



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

FOURTH SECTION

**CASE OF JANUŠKEVIČIENĖ v. LITHUANIA**

*(Application no. 69717/14)*

JUDGMENT

STRASBOURG

3 September 2019

**FINAL**

**27/01/2020**

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



**In the case of Januškevičienė v. Lithuania,**

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

Ganna Yudkivska, *President*,  
Paulo Pinto de Albuquerque,  
Faris Vehabović,  
Egidijus Kūris,  
Carlo Ranzoni,  
Georges Ravarani,  
Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 16 October 2018 and 18 June 2019,

Delivers the following judgment, which was adopted on the last-mentioned date:

## PROCEDURE

1. The case originated in an application (no. 69717/14) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Ms Vida Januškevičienė (“the applicant”), on 23 October 2014.

2. The applicant was represented by Mr S. Lileikis a lawyer practising in Vilnius. The Lithuanian Government (“the Government”) were represented by their Agent, Ms K. Bubnytė-Širmenė.

3. The applicant alleged that courts in criminal proceedings against third parties had declared that she had committed criminal offences, in violation of her right to be presumed innocent until proven guilty under Article 6 § 2 of the Convention, and that she had not had an effective remedy in respect of that complaint, contrary to Article 13 of the Convention.

4. On 20 September 2017 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Vilnius.

### **A. Start of the pre-trial investigation**

6. On 23 October 2007 the Vilnius office of the Financial Crime Investigation Service opened a pre-trial investigation into allegations of fraudulent appropriation of property of high value committed in an organised group in 2005 to 2007 (hereafter “the main investigation”). More than thirty individuals and companies were suspected of having participated in the criminal activity.

7. On 25 October 2007 the applicant was served with the official notice that she was suspected of fraud committed in an organised group, in the capacity of an organiser, as set forth in Articles 24 § 4 and 182 § 2 of the Criminal Code. It was suspected that the applicant, as the leader of the organised group consisting of her, Č.M., I.R., D.L., T.F., S.P., O.J., A.J. and other individuals, and as the individual in charge of several companies designed to cover up criminal activity, had falsified invoices and other accounting documents issued under the name of those companies and thereby helped multiple other companies, including company D., company A. and company S., appropriate large amounts of money in unpaid value-added tax.

8. The applicant was questioned on the same day in the presence of her lawyer but refused to answer any questions. She was questioned again on 27 April 2011 and again refused to answer questions.

### **B. Proceedings against V.D. and company D.**

9. On 25 May 2009 the prosecutor in charge of the pre-trial investigation decided to separate the investigation against company D. and its director V.D. from the main investigation. The prosecutor stated that the investigation was of a large scope and concerned the activities of more than ten companies, and thus it might take a long time to be completed. However, the evidence against V.D. and company D. had been collected and the case against them was ready for examination; it was also necessary to ensure their right to a trial within a reasonable time. The prosecutor stated that separating the pre-trial investigations would not impair their thoroughness or objectivity.

10. On 18 December 2009 the Vilnius Regional Court convicted V.D. and company D. of several counts of fraud, appropriation of property of high value, fraudulent accounting and falsification of documents, as set forth in Articles 182 §§ 1 and 2, 183 § 2, 222 § 1 and 300 §§ 1, 2 and 3 of the Criminal Code. They had not been charged with committing the criminal offences in an organised group.

The court found that V.D. had used falsified documents to show that company D. had acquired services from other companies, thereby reducing the company’s official profits and the amount of value-added tax due from

the company to the State budget. The both accused had pleaded guilty to all the charges.

11. The beginning of the descriptive part of the judgment reproduced the charges against the accused as presented in the indictment. It stated that in respect of each charge V.D. and company D. had acted with common intent with a group of accomplices (*veikė vieninga tyčia bendrininkų grupe*), consisting of Č.M., the applicant, I.R., D.L., T.F., S.P., O.J., A.J. and others.

12. Subsequently in the descriptive part of the judgment the court assessed the evidence submitted to it. It stated:

“When assessing the evidence of the case, the court makes the following conclusions (*vertindamas byloje esančius įrodymus, teismas daro šias išvadas*):

...

[V.D.] acquired from [D.L., I.R., the applicant, and Č.M.] falsified ... invoices and other accounting documents which included knowingly untrue information that [company D.] had bought advertising services from the aforementioned company. The falsified documents were included in the accounting balance of [company D.], the money was taken from [company D.’s] account in cash, part of which was paid to [D.L., I.R., the applicant, and Č.M.] for providing the falsified documents and the remainder was used for the various needs of [company D.]”

13. When determining the sentence to be given to the accused, the court took into account, among other circumstances, that they had committed the criminal offences in an organised group. They received monetary fines.

14. Company D. appealed against that judgment, arguing that the fine given to it was too high. On 20 March 2010 the Court of Appeal partly allowed its appeal and reduced the fine.

15. The beginning of the descriptive part of the Court of Appeal’s judgment reproduced the charges against the accused as presented in the indictment (see paragraph 11 above). The remainder of the judgment did not include any statements mentioning the applicant.

16. The applicant did not have any procedural status in the proceedings against V.D. and company D. She claims that she did not know about them until she was presented with an indictment against her in April 2014 (see paragraph 31 below).

### **C. Proceedings against V.S., R.N., V.B., company A. and company S.**

17. On 11 November 2010 the prosecutor decided to separate the investigation against V.S., R.N., V.B. and companies A. and S. from the main investigation. The prosecutor stated that the investigation was of a large scope and might take a long time to be completed, whereas the evidence against the aforementioned suspects had been collected and the case against them was ready for examination. The prosecutor reiterated the importance of ensuring their right to a trial within a reasonable time, and

stated that the separation of the investigations would not impair their thoroughness or objectivity.

18. On 4 June 2012 the Kaunas Regional Court convicted V.S. and R.N. of several counts of fraud, appropriation of property of high value, fraudulent accounting and falsification of documents, as set forth in Articles 182 §§ 1 and 2, 183 § 2, 222 § 1 and 300 §§ 1 and 3 of the Criminal Code. They had not been charged with committing the criminal offences in an organised group.

The court found that V.S. and R.N., who were directors of company A. and company S., respectively, had used falsified documents to show that their companies had acquired services from other companies, thereby reducing the companies' official profits and the amount of value-added tax due from them to the State. V.S. and R.N. partly confessed to the charges against them.

19. In the same judgment the court also acquitted V.B. (director of another company), company A. and company S. of similar charges for lack of evidence.

20. The beginning of the descriptive part of the judgment reproduced the charges against the accused as presented in the indictment. It stated that in respect of each charge each of the accused had acted with common intent with a group of accomplices, consisting of Č.M., the applicant, I.R., D.L., T.F., S.P., O.J., A.J. and others.

21. The remainder of the judgment did not include any statements mentioning the applicant.

22. The judgment was not appealed against and became final on 26 June 2012.

23. The applicant did not have any procedural status in these proceedings. She claims that she did not know about them until she was presented with an indictment against her in April 2014 (see paragraph 31 below).

#### **D. Proceedings against E.T., E.A., R.N., company P. and company S.S.**

24. On 12 July 2011 the prosecutor decided to separate the investigation against E.T., E.A., R.N. and companies P. and S.S. from the main investigation, giving essentially the same reasons as for separating other investigations (see paragraphs 9 and 17 above).

25. On 15 January 2014 the Kaunas Regional Court found all the accused guilty of several counts of fraud, appropriation of property of high value, fraudulent accounting and falsification of documents, as set forth in Articles 182 §§ 1 and 2, 183 § 2, 222 § 1 and 300 §§ 1, 2 and 3 of the Criminal Code. They had not been charged with committing the criminal offences in an organised group.

26. A copy of the Kaunas Regional Court's judgment has not been provided to the Court. However, from its description in the subsequent Court of Appeal's judgment (see paragraph 28 below), it appears that the beginning of the descriptive part of the judgment, which reproduced the charges against the accused as presented in the indictment, stated that in respect of each charge each of the accused had acted with a group of accomplices, consisting of Č.M., the applicant, I.R., D.L., T.F., S.P., O.J., A.J. and others. It also appears that that statement was subsequently repeated in the descriptive part of the judgment as part of the court's findings.

27. The applicant was called as a witness before the first-instance court but she refused to testify on the grounds that that case was related to the case in which she was a suspect (see paragraph 7 above).

28. On 8 May 2017 the Court of Appeal quashed that judgment and acquitted all the accused on the grounds of insufficient evidence that any criminal offences had been committed. In so far as relevant to the present case, the court held:

“In the descriptive part of the [judgment of the Kaunas Regional Court] it is stated that the first-instance court has established that [E.T., E.A., R.N. and companies P. and S.S.] committed the criminal offences with which they have been charged while acting in an organised group consisting of [Č.M., the applicant, I.R., D.L., T.F., S.P., O.J., A.J. and others]. However, that conclusion of the first-instance court is not based on evidence ...

As it was already mentioned, the pre-trial investigation in the present case was separated from another pre-trial investigation concerning allegations of falsification of documents and fraud when calculating and paying the value-added tax, in which official notices that they were suspects had been presented to [Č.M., the applicant, I.R., D.L., O.J. and A.J.] ... [T]he criminal case against [Č.M., the applicant, I.R., D.L., O.J. and A.J.] concerning allegations of falsification of documents and appropriation of value-added tax is still pending before the first-instance court (the Vilnius Regional Court). The evidence in that case is still being examined and a judgment on the charges against the aforementioned individuals has not been adopted. Accordingly, since pre-trial investigations have been separated on the basis of individuals and not on the basis of criminal offences, and since the criminal case from which the present case has been separated has not been examined by a court to date, the possibility to establish all the circumstances of the criminal offences allegedly committed by the accomplices in the present case is significantly restricted. Having in mind that the proceedings before the appellate-instance court are limited not only by Article 255 of the Code of Criminal Procedure but also by Article 320 of that Code (a case is examined only in respect of those accused (suspects) and those criminal acts which have been referred to the court for examination), the appellate-instance court ... cannot examine all the circumstances of the alleged criminal offences and cannot establish the acts and roles of [Č.M., the applicant, I.R. and D.L.] in the commission of the alleged criminal offences. As a result, the present case cannot determine the criminal liability, the form of complicity and other questions related to the aforementioned individuals who allegedly took part in criminal activity.”

### **E. Proceedings against other individuals**

29. On unspecified dates five other investigations against ten individuals and companies were separated from the main investigation. No information concerning the proceedings against them has been provided to the Court.

### **F. Proceedings against the applicant**

30. On 21 January 2014 the applicant was served with the finalised notice of suspicion which presented essentially the same allegations as before (see paragraph 7 above). She was questioned on the same day. She denied her guilt and refused to answer questions.

31. On 17 April 2014 the prosecutor drew up indictments against the applicant, Č.M., I.R., D.L., O.J. and A.J. It alleged that the applicant, as the leader of the organised group consisting of her, Č.M., I.R., D.L., O.J. and A.J., and as the individual in charge of several companies designed to cover up criminal activity, had falsified invoices and other accounting documents issued under the name of those companies and thereby helped multiple other companies appropriate over 6,000,000 Lithuanian litai (LTL) (approximately 1,700,000 euros (EUR)) in unpaid value-added tax. The indictment stated that the evidence against the applicant included, among other things, the evidence in the criminal case against V.D. and company D. and the criminal case against V.S. and R.N. (see paragraphs 9-23 above), as well as criminal cases against several other individuals. The applicant was charged with fraud, appropriation of property, legalisation of property obtained through criminal activity and falsification of documents committed in an organised group, in the capacity of an organiser or abettor, as set forth in Articles 24 §§ 4 and 6, 25 § 3, 182 § 2, 183 § 2, 216 § 1 and 300 § 3 of the Criminal Code.

32. On 30 April 2014 the case was referred to the Vilnius Regional Court for examination on the merits.

33. On 5 January 2018 all the accused asked the court to discontinue the criminal proceedings as time-barred.

34. On 23 January 2018 the court discontinued the criminal proceedings against the applicant, Č.M., I.R., D.L., O.J. and A.J. as time-barred. It noted that the criminal offences had allegedly been committed in 2005 to 2007, and even for the most serious of the charges against the accused the statutory limitation period was ten years. The court observed that there was no information that any of the accused had committed new criminal offences during the relevant period or that they had been hiding from the criminal proceedings. Accordingly, the proceedings were discontinued in respect of all the accused.

It appears that that decision was not appealed against and became final.



## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitutional and statutory provisions

#### 1. Constitution

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

##### Article 31

“A person shall be presumed innocent until proved guilty according to the procedure established by law and declared guilty by an effective court judgment.

A person charged with committing a crime shall have the right to a public and fair hearing of his or her case by an independent and impartial court.

...

A person suspected of committing a crime, as well as the accused, shall be guaranteed, from the moment of his or her arrest or first interrogation, the right to defence, as well as the right to counsel.”

##### Article 109

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

When administering justice, judges and courts shall be independent.

When considering cases, judges shall obey only the law

...”

#### 2. Code of Criminal Procedure

36. Article 44 § 6 of the Code of Criminal Procedure provides that anyone who has been suspected of or charged with a criminal offence must be considered innocent until his or her guilt has been proved in accordance with the Code by a final court judgment.

37. Article 170 § 4 (1) provides that the decision to join or separate pre-trial investigations is within the exclusive competence of a prosecutor.

38. Article 255 § 1 provides that a court examines a case only in respect of those accused and those criminal acts which have been referred to it for examination.

39. Articles 304, 305 and 307 provide that a judgment consists of three parts: introductory (*ižanginė*), descriptive (*aprašomoji*) and operative (*rezoliucinė*).

The introductory part must list, among other items, the date and place of the adoption of the judgment, the composition of the panel, the names of the people participating in the hearing, information about the accused, and the legal provisions under which the accused has been charged (Article 304).

The descriptive part of a judgment of conviction must provide the following: (1) circumstances of the criminal offence which has been

declared proven (*įrodyta pripažintos nusikalstamos veikos aplinkybės*); (2) evidence on which the court based its conclusion, and reasons for dismissing any other evidence; (3) reasons for the legal classification of the criminal offences; (4) reasons for the decision on the sentence (Article 305 § 1).

The operative part of a judgment of conviction must indicate, among others, the legal provisions under which the accused has been convicted and the sentence to be given to him or her (Article 307 § 1).

40. Article 312 § 1 provides that an appeal against a judgment can be submitted by a prosecutor, a convicted person, a person in respect of whom a case has been discontinued, his or her defence counsel or legal representative, a victim or his or her representative.

41. Article 367 § 1 provides that an appeal on points of law can be submitted by a prosecutor, a victim or his or her representative, a convicted person, an acquitted person, a person in respect of whom a case has been discontinued, his or her defence counsel or legal representative, a civil claimant, a civil defendant, their representatives, a person who has provided security for bail, a person whose property or assets have been seized, or his or her representative.

42. Article 3 § 3 provides that if the statutory limitation period expires after the case has been transferred to a court for examination and the accused asks that the criminal proceedings be continued, the court proceeds with the examination of the case and adopts a decision either to discontinue the case or to acquit the accused.

### 3. Civil Code

43. Article 7 of the 1964 Civil Code, which remained in force until 1 July 2001 with certain amendments, provided in its relevant parts:

#### Article 7. Honour and dignity

“Individuals or organisations have the right to apply to a court asking it to order retraction of information which is erroneous and damages their honour and dignity, unless the person who has disseminated that information proves that it is not erroneous.

...”

44. Article 2.24 of the 2000 Civil Code, in force from 1 July 2001 onwards, provides in its relevant parts:

#### Article 2.24. Protection of honour and dignity

“1. A person shall have the right to demand the retraction, in judicial proceedings, of information which has been made public and which denigrates his or her honour and dignity and is erroneous, in addition to the right to compensation for pecuniary and non-pecuniary damage incurred by the placing in the public domain of the

aforementioned information ... Information which has been made public shall be presumed to be erroneous, unless the publisher proves the opposite to be true.

2. Where erroneous information has been made public by the mass media (including the press, television and radio), the person who is the subject of the publication shall have the right to provide a proposed retraction, and to demand that the media source concerned publish the aforementioned retraction free of charge or make it public in some other way ...

...

9. The rules set in this Article do not apply to parties to court proceedings, which may not be held liable for statements made during a court hearing or information provided in court documents.”

45. Article 6.272 of the 2000 Civil Code provides:

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

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

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

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

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

**B. Practice of the domestic courts**

46. In a ruling of 29 December 2004 the Constitutional Court held:

“The presumption of innocence set out in Paragraph 1 of Article 31 of the Constitution is one of the most important guarantees of the implementation of justice in a democratic State. It is a fundamental principle of the implementation of justice in the process of criminal cases, an important guarantee of human rights and freedoms. A person is considered innocent of a crime until his or her guilt has been proved in accordance with a procedure established by law and he or she has been found guilty by a court judgment that has come into effect. The presumption of innocence is inseparably linked with respect for and the protection of other constitutional human rights and freedoms, as well as acquired rights. It is especially important that State institutions and officials respect the presumption of innocence. It should be noted that public figures should in general refrain from referring to a person as a criminal until that person’s guilt in respect of the crime has been proved in accordance with the procedure established by law and he or she has been found guilty by a court judgment

that has come into effect. Otherwise, human honour and dignity may be violated and human rights and freedoms may be undermined.”

47. In its review of domestic case-law, issued on 25 June 2009, the Supreme Court concluded that the requirement for a court to examine a criminal case only in respect of those accused who had been referred to it for examination, set out in Article 255 § 1 of the Code of Criminal Procedure (see paragraph 38 above), did not prohibit the court from examining whether the acts of third parties complied with the law, to the extent necessary for determining the criminal responsibility of the accused. However, a judgment could not include any phrases (*nuosprendyje negali būti formuluojami*) which established third parties’ guilt in respect of criminal acts, except for individuals who had already been convicted or exempted from criminal responsibility.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

48. The applicant complained that court judgments adopted in criminal proceedings against V.D. and company D. and those against V.S., R.N., V.B. and companies A. and S. had unambiguously stated that she had committed criminal offences as part of an organised group, despite the fact that she had not been found guilty of those offences by any court. She relied on Article 6 § 2 of the Convention, which reads:

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

#### A. The parties’ submissions

##### 1. The Government

49. The Government submitted that the applicant had had the opportunity to defend herself in the criminal proceedings against her. They stated that the applicant had been informed of the suspicions against her on 25 October 2007 (see paragraph 7 above) and thus she could have defended her rights during the pre-trial investigation. The Government emphasised that the judgments adopted against the co-suspects had not had a *res judicata* effect on the courts examining the case against the applicant, as demonstrated by the fact that investigative measures with regard to the applicant had been “intensively carried out” and that the applicant herself had submitted “numerous” requests to the Vilnius Regional Court regarding access to the case file and inclusion of new evidence – the Government

provided the Court with a copy of one request submitted by the applicant on 17 September 2015 to include new evidence in the case file. The Government contended that in those proceedings the applicant could have challenged the facts underlying the judgments adopted against her co-suspects; however, she had not done that. Nor had she complained at any point of a violation of her right to be presumed innocent.

50. The Government also submitted that the applicant herself, together with her co-accused, had requested that the Vilnius Regional Court discontinue the proceedings against her as time-barred. However, domestic law allowed courts to continue examining the case after the expiry of the statute of limitations at the request of the accused, and in such situations the court could either adopt a judgment of acquittal or discontinue the proceedings if an acquittal was not possible (see paragraph 42 above). Accordingly, the applicant could have requested that the court continue the examination of her case. The Government argued that by failing to do so she had precluded the courts from “removing any doubts” with regard to the references to her guilt made in the judgments against her co-suspects.

51. The Government further submitted that the applicant could have lodged a civil claim for damages for the breach of her honour and dignity. They provided two examples of relevant cases before the domestic courts:

- In the first case, the claimant had complained that his honour and dignity had been breached by his employer, a regional police force, which had stated during a disciplinary inquiry that the claimant had committed certain criminal offences, despite the fact that at that time he had not been convicted of any such offences. On 14 October 2010 the Kaunas Regional Court, relying on Article 7 of the 1964 Civil Code (see paragraph 43 above), had acknowledged that there had been a breach of the claimant’s honour and dignity and awarded him approximately 2,900 euros (EUR) in respect of non-pecuniary damage from the police force. The Government stated that that decision had not been appealed against and had become final.

- In the second case, the claimant had complained that his right to be presumed innocent had been breached by the courts which had refused his application to reopen the criminal proceedings against him; in those criminal proceedings the claimant had been acquitted of some of the charges against him and the case in respect of other charges had been discontinued because the relevant acts had been decriminalised. When refusing to reopen the criminal proceedings, the court had held, *inter alia*, that those proceedings had been opened “as a result of the claimant’s unlawful activities” and that they had been terminated on non-exonerative grounds. Relying on Article 6.272 of the 2001 Civil Code (see paragraph 45 above), the claimant had asked to be awarded compensation in respect of non-pecuniary damage. On 23 December 2008 the Supreme Court had dismissed the claim, finding that the impugned court decision had merely restated the facts which had been established in the criminal proceedings against the

claimant but had not declared him guilty of any criminal offences and had thus not breached his right to be presumed innocent.

52. The Government also provided three examples of cases in which, in the ambit of the same proceedings, higher courts had ordered the removal of wording from the judgments of lower courts which had not been in compliance with the presumption of innocence, or had remitted such cases for re-examination.

53. Accordingly, the Government submitted that the applicant had failed to provide the Lithuanian courts with an opportunity of redressing the alleged violations of her rights and thus her complaint had to be rejected under Article 35 § 1 of the Convention for non-exhaustion of effective domestic remedies.

## *2. The applicant*

54. The applicant submitted that, having no procedural status in the criminal cases against her co-suspects, she had not had any opportunity to defend herself against the allegations and to contest the statements referring to her in the relevant court judgments. She submitted that the remedies suggested by the Government (see paragraphs 49-52 above) related exclusively to the proceedings against her but would not have affected the judgments taken in the proceedings against third parties in which her right to be presumed innocent had been violated.

55. In response to the Government's argument that she should have applied to have the court continue examine her case despite the expiry of the statute of limitations (see paragraph 50 above), the applicant stated that the proceedings against her had lasted for more than ten years during which she had been subjected to various restrictions of personal liberty, and she had thus agreed to the discontinuation of the case as time-barred in order to end the stress and inconvenience.

## **B. The Court's assessment**

56. The Court will first of all address the Government's objection regarding the applicant's failure to exhaust domestic remedies.

57. The Court reiterates the general principles in this regard stated, *inter alia*, in *Vučković and Others v. Serbia* ([GC] (preliminary objection), nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014), in particular, that it is intended to be subsidiary to the national systems safeguarding human rights. It is therefore appropriate that the national courts should initially have the opportunity to determine questions of the compatibility of domestic law with the Convention and that, if an application is nonetheless subsequently brought to Strasbourg, the European Court should have the benefit of the views of the national courts, as being in direct and continuous contact with the forces of their countries (see, among many other

authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008).

58. In the present case, the Government submitted, *inter alia*, that the applicant had had the possibility to lodge a civil claim and obtain monetary compensation for the breach of her honour and dignity (see paragraph 51 above).

59. The Court has previously accepted that a remedy under civil law can, in principle, be considered effective against alleged violations of the presumption of innocence (see *Gutsanovi v. Bulgaria*, no. 34529/10, § 178, ECHR 2013 (extracts)). In several cases it found remedies under civil law, offering the possibility of obtaining monetary compensation together with various other procedures for acknowledgment of or putting an end to the infringement of the presumption of innocence, to be effective within the meaning of the Convention (see *Babjak and Others v. Slovakia* (dec.), no. 73693/01, 30 March 2004; *Marchiani v. France* (dec.), no. 30392/03, 27 May 2008; and *Ringwald v. Croatia* (dec.) [Committee], nos. 14590/15 and 25405/15, §§ 54-56, 22 January 2019).

60. In the present case, the Government provided some examples of domestic case-law in which individuals had claimed that statements presenting them as guilty of a criminal offence had breached their honour and dignity, and one of them had been successful in receiving monetary compensation (see paragraph 51 above). In the Court's view, the civil-law remedy indicated by the Government does not appear to be on its face ineffective with regard to the applicant's complaint about her right to be presumed innocent.

61. Moreover, in the present case the Court does not discern any exceptional circumstances which could have absolved the applicant from the obligation to avail herself of the compensatory remedy indicated by the Government. The Court reiterates, in this regard, that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Vučković and Others*, cited above, § 74, and *Scoppola v. Italy* (no. 2) [GC], no. 10249/03, § 70, 17 September 2009).

62. However, the applicant neither lodged a civil claim for compensation for a breach of her honour and dignity (see paragraph 44 above), nor asked the Vilnius Regional Court to continue examining the criminal case against her after it became time-barred and acquit her, in order to dispel any doubts as to her innocence (see paragraphs 33, 34 and 42 above; see, *mutatis mutandis*, *Adolf v. Austria*, 26 March 1982, § 40, Series A no. 49).

63. In the light of the foregoing, the Court finds that the applicant has failed to exhaust domestic remedies with regard to her complaint under Article 6 § 2 of the Convention. It therefore declares that complaint inadmissible under Article 35 §§ 1 and 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

64. The applicant also complained that she had not had any possibility to appeal against the court judgments in proceedings against third parties which had affected her right to presumption of innocence. She did not invoke any specific provision of the Convention.

65. 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 and 126, 20 March 2018), considers that this complaint falls to be examined under Article 13 of the Convention, which reads:

“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.”

### A. Admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

#### 1. *The parties’ submissions*

67. The parties’ arguments have been presented in the context of the complaint under Article 6 § 2 of the Convention (see paragraphs 49-55 above).

#### 2. *The Court’s assessment*

68. The Court reiterates that Article 13 guarantees the availability at national level of a remedy by which to complain of a breach of the Convention rights and freedoms. Therefore, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision, there must be a domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention, but the remedy must in any event be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the State. In certain circumstances, the aggregate of remedies provided for under domestic law may satisfy the requirements of Article 13 (see *De Tommaso v. Italy* [GC], no. 43395/09, § 179,



23 February 2017, and the cases cited therein). The Court also reiterates that it is incumbent on the respondent Government to illustrate the practical effectiveness of the remedies they suggest in the particular circumstances in issue with examples from the case-law of the relevant domestic courts or decisions of the administrative authorities (see *Varga and Others v. Hungary*, nos. 14097/12 and 5 others, § 50, 10 March 2015).

69. In the present case, the Court has already examined the domestic remedies suggested by the Government and found that the applicant had an effective remedy under the civil law (see paragraphs 56-63 above). Accordingly, it concludes that there has been no violation of Article 13 of the Convention.

### FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the complaint under Article 6 § 2 of the Convention inadmissible;
2. *Declares*, unanimously, the complaint under Article 13 of the Convention admissible;
3. *Holds*, by four votes to three, that there has been no violation of Article 13 of the Convention.

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

Marialena Tsirli  
Registrar

Ganna Yudkivska  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, joint dissenting opinion of Judges Pinto de Albuquerque, Kūris and Paczolay is annexed to this judgment.

G.Y.  
M.T.

DISSENTING OPINION OF JUDGES  
PINTO DE ALBUQUERQUE, KŪRIS AND PACZOLAY

1. The Chamber has declared the applicant's complaint under Article 6 § 2 of the Convention inadmissible and has found that there has been no violation of Article 13 (points 1 and 3 of the operative part). We disagree. These findings misrepresent the Lithuanian Government's submissions and distort the domestic law. What is more, the reasoning underlying these findings goes against the Court's case-law.

2. The crux of the applicant's complaints is that she, having had not any procedural status (not even of a witness) in the criminal cases against third persons (her co-suspects before disjoining of their cases from that of the applicant), was indicated in the judgments adopted in these cases as having committed a criminal offence. Although her criminal case was discontinued on account of statutory limitation, her *de facto* incrimination in these cases is to stay forever, if this judgment becomes final.

3. In this opinion, we criticise the majority's reasoning and propose an alternative approach, leading to opposite findings: that the Article 6 § 2 complaint is admissible and that there has been a violation of Article 13.

I

4. The majority's reasoning as regards the (in)admissibility of the Article 6 § 2 complaint (paragraphs 58-63 of the judgment) can be summarized in the following way. The Government submitted that the applicant had had the possibility to lodge a civil claim and obtain monetary compensation for the breach of her honour and dignity. A civil-law remedy can, in principle, be considered effective, within the meaning of the Convention, against alleged violations of the presumption of innocence. In some cases the Court found civil-law remedies, offering the possibility of obtaining monetary compensation together with various other procedures for acknowledgment of or putting an end to the infringement of the presumption of innocence, to be effective. The Government provided examples of domestic case-law in which individuals had claimed that statements presenting them as guilty of a criminal offence had breached their honour and dignity. One of them had succeeded in receiving monetary compensation. That remedy does not appear to be "on its face" ineffective with regard to the applicant's complaint about her right to be presumed innocent. The majority has not discerned any exceptional circumstances which could have absolved the applicant from the obligation to avail herself of the said compensatory remedy, and the existence of "mere doubts" as to the prospects of success of a remedy which is not "obviously futile" is not a valid reason for failing to exhaust that avenue of redress. In addition, the applicant did not ask the court to continue examining the criminal case

against her after it became time-barred and acquit her, in order to dispel any doubts as to her innocence. She thus has failed to exhaust domestic civil-law (compensatory) and criminal-law remedies with regard to her Article 6 § 2 complaint.

5. The majority has uttered on its behalf only one sentence on the above-mentioned criminal-law remedy. That utterance in passing is very uncritical. In paragraphs 45 and 46 below we, unlike the majority, spare more than few words to that “additional” remedy, which should have raised the eyebrows of the majority, but did not. Still, what sufficed for the Article 6 § 2 complaint to be dismissed, was that the applicant did not use the civil-law remedy. This is the majority’s principal consideration, by which the Government’s objection as regards the admissibility of the Article 6 § 2 complaint has been upheld.

6. That principal consideration, however, *is based on a fiction*. For all the arguments which the majority has attributed to the Government’s objection as regards the admissibility of the Article 6 § 2 complaint, have been raised by the Government not in support of *that* objection, but as their submissions concerning the Article 13 complaint.

Plainly, *the Government did not raise an objection of non-exhaustion of domestic remedies as regards Article 6 § 2 complaint*. Contrary to the majority’s view, that objection is not there. They made it out from not even between, but beyond the lines of another objection, worded it themselves and then accepted it, as if it had been raised by the Government.

7. When communicating the Article 6 § 2 complaint to the parties, the Court asked them two questions (see the letter of communication of 20 September 2017). The first one was the following:

“Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case, in view of the parts of judgments adopted in the criminal proceedings against other individuals and companies which concerned the applicant’s alleged participation in an organised group engaged in fraud, appropriation of property, falsification of documents and related criminal offences (see *Karaman v. Germany*, no. 17103/10, §§ 42-43 and 64-71, 27 February 2014, and *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, §§ 103-105, 23 February 2016)?

8. The Government in their submissions *has* mentioned that the applicant has not exhausted domestic remedies allegedly available to her (see paragraph 16 below). That has been done *in passing* and *in a confusing manner*. Even so, that submission pertains *not to Article 6 § 2 complaint*, but to that *under Article 13*, and is set out *under the latter heading*. Moreover, having thus hinted about the non-exhaustion of domestic remedies, the Government *conclude* that the Article 13 complaint should be declared inadmissible *as manifestly ill-founded* – not on account of non-exhaustion of domestic remedies (see paragraph 18 below).

The catch is: the Government’s submissions under Article 13, in which the non-exhaustion of domestic remedies is mentioned in passing, have been

transformed by the majority into the full-fledged “Government’s” objection of non-exhaustion of domestic remedies as regards the Article 6 § 2 complaint.

9. In line with the Court’s well-established case-law, an objection of non-exhaustion of domestic remedies cannot be examined of the Court’s own motion (see, among many other authorities, *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 51-54, ECHR 2016 (extracts), and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 62, 15 November 2018). The Court has always distinguished between the objections of non-exhaustion of domestic remedies and, say, the objections of non-compliance with the six-month rule: whereas the latter “[go] to the Court’s jurisdiction” and thus are “not prevented from [being examined] of [the Court’s] own motion”, the former do not go to the Court’s jurisdiction and are prevented from being raised by the Court *proprio moto* (see, *mutatis mutandis*, *Navalnyy*, loc. cit., and the cases cited therein).

This is reasonable. The Strasbourg Court, an international court, consists of judges, who are foreign to the legal system, the provisions of which are under examination in a case before it. It therefore should not pretend that it *knows and can invoke* domestic law, if the respondent Government has not flagged that there is a domestic legal provision to be invoked. Otherwise it would risk to forge a domestic remedy, which is not there.

10. The Lithuanian Government is well aware of the practice that an objection of non-exhaustion of domestic remedies must be raised explicitly and not somewhere between the lines, let alone “by default”. When they intend to raise any ground of inadmissibility (not only non-exhaustion of domestic remedies), they always do this in an explicit manner: they not only explicate the objection in the part of their observations which deals with the complaint under a specific Convention provision, but also mention it in the heading of the respective section of their observations, as well as in the introductory and concluding parts thereof.

To illustrate the above, we refer to some recent examples (proceeding from the later cases to the earlier ones).

11. In *M.A. and Others v. Lithuania* (no. 59793/17, 11 December 2018) the Government structured their observations into sections as follows: I. Introduction; II. Facts; III. EU law relevant to the case; IV. Domestic law relevant to the case; V. Arguments of the Government for inadmissibility of the application; VI. Arguments of the Government for the non-violation of the Convention. The Government was asked questions concerning Articles 3 and 13. In section V they explicitly raised an objection of non-exhaustion of domestic remedies in relation to the Article 3 complaint. In section VI they addressed, in consecutive order, the merits of the complaints under Articles 3 and 13.

12. In *Kožemiakina v. Lithuania* (no. 231/15, 2 October 2018) the Government’s observations were structured as follows: I. Introduction; II.

Facts; III. Relevant domestic law and practice; IV. Preliminary objection of the Government, sub-titled “As to the admissibility of the case”; V. Law, sub-titled “As to the merits of the case”. In section IV the objection of non-exhaustion of domestic remedies was raised explicitly.

13. In *D.R. v. Lithuania* (no. 691/15, 26 June 2018) the Government’s observations were structured as follows: I. Introduction; II. Facts; III. Relevant domestic law; IV. Preliminary objection of the Government submitted together with their reply to the Court’s first question; V. Law. In section IV the objection of non-exhaustion of domestic remedies was raised explicitly.

14. And so on, and so forth.

Further examples, showing that when the Lithuanian Government intend to raise an objection of non-exhaustion of domestic remedies, they do so explicitly, include: *Šidlauskas v. Lithuania* (no. 51755/10, 11 July 2017); *Mardosai v. Lithuania* (no. 42434/15, 11 July 2017); *Šimkus v. Lithuania* (no. 41788/11, 13 June 2017); *Lisovskij v. Lithuania* (no. 36249/14, 2 May 2017); *Paulikas v. Lithuania* (no. 57435/09, 24 January 2017); *Misiukonis and Others v. Lithuania* (no. 49426/09, 15 November 2016); *Kraulaidis v. Lithuania* (no. 76805/11, 8 November 2016).

Many more similar, even identical examples could be retrieved, should one wish to travel back in time.

15. By contrast, the Government’s observations in the present case are structured as follows: I. Introduction; II. Facts; III. Relevant domestic law; IV. Arguments of the Government for the non-violation of the rights and guarantees enshrined in the Convention. The first paragraph of section IV reads:

“The Government find the application to be unfounded and thus inadmissible. Therefore, in answering the questions submitted by the Court, the Government will seek to submit convincing arguments to persuade that the requirements of Article 6 § 2 and of the Convention have not been violated.” (§ 33).

The following headline reads: “As to non-violation of Article 6 § 2 of the Convention”. Afterwards the Court’s question to the parties concerning the alleged violation of Article 6 § 2 (see paragraph 7 above) is reproduced. The subsequent paragraphs refer to the Court’s case-law on the presumption of innocence and the right to fair trial and discuss the circumstances of the applicant’s case in the light of that case-law. It is then concluded that

“... the application is *manifestly ill-founded* and should be declared inadmissible under Article 35 §§ 3 and 4 of the Convention. Should the Court consider otherwise, the Government contend that there were other effective domestic remedies available to the applicant in order to protect his [*sic*] rights under the domestic law (see § 49 below).” (§ 45; emphasis added).

In the above-provided citations an objection of inadmissibility on the grounds of non-exhaustion is not explicitly raised – contrary to the examples cited above.

It would be *rather artificial* to read the Government's submissions otherwise.

16. The observations then restate the Court's second question to the parties – the one concerning the alleged violation of Article 13:

“Did the applicant have at her disposal an effective domestic remedy for her complaint under Article 6 § 2, as required by Article 13 of the Convention?”

The subsequent paragraphs present various remedies under the domestic law which, in the Government's view, the applicant could have used. Having presented the civil-law remedies, the Government state that

“the applicant has not exhausted domestic civil remedies in this regard” (§ 49)

and that

“[the] applicant's complaints concerning the alleged breach of the presumption of innocence related to the issue of an alleged violation of her rights to defence in the context of the judgments against other co-accused must be rejected under Article 35 § 1 of the Convention for non-exhaustion of the effective domestic remedies”. (§ 50)

After arguing that the applicant should have asked domestic courts to examine her case after it had become time-barred, the Government state that

“[the] applicant's complaints concerning the alleged breach of the presumption of innocence related to the issue of the unfairness of her own trial must be rejected under Article 35 § 1 of the Convention for non-exhaustion of the effective domestic remedies”. (§ 55)

Let it be reminded that these submissions, in which the non-exhaustion of domestic remedies is mentioned, appear *in the context of the Article 13 complaint* – and *under that heading*.

17. In the final paragraphs of the observations the Government reiterate their argument that the applicant's right to be presumed innocent was not breached by courts in the criminal proceedings against her co-suspects, and state that

“there were also other effective remedies available to the applicant under the domestic law that the applicant could have availed of” (§ 56)

and that

“the criminal proceedings against the applicant taken as a whole should be considered as fair”. (ibid.)

18. The overall conclusion of the Government's observations reads as follows:

“To sum up, the Government hold the position that the applicant's right to be presumed innocent was respected and, thus, the present situation is not incompatible with the procedural guarantees of Article 6 § 2 of the Convention. Nevertheless, the applicant also had an effective domestic remedy available to her as regards her complaint under Article 6 § 2 of the Convention, *as required under Article 13 of the Convention*. Thus, *this part of the application is manifestly ill-founded*, and should be

therefore declared inadmissible within the meaning of Article 35 §§ 3 and 4 of the Convention.” (§ 57; emphasis added)

19. It has to be concluded that the Government’s observations in the present case differ greatly in their structure and the contents from those submitted in the ten cases referred to in paragraphs 11-14 above. In their structure there is no reference to any inadmissibility objection. The introductory paragraph, which outlines the Government’s argument, does not mention an objection of non-exhaustion of domestic remedies. The concluding paragraph does not do so either. Non-exhaustion of domestic remedies is not referred to also in the part of the Government’s observations which deals with Article 6 § 2 complaint. It is mentioned *only in the submissions concerning the Article 13 complaint*, albeit *not in the conclusion*. One of those references relates to civil-law remedies, allegedly available to the applicant, and another to “the unfairness of [her] own trial” (§ 55), which is not what she complained about.

20. Of these two mentions the first one merits a closer look, for it is that passing mention which has been given crucial, however undue, prominence by the majority in the present case (paragraph 53). That mention, however, is not cited or adequately reproduced in the judgment. Neither its context, described above, is paid heed to. That mention thereby has been misrepresented. It is therefore worthwhile to cite in full the relevant submission (its fragment already has been cited in paragraph 19 above):

“Having regard to the above, the Government state that the applicant failed to provide Lithuanian courts with the opportunity of preventing or putting right the violations alleged against them. Thus [the] *applicant’s complaints concerning the alleged breach of the presumption of innocence related to the issue of an alleged violation of her rights to defence in the context of the judgments against other co-accused* must be rejected under Article 35 § 1 of the Convention *for non-exhaustion of the effective domestic remedies* and therefore, *this part of the application* should be declared inadmissible under Article 35 § 4 of the Convention.” (§ 50; emphasis added)

As mentioned, these submissions appear *in the context of the Article 13 complaint, and not that under Article 6 § 2*. As to the question related to the alleged violation of Article 6 § 2, at that stage it has already been answered: the Government has concluded that the applicant’s complaint under Article 6 § 2 should be declared inadmissible as *manifestly ill-founded*, but not on account of non-exhaustion of domestic remedies (see paragraph 15 above).

21. *The passing mentions of alleged failure to exhaust domestic remedies cannot be equated to an explicit objection on this account*, in stark contrast to the explicit objections which the Government raised in numerous other cases. Even more so, *the arguments concerning the Article 13 complaint should not be equated to arguments on the admissibility of the complaint under Article 6 § 2*.

Furthermore, such an – in fact, double – equation would amount to *the Court raising an objection of non-exhaustion of domestic remedies of its*

*own motion*, in other words, *making the Government's case for them*, which the Court is *not entitled to do*.

Yet this has been done.

22. But there is more to that. The Government's submissions concerning the Article 13 complaint, in which non-exhaustion of domestic remedies is mentioned only in passing, have been transformed, as if by the wave of a magic wand, into an objection of non-exhaustion of domestic remedies for the purposes of the Article 6 § 2 complaint. *Any difference between Article 13 and the remedy-exhaustion clause of Article 35 § 1 thus has been obliterated*, because, if the majority's approach is adopted, Article 13 is *de facto* subsumed by Article 35 § 1, is a mere appendage to the latter and has *no independent application*. For if all domestic remedies have *not* been exhausted for the purposes of Article 35 § 1, then how can an applicant claim that he or she had no "effective remedy before a national authority", as required by Article 13?!

Looks like catch-22? Is it one?

23. Not really.

Article 13 and the remedy-exhaustion clause of Article 35 § 1 are not unrelated. Applicants are only obliged to exhaust domestic remedies which are available in theory and in practice, that is to say, are capable of providing redress in respect of their complaints and offering reasonable prospects of success (see, among many other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). Remedies thus must be effective, not only nominal or illusory, for the purposes of not only Article 13, but also Article 35 § 1. However, notwithstanding this "bridge" between Article 13 and the remedy-exhaustion clause of Article 35 § 1, there is a pertinent point of their divergence.

Article 13 enshrines an individual's right to an effective remedy. This is the purpose, the *raison d'être* of Article 13. Its function largely corresponds to its purpose. Article 13 is invoked by applicants, who claim that there has been no effective domestic remedy available to them, which would have provided them with a venue for complaining of a breach of a Convention right. Article 13 is never invoked by respondent Governments.

Article 35 § 1 has a different purpose. It sets out the admissibility criteria for the applications lodged with the Court, including the requirement that all domestic remedies must be exhausted. In this respect it provides guidance (also) to the applicants. However, in contrast to Article 13, Article 35 § 1 is never invoked by the applicants, but exclusively by the Governments, when they argue that one or several of these criteria have not been met.

Article 13 therefore is a tool, which the Convention has reserved for the applicant(s) to enable them to defend their rights. The remedy-exhaustion clause of Article 35 § 1 is a tool, with which the Convention has handled the Governments, so they could argue the inadmissibility of complaints lodged against their States. The purpose of Article 13 and that of the remedy-



exhaustion clause of Article 35 § 1 must not be confused. They are different – and so are the functions which they perform.

24. The obliteration of the difference between Article 13 and the remedy-exhaustion clause of Article 35 § 1, as undertaken by the majority, means that the tool reserved by the Convention for the applicant, Article 13, was handled, *by the Court on its own motion*, to the Government, although the latter already have had at its disposal another Convention tool, the remedy-exhaustion clause of Article 35 § 1, but did not use it with regard to the Article 6 § 2 complaint. *The majority did the job for the Government.*

25. To conclude, we cannot but find the Article 6 § 2 complaint admissible. Consequently, the merits of that complaint had to be addressed.

## II

26. Had the merits of the Article 6 § 2 been addressed, a violation of that provision had to be found, because all the well-known general principles pertaining to the presumption of innocence, which need not to be recuperated in this opinion, point to that direction. Bypassing these principles in this case has become possible *only owing to an ingenuous filtering mechanism* – the acceptance by the majority of the objection as to the admissibility of the Article 6 § 2 complaint, which, as shown above, is in fact non-existent in the Government's observations.

27. The applicant and the persons against whom the impugned judgments were adopted had initially been subject to the same pre-trial investigation. They allegedly played various roles in an organised group, which had committed multiple criminal offences (fraud, falsification of documents etc.). There is no reason to doubt that the facts established in the proceedings against those other persons and the legal findings made therein were relevant to the applicant's disjoined case, which was pending at that time (see, *mutatis mutandis*, *Navalnyy and Ofitserov v. Russia*, cited above, § 103, and *Bauras v. Lithuania*, no. 56795/13, § 53, 31 October 2017). An assessment therefore is needed as to whether safeguards were in place to ensure that the decisions taken in the proceedings against those other persons would not undermine the fairness of the subsequent proceedings against the applicant (*Bauras*, loc. cit.). Even if the judgments adopted in the proceedings against those other persons were not legally binding on the courts examining the applicant's case, they had to be worded in such a way as not to raise doubts as to a potential pre-judgment about the applicant's guilt (*ibid.*). In other words, the courts in the proceedings against those other persons had to make it sufficiently clear that they were not also implicitly determining the applicant's guilt (*ibid.*, § 67).

28. Both the Vilnius Regional Court and the Kaunas Regional Court at the beginning of the descriptive parts of their judgments reproduced the text of the indictments, in which the applicant was mentioned as an accomplice

of the accused. The courts did not explicitly state that they were merely reproducing the text of the indictments as submitted by the prosecutor and not making any findings as to the establishment of facts or liability of the applicant. Whether a statement is in breach of the presumption of innocence must be determined in the context of the particular circumstances in which that statement was made (see *Paulikas v. Lithuania*, cited above, § 55, and the cases cited therein). When the judgments are read in their entirety, it is clear that the beginning of their descriptive parts presented only the charges brought by the prosecutor, who did not have the authority to make definitive findings on the guilt of the accused (see, *mutatis mutandis*, *Daktaras*, no. 42095/98, § 44, ECHR 2000-X), and not the circumstances which the courts considered to be established. Accordingly, the parts of the judgments which reproduced the indictments did not, despite mentioning the applicant, affect her right to be presumed innocent.

In addition, the judgment of the Kaunas Regional Court did not mention the applicant anywhere else in its text. That judgment therefore does not raise an issue under Article 6 § 2.

29. The same cannot be said about the judgment of the Vilnius Regional Court. In its part, in which the court assessed the evidence, it concluded that the accused V.D. had acquired from several individuals, *including the applicant*, falsified invoices and other accounting documents, those falsified documents had been included in the accounting balance of the accused company D., and part of the money taken from its account had been paid to other individuals, *including the applicant*, for providing the falsified documents. Nowhere did that court state that it was not determining the applicant's guilt in respect of the said criminal offences, nor did it refer to her as being subject to separate criminal proceedings (compare and contrast *Karaman*, § 69, and *Bauras*, § 54, both cited above). Even though that judgment was later partly changed on appeal, that change did not affect its parts, in which the applicant had been mentioned (compare and contrast *Bauras*, loc. cit.).

30. The Government averred that there had been “a strong factual connection” between the charges brought against the accused in the case decided by the Vilnius Regional Court and the applicant's actions allegedly committed as part of the organised criminal group; references to her participation in that group therefore had been necessary in order to establish the circumstances of the criminal offences and determine the role of the accused and thus “unavoidable”; the court had examined only the guilt of the accused and had consciously avoided making references to the applicant's alleged role in the commission of the offences any more than had been necessary; in the impugned judgment her role in the group had not been specified and no conclusions as to her criminal liability had been made; accordingly, the references to the applicant had been “limited to a neutral description of facts”.

31. It is impossible to agree with the above-cited assertion of the “neutrality” of the “description of facts”. The court expressed its findings of fact and opinion about the applicant’s participation in the commission of criminal offences in such terms which could not be seen as anything but prejudicial (see, *mutatis mutandis*, *Navalnyy and Ofitserov*, cited above, § 106; compare and contrast *Yushchenko and Others v. Ukraine*, nos. 73990/01 and 3 others, § 91, 15 July 2010). It is immaterial that the judgment did not specifically refer to the applicant’s alleged role as an organiser, because it nonetheless held it to be *established* that the applicant had *played a certain role in the commission of criminal offences* – and even provided *specifics* (see, in particular, the highlights in paragraph 29 above).

32. The language used by the decision-maker is of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2 (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 126, ECHR 2013, and the cases cited therein). In this connection, note must be taken of the conclusion adopted by the Supreme Court of Lithuania, the highest national judicial authority in criminal-law matters, in its review of domestic case-law, issued only few months before the impugned judgment of the Vilnius Regional Court. The Supreme Court held that a judgment could not include (with an exception not relevant in the present case) any phrases which established third parties’ guilt in respect of criminal acts (paragraph 47). *The judgment of the Vilnius Regional Court is in stark opposition to the explicit insistence of the Supreme Court of Lithuania.*

33. By the present judgment that insistence has been undermined. This judgment, being the Court’s precedent, has presented the domestic criminal courts (alas, not only Lithuanian), examining cases against third persons, with a *carte blanche* to refer in their judgments to criminal offences allegedly committed by an individual, who is not party in these proceedings, irrespective of whether any separate criminal proceedings are or are not instituted against him or her (which institution, in its turn, may have or have not sufficient factual basis), or whether the proceedings, which had been instituted against an individual, are discontinued or not. With the majority’s blessing, such mention, without any requisite caveats, now is permitted with regard to even individuals, against whom criminal proceedings would never be instituted. While the Supreme Court of Lithuania has had imposed the domestic courts with a taboo, meant to enhance both their responsibility and the individuals’ right to the presumption of innocence, the Strasbourg Court now sends a message, *urbi et orbi*, that the standards have been lowered. By the grace of the Court, not only the applicant in the present case, but all individuals who would be mentioned in courts’ judgments, adopted in cases against third persons, in which they would have no procedural status whatsoever, as having committed criminal offences, now are rewarded with an admirable perspective of spending months and years litigating with the State (may it be noted that according to Article 109 § 4 of the Lithuanian

Constitution, courts adopt decisions “in the name of the Republic of Lithuania” – the mention in question therefore is an act of the State). For the majority, *having neutralised the existing preventive remedy*, has discovered that there are certain *ex post* domestic remedies available for such individuals. Which brings us to the Article 13 complaint.

### III

34. The Chamber’s reasoning as regards the Article 6 § 2 complaint is very concise, limited to the issue of its admissibility and, as shown above, erroneous. The reasoning as regards the Article 13 complaint (as reclassified by the Court itself), the crux of which is that she had not had any possibility to appeal against the court judgments in proceedings against third parties which had affected her right to presumption of innocence, is even more concise. It boils down to one single argument: as “the Court has already examined the domestic remedies suggested by the Government and found that the applicant had an effective remedy under the civil law”, there has been no violation of Article 13 (paragraph 69).

This is it.

The issue of domestic remedies allegedly available to the applicant thus has been decided in the part of the judgment dealing with the admissibility of her complaint under Article 6 § 2.

35. But let us look at this matter from the perspective of Article 13, paying due heed to how such remedies, as suggested by the Government, have been assessed in the Court’s case-law so far. They encompass both civil-law and criminal-law remedies.

36. Let us begin with the civil-law remedies. The Government submitted that the applicant could have lodged a civil claim for damages for the breach of her honour and dignity. Under the Lithuanian law, such a remedy would entitle the applicant to monetary compensation, but *would not entitle her to a retraction of the impugned statements* made in the judgments adopted against third persons, *nor affect those judgments in any other way*.

37. The majority has given paramount prominence to the fact that in some cases the Court did not exclude a civil-law remedy *in principle* as being an effective remedy against alleged breaches of the presumption of innocence (paragraph 59). This was so in a series of cases against Bulgaria, many of which had resulted from the same factual situation and in which the applicants complained about public statements by State officials, declaring the applicants guilty while the criminal proceedings against them were pending (*Gutsanovi v. Bulgaria*, no. 34529/10, §§ 177-79, ECHR 2013 (extracts); *Toni Kostadinov v. Bulgaria*, no. 37124/10, § 108, 27 January 2015; *Slavov and Others v. Bulgaria*, no. 58500/10, §§ 105-06, 10 November 2015; *Alexey Petrov v. Bulgaria*, no. 30336/10, § 63, 31 March 2016; *Stoyanov and Others v. Bulgaria*, no. 55388/10, § 97, 31 March 2016;

*Petrov and Ivanova v. Bulgaria*, no. 45773/10, § 40, 31 March 2016; and *Lolov and Others v. Bulgaria*, no. 6123/11, §§ 45-51, 21 February 2019). The majority specifically refer to *Gutsanovi*.

What is *not mentioned* in the judgment is that in all these cases the Court dismissed the Government's objection of non-exhaustion of domestic remedies on the grounds that it had not been demonstrated that that remedy existed in practice.

38. Similarly, in several cases against other States the Court did not exclude *in principle* such a remedy as lodging a complaint for defamation against a State official who had made the impugned public statement, but dismissed the Governments' objections, because the effectiveness of that remedy in the applicants' situation had not been demonstrated by providing sufficient examples of domestic case-law (*Muradverdiyev v. Azerbaijan*, no. 16966/06, § 98, 9 December 2010; *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 221, 26 July 2011; and *Van Deilena v. Latvia* (dec.), no. 50950/06, § 73, 15 May 2012).

39. The majority also refers to *Babjak and Others v. Slovakia* (dec., no. 73693/01, 30 March 2004), *Marchiani v. France* (dec., no. 30392/03, 27 May 2008); and *Ringwald v. Croatia* ([Committee], dec., nos. 14590/15 and 25405/15, §§ 54-56, 22 January 2019), pointing out that in these cases the Court found civil-law remedies, offering the possibility of obtaining monetary compensation together with various other procedures for acknowledgment of or putting an end to the infringement of the presumption of innocence, to be effective within the meaning of the Convention (paragraph 59).

Bingo?

40. Not at all. Quite the contrary.

In those cases the civil-law remedies which the Court accepted as effective were supported by "various other procedures", which, *in addition to monetary compensation*, also in some way provided for *the possibility of retraction of the impugned statements*. Such crucial support is missing in the present case.

41. More specifically:

– In *Babjak and Others*, cited above, the applicant complained that the decision by the police not to institute criminal proceedings against him because of his young age stated that he had committed a criminal act. The Court found that after the impugned decision, the police department adopted a new decision in which it was stated that it had not been established that the actions of the applicant had constituted a criminal offence. The second decision had effectively invalidated the first one. In such circumstances, the Court considered that the possibility for the applicant to claim monetary compensation under the Civil Code was an effective remedy. The complaint was therefore dismissed for non-exhaustion of domestic remedies. That being so, while examining a subsequent case, *Mikolajová v. Slovakia* (no.

4479/03, §§ 31-32, 18 January 2011), which concerned a similar decision by the police, but where no subsequent decision invalidating the previous one had been adopted, the Court explicitly distinguished it from *Babjak* and dismissed the Government's objection that the applicant had failed to claim monetary compensation.

– In *Marchiani*, cited above, the applicant complained about public statements made by prosecutors and judges. The French Civil Code provided, that, where a non-convicted person was publicly depicted as guilty of facts which were the subject of an inquiry or judicial investigation, the judge might order the inclusion, in the publication concerned and at the expense of those responsible, of the communication aiming at putting an end to the infringement of the presumption of innocence. The Court considered this provision to be an effective remedy in respect of the applicant's complaints concerning public statements made by prosecutors and judges, and dismissed the application for failure to exhaust domestic remedies. It reiterated this approach in *Colonna v. France* ([Committee], dec., no. 4213/13, 15 November 2016).

– In *Ringwald*, cited above, the applicant complained about the public statements made by the police. The Supreme Court of Croatia had acknowledged that the impugned statements had contravened the applicant's right to be presumed innocent, although they had not made his trial, taken as a whole, unfair. In accordance with the Croatian law, such findings by the Supreme Court gave the applicant a realistic possibility to obtain monetary compensation in separate civil proceedings. The Court held that the national authorities expressly acknowledged a violation of the first applicant's right to be presumed innocent, which gave him a reasonable possibility of obtaining redress, but he had not sought compensation in a civil action against the State. Although, as a matter of principle,

“the institution of civil proceedings for damages in itself [could not] fully remedy an infringement of the right to the presumption of innocence”

this was not decisive in that particular case, because of the involvement of one of the above-mentioned “various other procedures”, namely:

“such proceedings in combination with the Supreme Court's acknowledgment of a violation of his right to be presumed innocent [did] satisfy the requirements of effectiveness” (§ 56).

The Court therefore concluded that the applicant could no longer claim to be a victim of a violation of the Convention, and declared the application inadmissible.

The majority's reliance on *Babjak and Others*, *Marchiani* and *Ringwald* thus speaks *against their finding* of the availability of effective domestic civil-law remedies.

42. Furthermore, in *Konstas v. Greece* (no. 53466/07, 24 May 2011), in which the applicant complained about public statements made by State

officials, the Court has explicitly rejected the purely compensatory civil-law remedies proposed by the Government. When dismissing the Government's objection, the Court held:

“[T]he remedy the Government referred to is based on Article 57 of the Civil Code, which provides for the possibility of claiming compensation for defamation. The Court reiterates that the principle of the presumption of innocence is above all a procedural safeguard, and one of the elements of a fair criminal trial required by Article 6 of the Convention ... [I]n the present case the Government did not refer to any remedy *that would have enabled the applicant to invite the criminal court concerned to find a violation of the presumption of innocence from the procedural standpoint*. That being so, the claim for damages based on Article 57 of the Civil Code ... could only be related to the alleged violation and sufficient in part; *it could not fully remedy the alleged infringement of the presumption of innocence.*” (§ 29; emphasis added)

The Court reiterated this approach and took the same stance in *Paulikas v. Lithuania*, cited above.

In the light of *Konstas*, it becomes sadly clear what the majority meant by stating that the compensatory remedy, suggested by the Government, was not ineffective “on its face” (see paragraph 4 above). It could be seen as effective only “on its face”, in other words, *superficially*, and that would be possible only if the Court's case-law is disregarded.

Neither *Konstas*, nor *Paulikas*, which pressingly point to the opposite direction than the one chosen in the present case, are cited in the judgment.

43. The Government provided to the Court two examples of domestic case-law which they considered relevant (paragraph 51). In the first case, the claimant complained about statements made by his employer (the police department) in documents concerning his dismissal, and was awarded monetary compensation. In the second one, the claimant complained about statements made by a court which had refused his application for reopening of criminal proceedings against him, but his claim for compensation was dismissed. These examples are not sufficiently close to the situation examined – or rather in fact *not* examined – in the present case, where the statements concerning the applicant were made *by courts in proceedings against third parties*. Furthermore, only two examples were provided and only in one of them the remedy was successful, which is clearly not sufficient to demonstrate that it is effective in practice. Still, it has appeared sufficient for the majority in the instant case.

44. More importantly, the remedy suggested by the Government remains *purely compensatory*. The Government did not provide any examples of domestic case-law where individuals had complained about violations of the presumption of innocence by courts in proceedings against third persons and had obtained *an acknowledgment of violation or retraction of the offending statements*, as required by the Court's aforementioned case-law.

It would thus have been in line with the Court's case-law to reject as ineffective the civil-law remedies suggested by the Government.

45. Now, to the criminal-law remedies.

The Government submitted that the applicant should have, in the criminal proceedings against her, challenged the facts underlying the judgments adopted against her co-suspects and complained of a violation of her right to be presumed innocent, and that she should have requested the courts to continue the examination of her case, even after the proceedings against her had become time-barred. She thus allegedly had had the opportunity to achieve that her case would have ended in her acquittal and thus the removal of any doubts with regard to the references to her guilt made in the judgments against her co-suspects (paragraphs 49 and 50).

The argument, which pertains to the alleged “additional” possibility for the applicant to ask the court to continue examining the criminal case against her after it became time-barred and acquit her, is mentioned in the majority’s reasoning, underlying the dismissal of the Article 6 § 2 complaint (see paragraph 4 above), for what sufficed for that dismissal, was that the applicant did not use the civil-law remedy. As to the said “additional” criminal-law remedy, of course, the applicant could have requested for the continuation of the proceedings in her case, since the domestic law allowed for such an option. But was that a *reasonable* option?! A rhetorical question. This argument of the Government is simply *not serious*. Even the majority have not elaborated on it: they have uttered the mention of this so-to-say remedy only in passing. On the other hand, by uncritically referring to it, the majority have somewhat legitimised it.

46. Let us have a look at *what* has been legitimised.

Law is supposed to be fair and reasonable, which encompasses not requiring that an individual acts against his or her better judgment. Now it can require that: the law of the Convention, as interpreted and applied in the present case. In addition to Aristotle’s two types of akratic action, infirmity (*astheneia*) and impetuosity (*propeteia*) (*Nicomachean Ethics*, VII.1-10), the majority has introduced the third one: compulsion by law. Indeed, a stunning contribution to the philosophy of action, the theory of practical reasoning and – last but not least – the legal mind. In the legal mind law has always had something to do with rationality and self-determination of an individual, let alone justice. Until now, as it appears.

47. The above is *à propos*. What we are concerned with much more is how less preposterous criminal-law remedies, similar to those suggested by the Government, have been assessed, up to now, in the Court’s case-law.

48. In a factually similar case, *Karaman*, cited above, which concerned statements made about the applicant in judgments adopted against his co-accused, the applicant lodged an application with the Court, alleging a violation of Article 6 § 2, while the criminal proceedings against him were still pending. The German Government argued that the applicant had failed to exhaust domestic remedies: according to them, he should have waited for the outcome of the criminal proceedings against him and then should have



complained about the violation of his right to be presumed innocent in appeals in those proceedings. The Court dismissed that objection on the following grounds:

“In view of its finding that the principle of the presumption of innocence may be infringed even in the absence of a formal finding of a defendant’s guilt ... the Court rejects the Government’s argument that the applicant ought to have awaited the outcome of the criminal proceedings pending against him before alleging a possible violation of his right to be presumed innocent. The Court finds that while that objection may be valid where an applicant complains of a violation of the procedural guarantees enshrined in Article 6 §§ 1 and 3 in the context of a criminal trial itself and where it would be the Court’s task to evaluate the fairness of the criminal proceedings taken as a whole ... an applicant is not precluded from alleging a violation of his right to be presumed innocent prior to the conclusion of the proceedings pending against him.” (§ 51)

As *Konstas* and *Paulikas*, both cited above, *Karaman* is not cited in the judgment – and this notwithstanding that it was this judgment which was explicitly referred to in the letter of communication (see paragraph 7 above).

49. In several cases in which the applicants lodged their applications with the Court while the domestic criminal proceedings against them were still pending, the Court stated that a remedy against an alleged violation of the right to be presumed innocent had to be available to the applicant *immediately* and that it *had not to depend on the final outcome of the criminal proceedings* against him/her.

In particular, in *Gutsanovi v. Bulgaria*, cited above, in which the applicants complained about public statements made by certain State officials, the Court held that in view of the very nature of the Article 6 § 2 right the effective domestic remedy to redress an alleged violation of the presumption of innocence in the course of pending criminal proceedings had to be immediately open to the litigant and should not be subject to the outcome of his trial.

Moreover, in the Court’s own words,

“admitting the opposite would be tantamount to destroying the very principle of respect for the presumption of innocence” (§ 176; emphasis added).

The Court therefore dismissed the Bulgarian Government’s objection as to the non-exhaustion of domestic remedies. It reiterated this approach in a series of cases against Bulgaria (see *Toni Kostadinov v. Bulgaria*, cited above, § 108; *Alexey Petrov v. Bulgaria*, cited above, § 63; *Stoyanov and Others v. Bulgaria*, cited above, § 97; *Popovi v. Bulgaria*, no. 39651/11, § 81, 9 June 2016; *Maslarova v. Bulgaria*, no. 26966/10, § 37, 29 January 2019); and *Lolov and Others v. Bulgaria*, cited above, §§ 45-46), as well as in some cases against other States (see, for instance, in *Neagoe v. Romania*, no. 23319/08, § 26, 21 July 2015).

As shown in paragraph 37 above, *Gutsanovi* is misrepresented in the present judgment, in which, by the way, reference is made to paragraph 178

of that landmark judgment, but not to its § 176. Other above-cited cases are not mentioned.

50. Truth to say, in some cases in which the applicants had not raised their Article 6 § 2 complaints in the appeals in the criminal proceedings against them, the Court declared those complaints inadmissible (see *Gökçe and Demirel v. Turkey*, no. 51839/99, §§ 64-65, 22 June 2006; and *Linkevičienė and Others v. Lithuania* (dec.), nos. 33556/07 and 2 others, §§ 95-100, 20 June 2017). But the aforementioned cases concerned complaints about public statements by various officials, which distinguishes them from the present case, in which the offending statements were made *by courts in proceedings against third persons*.

51. In yet other cases the Court found that complaining to a court about statements made by persons who were not party to those proceedings would not have been an effective remedy, as that court would have been unable to affect the offending statements. For example, in *Neagoe*, cited above, in which the applicant complained about the public statements made by the President of Romania, the Court held that with regard to the remedy suggested by the Government, which would have been for the applicant to raise arguments in the main proceedings before the Court of Appeal alleging a breach of presumption of innocence by the President, the examination by that court of such a complaint would have been only formal and would not concern its essence.

52. The case most similar to the present one is *Lebedev v. Russia* (no. 2), dec., no. 13772/05, 27 May 2010, in which, the applicant complained that the court in the criminal case against him had referred to evidence in different criminal proceedings against another individual. The Court did not consider that raising in an appeal a complaint about a court judgment adopted in different proceedings would be an effective remedy. It held:

“As to the alleged breach, by the findings made in the Shakhnovskiy judgment, of the applicant’s right to be presumed innocent ... the Court does not consider that the appeal against the judgment of 16 May 2005 was an effective remedy either. That appeal was supposed to remedy the alleged defects of the proceedings in which the applicant was a criminal defendant. In the Court’s opinion ... that remedy was incapable of refuting the findings of the Shakhnovskiy judgment, or otherwise redress the alleged breach of the right to be presumed innocent resulting from that judgment. The Court is not aware of any remedy in Russian law which would be “effective” in the circumstances (see, as an opposite example, the analysis of the French law in the case of *Marchiani v. France* ...)” (§ 254)

Like almost all other relevant cases, *Lebedev* (no. 2) is also not mentioned in the present judgment.

53. It is clear that the criminal-law avenues proposed by the Government in the present case would not have provided the applicant with an immediate remedy against the alleged violation of her right to be presumed innocent, as per *Karaman*, *Gutsanovi* and the subsequent cases relying on them. Also, as in *Lebedev* (no. 2), even if the applicant had eventually managed to raise her

Article 6 § 2 complaints in the criminal proceedings against her, the courts examining that case would have been unable to refute the findings in the judgments adopted against her co-suspects or otherwise redress the alleged breach.

54. Lastly, the Government provided the Court with three examples of cases in which higher courts had effectively removed certain wording from lower courts' judgments taken within the same proceedings (had ordered the removal of wording from the judgments of lower courts which had not been in compliance with the presumption of innocence, or had remitted such cases for re-examination). However the applicant did not have any status in the proceedings against her co-suspects and was unable to appeal against the judgments mentioning her, therefore the examples provided are of no relevance to the present case.

55. To sum up, a thorough research of the Court's case-law related to the effective remedies, as required for the purposes of the presumption of innocence, proves that *none of the remedies suggested by the Government could be considered effective*.

Accordingly, there has been a violation of Article 13.

#### IV

56. This case, which did not seem controversial at the first glance, now merits the examination by the Grand Chamber. This is so not only and not primarily because of the change of the Court's long-standing course as regards the procedural issue of admissibility of complaints, as undertaken by the majority, is disturbing in itself. After all, this judgment may remain an isolated instance of the Court doing the Government's job. On the other hand, the present judgment may be a symptom of an emerging trend in the Court's practice to read expansively the conditions of inadmissibility of complaints, so that as many cases as possible are stifled at an early stage.<sup>1</sup>

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<sup>1</sup> We are well aware of the Court's case-law that "the content and scope of the 'case' referred to the Grand Chamber are ... delimited by the Chamber's decision on admissibility" and that, consequently, the Grand Chamber "may examine the case in its entirety in so far as it has been declared admissible" by the Chamber and "cannot ... examine those parts of the application which have been declared inadmissible by the Chamber" (see, among many authorities, *Kurić and Others v. Slovenia* [GC], no. 26828/06, §§ 234 and 235, ECHR 2012 (extracts)). On the other hand, even if the Grand Chamber, as a rule, finds – at times not mechanically but after a thorough and lengthy consideration – no reason to depart from this principle in the cases referred to it, the said approach should not be seen as not allowing for any exception – never ever. Various circumstances (like those of the present case) may render such departure not only possible, but also most appropriate (see, e.g., the joint partly dissenting opinion of Judges Kovler and Kalaydjieva in *Kurić and Others v. Slovenia* [GC], cited above). After all, the fact remains that the Chamber judgment whereby certain parts of the application were found inadmissible has never become final (see the partly dissenting opinion of Judge Kūris in *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, ECHR 2016 (extracts)).

57. Be that as it may, this case merits the Grand Chamber's attention, first of all, owing to the importance of the substantive issue in question – the presumption of innocence as one of the cornerstones of human rights, which, so far, has been more or less adequately protected in the Court's case-law. The present judgment sits extremely badly with that case-law. In this judgment the Court's well-established case-law, which inconveniently points to the direction, antipodal to the chosen outcome of this case, is *disregarded in its totality*.

58. That case-law, however, has not disappeared anywhere. It is reminded of in this opinion. But it should be reminded of and re-confirmed – time and again – by the Grand Chamber. We want to believe that some day it will be re-confirmed.

59. The Court's case-law which would deal directly with the situations, where the presumption of innocence has been allegedly violated not by "some" State officials, but by courts, examining cases, in which the victims have had no procedural status, is extremely sparse. This is an additional reason for this case to be examined by the Grand Chamber.

60. The present case has not been relinquished to the Grand Chamber by the Chamber, which so-to-say examined it. The applicant's request for its referral to the Grand Chamber therefore would be the most appropriate – in fact, the only possible – avenue, at least at this time, for restoring the value of the principle of respect to the presumption of innocence. The way in which this principle has been dealt with in the present case – that is to say, the refractory spirit of "admitting the opposite [to] the ... principle of respect to the presumption of innocence", which the Court in *Gutsanovi*, cited above, held to be "tantamount to destroying [that] very principle" and excommunicated (see paragraph 49 above), – undoubtedly falls under the notion of "serious question affecting the interpretation or application of the Convention or the Protocols thereto", contained in the respective clause of Article 43 § 2 of the Convention.