitled to continue her term as senator, at the very least until the court had ruled on the merits of her case.

16. In its pleadings the Belgian State submitted as its primary argument that under Article 48 of the Constitution the ordinary courts had no jurisdiction to rule on the applicant's claim.

17. In his decision of 8 October 2010 the President of the Brussels Court of First Instance held that he did not have jurisdiction to hear the dispute. He considered that in examining their credentials, the Senate verified that elected candidates, both full members and substitutes, had been lawfully elected

and/or that there were no grounds for disqualification. The Senate alone had jurisdiction to decide on the validity of elections and there lay no appeal against a decision of the Senate concerning the verification of credentials to either the ordinary courts, the *Conseil d'État* or the Constitutional Court. The President of the court further held that the Senate's review of the validity of the applicant's resignation was a precondition for the ratification of her successor's credentials, and that, pursuant to Article 48 of the Constitution, the Senate alone had jurisdiction in that regard. Consequently, were the Senate to ratify the credentials of the applicant's successor and to swear him or her in, that could only mean that it considered the applicant to have validly resigned. Judicial review of the Senate's discretionary decision-making power by the ordinary courts would, according to the President of the court, run counter to Article 48 of the Constitution and the principle of the separation of powers.

D. The plenary session of the Senate of 12 October 2010

18. On 12 October 2010 the Senate held a plenary session.

19. The applicant submitted that Senate security personnel had blocked access to the chamber to prevent her from entering.

20. A member of the Bureau of the Senate read out the report prepared by that body, which had convened on 23 September and 7 October 2010. He noted that, pursuant to Article 6 of the Senate rules, in the event that a senator resigned, it fell to the Bureau, sitting as the Committee for the Examination of Credentials, to carry out the necessary verifications and to prepare the plenary Senate's deliberations on that point. The Bureau took the view that, in the absence of statutory or regulatory provisions, four principles must be applied when examining credentials: (1) a senator's resignation took effect *ipso facto*; (2) a senator's resignation need not have been accepted by the President of the Senate, or the Bureau, or the plenary Senate; (3) a senator's resignation was irrevocable; (4) it was for the Senate to verify whether there was any evidence clearly establishing that the act of resignation had taken place in irregular circumstances. Regard being had to these four principles and the documents in the file, in particular the statements given by the applicant and her counsel, the Bureau considered that there was no cause to dispute the validity of the applicant's resignation. Consequently, the Bureau examined the credentials of her successor. It proposed that the plenary Senate approve the findings of its report, accept the successor as a member of the Senate, and swear that member in.

21. After debate, the plenary Senate adopted the conclusions of the Bureau's report in a vote by sitting and standing. Immediately afterwards, the applicant's successor took the constitutional oath.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Jurisdiction in respect of post-electoral disputes

22. Article 48 of the Constitution provides:

“Each [Federal] House shall examine the credentials of its members and shall adjudicate on any disputes arising in this regard.”

23. In accordance with the provision cited above, the Belgian courts have consistently declined jurisdiction to hear election-related matters submitted to them, whether before the Constitutional Court (judgment no. 34 of 19 February 1987, judgment no. 20/2000 of 23 February 2000, judgment no. 81/2000 of 21 June 2000, judgment no. 30/2003 of 26 February 2003, and judgment no. 152/2009 of 13 October 2009), the Court of Cassation (Court of Cassation (Cass.), 18 October 1995, *Pasicrisie belge* (Pas.), 1995, I, no. 925, and Cass., 11 June 2004, *Chroniques de droit public* (CDPK), 2004, no. 553) or the *Conseil d’État* (*Conseil d’État* (CE) no. 13.893 of 13 January 1970, CE no. 15.876 of 15 May 1973, CE no. 17.303 of 25 November 1975, CE no. 22.250 of 12 May 1982, CE no. 24.614 of 12 September 1984, CE no. 27.619 of 4 March 1987, CE no. 49.237 of 23 September 1994, CE nos. 53.170, 53.171 and 53.172 of 8 May 1995, CE no. 53.793 of 16 June 1995, CE no. 54.395 of 6 July 1995, CE no. 55.271 of 22 September 1995, CE, no. 118.570 of 24 April 2003, CE no. 171.527 of 24 May 2007, and CE no. 203.980 of 18 May 2010).

24. In its judgment no. 20/2000 of 23 February 2000, the Administrative Jurisdiction and Procedure Court (*Cour d’Arbitrage* – now the *Cour constitutionnelle* (Constitutional Court)) specified as follows:

“The rule according to which the elected Houses of Parliament shall have the greatest possible independence in the fulfilment of their mission is one of the basic principles of the democratic structure of the State. That independence is reflected, *inter alia*, in the oversight they themselves exercise over their members with regard both to the validity of their office and to the manner in which it is acquired by means of elections. Article 48 of the Constitution is an application of that basic principle: it provides that each House shall examine the credentials of its members and shall adjudicate on any disputes arising in that regard.”

B. Proceedings in connection with the resignation of a senator

25. The relevant provisions of the Electoral Code, as in force at the material time, read as follows:

Article 234

“When the Houses are sitting, they alone shall have the right to receive the resignation of their members. When they are not in session, notice of resignation may be given to the Minister of the Interior.”

Article 235

“In the event of a vacancy by choice, death, resignation or otherwise, the new senator or representative shall complete the term of office of the member he or she replaces.

If candidates belonging to the same list as the member to be replaced were declared as substitutes when that member was elected, the substitute placed first in the appropriate order shall take up office. However, prior to his or her confirmation as a representative or senator, the relevant House shall carry out an additional verification of his or her credentials, exclusively from the perspective of continued eligibility.”

26. The relevant provisions of the Senate Rules of Procedure, as in force at the material time, read as follows:

Rule 3

“Documentation relating to the distribution of seats and the appointment of senators, as well as any complaints and objections arising therefrom, shall be submitted to the Committee for the Examination of Credentials, which shall appoint one or more of its members to report to the Senate.

Complaints must reach the Senate before the examination of credentials. If they are based on findings contained in documents, those documents shall be appended thereto.

The validity of elections shall be decided by the Senate and the President shall proclaim elected as senators and substitute senators those persons whose credentials have been declared valid.”

Rule 6

“After final constitution of the Bureau, in the event of by-elections, credentials shall be verified by the Bureau in accordance with the provisions of Rule 3. The Bureau shall appoint one of its members to report to the Senate.”

27. Pursuant to Rule 8 of the Senate Rules of Procedure, the Bureau must be composed exclusively of senators. At the material time, the Bureau was composed of P., in his capacity as President of the Senate, three vice-presidents, three questors and the nine Presidents of the political groups represented on the parliamentary committees, among whom was H.

28. The President of the Senate is always entitled to a vote (Rule 10 of the Rules of Procedure).

C. Precedent in matters relating to the resignation of Belgian parliamentarians

29. The applicant cited two past cases in Belgium involving a member of parliament’s withdrawal of his/her resignation. The first concerned the withdrawal of the resignation of a representative sitting in the Federal House of Representatives during the 2003-2007 parliamentary term, which had been accepted since the plenary House had yet to be notified.

30. The second case cited by the applicant concerned a substitute member of the Flemish Parliament who had indicated that he/she did not wish to take

up a seat, were a seat to become vacant. That resignation letter had been submitted to the plenary House of the Flemish Parliament at the start of the 2003 parliamentary term. Almost three years later, the same person had written to the President of the Flemish Parliament that he/she wished to withdraw his/her resignation and take up a seat in the event of a vacancy. The Flemish Parliament's Committee for the Examination of Credentials had considered that the resignation had become irrevocable and that the striking-out of that person from the list of substitute members had become final from the moment the plenary House had become aware of the resignation letter.

D. Statutory provisions relating to consent

31. Article 1109 of the Civil Code provides

“No consent shall be valid if it has only been given by mistake, or if it has been obtained by means of duress or misrepresentation.”

32. Article 1112 of the Civil Code specifies

“Duress obtains wherever it is such as to make an impression on a reasonable person and may cause him or her to fear that his or her person or fortune is exposed to considerable, imminent harm.

In such cases, regard shall be had to the person's age, sex and condition.”

E. Claims for damages against the State

33. A claim for compensation may be brought against the State for negligence on the part of one of its bodies on the basis of the following provisions of the Civil Code, which constitute the ordinary rules on civil liability:

Article 1382

“Any act committed by a person that causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it.”

Article 1383

“Everyone shall be liable for the damage he has caused not only by his own acts, but also by his negligence or carelessness.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL NO. 1

34. The applicant alleged that she had been deprived of her Senate seat in violation of Article 3 of Protocol No. 1, which reads as follows:

“The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

35. The Government contested this argument.

A. Admissibility

1. The Government's objection

36. The Government raised an objection alleging that the applicant had failed to exhaust domestic remedies since she had neglected to bring a claim for damages against the State on the basis of Articles 1382 and 1383 of the Civil Code. Such proceedings could have resulted in the State's being held liable in its legislative function. If there were any doubt as to the effectiveness of such a remedy for want of precedent, the Government pointed out that the existence of mere doubts as to the prospects of success of a particular remedy which was not manifestly futile was not a valid reason for failing to exhaust that avenue of redress. The ordinary courts were required to give full effect to the Convention by seeing that it prevailed, where applicable, over the Constitution. In that regard, the Government emphasised that the dispute was not electoral in nature since the applicant had relied on the provisions of the Civil Code to challenge the validity of her resignation. It would therefore have been natural for the applicant to bring civil proceedings before lodging her complaint with the Court.

37. The applicant noted that the Government were submitting an argument to the Court that was contrary to the one they had submitted in the domestic proceedings before the President of the Court of First Instance (see paragraph 17 above). In those proceedings the Government had argued that the ordinary courts had no jurisdiction whatsoever in the matter. In that connection, the applicant pointed out that the State was not entitled to put arguments to the Court which were inconsistent with those it had put forward in the domestic proceedings (she referred to *Kolompar v. Belgium*, 24 September 1992, § 32, Series A no. 235-C). She further noted that there was no obligation to avail oneself of remedies which were inadequate or ineffective and argued that, having regard to the case-law of the Belgian courts as a whole, availing herself of a remedy before any particular Belgian court would have been futile since, as the Government had admitted, no court had jurisdiction to examine the validity of her resignation.

2. The Court's assessment

38. The Court refers to the principles governing the exhaustion of domestic remedies as it has set them down in particular in its judgment in the case of *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

39. It points out that it has previously held in a case relating to the disputed resignation of a Serbian member of parliament that civil proceedings would not have afforded an effective remedy in the particular circumstances of that case because there had been no suggestion that the annulment of the impugned letter of resignation would have resulted in the restoration of the applicant's parliamentary office (see *Paunović and Milivojević v. Serbia*, no. 41683/06, § 48, 24 May 2016).

40. In the present case, the Court finds that proceedings brought under Article 1382 of the Civil Code would at most have allowed the applicant to obtain compensation for the damage sustained had she been able to demonstrate that her resignation had not been valid. Under no circumstances would such a remedy have allowed her to continue her term as senator and it could not therefore have afforded the applicant adequate redress. The Court concludes from the foregoing that a claim for compensation was not, in the present case, a remedy that had to be used for the purposes of exhaustion under Article 35 § 1 of the Convention. Consequently, it dismisses the objection raised by the Government.

41. The Court further finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) Applicant

42. The applicant pointed to the circumstances in which she had been pressured into signing the resignation letter on 31 August 2010 and of the fact that she had informed the Senate on two occasions prior to the following plenary session that she wished to continue her term of office as senator.

43. The applicant submitted that the fact that no remedy had been available to her to challenge the plenary Senate's decision before a tribunal constituted in itself a violation of Convention (she referred to *Grosaru v. Romania*, no. 78039/01, ECHR 2010). The validity of her resignation had been reviewed only by the Bureau of the Senate, which was a purely political body that was incapable of rendering an independent and impartial decision, especially since P. and H. – who had both put pressure on her on 31 August 2010 – were acting as judges in their own cause, being respectively the President and a member of the Bureau that had reviewed the validity of her resignation. The proceedings before the Senate could therefore not be deemed to constitute an effective remedy.

44. In addition, the applicant submitted that, at the relevant time, there had been no clear and foreseeable regulation as to the procedure to be followed in

the event of a senator's resignation. The opinions issued by the Senate's legal department on 15 and 21 September 2010 (see paragraphs 13 and 14 above) had been inconsistent with the precedents established in the Federal House of Representatives and the Flemish Parliament (see paragraphs 29 and 30 above) and had moreover been issued after the applicant's resignation. According to her, both opinions had thus been tailored "to fit the bill" and "for the purpose in hand".

45. Furthermore, the applicant argued that she had not been afforded any procedural safeguards against arbitrariness. She had not been interviewed by the Bureau, which had necessarily been influenced by members of her political party seeking her resignation. Moreover, the Bureau's proposal had come a few days after a political agreement had been reached on an important file, which had ensured that the President of the Senate would have the plenary Senate's support in validating the applicant's resignation, as the other political parties had not wished to jeopardise their bargaining power over the matter at a time when there was still no government in Belgium following the federal elections of 13 June 2010. As evidence, the applicant cited a letter dated 24 September 2010 from the chairman of another political party which stated explicitly that his political party wished to prioritise negotiations between political parties over the applicant's individual resignation. Lastly, the applicant submitted that security personnel had prevented her from entering the Senate to take part in the plenary session of 12 October 2010 by order of the President of the Senate.

(b) The Government

46. The Government first observed that the applicant had not been deprived of her seat by the Senate but had herself tendered her resignation. In Belgium a resignation tendered by a member of parliament was effective immediately, as opposed to countries in which such resignation had first to be accepted by the relevant House. This principle had been confirmed by the Senate's legal department in its memorandum of 15 September 2010 (see paragraph 13 above). The validity of the resignation could then be contested at the time the credentials of the successor to the resigning member of parliament were verified.

47. The Government pointed out that the applicant's contestation *ex post facto* of her resignation had been adjudicated on the basis of four principles rigorously laid down by the Bureau convened for the purpose of examining credentials and subsequently reiterated at the plenary session of 12 October 2010 (see paragraph 20 above). In the Government's view, the resignation of a member of parliament formed part of the constitutional autonomy of States, which implied that they should be afforded particularly broad leeway in that respect. It was for the national authorities to interpret domestic law and, more specifically, the constitutional rules governing parliamentary terms of office. In their view, this principle held true especially in respect of Article 3 of

Protocol No. 1 (referring to *Federación nacionalista Canaria v. Spain* (dec.), no. 56618/00, ECHR 2001-VI). In the present case, the Government submitted that by applying the aforementioned principles the Senate had not acted arbitrarily but had in fact applied the relevant constitutional and statutory provisions correctly, conscientiously and faithfully. As a subsidiary consideration, the Government argued that the applicant had in the present case failed to establish the coercion or duress purportedly involved in her resignation.

48. Lastly, the Government submitted that the present case differed from the *Gaulieder v. Slovakia* (no. 36909/97, Commission's report of 10 September 1999) and *Paunović and Milivojević* (cited above) cases in that, unlike in those cases, the resignation letter in the present case had come after the election, had been duly dated and signed by the applicant and had been delivered to the President by the applicant herself. The Government concluded from the above that the applicant had not been arbitrarily deprived of her seat as a senator.

2. The Court's assessment

(a) General principles

49. The Court reiterates that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, series A no. 113, and *Ždanoka v. Latvia* [GC], no. 58278/00, § 103, ECHR 2006-IV).

50. It has also held that Article 3 of Protocol No. 1 grants individual rights, including the right to stand for election (see *Mathieu-Mohin and Clerfayt*, cited above, §§ 46-51). That right goes beyond the mere possibility of taking part in an election as a candidate. Once elected, the person concerned is also entitled to sit as a member of parliament (see *Riza and Others v. Bulgaria*, nos. 48555/10 and 48377/10, § 141, 13 October 2015, and *Paunović and Milivojević*, cited above, § 58).

51. The Court further reiterates that the rights guaranteed under Article 3 of Protocol No. 1 are not absolute. There is room for "implied limitations", and the Contracting States enjoy a wide margin of appreciation in this sphere (see *Mathieu-Mohin and Clerfayt*, cited above, § 52; *Ždanoka*, cited above, § 103; and *Podkolzina v. Latvia*, no. 46726/99, § 33, ECHR 2002-II). There are numerous ways of organising and running electoral systems and a wealth of differences within Europe (see *Hirst v. the United Kingdom (No. 2)* [GC], no. 74025/01, § 61, ECHR 2005-IX). However, it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with. It has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in

pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Mathieu-Mohin and Clerfayt*, cited above, § 52, and *Ždanoka*, cited above, § 104).

(b) Application to the present case

52. The applicant was elected to the Senate in the federal parliamentary elections of 13 June 2010. On 31 August 2010 she signed a resignation letter which she attempted to withdraw a few days later, claiming to the President of the Senate that she had been subjected to heavy pressure at the time of signing and that this had vitiated her consent (see paragraphs 10 and 11 above). During the plenary session of 12 October 2010 the Senate found, like the Bureau in its report, that there was no cause to dispute the validity of the applicant's resignation. Consequently, the Senate took note of her resignation and validated the credentials of her successor (see paragraph 20 above).

53. The Court has previously held that the refusal to accept the withdrawal of a member of parliament's resignation or forfeiture of his or her seat pursued a legitimate aim, namely that of safeguarding legal certainty in relation to the electoral process (see *Occhetto v. Italy* (dec.), no. 14507/07, § 49, 12 November 2013). If a candidate were able to forfeit a parliamentary seat and then to withdraw that decision at any time, there would be uncertainty as to the composition of the legislature (*ibid.*). It therefore cannot be deduced from Article 3 of Protocol No. 1 that the relevant national authorities have an obligation to allow a member of parliament to withdraw his or her resignation at any time.

54. That being so, the Court considers that the present case differs from the *Occhetto* case, in which the applicant had, of his own free will, signed a document forfeiting his parliamentary seat (*ibid.*, § 50). In the present case, the applicant argued that she had not acted of her own free will. It is not for the Court to determine whether the applicant's resignation was freely tendered or whether her signing of the impugned letter of 31 August 2010 was coerced within the meaning of Article 1109 of the Civil Code. The answer to that question is in any event not decisive for the outcome of the case. The Court finds that in the present case, in so far as the applicant had explicitly stated on several occasions that her resignation had been coerced and that she wished to retain her seat in the Senate, there was at the very least a dispute as to the validity of her resignation.

55. The Court will thus examine whether the Senate's decision to accept the applicant's resignation as valid constituted a violation of Article 3 of Protocol No. 1.

56. The Court would point out that in other cases relating to Article 3 of Protocol No. 1, it has emphasised that the decision-making process concerning ineligibility or contestation of election results must be accompanied by criteria framed to prevent arbitrariness (see *Podkolzina*, cited above, § 35; *Kovach v. Ukraine*, no. 39424/02, §§ 54-55, ECHR 2008;

Kerimova v. Azerbaijan, no. 20799/06, §§ 44-45, 30 September 2010; and *Riza and Others*, cited above, § 143). It is of the view that such must also be the case where a dispute arises as to the resignation of a member of parliament who wishes to withdraw that resignation or argue that it was not valid under domestic law.

57. In that connection, the Court considers firstly that the decision-making body's discretionary power must not be excessive; it must be circumscribed with sufficient precision by the provisions of domestic law. For while Article 3 of Protocol No. 1 does not contain an express reference to the "lawfulness" of any measures taken by the State, the rule of law, which is one of the fundamental principles of a democratic society, is a concept inherent in all the Articles of the Convention (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III). This principle entails a duty on the part of the State to put in place a framework of legislation for securing its obligations under the Convention in general and Article 3 of Protocol No. 1 in particular (see *Paunović and Milivojević*, cited above, § 61).

58. In the present case, the Court finds that, at the relevant time, neither statute nor the Senate's Rules of Procedure set forth a procedure in the event of the withdrawal of a senator's resignation. In particular, contrary to what the Government alleged, it had not been specified whether the resignation took effect *ipso facto* and was irrevocable or whether it only became irrevocable upon approval by the plenary Senate. In two cases of withdrawal of a resignation by members of other Belgian legislative Houses, the relevant Houses decided – unlike the Senate in the present case – that resignation or forfeiture only became irrevocable after having been submitted to the plenary House (see paragraphs 29 and 30 above). According to the information submitted by the parties, such a situation had never previously arisen in the Belgian Senate. In the absence of any regulations, the Senate's legal department was asked to produce two opinions on 15 and 21 September 2010 respectively, ultimately finding that, while resignation became irrevocable immediately, it was nevertheless for the plenary Senate to decide on the validity of the resignation when verifying the successor's credentials (see paragraph 14 above). Those opinions specified that it was not, in any event, within the remit of a court to rule on the validity of the Senate's composition.

59. The Court concludes from the above that the discretion enjoyed by the Senate had not been circumscribed with sufficient precision by the provisions of domestic law.

60. Next, the proceedings themselves had to be such as to allow the persons concerned to argue their point of view and to avoid any abuse of power on the part of the relevant authority.

61. In the present case, the Court considers that the proceedings before the Senate did not afford procedural safeguards against arbitrariness. The Senate's Rules of Procedure provided that it was for the Bureau to verify the credentials of the applicant's successor (see paragraph 26 above) and thus,

indirectly, the validity of her resignation, yet neither the applicant nor her counsel were interviewed by the Bureau. Nor was the applicant invited to submit her arguments in writing before the adoption of the report. The Bureau indicated that it had drawn up its report on the basis of the evidence before it, which included, *inter alia*, the statements given by the applicant and her counsel in the letters of 6 and 14 September 2010 (see paragraphs 10 and 11 above). It can be seen from the report as presented to the plenary House that, in the absence of any statute or rule, the Bureau applied four principles to assess the validity of the applicant's resignation (see paragraph 20 above). The Court finds, however, that no reasons were given as to why the Bureau had rejected the applicant's argument and had found that there was no cause to dispute the validity of her resignation.

62. Moreover, the Bureau was made up of senators (see paragraph 27 above), including P. and H., who had been directly accused by the applicant of having been involved in exerting pressure on her to sign the impugned resignation letter on 31 August 2010 (see paragraph 7 above). There is no evidence to suggest that P. and H. refrained from taking part in the debate on the validity of the applicant's resignation. As the Bureau met in private, it is impossible to know what part they may have played in the discussions. In the Court's view, the composition of the Bureau of the Senate was therefore not, in the particular circumstances of the present case, apt to counter the impression that the senators directly accused by the applicant had played a dominant role in the decision-making process.

63. The subsequent plenary Senate session was not conducted in such a way as to remedy the shortcomings of the proceedings before the Bureau. P. and H. were also present at the plenary session of 12 October 2010 and there was no indication that they abstained from voting. Furthermore, the applicant was not given the opportunity to be heard or to put forward her arguments since Senate security personnel prevented her from entering the chamber (see paragraph 19 above).

64. Thus, having regard to the circumstances of the case as a whole, the Court finds that the applicant's resignation from her office as senator was accepted by the Senate despite the fact that she had not been afforded any procedural safeguards against arbitrariness, thereby impairing the very essence of her rights under Article 3 of Protocol No. 1.

65. There has therefore been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3 OF PROTOCOL NO. 1

66. The applicant further complained of a violation of Article 13 of the Convention taken in conjunction with Article 3 of Protocol No. 1. Article 13 reads as follows:

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

67. The applicant alleged that the proceedings before the Bureau of the Senate and the plenary Senate did not constitute an effective remedy given that she had not been afforded any procedural safeguards before those authorities and that, as the Government admitted, no court had jurisdiction to rule on the validity of her resignation.

68. The Government observed that in the *Grosaru* judgment (cited above, § 28), the Court had expressly considered Belgium to have enjoyed a long tradition of democracy which tended to dispel any doubts as to the legitimacy of its practice of not providing for any remedy other than validation by the parliamentary House itself. It argued that the proceedings in connection with the validity of the applicant’s resignation had been accompanied by a number of safeguards and concluded that an effective remedy had therefore been available to her before the Senate.

69. The Court finds that this complaint is linked to the one examined under Article 3 of Protocol No. 1 and that it must therefore likewise be declared admissible. However, having regard to its findings with regard to Article 3 of Protocol No. 1 (see paragraphs 64 and 65 above), the Court finds that, in the circumstances of the present case, it is not necessary to examine whether there has been a violation of Article 13 of the Convention taken in conjunction with the aforementioned Article.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 381,032 euros (EUR) in respect of pecuniary damage, in which she included the loss of salary (EUR 170,200), the loss of severance pay (EUR 37,000), the loss of her senator’s expense budget (EUR 86,400), her leave bonus (EUR 12,432), and the loss of her pension benefits (EUR 1,020,000, which she agreed to reduce to EUR 50,000). She further claimed EUR 25,000 assessed *ex aequo et bono* in respect of non-pecuniary damage.

72. The Government submitted, by way of principal argument, that the amounts claimed by the applicant should be dismissed since she ought to have brought a claim for damages before the ordinary courts on the basis of Article 1382 of the Civil Code (referring to *Süzer and Eksen Holding A.Ş.*

v. Turkey, no. 6334/05, § 172, 23 October 2012). In the alternative, the Government argued that, as to the loss of salary, there was nothing to suggest that the applicant would have remained in office until the end of the parliamentary term and that she had moreover failed to provide any details as to her professional activities or income following her resignation (referring to *Lykourazos v. Greece*, no. 33554/03, § 64, ECHR 2006-VIII). In addition, the Government submitted that the applicant could not be awarded any sum in respect of the loss of her severance pay, expense budget and leave bonus in so far as these were costs tied to the applicant's performance of her duties which she had not had occasion to incur. Lastly, concerning the loss of pension benefits, the Government did not see how the applicant could claim pension benefits based solely on an article in the press purporting to show that a senator received a monthly pension of EUR 4,250. The Government noted that a parliamentary term of office was limited to four years and that there was nothing to suggest that the applicant would have gone on to be re-elected in future elections. Concerning non-pecuniary damage, the Government took the view sufficient redress would be afforded by the finding of a violation.

73. The Court reiterates that compensation in respect of pecuniary damage can only be awarded if there is a causal link between the loss or damage alleged and the violation found (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 111, ECHR 2009; see also *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV, and *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, § 81, ECHR 2014). The Court takes the view that the only basis on which just satisfaction should be awarded in the present case resides in the applicant's not being afforded minimal safeguards against arbitrariness. The Court cannot speculate as to the outcome of proceedings to contest the applicant's resignation had she been afforded the safeguards provided for in Article 3 of Protocol No. 1. Consequently, the Court dismisses the claim in respect of pecuniary damage (see, in the same vein, *Kavakçı v. Turkey*, no. 71907/01, § 53, 5 April 2007; *Sobacı v. Turkey*, no. 26733/02, § 39, 29 November 2007; and *Grosaru*, cited above, 67). It nevertheless finds, in the light of the circumstances of the case, that the impugned procedure unquestionably caused the applicant non-pecuniary damage, for which the finding of a violation in the present judgment does not constitute sufficient redress (see, *mutatis mutandis*, *Ronald Vermeulen v. Belgium*, no. 5475/06, § 63, 17 July 2018). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 5,000.

B. Costs and expenses

74. The applicant also claimed EUR 29,968.59 for the costs and expenses incurred before the domestic courts and before the Court, including lawyer's and bailiff's fees.

75. The Government alleged that, in the absence of invoices, it was not proven that the applicant had settled the amounts indicated in the list of services rendered. They therefore asked the Court to dismiss the claim in that respect.

76. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that, contrary to what the Government alleged, the applicant did provide proof that she had paid the costs for which she asked to be reimbursed. Thus, regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 29,968.59 covering costs under all heads.

C. Default interest

77. The Court considers it appropriate to set the rate of default interest equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 3 of Protocol No. 1 admissible;
2. *Declares*, by a majority, the complaint under Article 13 of the Convention taken in conjunction with Article 3 of Protocol No. 1 admissible;
3. *Holds*, by six votes to one, that there has been a violation of Article 3 of Protocol No. 1 to the Convention;
4. *Holds*, by six votes to one, that there is no need to examine the complaint under Article 12 of the Convention taken in conjunction with Article 3 of Protocol No. 1;
5. *Holds*, by six votes to one,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

- (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 29,968.59 (twenty-nine thousand nine hundred and sixty-eight euros and fifty-nine cents), plus any tax that may be chargeable to the applicant, 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;
6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in French, and notified in writing on 21 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Robert Spano
President

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

R.S.
H.B.

DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM

1. I am respectfully unable to concur with the opinion of the majority in finding a violation of Article 3 of Protocol No. 1 to the Convention.

2. The applicant, who had been elected to the Senate on 13 June 2010, was summoned on 31 August 2010, immediately upon her return from leave, by the President of the Belgian Senate, who happened to be a member of the applicant's political party. At the end of that meeting, at which the President and the leader of her party's parliamentary group were present, she signed a letter of resignation from her office as senator.

3. On 6 September 2010 she sent the President of the Senate a letter in which she informed him that she intended to retain her seat as senator. She pointed out that she had been subjected to considerable psychological pressure when signing her letter of resignation and that she had in fact been coerced into giving her consent.

4. Article 6 of the Senate Rules of Procedure provided that when a senator resigned, it fell to the Bureau, sitting as the Committee for the Examination of Credentials, to carry out the necessary verifications and prepare the deliberations of the plenary House. The Bureau, in two sittings on 23 September and 7 October 2010, found that there was no cause to dispute the validity of the applicant's resignation.

5. The following points must be taken into consideration:

(a) The resignation of an elected official is a unilateral act which, according to the opinion delivered by the Senate's legal department on 15 September 2010, is irrevocable as soon as it is delivered to the President of the Senate.

(b) The applicant's resignation from her elected office was radically different in nature from a contestation of election results or a disqualification, also falling within the ambit of Article 3 of Protocol No. 1.

(c) The institutional insecurity potentially caused by formal resignations that are subsequently withdrawn requires that there be a rigorous framework for calling such individual acts into question and that such a practice only be authorised in very specific cases.

(d) Moreover, it hardly needs to be pointed out that the situation of a senator recently voted into office is in no way comparable to that of an employee who reports to his/her employer and is thus legitimately susceptible to intimidation.

(e) If, however, an elected official were to be pressured into resigning, which is of course conceivable, legal proceedings of a civil or criminal nature could, ultimately, be initiated to dispute the validity of the act of resignation.

(f) It cannot be denied that when the Bureau met, the applicant had not brought any such proceedings to complain of the coercion to which she claimed she had been subjected and potentially have it recognised as such by a court of law.

(g) Article 48 of the Constitution provides that, following the resignation of one of its members, the Senate must verify the credentials of the new senator and therefore has the opportunity, at that time, to decide indirectly on the validity of the resignation.

(h) In the present case, the assessment of the applicant's resignation, which was entrusted to a group of sixteen senators making up the Bureau, then put to the plenary Senate, corresponded to the application of Article 234 of the Electoral Code as in force at the material time, which provided that "when the Houses are sitting, they alone shall have the right to receive the resignation of their members".

(i) The Senate's subsequent verification of its members' credentials constituted the final stage in the confirmation of the applicant's resignation and was lawfully carried out.

(j) Although the opinion rendered by the Senate on 15 September 2010, which provided that a resignation took immediate and irrevocable effect once delivered to the President of the Senate, was not in compliance with Article 234 of the Electoral Code, the procedure must nevertheless be regarded as having been regularised during the Senate's session of 12 October 2010.

(k) Thus, the applicant's resignation did not take effect on the day the letter was delivered to the President of the Senate but was confirmed on 12 October 2010 at the plenary session of the Senate that voted to adopt the Bureau's report.

6. It therefore appears to me, contrary to the majority in the Chamber, that unless one wishes to call into question the Belgian State's margin of appreciation in this sphere and its procedural choices in dealing with disputed resignations, it cannot be concluded that there has been a violation of Article 3 of Protocol No. 1.