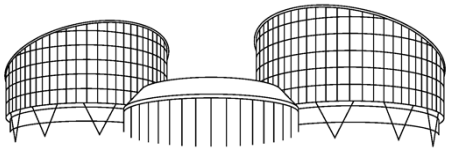

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GRAŽULEVIČIŪTĖ v. LITHUANIA

(Application no. 53176/17)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Failure of Supreme Administrative Court to respect *res judicata* effect of a final court decision annulling the applicant's suspension as a clinical researcher • Reassessment of same factual circumstances without reopening the first set of court proceedings, and rendering the first set largely devoid of any legal effect

STRASBOURG

14 December 2021

FINAL

14/03/2022

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

In the case of Gražulevičiūtė v. Lithuania,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Aleš Pejchal,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 53176/17) 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 Edita Gražulevičiūtė ("the applicant"), on 21 July 2017;

the decision to give notice to the Lithuanian Government ("the Government") of the complaints concerning the right to a fair hearing, the right to respect for private life, and the right to an effective domestic remedy, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 9 November 2021,

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

INTRODUCTION

1. The applicant is a doctor and a clinical researcher. After one of her patient's died, she was suspended. The applicant complains that the final court decision, by which she was exculpated, was overturned, in breach of the principle of *res judicata* and Article 6 § 1 of the Convention. She also complains that she was not compensated for the damage sustained due to her suspension, in breach of Article 8.

THE FACTS

2. The applicant was born in 1971 and lives in Vilnius. She was represented by Ms L. Meškauskienė, a lawyer practising in Vilnius.

3. The Government were represented by their Acting Agent, Ms L. Urbaitė.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is a rheumatologist and has been working in that capacity since 2004.

According to what appears to be an extract from a tax declaration provided by the applicant, she was working as a clinical researcher (*tyrėja*) from 12 November 2004. According to another document issued by a private company, the Centre for Clinical and Basic Research, the applicant worked for that company from May 2007 to July 2011 as a "consulting doctor".

I. THE APPLICANT'S WORK AS A CLINICAL RESEARCHER AND HER SUSPENSION

6. In 2011, the applicant was carrying out several clinical trials as a clinical researcher in a team with other researchers. At a certain point, she was on maternity leave. One of the trials concerned a drug, tocilizumab, and in the course that trial, on 14 April 2011 a patient, V.S., died. On 27 September 2011, V.S.'s daughters asked the State Medicines Control Agency (*Valstybinė vaistų kontrolės tarnyba* – hereinafter "the SMCA") to investigate whether the applicant had carried out her duties properly during the clinical trial.

7. On 11 October 2011 the head of the SMCA ordered an unscheduled good clinical practice inspection (hereinafter – "the inspection").

8. The inspection was carried out on 16 December 2011, and certain shortcomings, two of which were considered to be critical (dangerous) (*kritiniai* (*pavojingi*)) violations of the Good Clinical Practice Rules were identified (see paragraphs 53 and 54 below): firstly, failure to accept the patient for an unscheduled appointment, and, secondly, failure to report serious side-effects of the medicine which was being tested. Besides that, the inspectors also found ten significant (*reikšmingi*) and six minor (*nereikšmingi*) violations of those rules. The inspectors further concluded that the researchers' actions had possibly caused damage to the patient V.S.'s health, leading to her death. According to the inspectors, during the trial the welfare of V.S. had not been guaranteed, thus breaching her rights. The inspectors recommended that the measures set out in point 78 of the Description of Control Procedure (see paragraph 54 below) should be imposed on the principal researcher, A.V., and on the applicant.

9. By order (*įsakymas*) no. 1A-29 of 10 January 2012 of the head of the SMCA, the applicant and A.V. were suspended (*nušalinti*) from the clinical trial of tocilizumab being carried out at the Santariškės Clinics of Vilnius University Hospital (hereinafter – the first clinical trial). They were prohibited from taking up new clinical trials. That order was to be made public on the SMCA website.

10. By order (*įsakymas*) no. 1A-45 of 12 January 2012 of the head of the SMCA, the applicant, as the principal researcher (she had been granted such status by the SMCA on 25 July 2011), was suspended from the clinical trial

of tocilizumab carried out in the Vilnius Region Central Polyclinic (*Vilniaus rajono centrinė poliklinika*, hereinafter – the second clinical trial).

The head of the SMCA himself annulled the latter order on 29 May 2012.

11. On 27 August 2011 the authorities started a pre-trial investigation into the circumstances of V.S.'s death. A forensic examination was ordered. On 11 October 2012 the experts produced report no. DM 6 (76)/13 (01), which stated that V.S. had died of "sepsis which [had] developed as fast as lighting" (*žaibiškai išsivystęs sepsis*), and not because of the applicant's actions. The report also stated that sepsis could develop whether taking tocilizumab or not. It was also noted that, once she had been informed of the deterioration of V.S.'s state of health, the applicant, suspecting that such deterioration did not have rheumatologic causes, but instead was a result of other medical issues (complications) such as torn tendons or an infection, had advised V.S. to contact a traumatology specialist.

II. ADMINISTRATIVE COURT PROCEEDINGS REGARDING THE APPLICANT'S SUSPENSION AS A RESEARCHER

12. On an unknown date, the applicant challenged the suspension decisions (see paragraphs 9 and 10 above). She argued, among other things, that when reaching their conclusion the SMCA inspectors had not properly evaluated all the information and that therefore the suspension decisions had been unlawful and unfounded. Regarding the facts surrounding V.S.'s death, the applicant argued that legal regulation did not provide for an obligation to organise an unscheduled appointment for diagnosis [at the patient's house] if the patient refused to come in to a medical institution. The applicant stated that, having learned by telephone of the deterioration of V.S.'s state of health on 11 April 2011, she had suspected complications. Having consulted several other doctors, the applicant had recommended that V.S. come immediately to the hospital, which she had failed to do. As a result, examining V.S. in a timely manner had become impossible, which had eventually resulted in her death.

13. In its reply to the applicant's action, the SMCA argued that the information established in the inspection report had been objective. The SMCA also pointed out that the orders to suspend the applicant had been issued "only because" two critical (dangerous) violations of the Good Clinical Practice Rules (see paragraph 53 below) had been established, and that therefore only those two violations of the rules were pertinent to the court proceedings. Any other – significant or minor – violations had not been the basis for the orders to suspend the applicant.

14. On 6 December 2013 the Vilnius Regional Administrative Court fully allowed the applicant's claim. At the outset, the court clarified that, since the administrative courts examine disputes regarding the actions or

decisions which have an impact on the claimant's rights or obligations, the inspection report, and the circumstances established in that report (see paragraph 8 above), as such, had no consequences for the applicant, which meant that that report could not be challenged in court. In other words, only the orders to suspend her had affected her rights or obligations, and not the inspection report. That being so, the court would only issue a verdict regarding the circumstances mentioned in the inspection report that had led to the orders to suspend the applicant. Given that the applicant's suspension and removal from clinical trials had been based on the two critical (dangerous) violations of the Good Clinical Practice Rules (see paragraph 8 above), the court decided to limit its assessment to those aspects.

15. As to the circumstances leading to V.S.'s death, the court established that before the clinical trial V.S. had signed an agreement to participate in the clinical trial and had been informed whom to contact in the event of complications. That agreement had not indicated the applicant's contact details, only the details of doctor J.R. and those of the principal researcher, A.V. Although V.S.'s daughters had complained of the actions of the applicant, they had not been able to explain why V.S. had failed to contact the other researchers (J.R. or A.V.). The court also noted that even though V.S. had been obliged to inform the researchers of any possible deterioration of her health, once her state of health had started worsening on 9 April 2011, V.S. had instead contacted an outside doctor she had "personally known" (*asmeniškai pažįstamo gydytojo*), had taken medication prescribed by the latter doctor and had also taken methadone. She had contacted the applicant only several days later.

16. The court had regard to the expert medical report obtained in the criminal proceedings, where it had been found that V.S. had died because of acute sepsis and not because of the applicant's actions (see paragraph 11 above). The court also questioned as a witness doctor J.R., who had taken part in the same clinical trial and who had been named therein as one of the contact persons in the event of complications. J.R. confirmed that she had heard the telephone conversation between V.S. and the applicant on 12 April 2011, during which the applicant "had insisted" (*primygtinai liepė*) that V.S. go to hospital to see a traumatology specialist. J.R. stated that when V.S. had ultimately been taken to hospital by ambulance on 13 April 2011, J.R. had examined V.S. together with the applicant and they had seen that V.S.'s leg was dark grey and the complication was at least four days old. The court established that both the applicant and J.R. had examined V.S., and thus one of the conclusions of the inspection held against the applicant – that she had not participated in that examination – was unfounded.

17. The court also found that the inspectors had based their findings on the explanations given by V.S.'s daughters, by presuming that the applicant could have intentionally filled in the medical and other records incorrectly

in order to avoid trouble. However, such a conclusion lacked a factual basis and was based only on the subjective view of the daughters, in their testimony given after V.S.'s death, possibly in order to substantiate their claims against the applicant.

18. Contrary to what had been suggested by V.S.'s daughters, the fact that the applicant had been on maternity leave (*vaiko priežiūros atostogos*) (see paragraph 6 above) was not important because the applicant had not been the only researcher taking part in that clinical trial. Another doctor, J.R., had also taken part with the same responsibilities as the applicant. The court also specifically held that the applicant had not been an "irreplaceable person" during that clinical trial, and that her being on maternity leave, as such, had not complicated the situation and had not directly influenced the carrying out of the clinical trial.

19. In the light of the above, the Vilnius Regional Administrative Court held that the inspectors' conclusions as regards the breach of the Good Clinical Practice Rules, which had been qualified as inappropriate organisation of unscheduled appointments, had been incorrect and had contradicted the factual circumstances.

20. The court then turned to the second critical (dangerous) violation of the Good Clinical Practice Rules which had been attributed to the applicant's actions, namely her alleged failure to inform, within twenty-four hours, the sponsor of the clinical trial (*užsakovas*) of any "serious side-effects" (*sunkus nepageidaujamas reiškinys*) which had resulted in death or disability or had had other serious consequences. Having examined the medical records and also having questioned an expert in clinical trials, the court established that the applicant had not breached this requirement to report side-effects, since at first V.S. had experienced pain in her ankle, which was not a serious side-effect of the medication being trialled. The applicant had also immediately informed the sponsor when it had been suspected that V.S. had septic arthritis.

21. The court thus held that the conclusions reached by the inspectors had been based on their subjective assessment of circumstances, without giving reasons as to why they had rejected the applicant's arguments. For the court, there was no evidence to help to reach a categorical conclusion that the arguments of the applicant had been unfounded. Accordingly, the court concluded that the applicant's actions – reporting negative side-effects – had been unjustifiably qualified as a critical (dangerous) violation.

22. Given its finding that the inspectors had incorrectly concluded that the applicant had committed two critical (dangerous) violations, the Vilnius Regional Administrative Court held that restrictions on the applicant's working as a researcher had been imposed "unjustly" (*neteisingai*). Thus, the court annulled the orders to suspend the applicant from the clinical trials and not to take part in new ones (see paragraphs 9 and 10 above).

23. This decision was not appealed against and became final on 21 December 2013.

III. ADMINISTRATIVE COURT PROCEEDINGS IN RESPECT OF DAMAGE SUSTAINED OWING TO SUSPENSION

24. The applicant afterwards lodged a claim against the State, represented by the SMCA, claiming pecuniary and non-pecuniary damage which she argued she had sustained owing to her suspension from the clinical trials. The applicant submitted, among other things, that she had been working as a clinical researcher as of 12 November 2004. She argued that damage had been caused to her by the unlawful actions of the SMCA in ordering her suspension, a suspension which had been annulled by the court in the earlier set of proceedings (see paragraphs 12-23 above). The applicant argued that, had she not been suspended, she would have received income from the first and the second trials. The applicant underscored the "particularly high requirements of care and professionalism" (*ypač aukšti atidumo ir rūpestingumo reikalavimai*) applicable to the medical profession and submitted that any doubts about her competence had tarnished her reputation, causing her great stress.

The applicant specified that the first clinical trial had taken place from 11 October 2010 to 19 August 2013.

Responding to the applicant's claim, the SMCA referred to the two critical violations, as established by the inspectors: obligatory medical assistance had not been provided to V.S., in breach of clinical trial protocol and relevant regulations, and systemic failures of reporting serious side-effects had damaged the integrity of the data of the critical trial. Those two critical violations had been the basis for the applicant's suspension by the SMCA, and there was nothing unlawful in the SMCA taking such a measure.

25. On 4 November 2015 the Vilnius Regional Administrative Court allowed the applicant's claim in part. The court firstly noted that in her claim the applicant had claimed as pecuniary damage the income which she would have received if the SMCA had not adopted the orders of 10 and 12 January 2012 by which she had been suspended from conducting the first and the second clinical trials. The court also referred to Article 6.249 § 1 of the Civil Code, regarding the notion of damage, and Articles 6.246 and 6.271 thereof (see paragraph 56 below), which provided that one of the necessary conditions for civil liability was unlawful actions.

26. The court also pointed out that, under Article 58 § 2 of the Law on Administrative Proceedings (see paragraph 55 below), facts which had been established in one administrative case by a court decision which had come into effect did not need to be proven again in other administrative cases where the same parties were taking part. The court then referred to the

Vilnius Regional Administrative Court's decision of 6 December 2013 regarding the dispute between the applicant and the SMCA, which had not been appealed against and which had entered into force (see paragraphs 14-23 above). The court pointed out that in the instant (second) set of proceedings "essentially the same parties [had been] taking part", and accordingly there was no need to prove again the conditions for the public liability (*viešosios atsakomybės sąlygos*) in respect of the applicant.

27. Regarding the first clinical trial, the court established that on 17 August 2010 an agreement had been concluded whereby concrete amounts to be paid for one person for a complete trial had been fixed. The court noted that the applicant had *de facto* carried out that clinical trial until she had been suspended from it by the SMCA order of 10 January 2012, which had later had been annulled by the administrative court. Given that one of the patients had died, the applicant had continued the clinical trial with the remaining five patients. On the basis of the case-file material the court also established that the first clinical trial had been completed and documented as planned. There was no information in the file which could raise doubts as to whether the clinical trial would not have taken place because of the applicant's actions. Moreover, contrary to what had been suggested by the defendant in those court proceedings, medical records showed that it had been precisely the applicant who had carried out the clinical trials with those five patients and that the clinical trials had been completed in respect of them.

28. For the court, it had to be underscored that, as had been mentioned in the court decision of 6 December 2013, the inspectors' conclusions regarding the violations of the Good Clinical Practice Rules had been erroneous, and that therefore the SMCA order of 10 January 2012 to suspend the applicant from the first trial had been annulled. In the Vilnius Regional Administrative Court's view, this meant that the order of the SMCA removing the applicant from the first clinical trial had caused the applicant pecuniary damage.

29. Lastly, the administrative court referred to the Supreme Court's ruling of 13 November 2006 in civil case no. 3K-3-585/2006, where it had held that the amount of income not received had to be proven by the plaintiff, and that amount had to be real. When deciding on whether the unreceived income could be seen as pecuniary damage it was necessary to have regard to whether that income had been planned, whether the plaintiff could reasonably have expected to receive it, and whether he or she had not received it because of unlawful actions on the part of the defendant. In the instant case, had the applicant not been suspended from conducting the first clinical trial for the remaining five patients, she would have received 6,128 euros (EUR), a sum which had been calculated in advance in the contract with the pharmaceutical company and which the applicant had not received because of the "unlawful actions" (*neteisėti veiksmai*) of the

SMCA. The court thus awarded the applicant the sum of EUR 6,128 for pecuniary damage.

30. Regarding the second clinical trial, the court noted that on 26 August 2011 the applicant had concluded a clinical trial contract, with her as the principal researcher, with a pharmaceutical company. Later on, she had been suspended from conducting that trial by the decision of 12 January 2012 (see paragraph 10 above). That being so, the court also noted that, as the applicant herself had confirmed in the courtroom, she had refused to take part in that second clinical trial, and therefore that trial had not taken place in the Vilnius Region Central Polyclinic. Although at the court hearing the applicant had argued that she had withdrawn from the second clinical trial due to the psychological stress she had experienced due to the inspection of the first clinical trial, there was no evidence to substantiate that. It was also worth noting that the pharmaceutical company had informed the SMCA that no patients had taken part in or had even been chosen for the second clinical trial. It followed that the applicant's claim regarding the pecuniary damage sustained in connection with the second clinical trial had to be dismissed.

31. Lastly, as regards non-pecuniary damage, the court noted the applicant's complaint that she had been suspended from conducting the first clinical trial and could not take up researcher's activity for nearly two years, between 10 January 2012 and 6 December 2013 (see paragraphs 9 and 23 above), and that any doubts as to her competence as a medical professional had been damaging to her reputation, also given the fact that information about her suspension and about critical (dangerous) violations of the Good Clinical Practice Rules had been made public on the SMCA's website. The court reiterated that the decision of 10 January 2012 for the applicant's suspension had been annulled as unlawful. The court considered that the nearly two years of suspension from clinical trials objectively could have caused the applicant a "negative experience" (*neigiami išgyvenimai*), and decided to award her EUR 200 in compensation.

32. The applicant appealed, asking to be awarded pecuniary damage in connection with the second clinical trial. She also contested that the claim for non-pecuniary damage had not been fully granted.

The SMCA also appealed, arguing that the applicant had failed to substantiate her claim for pecuniary damage as regards the first clinical trial and was not entitled to have that claim granted. The SMCA further submitted that the applicant should not be granted a monetary award as compensation for non-pecuniary damage.

The SMCA also argued that, within the second set of court proceedings, the first instance court had not assessed the factual and legal aspects of the SMCA's actions, which were relevant for the question of the State's tortious liability. In the view of the SMCA, the first instance court had failed to take into account that the head of the SMCA had issued the orders to suspend the

applicant on the basis of the inspection conclusions showing the presence of two critical violations – damage to a patient's health and damage to the integrity of the trial data. The SMCA also argued that when taking action against the applicant – adopting the decisions to suspend her – it had sought to protect the health of those taking part in the clinical trials.

33. By a ruling of 30 January 2017, in written proceedings, the Supreme Administrative Court allowed the SMCA's appeal, rejected the civil claim for damages on the part of the applicant and dismissed her appeal.

34. At the outset, the Supreme Administrative Court referred to its consistent case-law in cases concerning liability for damage caused by State institutions' unlawful actions (Article 15 § 1 (3) of the Law on Administrative Proceedings, see paragraph 55 below) to the effect that the annulment of an administrative decision was, as such, not a basis to hold that the actions of a State institution had been unlawful and that therefore civil liability under Article 6.271 of the Civil Code arose. The court also pointed out that, when deciding the question of a State institution's civil liability, Article 6.271 § 4 of the Civil Code had to be applied as this was the "special norm" (*specialioji norma*), as opposed to the general norm set out in the first paragraph of that Article (see paragraph 56 below).

35. The Supreme Administrative Court held that, in accordance with the principle of *res judicata*, factual and legal elements established in another court decision had to be accepted, and parties to the proceedings or another interested party could rely on them. That notwithstanding, this did not mean that in cases concerning the issue of damages the court had no right to verify supposedly unlawful actions in the context of tortious liability on the part of the State. For the Supreme Administrative Court, legal assessment (*teisinis vertinimas*) of the circumstances established by a court decision was not to be treated as denial of the binding and *res judicata* value of that decision. Moreover, disputes in administrative cases regarding the annulment of administrative decisions differed from disputes regarding compensation for damage caused by unlawful actions on the part of the State (the Supreme Administrative Court referred to its earlier ruling of 14 July 2011 in case no. A502-3034/2011, decided by an enlarged chamber composition). Likewise, the "verification" (*patikra*) by the court of purportedly unlawful actions in the context of tortious liability was an assessment of the respective factual and legal elements within the meaning of Article 6.271 of the Civil Code, and such verification in the case for the compensation of damage could be performed without questioning the established facts and their assessment in another (previous) case (the Supreme Administrative Court referred to the same ruling, and to its ruling of 8 October 2015 in case no. A3155-624/2015, also decided by an enlarged chamber composition). The Supreme Administrative Court considered that the first-instance court had failed to take all this case-law into account when examining the

applicant's claim for damages (see paragraphs 25-31 above), and thus had adopted an unreasoned and unlawful decision.

36. Next, the Supreme Administrative Court pointed out that when examining whether there had been civil liability on the part of the State in the instant case, not only did domestic legal regulations have to be taken into account, but also international and European Union law. Firstly, it cited the principle that a person's interests and well-being are more important than society's and science's interests. It also referred in this connection to the general rule that scientific research was performed freely, taking into account legal rules protecting human rights, set out, respectively, in Articles 2 and 15 of the Oviedo Convention on Human Rights and Biomedicine (see paragraph 48 below). The court pointed out that the principle enunciated in Article 2 of that Convention had been reflected in Article 5 § 1 of the Law on Ethics of Biomedical Research (see paragraph 51 below) and point 2.3 of the Good Clinical Practice Rules (see paragraph 53 below).

37. Secondly, at the material time, provisions of Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 (hereinafter "the Directive", see paragraph 49 below) had applied and had been relevant. In Lithuania, the Directive was implemented by the Law on Ethics of Biomedical Research (see paragraph 51 below), the Law on Pharmacy (see paragraph 52 below) and other relevant legal acts. The Directive established the principle of protection of individuals participating in clinical trials (point 2 of its preamble). Likewise, the Directive set out "core provisions" (*esminės nuostatos*), including that a clinical trial once commenced should be verified and supervised, and its compliance with the Good Clinical Practice standards should be monitored, and that, should objective evidence be detected, the Member States had a right to suspend it or to discontinue it (point 18 of the preamble and Article 12 of the Directive, see paragraph 49 below). Lastly, a clinical trial could not be opened until the committee on ethics agreed. In Lithuania, the relevant authorities for the approval of clinical trials were the SMCA and the Bioethics Committee (Article 18 § 4 of the Law on Pharmacy, see paragraph 52 below).

38. In the present case, the Vilnius Regional Administrative Court had annulled the relevant part of the order concerning the applicant because it had assessed the conclusions of the investigation against her as insufficient to substantiate the two critical (dangerous) violations of the Good Clinical Practice Rules and held that too much weight had been given to the subjective explanations given by V.S.'s daughters (see paragraph 17 above). For the Supreme Administrative Court, it was important to establish whether agreements by the authorities to carry out two clinical trials had been in accordance with the law.

39. The Supreme Administrative Court held that the findings which the first-instance court had reached within the first set of administrative court

proceedings, which had led to the annulment of the decision of 10 January 2012, "in themselves [had] not constitute[d] a basis" (*savaime nėra pagrindas*) to rule that the SMCA's actions had been unlawful within the meaning of Article 6.271 of the Civil Code. For the purpose of Article 6.271 § 4 of that Code, to assess possible tortious liability on the part of the State, it was necessary to have a "broader legal assessment of the circumstances pertinent to the case and in a broader legal viewpoint" (*turi būti atliktas platesnis bylai aktualių aplinkybių teisinis vertinimas platesniu teisiniu aspektu*). When examining the claim for damages, it had to be verified whether the actions of the SMCA when ordering the inspection as well as how that inspection had been carried out had complied with the letter of the law: whether the SMCA and its employers had acted in a manner compliant with the law, since if essential violations of the rules applicable to such an inspection were found, this could be the basis to hold that the individual administrative decision adopted on the basis of such a conclusion had resulted in an unlawful action within the meaning of Article 6.271 of the Civil Code. For the Supreme Administrative Court, when examining whether there was tortious liability on the part of the State, the relevant court also had to examine whether when adopting the decision to suspend the applicant the SMCA had acted as the law required it to act as regards firstly the protection of individuals taking part in the clinical trial, and secondly checks on the reliability of the data received during the clinical trial.

40. Over several pages of its decision the Supreme Administrative Court then extensively analysed the SMCA's actions against the background of existing legal regulations, in particular the Good Clinical Practice Rules. Eventually, it reached the conclusion that, within the meaning of Article 6.271 § 4 of the Civil Code, the SMCA had acted within its competence, and as it was required to act under the law.

41. In the light of the aforementioned legal regulations and the factual circumstances of the case, the Supreme Administrative Court shared the SMCA's view that that agency, when applying the measure prescribed in point 78.1 of the Description of Control Procedure to the applicant, and also on the basis of the inspectors' conclusion, had acted within the bounds of its competence with aims prescribed by law – to prevent violations of individuals' rights, and to guarantee their safety and well-being, as well as to guarantee that the clinical trial would be performed in accordance with the Good Clinical Practice Rules and other legal acts, and also so that the data received during clinical trials would be reliable and of quality. For the Supreme Administrative Court, there was no reason to disagree with such arguments of the SMCA.

42. The Supreme Administrative Court also noted that the relevant legal acts did not grant the head of the SMCA discretion to "revise" (*revizuoti*) the inspectors' conclusions and to "correct them" (*atitinkamai jas*

koreguoti). Likewise, when performing his function, the head of the SMCA had no right to disregard those conclusions. The inspectors' conclusions, set out in the relevant report (see paragraph 8 above), thus amounted to a factual basis by which measures would be applied to the clinical researcher. The lawfulness and reasonableness of the inspectors' conclusions could be verified only "in court" (*tik teismine tvarka*) by challenging a decision imposing measures on a researcher.

43. The Supreme Administrative Court also agreed with the defendant's position that, after the inspectors' conclusions unfavourable to the applicant had been received and specified – that she had committed two critical (dangerous) violations – the head of the SMCA could only adopt the decision to suspend her. The mere fact that the order for the applicant's suspension had later been annulled by the Vilnius Regional Administrative Court did not mean that the SMCA's actions, when adopting that order, had been unlawful within the meaning of Article 6.271 of the Civil Code. It had to be emphasised that during the first set of court proceedings the order of 10 January 2012 in respect of the applicant had been annulled not because the court had established any of the absolute grounds for annulment of that order, as set out in Article 89 of the Code of Administrative Procedure (see paragraph 55 below), but because that court had disagreed with the inspectors' reasoning that the applicant had committed two critical (dangerous) violations of the Good Clinical Practice Rules. This meant that the order of 10 January 2012 regarding the applicant's suspension had not been unlawful *ab initio*.

44. The Supreme Administrative Court also re-examined the factual circumstances regarding the two critical (dangerous) violations of the Good Clinical Practice Rules that the inspection had attributed to the applicant. Regarding the first critical violation, the Supreme Administrative Court retraced the sequence of events leading to S.V.'s death, and how those events had been reflected in the inspection report. The court found that data established by the inspection had not been refuted by any other information in the case file, and that that data showed that the applicant had not guaranteed that when side-effects had occurred on 11 April 2011 V.S. would receive proper medical care. The applicant had also not taken effective measures to ensure that unscheduled medical appointments would take place, as she had been required to do by the Good Clinical Practice Rules.

45. In its reasoning the Supreme Administrative Court also referred to the addendum to the agreement to take part in the clinical trial, signed by both V.S. and the applicant on 6 April 2011, which partly amended the initial agreement to take part in the clinical trial, concluded on 9 November 2010. The addendum warned of a higher possible risk of serious, and sometimes deadly, infection from the medication tested during that clinical trial. For the Supreme Administrative Court, that addendum had imposed on

the applicant, as a researcher, an "increased duty of care" (*reikalavo iš tyrėjo padidinto budrumo*) to ensure that the rights and well-being of the patients taking part in the clinical trial, including V.S., remained protected.

The Supreme Administrative Court thus considered that the SMCA had acted within its competence when imposing measures on the applicant.

46. Regarding the second critical (dangerous) violation of the Good Clinical Practice Rules, concerning reporting of serious side-effects (see paragraph 8 above), the Supreme Administrative Court also held that "there were data in the case file" to the effect that during the inspection it had been established that the applicant had not taken measures to guarantee the "quality, completeness and reliability" of the clinical trial documents (*dokumentų kokybę, pilnumą ir patikimumą*). The Supreme Administrative Court also considered that, under point 78.1 of the Description of Control Procedure, the first critical (dangerous) violation of Good Clinical Practice Rules alone had been sufficient to suspend the applicant, and that the second critical violation established by the inspection had essentially been related to that first violation, and had had no impact on the adoption of the decision to suspend the applicant.

47. In the light of the foregoing, the Supreme Administrative Court concluded that the SMCA, when adopting order no. 1A-29 within the meaning of Article 6.271 § 4 of the Civil Code, had acted in accordance with Article 18 § 1 of the Law on Pharmacy, and points 78, 79 and 79[1] of the Description of Control Procedure (see paragraph 54 below), as it had been seeking to protect the rights and well-being of individuals taking part in clinical trials, as well as seeking that the data gathered during clinical trials would be reliable and of quality. Contrary to what had been found by the first-instance court (see paragraphs 25-31 above), there was no basis on which to find that the SMCA had acted improperly, which also meant that the State could not be held civilly liable under Article 6.271 of the Civil Code, since there had been no unlawful actions on the part of the SMCA – an element indispensable for such a finding.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. COUNCIL OF EUROPE INSTRUMENTS AND EUROPEAN UNION LAW

48. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (known as the Oviedo Convention on Human Rights and Biomedicine), which entered into force in respect of Lithuania on 1 February 2003, in so far as relevant, reads as follows:

Article 2 – Primacy of the human being

"The interests and welfare of the human being shall prevail over the sole interest of society or science."

Article 15 – General rule

"Scientific research in the field of biology and medicine shall be carried out freely, subject to the provisions of this Convention and the other legal provisions ensuring the protection of the human being."

49. Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001, on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use, in so far as relevant, reads as follows:

"Whereas:

...

(2) The accepted basis for the conduct of clinical trials in humans is founded in the protection of human rights and the dignity of the human being with regard to the application of biology and medicine ...

...

(18) It is also necessary to make provision for the monitoring of adverse reactions occurring in clinical trials ... in order to ensure the immediate cessation of any clinical trial in which there is an unacceptable level of risk ..."

Article 3
Protection of clinical trial subjects

"1. This Directive shall apply without prejudice to the national provisions on the protection of clinical trial subjects if they are more comprehensive than the provisions of this Directive ...

2. A clinical trial may be undertaken only if, in particular:

(a) the foreseeable risks and inconveniences have been weighed against the anticipated benefit for the individual trial subject and other present and future patients. A clinical trial may be initiated only if the Ethics Committee and/or the competent authority comes to the conclusion that the anticipated therapeutic and public health benefits justify the risks and may be continued only if compliance with this requirement is permanently monitored;

(b) the trial subject ... has had the opportunity, in a prior interview with the investigator or a member of the investigating team, to understand the objectives, risks and inconveniences of the trial, and the conditions under which it is to be conducted and has also been informed of his right to withdraw from the trial at any time;

(c) the rights of the subject to physical ... integrity ... are safeguarded;

(d) the trial subject ... has given his written consent after being informed of the nature, significance, implications and risks of the clinical trial ...;

...

3. The medical care given to, and medical decisions made on behalf of, subjects shall be the responsibility of an appropriately qualified doctor ...

4. The subject shall be provided with a contact point where he may obtain further information."

Article 12
Suspension of the trial or infringements

"1. Where a Member State has objective grounds for considering that the conditions in the request for authorisation ... are no longer met or has information raising doubts about the safety or scientific validity of the clinical trial, it may suspend or prohibit the clinical trial and shall notify the sponsor thereof. ...

2. Where a competent authority has objective grounds for considering that the sponsor or the investigator or any other person involved in the conduct of the trial no longer meets the obligations laid down, it shall forthwith inform him thereof, indicating the course of action which he must take to remedy this state of affairs. The competent authority concerned shall forthwith inform the Ethics Committee, the other competent authorities and the Commission of this course of action."

II. DOMESTIC LAW AND PRACTICE

A. The Constitution and law related to medical research and pharmacy

50. The Constitution reads:

Article 19

"The right to life of a human being shall be protected by law."

Article 21

"... No one may be subjected to scientific or medical experimentation without his knowledge and free consent."

Article 30

"A person whose constitutional rights or freedoms are violated shall have the right to apply to court.

Compensation for material and moral [i.e. non-pecuniary] damage inflicted upon a person shall be established by law."

Article 48

"Everyone may freely choose a job or business, and shall have the right to have proper, safe, and healthy conditions at work, as well as to receive fair pay for work and social security in the event of unemployment."

Article 53

"The State shall take care of the health of people and shall guarantee medical aid and services for a person in the event of sickness..."

51. The Law on Ethics of Biomedical Research (*Biomedicininių tyrimų etikos įstatymas*), as in force at the material time, insofar as relevant read:

Article 5. Ethical requirements for biomedical research

"1. Biomedical research must be conducted according to the principle that the interests of the human being prevail over the interests of society and science ..."

52. The Law on Pharmacy (*Farmacijos įstatymas*), as in force at the material time, insofar as relevant read:

Article 18. Requirements for Clinical Trials of a Medicinal Product

"1. Clinical trials of a medicinal product shall be regulated by the legal acts of the Republic of Lithuania. Compliance ... shall be ensured by the State Medicines Control Agency and other institutions authorised under the law.

2. The qualifications of the principal researcher must correspond to the qualifications requirements established by the Minister of Health.

3. All clinical trials of medicinal products shall be designed, conducted, registered and reported on in accordance with the Good Clinical Practice [Rules] approved by the Minister of Health.

4. Clinical trials of a medicinal product may be conducted only with the approval of the Lithuanian Bioethics Committee and the authorisation of the State Medicines Control Agency.

...

11. If the State Medicines Control Agency or the Lithuanian Bioethics Committee ... has information raising doubts about the safety or scientific validity of a clinical trial, they may refuse to issue the authorisation to conduct the clinical trial of the medicinal product or the certificate of approval and shall notify the sponsor thereof.

...

14. The State Medicines Control Agency may take a decision to suspend or terminate in the country clinical trials of a medicinal product when it is already being conducted, if it has reasonable grounds to decide that the conditions of the authorisation are not being met or if there are doubts about the safety or scientific validity of the clinical trial, and indicate the reasons of the decision ..."

53. The Good Clinical Practice Rules (*Geros klinikinės praktikos taisyklės*), approved by the Ministry of Health order no. V-945 on 13 November 2006, read in its relevant parts as follows:

"2.3. The rights, safety and health of the person taking part in the clinical trial prevail over the interests of science and society.

...

3.1.1. The commission of the supervising institution/the independent ethics committee must guarantee that the rights, safety and well-being of the persons taking part in the clinical experiment will be properly protected ..."

54. On 18 July 2011 the Minister of Health, by order no. V-692, approved the Description of Procedure of Agreement to Perform a Clinical

Experiment of a Medicinal Product and Issue of Licences to Perform a Clinical Experiment of a Medicinal Product, Carrying Out of Experiments and their Control (*Pritarimo atlikti klinikinį vaistinio preparato tyrimą liudijimų ir leidimų atlikti klinikinį vaistinio preparato tyrimą išdavimo, tyrimų atlikimo ir kontrolės tvarkos aprašas*; hereinafter – "the Description of Control Procedure"), which at the material time read in its relevant parts as follows:

> "77. The Inspectors performing the good clinical practice investigation draw up a report and list the shortcomings they have found and the breaches of the Good Clinical Practice Rules, especially those that could have negative consequences. Groups of possible violations:
>
> 77.1. dangerous (critical) violations – conditions, activities or procedures, which breach the rights, safety or are damaging to the health of the patients, data quality and its integrity; dangerous violations could be linked to major deviations from the Good Clinical Practice requirements, poor data quality, absence of primary documents; this group includes fraud;
>
> 77.2. significant violations – conditions, activities or procedures that may violate the rights, safety, health of the patient and (or) the data quality and its integrity; these are serious shortcomings that directly violate the requirements of the Good Clinical Practice Rules;
>
> ...
>
> 78. Having established, during the inspection, dangerous or (and) significant violations of the Good Clinical Practice Rules due to the researcher's fault, the SMCA shall impose one of the following measures:
>
> 78.1. to suspend (*nušalinti*) the researcher from conducting the clinical trial and to prohibit the researcher from starting new clinical trials until the end of the clinical trials already in progress, and shall publish information about this prohibition, the researcher's suspension and the dangerous violation of the Good Clinical Practice Rules committed on the Internet page of the SMCA, if during the inspection of an ongoing clinical trial at least one dangerous violation of the Good Clinical Practice Rules has been established ...
>
> 79. The measures referred to in point 78 of this Description shall be applied by the SMCA after having coordinated it with the Lithuanian Bioethics Committee. The measures shall be applied following an order of the head of the SMCA ...
>
> 79^1. A researcher to whom the measures provided for in points 78.1 or 78.4 of this Description were imposed for having committed critical violations of the Good Clinical Practice Rules shall immediately be suspended from any other clinical trial conducted by her or him as a principal researcher until the SMCA in accordance with the Rules for Inspection approved by the head of the SMCA has carried out an unscheduled inspection and has assessed compliance with the requirements of the Good Clinical Practice Rules of all the clinical trials conducted by her or him as a principal researcher. ... The suspension of the researcher shall also be discontinued if the SMCA does not carry out the unscheduled inspections within the prescribed period of time ..."

B. Other relevant law

55. The Law on Administrative Proceedings (*Administracinių bylų teisenos įstatymas*), as in force at the material time, insofar as relevant read as follows:

Article 15. Cases Assigned to the Competence of the Administrative courts

"1. Administrative courts shall decide cases relating to:

...

3) compensation for damage inflicted by [the State or municipal] institutions' unlawful actions in the field of public administration (Article 6.271 of the Civil Code) ..."

Article 58. Circumstances or Facts for which Proof is not Necessary

"1. Circumstances recognised by the court as commonly known shall not be required to be proved.

2. Facts established by an effective court decision in another administrative or civil case shall not be required to be proved in other administrative proceedings in which the same persons are participating. ..."

Article 89. Grounds for Annulment of Contested Decisions

"1. A contested decision (or a part thereof) must be annulled if it is:

1) unlawful in essence, that is to say its contents conflict with higher law;

2) unlawful by reason of being adopted by an entity of administration acting outside the remit of its competence;

3) unlawful as it was adopted in violation of the basic procedures, especially the rules which were to ensure objective assessment of all circumstances and validity of the decision.

2. The contested decision (or a part thereof) may also be annulled on other grounds recognised as material by the administrative court."

Article 92. Legal Consequences of Annulment of the Act

"The annulment of the contested decision shall signify restoration in a certain specific case of the *status quo* which existed before the making of the contested decision, that is to say the claimant is granted restoration of the infringed rights or lawful interests ..."

56. The Civil Code reads, in its relevant parts, as follows:

Article 6.246. Unlawful actions

"1. Civil liability shall arise from the non-performance of a duty established by law or by contract (unlawful failure to act), or from the performance of actions that are prohibited by law or by contract (unlawful action), or from a violation of the general duty to behave with care."

Article 6.249. Damage and damages

"1. Damage shall include the amount of the loss or damage of property sustained by a person and the expenses incurred (direct damages) as well as the income of which he has been deprived, i.e. the income he would have received if unlawful actions had not been committed. Damage expressed in monetary terms shall constitute damages. Where the amount of damages cannot be proved by the party with precision, it shall be assessed by a court ..."

Article 6.271. Liability for compensation for damage caused by an unlawful action on the part of public authority institutions

"1. Damage caused by the unlawful action of a public authority institution must be compensated by the State from the resources of the State budget, irrespective of any fault on the part of a particular public servant or other employee of the public authority institution ...

...

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

C. The courts' practice

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

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

...

[It] should be noted that, under the Constitution, a person has the right to claim compensation for damage inflicted by unlawful actions of State institutions and officials, also when the case of the corresponding compensation for damage is not

> specified in any law, while the courts, deciding such cases according to their competence, have the constitutional powers, by applying the Constitution directly (the principles of justice, legal certainty and legal security, proportionality, due process of law, the equality of persons and the protection of legitimate expectations, as well as other provisions of the Constitution), and general principles of law, pursuing, *inter alia*, the principle of reasonableness etc., to award the corresponding compensation for damage."

58. Most recently, in a ruling of 19 March 2021, the Constitutional Court reiterated the principle that it did not follow from the Constitution that any kind of exceptions could be established where pecuniary or non-pecuniary damage caused to a person would not be compensated (on this point, the Constitutional Court referred to its earlier ruling of 19 August 2006, and to its ruling of 13 May 2010). When reiterating that principle, the Constitutional Court also was inspired by the Court's findings in the judgment of *Černius and Rinkevičius v. Lithuania*, nos. 73579/17 and 14620/18, 18 February 2020.

59. As referred to by the Government in their observations on the admissibility and merits, by a ruling of 20 December 2018 the Supreme Administrative Court in administrative case no. eA-842-822/2018 examined the question of compensation for non-pecuniary damage lodged by G.R. She had been a prosecutor and had been dismissed from her job on the basis of the Prosecutor General's conclusion that she had failed to properly perform her duties. Afterwards, G.R. contested her dismissal and in a final ruling adopted in 2014 the Supreme Administrative Court held that whilst she had committed a disciplinary violation, the decision to dismiss her had been too harsh. Instead, she was to be given a reprimand (*papeikimas*). She was reinstated.

In the ruling of 20 December 2018 the Supreme Administrative Court dismissed G.R.'s claim for non-pecuniary damage caused by her dismissal. It reasoned that although the decision to dismiss the applicant from service had been annulled as disproportionate, the conclusion that she had committed a disciplinary violation when carrying out her duties in violation of the norms of the Code of Criminal Procedure remained valid.

THE LAW

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

60. The applicant alleged, in particular, that the Supreme Administrative Court had failed to respect the *res judicata* effect of an earlier court decision in which the SMCA orders for her suspension as a clinical researcher had been annulled as unlawful. She relied on Article 6 § 1 of the Convention

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

A. Admissibility

61. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The submissions by the parties

(a) The applicant

62. The applicant noted that the right to a court comprised the requirement that in cases where a final court decision had been reached, it could not be questioned (she referred to *Esertas v. Lithuania*, no. 50208/06, § 20, 31 May 2012; *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII; and *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, § 61, 12 January 2006). In her case, however, the Supreme Administrative Court had departed from the principles of legal certainty and *res judicata*, since the facts which had already been established within the first set of court proceedings concerning the annulment of the SMCA orders for her suspension had been disregarded in the second set of court proceedings concerning the claim for damages. She had thus found herself in a situation where the facts concerning the same parties, which had been established in the first set of court proceedings, had been "ignored" in the second set of court proceedings between the same parties. The applicant also complained of the fact that despite the Vilnius Regional Administrative Court's findings in the first set of proceedings that the SMCA had unlawfully suspended the applicant from two clinical trials and that the restrictions on her working as a clinical researcher had been applied unreasonably, the Supreme Administrative Court, denying the principle of legal certainty, had reached the opposite conclusion within the second set of court proceedings. The applicant also considered that it had been unfair to place the burden of the SMCA – a State institution – on her, by refusing to compensate her losses which would not have occurred if the unlawful orders to suspend her had not been adopted.

63. The applicant pointed out that if the principle of legal certainty and *res judicata* of the court decision reached within the first set of court proceedings had been properly respected by the domestic courts, then the facts established within the case for the annulment of the administrative decisions, that is to say facts with binding value within the meaning of Article 58 § 2 of the Code of Administrative Procedure (see paragraph 55 above), should have been considered as binding on the Supreme Administrative Court when rendering the decision in the case concerning damages. The applicant also pointed out that when annulling the SMCA orders to suspend her, the first-instance court had found that the inspection's

conclusions had been based on a subjective assessment of the circumstances and suppositions.

64. Lastly, the applicant argued that because of unlawful measures applied to her by the SMCA, she had not been able to conduct clinical trials for a period of two years, and therefore had been unable to generate income from such activity. However, this had not been taken into account by the national courts. Instead, the burden of unlawful action of the SMCA had been shifted on to the applicant alone, in violation of Article 6 of the Convention.

(b) The Government

65. The Government submitted that the applicant's case and the situation at issue did not amount to a breach of the principle of legal certainty, enshrined in Article 6 § 1 of the Convention.

66. They argued, firstly, that the scope of the two sets of administrative proceedings had been different: within the first set the Vilnius Regional Administrative Court had decided on the reasonableness of the administrative decisions adopted by the SMCA on the basis of the inspectors' conclusions regarding the applicant's work as a researcher. That court had assessed only the circumstances established during the inspection as regards the two critical (serious) violations allegedly committed by the applicant, which had led to her suspension. Apart from that, within the first set of administrative proceedings the court had not assessed the lawfulness of the SMCA actions, nor had it examined any other circumstances with regard to the State's liability.

67. The second set of administrative proceedings had concerned the matter of compensation for damage caused by allegedly unlawful actions on the part of the relevant public authority, the SMCA. The Government thus wished to explain that within that second set of administrative proceedings, in the context of the question of the State's liability, the court had assessed whether the SMCA had issued the suspension orders in accordance with the law, in particular with regard to the protection of individuals participating in a clinical trial. The Supreme Administrative Court had found that the first-instance court's findings within the first set of court proceedings, whilst quashing the orders to suspend the applicant, in themselves had not constituted grounds to establish the unlawfulness of the SMCA's actions. The Supreme Administrative Court had also considered that the decisions issued by the SMCA had not been unlawful *ab initio*.

68. The Government also asserted that in the second set of the administrative proceedings the Supreme Administrative Court had not questioned the assessment of facts and circumstances as carried out by the first-instance court in the first set of administrative proceedings. The Government thus disagreed with the applicant's view that in the second set of proceedings the court had newly assessed or interpreted the same factual

circumstances but had come to the opposite findings. The Government considered that during the second set of proceedings the Supreme Administrative Court had refrained from assessing the severity of any shortcomings in the applicant's actions in conducting the clinical trial. For the Government, the court had "merely noted" that the applicant had failed to take the required actions to ensure the quality, completeness and reliability of the documents of the clinical trial. The Supreme Administrative Court had assessed all the circumstances which it considered to be significant in the context of the damage allegedly sustained by the applicant due to what she claimed to be unlawful actions of the SMCA. Thus, in the second set of proceedings the Supreme Administrative Court had assessed whether the inspection could have been conducted in those circumstances, and also whether the SMCA had had competence to adopt relevant orders once it had received the conclusions of the inspection.

69. The Government also noted that in the second set of proceedings the Supreme Administrative Court had established that the SMCA's actions had been in accordance with the law, that when adopting the orders to suspend the applicant from clinical trials the SMCA had aimed at preventing the violation of [other] patients' rights and ensuring the safety of the clinical trials, and that once the inspectors' conclusions, unfavourable to the applicant, had been received, the SMCA had had to take measures.

70. The Government also wished to point out that, under the well-established case-law of the administrative courts, when examining administrative cases as regards the damage caused by unlawful actions on the part of the authorities, the annulment of an administrative decision in previous proceedings did not in itself imply unlawful actions on the part of the authorities such that civil liability would be found under Article 6.271 of the Civil Code. Furthermore, as noted by the Supreme Administrative Court in the second set of proceedings, also referring to its settled case-law, disputes in administrative cases concerning the annulment of administrative decisions differed from disputes in administrative cases regarding compensation for damage caused by unlawful actions on the part of the authorities (see paragraph 35 above).

71. In the light of the above, the Government considered that the Vilnius Regional Court's decision within the first set of court proceedings annulling the SMCA suspension orders in respect of the applicant had not precluded the Supreme Administrative Court from carrying out an assessment of the factual circumstances in the context of the claim regarding the State's liability within the second set of court proceedings. Within the context of two sets of proceedings, the domestic courts had assessed different factual and legal aspects of the relevant institution's activities, and the courts' finding that the actions of the relevant authority should not be considered as unlawful *ab initio* in the case regarding the compensation for damage had not contradicted the findings of the first court decision regarding the

reasonableness of the applicant's suspension. The Government asked the Court to dismiss the complaint as unfounded.

2. The Court's assessment

(a) General principles

72. As the Court has stated in previous cases, the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of the rule of law and legal certainty, encompasses the requirement that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu*, § 61, and *Kehaya and Others*, § 61, both cited above).

73. The principle of *res judicata* requires that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Any review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not grounds for re-examination (see *Shchurov v. Russia*, no. 40713/04, § 18, 29 March 2011). A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX; *Roşca v. Moldova*, no. 6267/02, § 25, 22 March 2005; and *Vardanyan and Nanushyan v. Armenia*, no. 8001/07, § 67, 27 October 2016). The relevant considerations to be taken into account in this connection include, in particular, the effect of the reopening and any subsequent proceedings on the applicant's individual situation (see, *Agro Frigo OOD v. Bulgaria*, no. 39814/12, § 35, 5 September 2019, and, *mutatis mutandis*, *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 62, 11 July 2017).

74. In the Court's view the principle according to which a final judgment is *res judicata* and resolves the dispute between the parties with final effect is a fundamental element of the right to a fair trial guaranteed by Article 6 of the Convention in civil matters (see *Kehaya and Others,* cited above, § 63). The Court also observes that in all legal systems the *res judicata* effects of judgments have limitations *ad personam* and as to material scope (ibid.*,* § 66).

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

75. At the outset, the Court draws attention to the fundamentally subsidiary role of the Convention system. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court (see *Correia de Matos v. Portugal* [GC], no. 56402/12, § 116, 4 April 2018).

The Court observes that, pursuant to Article 58 § 2 of the Law on Administrative Proceedings, in Lithuania within administrative proceedings the *res judicata* principle extends to the facts established by an effective court decision in one administrative or civil case between the same parties to administrative proceedings (see paragraph 55 above). On the facts of the instant case the Court firstly notes that both sets of court proceedings concerned the same parties – the applicant, on the one hand, and the State, represented by the SMCA, on the other (see paragraphs 13 and 24 above). It would therefore appear that the *res judicata* principle with regard to the Vilnius Regional Administrative Court's decision of 6 December 2013 extended to the applicant and the State, the latter having been represented by the SMCA. This was also the view of the Vilnius Regional Administrative Court in its decision of 4 November 2015 (see paragraph 26 above).

76. However, the Government, endorsing the findings of the Supreme Administrative Court (see paragraph 35 above), asserted that the cases before the administrative courts during the two sets of proceedings had objectively differed, since the first set of court proceedings had concerned the examination of the applicant's claim that she had been unreasonably suspended, whereas the second set of court proceedings had concerned the examination of the SMCA's actions regarding the applicant's suspension, which the applicant had seen as having caused her damage. The Supreme Administrative Court reasoned that the State could be liable in tort only where those actions had been unlawful, which it found not to have been the case. The thrust of the Supreme Administrative Court's approach in the applicant's case was the view, apparently prevalent in the Supreme Administrative Court's practice, according to which the mere fact that the State authorities' decisions had been annulled did not render them unlawful, such as to amount to actions that could have caused damage under Article 6.271 § 4 of the Civil Code (see paragraphs 35 and 39 above; see also Article 89 of the Law on Administrative Proceedings, cited in paragraph 55 above).

77. In this connection, the Court would reiterate that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the obligations undertaken by the Contracting Parties to the Convention (see *Čamovski v. Croatia*, no. 38280/10, § 37, 23 October 2012), and it is not the Court's task to assess *in abstracto* the legal theory underlying a piece of legislation or domestic case-law (see, *mutatis mutandis*, *Kehaya and Others,* cited above, § 65). It also goes without saying that it is not the duty of the Court to examine the scope of application and interpretation of the relevant domestic law on State liability in tort (see, *mutatis mutandis*, *Brletić v. Croatia*, no. 42009/10, § 46, 16 January 2014). Be that as it may, the Court recalls that, in the context of the question of "unlawfulness" of administrative decisions, it has recently found a violation of Article 6 § 1 of

the Convention on account of the Lithuanian courts' refusal to reimburse the applicants' legal costs incurred during administrative litigation in which they challenged the imposition of fines by a State institution and obtained the annulment of the respective decisions as unfounded (see *Černius and Rinkevičius v. Lithuania*, nos. 73579/17 and 14620/18, §§ 26, 68-74, 18 February 2020; see also the Constitutional Court's case-law in paragraphs 57 and 58 above).

78. Regarding the circumstances of the present case, the Court confines itself to noting that the two sets of proceedings, apart from having concerned the same parties, also concerned the same legal relations and the same set of facts, specifically the circumstances surrounding the applicant's suspension from working as a clinical researcher, and thus these two sets of proceedings had essentially the same material scope (see, *mutatis mutandis*, *Brletić*, cited above, § 47; see also *Kehaya and Others*, cited above, § 67, and *Esertas*, cited above, § 23; and compare *Siegle v. Romania*, no. 23456/04, § 36 *in fine*, 16 April 2013). In particular, despite the fact that during the first set of proceedings the Vilnius Regional Administrative Court examined the circumstances leading to V.S.'s death and the applicant's actions *vis-à-vis* her duty of care, and found that two critical (dangerous) violations of the Good Clinical Practice Rules had been established by the inspectors without sufficient basis (see paragraphs 17 and 21 above), the Supreme Administrative Court, without there having been a reopening of the first set of court proceedings, clearly reassessed the same factual circumstances, including the sequence of events that had led to V.S.'s loss of life, and, on the basis of the case file, found that the applicant had failed to guarantee that V.S. received proper medical care when the side-effects appeared (see paragraph 44 above). For the Court, the conclusion that the Supreme Administrative Court re-examined the factual circumstances which had already been established by a final court decision is even more evident from the fact that in order to substantiate its findings in respect of the applicant's failure to act carefully, in its reasoning that court referred to the addendum of 6 April 2011 to the clinical trial agreement, a document which had not been part of the Vilnius Regional Administrative Court's examination during the first set of court proceedings (see paragraph 45 above). Furthermore, it is also apparent that, as regards the second critical (dangerous) violation of the Good Clinical Practice Rules, the Supreme Administrative Court not only re-examined the case file, but also re-qualified that violation as having been only supplementary and not having had any impact on the applicant's suspension (see paragraph 46 above). That being so, the Court cannot share the Government's view that in the second set of the administrative proceedings the Supreme Administrative Court did not question the assessment of facts and circumstances as carried out by the first-instance court in the first set of administrative court proceedings (see paragraph 68 above). Indeed, the

Court observes that the Supreme Administrative Court went as far as making different findings of fact from those made in the first set of proceedings by the administrative court where a final decision had already been reached (see paragraph 44 *in fine*, above).

79. In the light of the foregoing, the Court finds that although not annulled (compare and contrast *Brumărescu*, cited above, §§ 61 and 62), the Vilnius Regional Administrative Court's final decision of 6 December 2013 was, nonetheless, rendered largely devoid of any legal effect, as in separate proceedings for damages the question whether the SMCA had acted reasonably when finding that the applicant had merited disciplinary sanction was re-examined and decided differently by the Supreme Administrative Court, which determined the circumstances regarding the applicant's suspension differently from the manner in which during the first set of court proceedings they had already been determined by the Vilnius Regional Administrative Court. This resulted in the applicant losing her civil claim for damages based on the reassessment of facts which had been raised and addressed in the first set of proceedings. Regardless of the theoretical classification of the second set of court proceedings, those proceedings essentially had the effect of determining the soundness of the applicant's actions as a clinical researcher and whether she had complied with the "increased duty of care" applicable to this occupation (see paragraphs 15, 20, 21 and 44-46 above; see also, *mutatis mutandis*, *Kehaya and Others*, cited above, § 68).

80. The Court has underlined that the principle of legal certainty dictates that where a civil dispute is examined on the merits by the courts, it should be decided once and for all (ibid., § 68; see also *Varnienė v. Lithuania*, no. 42916/04, § 39, 12 November 2013). Thus, the Court cannot but find that the approach of the Supreme Administrative Court provided a "second chance" for the State, represented by the SMCA, to obtain an examination of the dispute already examined in contentious proceedings between the same legal subjects – the State and the applicant – and determined by way of a final court decision (compare ibid., § 69). The fact that it was not the SMCA but the applicant who had initiated this second set of court proceedings is irrelevant, since, as it transpires from the Supreme Administrative Court's ruling, it acted on the basis of the arguments the SMCA had put forward within the second set of court proceedings (see paragraphs 24 and 32 above), thus allowing the SMCA to contest the facts – absence of two critical violations having been committed by the applicant, and the ensuing legal consequences and absence of grounds for the applicant's suspension – which had already been determined during the first set of administrative court proceedings.

81. This, in the Court's view, undermined the applicant's rights under Article 6 § 1 of the Convention, since the Supreme Administrative Court's decision set at naught a judicial process which had ended in the final

decision of the Vilnius Regional Administrative Court of 6 December 2013 (compare *Esertas*, cited above, § 31), and which, moreover, had not even been contested by the SMCA during the first set of administrative court proceedings (see paragraph 23 above).

82. Lastly, it has not been argued before the Court that the SMCA – an emanation of the State and a specialised administrative authority in charge of the control of medicines – had not been afforded all procedural means to defend the State's interests in the first set of court proceedings. Accordingly, the Court cannot hold that in the circumstances of the present case the principle of legal certainty was disturbed in order to correct a "fundamental defect" or a "miscarriage of justice" (see, among other authorities, *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX, and, more recently, *Şamat v. Turkey*, no. 29115/07, § 62, 21 January 2020). Neither has it been argued by the Government that the proceedings before the Vilnius Regional Administrative Court were tarnished by a fundamental defect, for example a jurisdictional error or serious breach of court procedure. There was, therefore, no pressing social need to disregard the decision in question (see *Şamat*, cited above, § 64). Yet, the departure from the *res judicata* principle, without it being justified by circumstances of a substantial and compelling character of the applicant's case, had the effect on the applicant's individual situation, as her claim for damages was dismissed (see paragraph 33 above; see also the case-law referred to in paragraph 73 above and the Constitutional Court's case-law referred to in paragraphs 57 and 58 above).

83. In the light of the foregoing, the Court holds that in the particular circumstances of this case the Supreme Administrative Court acted in breach of the principle of legal certainty inherent in Article 6 § 1 of the Convention. There has accordingly been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

84. The applicant complained that her suspension from working as a clinical researcher had been in breach of the right to respect for her private life, as provided in Article 8 of the Convention.

The relevant parts of Article 8 of the Convention provide as follows:

> "1. Everyone has the right to respect for his private ... life ..."

A. Submissions by the parties

1. The applicant

85. The applicant argued that she had been involved in the clinical trials since November 2004 (see paragraph 5 above). She also asserted that research had been her main professional activity, pointing out that on 27 July 2011, before the orders for her suspension had been adopted, she

had been granted authorisation to conduct a clinical trial wherein she had been appointed the principal researcher (see paragraph 10 above), which showed the potential for her further progression in the field.

86. The applicant submitted that it had been her choice as to what type of work – either a clinical researcher or a rheumatologist – to perform. Had the orders for her suspension not been adopted by the SMCA, she could have continued conducting clinical trials and could have generated not only the amount of income which she had already been set to receive, but also could have raised her income by improving her professional experience and boosting her reputation in that professional field. The orders for her suspension had thus had harsh consequences on her private life. Her work opportunities had been restricted for an unjustifiably long time, for more than two years, depriving her of income and thereby affecting the quality of life. In that connection, she referred to information from the case file which she saw as demonstrating that during the relevant period her work as a clinical researcher had been her main occupation, generating as much as 85% of her overall annual income.

87. The applicant also emphasised that in the medical profession, including for clinical researchers, the requirements of diligence and care were very high and that even the slightest doubt regarding a doctor's or researcher's professional competence could seriously damage his or her professional reputation. In the applicant's case, her suspension had severely tarnished her reputation and led to a loss of confidence in her by sponsors of clinical trials, undermining her opportunities to progress in the future, and to enter into new contracts in order to generate income. In that context, one also had to bear in mind that her suspension from clinical trials and alleged serious infringements had been publicly announced. It went without saying that such violations had affected the applicant's private and family life, economic welfare and possibilities for earning a living from her professional activity.

88. The applicant disagreed with the Government's view (see paragraph 91 below) that damage had not and could not have been suffered by her as she had not been precluded from engaging in other types of work, such as practising as a doctor (rheumatologist), or taking up other activities related to her [medical] profession. The fact that the applicant had continued working as a rheumatologist did not negate the fact that she had been unable to carry out the researcher's activity for which she had possessed the necessary knowledge and experience, as well as fulfilling existing contracts to conduct clinical trials. Thus, the Government's submissions that the applicant had been able to take other income-generating activities were incompatible with the principles of fairness, reasonableness and legitimate expectations.

89. Lastly, the applicant saw as entirely unjustified the Government's statements (see paragraph 91 *in fine* below) that during her restriction period

she had been on maternity leave. The applicant submitted that, firstly, working as a clinical researcher during maternity leave was permitted under Lithuanian law. In fact, the applicant had conducted clinical trials during maternity leave, and it had been solely for the applicant to decide whether to engage in these activities during that period.

2. The Government

90. At the outset, the Government argued that the applicant's inability to work as a researcher in clinical trials which, in the Government's view, the applicant "had actively carried out only as of 2011", had not affected her ability to work as a doctor to such a degree as to attain the threshold of severity under Article 8 of the Convention (they relied on *Denisov v. Ukraine* [GC], no. 76639/11, §§ 115-17, 25 September 2018).

91. The restriction on the applicant's working as a clinical researcher had been rather limited, having lasted for quite a short period – less than two years – and the impact of her suspension had had minimal impact on her private life. It had to be borne in mind that as of 2004 the applicant had worked as a doctor (rheumatologist), and that she had not been precluded from continuing that work or taking up any other activity related to that profession. It was worth noting that the suspension from clinical trials had been a restriction different in nature in comparison to permanent bans applicable to other professions, such as to judges or prosecutors, because in essence it had not been a ban of a permanent nature and had not restricted the applicant from performing most of the functions or activities related to the medical profession. Thus, in the situation at hand, the applicant had had a choice to either wait for the outcome of the administrative proceedings regarding her suspension or to take up another job within the health care system, such as a rheumatologist, and thus make a living. The Government also challenged the applicant's argument that she had received most of her income from clinical research. They considered thus that the applicant had not been deprived of the major part of her income which had substantially impacted her living standard. In that connection, and referring to the case-file material, the Government maintained that the numbers relied on by the applicant concerned her average income within one single year, 2011, and, in any case, could not be considered as reliable evidence to support her assertions in this regard. Besides, the Government asked that note be taken of the fact that, as was apparent from the case-file material, the applicant had been on maternity leave, which, in their view, would have in any case obstructed the applicant from performing the duties of a clinical researcher.

92. The Government also pointed out that during the first set of court proceedings the Vilnius Regional Court had annulled the inspectors' findings that the violations which the applicant had committed had been dangerous (critical), rather than finding absence of shortcomings in the applicant's conduct. The Government thus contended that the damage to the

applicant's reputation had been a foreseeable consequence of her own actions (they relied on *Denisov*, cited above, § 98).

93. In the light of the above, the Government considered that there had been no interference with the applicant's right to private life, and Article 8 of the Convention was not applicable to the applicant's complaint.

94. Lastly, the Government submitted that the applicant had been able to successfully seek protection of her reputation before the domestic courts, when challenging her suspension. Without explicitly stating that the applicant's complaint should be rejected for failure to exhaust the domestic remedies, the Government also argued that, if the applicant was of the view that the fact that the information about her suspension had been made public on the SMCA's website had degraded her honour and dignity, she could have started proceedings for damages at that point.

B. The Court's assessment

1. General principles

95. The general principles as to the applicability of Article 8 to an employment-related dispute between an individual and a State have been set out in *Denisov* (cited above, §§ 92-117). In particular, the Court has held that whereas no general right to employment, nor a right of access to the civil service or a right to choose a particular profession, can be derived from Article 8, the notion of "private life", as a broad term, does not exclude in principle activities of a professional or business nature. It is, after all, in the course of their working lives that the majority of people have a significant opportunity to develop relationships with the outside world. Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may, under certain circumstances, fall within the scope of "private life" (ibid., § 100, with further references).

96. Within the employment-related scenarios involving Article 8, the Court has dealt with different types of cases. In particular, it has dealt with discharge from military service, dismissal from judicial office and removal from administrative functions in the judiciary. Other types of cases have concerned restrictions on access to employment in the public service, loss of employment outside the public service, and restrictions on access to a profession in the private sector (ibid., § 101, with further references).

97. In the cases falling into the above-mentioned category, the Court applies the concept of "private life" on the basis of two different approaches: identification of the "private life" issue as the reason for the dispute (reason-based approach) and deriving the "private life" issue from the consequences of the impugned measure (consequence-based approach) (ibid., § 102).

98. When the reasons for imposing a measure affecting an individual's professional life are not linked to the individual's private life, an issue under

Article 8 may still arise in so far as the impugned measure has or may have serious negative effects on the individual's private life. In cases where the Court employs the consequence-based approach, the analysis of the seriousness of the impugned measure's effects occupies an important place (ibid., §§ 107 and 110).

99. If the consequence-based approach is at stake, the threshold of severity with respect to all the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 is applicable where these consequences are very serious and affect his or her private life to a very significant degree (ibid., § 116).

100. The Court has established criteria for assessing the severity or seriousness of alleged violations in different regulatory contexts. An applicant's suffering is to be assessed by comparing his or her life before and after the measure in question. The Court further considers that in determining the seriousness of the consequences in employment-related cases it is appropriate to assess the subjective perceptions claimed by the applicant against the background of the objective circumstances existing in the particular case. This analysis would have to cover both the material and the non-material impact of the alleged measure. However, it remains for the applicant to define and substantiate the nature and extent of his or her suffering, which should have a causal connection with the impugned measure (ibid., § 117).

2. Application of the above principles to the instant case

101. The explicit reasons for the applicant's suspension from the position of clinical researcher were strictly limited to concrete factual circumstances, namely the alleged violation by the applicant of Good Clinical Practice Rules and the allegedly related death of the patient who had taken part in the clinical trial conducted by the applicant (see paragraphs 6-10 above). Those reasons related only to the applicant's professional tasks at the workplace and had no connection to her private life. Accordingly, the Court does not find that the impugned measure – the applicant's suspension – would have been linked to any factors relating to the applicant's private life, those factors having been regarded as qualifying criteria for the researcher's function (ibid., §§ 103-105, with further references). The applicant did not maintain so either.

102. When it comes to the consequences of the applicant's suspension, the first question which arises is whether there can be any scope for an issue under Article 8 in the light of the *Gillberg* exclusionary principle (see *Gillberg v. Sweden* [GC], no. 41723/06, § 68, 3 April 2012; see also *Denisov*, cited above, § 98). According to that principle, where the negative

effects complained of are limited to the consequences of the unlawful conduct which were foreseeable by the applicant, Article 8 cannot be relied upon to allege that such negative effects encroach upon private life. It has to be noted that in *Gillberg* the fact of the applicant's unlawful conduct was largely undisputed (see *Gillberg*, cited above, § 71), whereas in the present case the applicant contested the very existence of any misconduct, thus implying that her suspension could not have been a foreseeable consequence of her conduct in the capacity of clinical researcher. Given the fact that as regards the alleged critical violations, which had been the sole basis for her suspension (see paragraph 13 above), the applicant was fully exculpated by the final decision of the Vilnius Regional Administrative Court (see paragraphs 14-23 above), the present case is distinguishable from *Gillberg* and the Court cannot follow this approach.

103. Turning to the consequences-based assessment, the Court firstly takes note of the applicant's argument that the suspension resulted in a reduction in her income, and in her prospective pecuniary gain, in the capacity of a researcher (see paragraph 86 above). This argument has to be viewed as relating to the worsening of the material well-being of the applicant and her family. The Court has already held that even though the pecuniary element of the dispute has been considered significant for the purpose of the applicability of Article 6 under its civil head, this conclusion does not automatically bring the issue within the scope of Article 8 of the Convention (see *Denisov*, cited above, § 122). In the present case, the parties disagreed on which percentage of her annual income her work as a clinical researcher had accounted for (see paragraphs 86 and 91 *in fine* above), and the Court does not consider it necessary to quantify that, since, in any case, the number has not been determined by the domestic courts (see, *mutatis mutandis*, *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 61, ECHR 2012). That being so, and in the absence of any strong evidence to suggest that the reduction in the applicant's income, caused by her suspension as a clinical researcher, seriously affected the "inner circle" of her private life, it would be speculative to assume this.

104. Secondly, the Court acknowledges the applicant's argument that she saw a career as a clinical researcher as a professional challenge and a way towards self-improvement. In this respect, the Court has held that the notion of "private life" may include professional activities (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 110, ECHR 2014 (extracts)) and also reiterates that Article 8 protects the right to personal development (see *Gillberg v. Sweden* [GC], no. 41723/06, § 66, 3 April 2012; and *Bărbulescu v. Romania* [GC], no. 61496/08, § 70, ECHR 2017 (extracts), and the case-law cited therein). Even though the applicant was suspended as a researcher, the fact remains that, whilst suspended, she could have continued working as a rheumatologist or in another job as a doctor, thus

having the opportunity to enhance her qualifications through day to day work.

105. Thirdly, the question remains whether or not the impugned measure encroached upon the applicant's reputation in such a way that it seriously affected her esteem among others, with the result that it had a serious impact on her interaction with society. The Court will look at this issue in terms of professional and social reputation.

106. As regards the applicant's professional reputation, the Court notes that her principal professional function was that of a doctor. The profession of a doctor required her to possess specific knowledge, educational qualifications, skills and experience. At the same time, the successful performance of a clinical researcher's function is not, strictly speaking, a characteristic of the doctor's profession. Therefore, in objective terms, the rheumatologist's function constituted the applicant's fundamental professional role. Her activity as a clinical researcher, however self-fulfilling and prestigious it might be in the medical sphere and however it might have been subjectively perceived and valued by the applicant, did not relate to the principal sphere of her professional activity (see, *mutatis mutandis*, *Denisov*, cited above, § 125). In the proceedings at issue, at no point did the domestic authorities put emphasis on the applicant's performance in her capacity as a rheumatologist, as such, or express any opinion as to her competence and professionalism in general. The decisions regarding the applicant's suspension concerned only her researcher's function, and this has been prompted by circumstances of one particular clinical trial where loss of life had occurred. Her principal professional function, that of a doctor (rheumatologist), was not touched upon. This limited area of scrutiny and criticism cannot be regarded as relating to the core of the applicant's professional reputation (see, *mutatis mutandis*, *Denisov*, cited above, §§ 125 and 126).

107. As regards social reputation in general, the criticism by the authorities did not affect a wider ethical aspect of the applicant's personality and character. Even though the applicant's suspension was based on the suspicions that she had breached her duties in the capacity of a clinical researcher, any accusation of intentional misconduct had been ruled out by the Vilnius Regional Administrative Court (see paragraph 22 above). Eventually, the applicant's moral values were not called into question and no reproaches of this nature can be identified in the final court decision (contrast *Lekavičienė v. Lithuania*, no. 48427/09, 27 June 2017, and *Jankauskas v. Lithuania (no. 2)*, no. 50446/09, 27 June 2017).

108. As to establishing and maintaining relationships with others, such as the sponsors of clinical trials (see paragraph 87 above), the applicant's temporary – two year long – suspension from the position of a clinical researcher, which she saw as the apex of her medical career, did not result in her removal from that field of medical activity in future. Besides, the Court

has already noted that she continued to work as an ordinary rheumatologist, alongside her colleagues. The applicant did not put forward any other allegations in this respect. It follows that, even if her opportunities to establish and maintain relationships, including those of a professional nature, might have been affected, there are no factual grounds for concluding that such effects were substantial. In any event, the Court does not have sufficient material to conclude that the alleged loss of esteem reached the high degree of seriousness required by Article 8 of the Convention, as discussed in paragraphs 99 and 100 above.

109. Lastly, the applicant's contention that the decision on her suspension had been made public on account of it being announced in the website of the SMCA (see paragraphs 9 and 87 above) and thus had become known to an unidentified number of persons cannot, as such, demonstrate substantial damage to her professional and social reputation (see, *mutatis mutandis*, *Denisov*, cited above, § 130).

110. Accordingly, measuring the applicant's subjective perceptions against the objective background and assessing the material and non-material impact of her suspension on the basis of the evidence presented before the Court, it has to be concluded that the suspension had limited negative effects on the applicant's private life and did not reach the threshold of seriousness for an issue to be raised under Article 8 of the Convention.

111. Given that neither the reasons for the applicant's suspension were linked to nor that the consequences of that measure affected her "private life" within the meaning of Article 8, the Court finds that this Article is not applicable. The Government's objection in this respect should therefore be upheld and the complaint must be dismissed as incompatible *ratione materiae* with the Convention pursuant to Article 35 §§ 3 (a) and 4. In the light of this conclusion, it is not necessary to rule on the Government's second objection, based on Article 35 § 3 (b) of the Convention (see paragraph 94 above).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

112. Lastly, the applicant complained of an alleged violation of Article 13 of the Convention. She claimed that she had sustained damage due to her suspension and had not been compensated for that, even in part, because of the ineffectiveness of the domestic remedies.

113. The Government argued that the applicant had had an effective remedy with regard to her complaint under Article 6 § 1 of the Convention, given that it had been examined by the domestic courts.

114. The Court notes that it has already found a violation of Article 6 § 1 of the Convention (see paragraph 83 above). In so far as the applicant's complaint relates to the fairness of the proceedings that concerned her claim

for compensation, Article 6 is the *lex specialis* (see, *mutatis mutandis*, *Mitchell and Holloway v. the United Kingdom*, no. 44808/98, § 61, 17 December 2002). The Court thus considers that it is unnecessary to examine the admissibility and merits of the applicant's complaint under Article 13.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. Article 41 of the Convention provides:

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

A. Damage

116. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

117. The Government disputed the sum claimed as excessive.

118. The Court notes that it has found a violation of Article 6 § 1 of the Convention. It considers that the applicant must have suffered distress and anxiety which the finding of a violation of the Convention in this judgment does not suffice to remedy. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,000 under this head.

B. Costs and expenses

119. The applicant also claimed EUR 2,063 for the costs and expenses incurred before the domestic courts and EUR 1,210 for those incurred before the Court.

120. The Government argued that the applicant's claims as regards the legal costs incurred before the domestic courts could not be regarded as grounded and substantiated and should therefore be rejected.

However, they considered that the legal costs incurred before the Court in the amount of EUR 1,210 had been reasonable and properly substantiated.

121. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,086 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 6 § 1 admissible;

2. *Declares*, unanimously, the complaint under Article 8 of the Convention inadmissible;

3. *Holds*, by five votes to two, that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*, unanimously, that there is no need to examine separately the admissibility and merits of the applicant's complaint under Article 13 of the Convention;

5. *Holds*, by five votes to two,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,086 (two thousand and eighty-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Kūris;
(b) partly dissenting opinion of Judges Kjølbro and Koskelo.

J.F.K.
S.H.N.

CONCURRING OPINION OF JUDGE KŪRIS

1. This case is a borderline one. While I have no hesitations regarding the finding of a violation of Article 6 § 1 of the Convention, it was not without a certain uneasiness that I voted for the decision to declare the applicant's Article 8 complaint inadmissible. The Court's response to the applicant's query could well have been instead that this complaint was admissible and, furthermore (but, of course, hypothetically), that there had been a violation of Article 8.

Such an alternative turn would have been somewhat natural slightly more than three years ago.

I

2. Not so long ago the Court's case-law was steadily developing in the direction of expanding the applicability of Article 8. That expansion was not always easily justifiable. At times it was not justifiable at all – in the cases where the Court held that Article 8 was applicable even to situations in which an objective observer would have had difficulty guessing what was so "private", in the proper sense of the word, in the applicant's grievances, this allowed him or her to fall under the protection of the right to respect for private and family life, enshrined in Article 8. In particular, the notion of "private life" was extended to embrace virtually any act by the authorities *vis-à-vis* an individual, as a participant in the labour market or as member of a profession or holder of any other official function.

But that was then.

3. In my dissenting opinion in *Erményi v. Hungary* (no. 22254/14, 22 November 2016) I argued that the perspective of examining privacy in terms of the right and value protected by Article 8 had to be returned to its natural angle: 8 should indeed be seen as 8, not like ∞, the sign of infinity.

II

4. Had the present case been examined at the time when that most expansive interpretation of the scope of applicability of Article 8 was flourishing, it is very likely that Ms Gražulevičiūtė's complaint under that Article would have been declared admissible.

That admissibility could have been substantiated along the following lines.

5. Apart from working as a rheumatologist, the applicant also worked as a clinical researcher. The Government insisted that, whilst suspended, she could have continued working as a rheumatologist or in another job as a doctor. Nevertheless, this opportunity, as such, hardly counterbalanced the applicant's ability to choose to work as a clinical researcher (in particular,

as under Article 48 of the Lithuanian Constitution individuals may freely choose their jobs). From the fact that the applicant had been contracted to take part in the first and the second clinical trials, and in the second trial she was supposed to be the principal researcher, it would also be not unreasonable to hold that she had the necessary qualifications for such work. Accordingly, weight could, or, rather, should, be given to the applicant's argument that she saw a career as a clinical researcher as a professional challenge and a means towards self-improvement. In this respect it must be mentioned that the notion of "private life" may include professional activities (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 110, ECHR 2014 (extracts)) and that Article 8 protects the right to personal development (see *Gillberg v. Sweden* [GC], no. 41723/06, § 66, 3 April 2012; and *Bărbulescu v. Romania* [GC], no. 61496/08, § 70, ECHR 2017 (extracts), and the case-law cited therein). Article 8 likewise protects the right to establish and develop relationships with other human beings and the outside world (see *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018). The applicant has plausibly argued that her suspension, which, in addition, had been made public on the website of the State Medicines Control Agency ("SMCA"), caused a loss of trust in her as a medical professional by sponsors of clinical trials (compare *Platini v. Switzerland* (dec.), no. 526/18, § 57, 11 February 2020). Although the parties disagreed as to the percentage of her annual income for which her work as a clinical researcher had accounted, that quantification does not seem to be necessary, since in any case it is clear that, at least for her work on the first clinical trial, the applicant should have received the sum of EUR 6,128, which cannot be regarded as insignificant. (In addition, although the Government have not explicitly argued that by not having started separate court proceedings for damage caused to her reputation the applicant did not exhaust domestic remedies, she raised this aspect within the court proceedings for damages.) That being so, the orders for the applicant's suspension could be assessed as having seriously affected her private life.

Accordingly, Article 8 of the Convention could be held to be applicable to the applicant's complaint, and her complaint (being neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35) could therefore be declared admissible.

III

6. As mentioned above, in the light of the Court's case-law as it stood three years ago the Court could also have found a violation of Article 8 on account of the disproportionate nature of the interference with the applicant's right to respect for her private life.

The reasoning behind that finding could have been the following.

7. In *Denisov* (cited above), the Court dealt with an employment-related dispute between an individual and a State, where the decision to dismiss the person was taken by a State authority. It held that once such a measure was found to have seriously affected the person's private life, that conclusion meant that the complaint was compatible *ratione materiae* with the provisions of the Convention and, at the same time, that the measure constituted an "interference" with the "right to respect for private life" for the purpose of the three-limb merits test under Article 8: assessment of the lawfulness, legitimate aim and necessity of such "interference" (§ 92).

8. In the light of this methodology, Ms Gražulevičiūtė's suspension from working as a clinical researcher constituted an "interference" with the "right to respect for her private life" for the purpose of the three-limb merits test under Article 8.

9. Moreover, her suspension from working as a clinical researcher, notwithstanding its subsequent annulment, was based on the provisions of the Description of Control Procedure (as was also noted by the domestic courts) and thus the interference had a basis in law.

10. It could also be accepted that the interference pursued the legitimate aim of protecting the rights of patients, since from the Law on Ethics of Biomedical Research (Article 5 § 1); the Good Clinical Practice Rules (point 2.3), the Oviedo Convention on Human Rights and Biomedicine (Article 2) and the provisions of Directive 2001/20/EC of the European Parliament and of the Council of 4 April 2001 ("the Directive") it follows that a person's interests and well-being prevail over those of society and science (this had been pointed out by the Supreme Administrative Court).

11. The turning-point would have been where the Court had to address the issue of the necessity and proportionality of the interference in question. I believe that, had the Court reached that stage, it could have appeared that there were solid reasons for finding a violation of Article 8.

12. In the light of the death of V.S., a patient who had been taking part in the clinical trial of tocilizumab, a medical product, conducted by the applicant together with other clinical researchers, it was not only necessary but also obligatory to investigate the circumstances in which the loss of life had occurred. This positive obligation of the State stemmed from Article 2. The States' obligation to protect clinical trial subjects and to suspend a clinical trial where the State has objective grounds for doubting that the conditions for the safety of the clinical trial are being met have been clearly established in Articles 2 and 12 of the Directive. The necessity for the State to take measures to guarantee that the rights, safety and well-being of the individuals taking part in a clinical trial are being properly protected is also prescribed in domestic law, namely in the Good Clinical Practice Rules (point 3.1.1) and the Law on Pharmacy (Article 18 § 14).

That being so, the circumstances leading to V.S.'s death had been examined firstly during a pre-trial investigation, and secondly during

administrative court proceedings for annulment of the SMCA orders for the applicant's suspension. As noted by the experts during the pre-trial investigation, V.S. died of sepsis which developed "as fast as lighting", and, most importantly, was not caused by the applicant's actions or failure to act. Likewise, during the first set of administrative court proceedings, her actions were again examined. That examination included analysing medical documents and questioning of witnesses, and again a conclusion was reached that V.S.'s death had not been the result of the applicant's actions or her failure to act.

Against this background (and bearing in mind that it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them), the applicant's suspension, whilst initially justified, became unjustified from the moment the SMCA orders were annulled by the Vilnius Regional Administrative Court's decision.

13. However, that annulment did not in itself erase all the consequences of the applicant's suspension. The Court therefore could, or even should, have focused on the question of redress, that is to say, whether, once exculpated by the court during the first set of administrative court proceedings, the applicant should have been compensated for her suspension.

14. The applicant's suspension from working as a clinical researcher lasted nearly two years (from 10 January 2012 to 21 December 2013), when the Vilnius Regional Administrative Court's decision annulling the SMCA's orders for her suspension became final. Whilst during that time the applicant could have worked as a doctor (rheumatologist), it could, or perhaps should, not be overlooked that the applicant, in her own submission, saw a career as a clinical researcher as important for her professional self-fulfilment as well as a way to earn a living.

Her suspension was based on the inspectors' finding that she had committed two critical (dangerous) violations of the Good Clinical Practice Rules. As acknowledged by the SMCA during the first set of administrative court proceedings, it was those two (alleged) violations that were pertinent for her suspension – any other possible failings attributable to the applicant could not have been grounds for suspension. It follows that, once those two dangerous (critical) violations held against the applicant had been annulled owing to a flawed interpretation of events by the inspectors, the grounds for her suspension could no longer be considered necessary. Therefore, it would be very difficult to be convinced by the Government's argument that the applicant's actions included additional failings and thus the Supreme Administrative Court had been correct in finding that the interference with her rights as a researcher had been proportionate.

15. The case referred to by the Government (see paragraph 59 of the judgment) was also different in the sense that, in that case, even if the

plaintiff's suspension had been lifted, the imposition of another disciplinary sanction – a reprimand – had been endorsed. In the instant case no disciplinary sanction whatsoever was imposed on the applicant.

Thus, having regard to its conclusion that in the applicant's case the principle of legal certainty was breached (see paragraphs 82 and 83 of the judgment), the Court should have relied, as final and valid, on the Vilnius Regional Administrative Court's verdict that the restrictions on the applicant's working as a clinical researcher had been imposed "unjustly", and as a consequence of the erroneous and subjective assessment of facts by the inspectors.

16. Consequently, the Court could have held that, by refusing the applicant's claim for compensation for pecuniary and non-pecuniary damage, which she maintained she had sustained owing to her suspension, the Supreme Administrative Court disproportionately placed the burden of the mistake of the SMCA, a State authority, on the applicant.

17. Within the second set of administrative court proceedings the question of the amount of pecuniary damage, consisting of income not received because of what the Vilnius Regional Administrative Court adjudged to be "unlawful actions" on the part of the SMCA, and in connection with the first clinical trial, was examined and explained by the Vilnius Regional Administrative Court. Bearing in mind the interpretation of the obligation to compensate for damage caused by the State institutions' and officials' unlawful actions, this obligation having been set out by the Constitutional Court in its ruling of 19 August 2006, reinforced in its ruling of 19 March 2021, and very recently scrutinised by the Court in the judgment of *Černius and Rinkevičius v. Lithuania* (nos. 73579/17 and 14620/18, §§ 26 and 71, 18 February 2020), the Court would have needed very strong reasons to depart from the Vilnius Regional Administrative Court's findings. I fail to see any such reasons, but, as I mentioned, this alternative line of reasoning is hypothetical, because the Court has not reached this stage of examination of the applicant's Article 8 complaint.

18. That being so, I am inclined to tentatively maintain that, unlike the position regarding the first clinical trial, the refusal to compensate the applicant for the second clinical trial could not be regarded as disproportionate, because, as established by the Vilnius Regional Clinical Court, that trial had not taken place.

19. Last but not least, the Government argued that during her suspension the applicant had been on maternity leave which, in their view, would have in any case hindered her from performing the duties of a clinical researcher. This suggestion was contested by the applicant, who stated that there was no prohibition on a clinical researcher working as such during maternity leave. Her position is also supported by the Vilnius Regional Administrative Court, which rejected V.S.'s daughters' argument, similar to that of the Government, in holding that even if the applicant had been on maternity

leave, she had still continued seeing the five patients who had taken part in the first clinical trial and moreover had successfully brought that clinical trial to a conclusion

The Court has very recently held that, as a matter of principle, even where the availability of an employee was a precondition for the proper performance of an employment contract, the protection afforded to a woman could not be dependent on whether her presence at work during maternity leave was essential for the proper functioning of her employer or by the fact that she was temporarily prevented from performing the work for which she had been hired (see, *mutatis mutandis*, *Jurčić v. Croatia*, no. 54711/15, § 76, 4 February 2021).

Accordingly, the Court could, or should, have dismissed the Government's argument that, given the fact that the applicant went on maternity leave, her suspension did not disproportionately affect her interests.

IV

20. But that would have been then, and now is now.

The game-changer was *Denisov v. Ukraine* (cited above), the judgment in which, while reiterating what had long been the Court's case-law and admitting that "it would be too restrictive to limit the notion of 'private life' to an 'inner circle' in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle" (§ 96), the Grand Chamber revisited and fine-tuned the Court's standards of Article 8 applicability in employment-related disputes (§§ 92-117). There is no need to repeat them here, as they are referred to in the present judgment.

21. I have previously expressed my approval of the change in the Court's course, from one which by then had reached the level of virtual all-inclusiveness of Article 8 towards a more nuanced, more qualified and more common sense-friendly (in the sense that it is closer to the meaning of the word "private") approach, based on what can be called the *Denisov* standards for the applicability of Article 8 in employment-related disputes (I refer to my dissenting opinions in *Brisc v. Romania*, no. 26238/10, 11 December 2018 joined by Judge Yudkivska, and in *Nicolae Virgiliu Tănase v. Romania*, [GC] no. 41720/13, 25 June 2019).

And yet one must acknowledge that, to hope that the said standards, refined as they now are, may have completely put an end to the erstwhile and even very recent spilling in all directions of Article 8 case-law, would be very very very optimistic. One could legitimately ask whether such optimism would embrace realism. For there are – and always will be – bigger or smaller deviations from these standards. Still, the process of spilling over on all fronts, undesirable and sometimes mysterious as it was,

has been constrained within certain reasonable limits and significantly slowed down.

Under the *Denisov* standards, the applicability threshold has become clearer, more elaborate, and – not so easy to reach. I believe that under these refined and, in my opinion, consistent standards today, not only no *Erményi* (cited above), in which the all-inclusiveness of Article 8 had reached its extreme, would be possible, but one could even question whether a violation of Article 8 (in conjunction with Article 14) would be so easily found in such cases as, say, *Sidabras and Others v. Lithuania* (nos. 55480/00 and 59330/00, 27 July 2004) or its sequels *Rainys and Gasparavičius v. Lithuania* (nos. 70665/01 and 74345/01, 7 April 2005) and *Žičkus v. Lithuania* (no. 26652/02, 7 April 2009). But that would be guesswork.

22. What is pertinent to the present case is that under the *Denisov* standards it is indeed possible to substantiate that Ms Gražulevičiūtė's complaint under Article 8 is inadmissible, as it can be argued – if not conclusively, then at least with not a little degree of persuasiveness – that her suspension from working as a clinical researcher had limited negative effects on her private life and did not reach the requisite threshold of seriousness for Article 8 to be applied, and therefore that her complaint must be dismissed as incompatible *ratione materiae* with the Convention.

23. As I have already mentioned, this is a borderline case. The Chamber chose to place itself on one side of the borderline and not on the other. There are no strong reasons why it could not make such a choice.

But the Chamber's choice could have been different, because the *Denisov* standards, at least in my reading, would not fully exclude such a possibility, given all the factual circumstances of the present case. Had the Chamber chosen to place itself on the other side of the borderline, perhaps even the *Denisov* standards would not have offered very strong reasons against such a choice.

24. It is often said that hard cases make bad law. Less often (if ever) is this commonplace adage subjoined by a reservation that this generality has exceptions.

The present one is a hard case. However, owing to the ultimate finding of a violation of Article 6 § 1, I tend to view it, seen overall, as one of the (perhaps indeed rare) exceptions to the above-mentioned generality – not only because the Convention right to a fair trial of this particular applicant was protected, but also because the said finding of a violation of Article 6 § 1 and the reasoning underlying it serve to enhance and reinforce the principles of legal certainty and *res judicata*. Those principles are called upon to secure the materialisation of the fundamental tenet of the rule of law and its rapprochement with substantive justice, namely that, when applied in practice, the rule of law has fewer gaps through which substantive injustice so often manages to pass – sometimes to the detriment of victims of judicial manoeuvring.

PARTLY DISSENTING OPINION OF JUDGES KJØLBRO AND KOSKELO

1. We have voted against the finding of a violation of Article 6 § 1 in the present case because, in our firm view, the requirement of legal certainty under that provision has not been breached. Instead, we consider that the majority have erred in their interpretation of the principle of *res iudicata* by giving it an excessively wide scope. Such an interpretation risks entailing wide-ranging disruptive implications for the domestic legal systems throughout the Convention space. Instead of protecting legal certainty, the approach taken will therefore, paradoxically, provoke a great deal of legal uncertainty.

2. What is at issue in the present case is the extent of the substantive *res iudicata* effect attaching to a final judgment falling under the civil limb of Article 6 § 1 *(l'étendue de l'autorité de la chose jugée*; *matérielle Rechtskraft*), namely the scope of the binding effect of such a final judgment in subsequent litigation between the same parties. More specifically, the gist of the problem concerns the question whether, or to what extent, the two sets of proceedings concerned issues which were "the same", such as to create a binding effect from the final findings in the first set of proceedings over the subsequent proceedings.

3. It is well-known that this subject-matter is one of considerable complexity, and one where the governing rules and doctrines in the various domestic legal orders may not be identical in all respects. That state of affairs calls in itself for a degree of care and caution with regard to the Court's approach in interpreting Article 6 § 1.

4. In the present case, however, the majority not only fail to exercise such care and caution but disregard the fundamental limits of the principle of *res iudicata* as set out in the Court's existing case-law. This is a matter of great concern.

5. In *Kehaya and Others v. Bulgaria* (nos. 47797/99 and 68698/01, 12 January 2006), the Court stated that the principle according to which a final judgment is a *res judicata* and resolves *the dispute* between the parties with final effect is a fundamental element of the right to a fair trial guaranteed by Article 6 in civil matters (§ 63). It also noted that in all legal systems the *res judicata* effects of judgments have limitations *ad personam* and as to material scope (§ 66). It is, however, essential to note that in its case-law, the Court has in this regard expressly referred to the "*same circumstances which were crucial for deciding the dispute*" (see *Brletić v. Croatia*, no. 42009/10, § 47, 16 January 2014, and *Esertas v. Lithuania*, no. 50208/06, § 23, 31 May 2012); "*les mêmes circonstances factuelles qui étaient déterminantes pour leurs issues*" (see

Siegle v. Romania, no. 23456/04, § 36, 16 April). This is crucial because the *res judicata* concerns, and is limited to, the specific legal issue that has been resolved, i.e. the legal consequence that has been determined by a final judgment. It is to be noted that in *Kehaya and Others*, the legal issue in the two sets of proceedings was indeed the same, namely the question of ownership of certain immovable property. In *Brletic*, the legal issue in both sets of proceedings concerned the same monetary obligation. In *Esertas*, the issue concerned the (continued) existence of a contract between the parties. In *Siegle*, the key issue determining the outcome of the case was whether an offence had been committed by the driver of a vehicle. Although the above case-law is cited, and ostensibly relied on, in the present judgment, in reality the majority extend the scope of the *res judicata* effect, as a Convention standard, far beyond the existing case-law.

6. In the present case, the essence of the position taken by the majority is based on the idea that "the Supreme Administrative Court re-examined the factual circumstances which had already been established by a final court decision" (see paragraph 78 of the judgment). In this context, the majority also state that the two sets of proceedings were not only between the same parties but concerned "the same legal relations" and the "same set of facts, specifically the circumstances surrounding the applicant's suspension" from her work as clinical researcher. Thus, the majority considers that the two sets of proceedings had "essentially the same material scope".

7. We find such loosely formulated starting points fundamentally problematic, especially because it is obvious that a given "legal relation" may give rise to a variety of distinct legal issues and disputes, and even the "same set of facts", or the "circumstances surrounding" a given factual event, may raise legal issues that are different in terms of the applicable substantive norms, and thus also separate and distinct with regard to the application of the principle of *res judicata*. Furthermore, the assessment of such different legal issues may depend on different factual conditions, which accordingly makes such issues subject to a separate or at least a differentiated assessment of the facts and related evidence. All these basic matters, however, are overlooked by the majority.

8. Indeed, the *res judicata* principle has nothing to do with the position that different legal consequences arising from a given situation may depend on different factual conditions. There is nothing unusual or abnormal in that. Accordingly, different legal consequences may be subject to distinct legal conditions, which not only justify but even require distinct factual assessments. To suggest that this is contrary to the *res judicata* principle as applicable under the Convention is, in our view, not only wrong but entirely unreasonable. Such an interpretation of the *res judicata* principle as a Convention standard would have unforeseen consequences and cause wide-

ranging disruption in the established legal and procedural systems throughout Europe. We can see no justification for such an approach.

9. In the present case, the two sets of proceedings concerned different legal issues, namely the different consequences of an allegedly unlawful administrative act – annulment of the suspension on the one hand, and the State's liability in damages for pecuniary or non-pecuniary losses on the other. The legal conditions to which each of these issues is subject, and the factual assessments on which they depend, are matters of domestic law. Accordingly, they must be settled at the domestic level. In the second set of proceedings, concerning the issue of the State's liability in damages, the Supreme Administrative Court carefully explained in its judgment that the annulment of the suspension did not mean that the measure was unlawful *ab initio*, and that the conditions for the State's liability in tort were therefore not satisfied.

10. There is nothing unusual in such a position as a matter of domestic law. In any event, the *res judicata* principle is not an instrument by which the Court could or should intervene to resolve and overrule such determinations in matters of domestic law. This is so even if it appears that, on this particular point, there is a conflict of interpretation between the Supreme Administrative Court and the Constitutional Court. That issue of substantive national law remains one for the domestic authorities to settle.

11. In the light of the above considerations, we discern no valid grounds for holding, as the majority does, that the Supreme Administrative Court in the present circumstances acted in breach of the principle of legal certainty inherent in Article 6 § 1. As already mentioned, we consider that, on the contrary, the misguided interpretation of the principle of *res judicata* as adopted by the majority is liable to create a great deal of wholly unwarranted legal uncertainty within the entire Convention space.